



Legal Update

June 2016

The Appeals Court holds that police were not justified in searching the backseat armrest of a vehicle after safety concerns dissipated post exit order and patfrisk.

Commonwealth v. Meneide, Mass. Appeals Court, No. 15-P-124 (2016):

The Appeals Court affirmed the motion judge's decision suppressing a handgun found in the backseat armrest and found that the following:

1. The exit order, pat-frisk of the driver, and initial limited search of the vehicle where the driver was seated were valid based on safety concerns;
2. The subsequent search of the backseat armrest exceeded the scope of a protective frisk because the driver made no movement toward the backseat area in general or particularly toward the armrest and there was no other reason to suggest a weapon was concealed in the armrest.

Background: State police were on patrol in Brockton when they observed a small four door sedan driven by the defendant who was looking side to side and talking on a cell phone. The troopers did not recognize the driver nor were they familiar with the apartment complex that the driver was headed towards. The troopers were only aware that drug sales had been taking place in the parking lots of commercial establishments in

the general area. When the defendant drove through a red light, the police stopped the vehicle. As the troopers approached, they observed the defendant lift his buttocks six inches. The troopers believed that the defendant's movements were consistent with him placing his left hand under his buttocks. The troopers were concerned the defendant was trying to conceal something beneath him, presumably contraband such as narcotics or weapons.

The defendant was calm and complied with the trooper's request for his license and registration. One of the troopers smelled an overwhelming odor of unburnt marijuana and air fresheners emanating from the car. The defendant acknowledged that he had "a little weed." The troopers ordered the defendant out of the vehicle and conducted a pat frisk. A packet of marijuana was found in the defendant's jacket pocket, and a smaller one was located in the pocket of his pants. The two packets weighed less than an ounce and the trooper did not intend to apply for a criminal complaint for possession. The trooper found nothing when he searched the area of the driver's seat and opened the driver's side door. When the trooper pulled down the back center armrest, he discovered a gun.

The defendant was charged with unlawful possession of a firearm and filed a motion to suppress. After a hearing, the motion judge concluded that the police validly stopped the motor vehicle and lawfully issued an exit order based on safety concerns. The judge denied the motion with respect to the marijuana, but allowed it with respect to the gun retrieved during the search of the vehicle and the statements the defendant made to police.

1st Issue: Were the exit order, pat-frisk, and initial limited search lawful?

The Appeals Court held that the troopers had **reasonable safety concerns** to justify the exit order, pat-frisk, and **limited search of the immediate area** where the defendant was seated. With regard to the exit order, the Appeals Court found that the "defendant's unusual action of lifting himself off the seat by six inches in a manner consistent with concealing something was sufficient to justify the exit order and pat-frisk. "The officer does not need to know the exact nature of the object being concealed in order to trigger a safety concern." *Commonwealth v. Haynes*, 83 Mass. App. Ct. 903 (2013). Further, the Court held that "there is no blanket rule that a driver who conceals something when officers stop him is presumed to be concealing drugs rather than a weapon." The exit order and pat-frisk of the defendant were proportionate to the suspicions that he "had concealed a weapon beneath himself or in a back pocket."

2nd Issue: Did police exceed the scope of the search?

The Appeals Court found that the search became excessive when no weapon was found during the pat-frisk or in the immediate area where the defendant was seated. The search must be limited to where a suspect may be able to gain possession of a weapon. For example, police were justified in opening a locked glove compartment after they observed the defendant lock the glove compartment while the police approached. *Commonwealth v. Graham*, 78 Mass. App. Ct. 127 (2010). The Court cited examples where police were justified in making a limited search based on the defendant's actions. When a defendant twists his body to the right, a protective search was limited beneath the defendant's seat. *Commonwealth v. Almeida*, 373 Mass. 272 (1977). Similarly, when a defendant leaned forward and down to retrieve his registration from a glove compartment, police were justified in looking inside the console and glove compartment for safety measures. *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526 (1995). The scope of a protective search within the interior of an automobile must be limited by, and rationally connected to, a safety concern about the particular area to be searched.

The Appeals Court did not agree with the Commonwealth's argument that the small size of the vehicle made it possible for the defendant to reach into the backseat armrest. The Court stated that unless there is a safety issue, the possibility that a defendant could reach into a particular area of a vehicle without any evidence is not persuasive. Furthermore, the Court also stated that there are no cases that "have applied the concept of wing span when defining the scope of such searches. Here, the defendant made no movement towards backseat armrest and there was no indication that a weapon was concealed there. The defendant was also cooperative and calm while interacting with the troopers and had no prior interactions with him. Based on all these factors, the Court found that the searching the backseat armrest was unlawful.