



## Legal Update

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**June 2017**

***The Appeals Court held that the police had reasonable suspicion to stop the defendant for unlawful possession of a firearm upon observing three men quickly and covertly transfer a pistol outside a barbershop!***

*Commonwealth v. Juan Suriel*, 91 Mass. App. Ct. 604 (2017): On November 30, 2013, a Springfield police officer from the narcotics division was conducting surveillance of a local barbershop. The officer was parked in the lot of Springfield Technical Community college, when he observed two men enter the barbershop. A short time later, another man, later identified as codefendant Glidden Gotay, went into the barbershop holding a blue bag. The three men were talking by the front door and a fourth man, later identified as the defendant, Juan Suriel, joined the conversation. The narcotics officer lost sight of the men, but within a short period of time the four men exited the barbershop and walked about ten to fifteen feet down the driveway next to the barbershop and began to talk. Another man, later identified as codefendant Jose L. Vicente, remained at the head of the driveway near the street and sidewalk. The narcotics officer then saw Gotay hand a gun to one of the two men, who handed it back to Gotay. Gotay next handed the gun to the defendant. The defendant then put the gun inside his jacket. The entire transaction took a matter of seconds.

The men left in separate cars. The defendant left with Vicente in a Saturn. While observing the meet-up, the narcotics officer had given support officers a running description of what he saw, including the make, model, color, and license plate of the Saturn. When support officers spotted the Saturn, they pulled in front of it, positioning the unmarked cruiser so that the Saturn had to stop. When one of the support officers approached the Saturn, he noticed the defendant "looking down to his right, and gesturing feverishly to the right side of his seat with his arm." That officer shouted for the defendant to show his hands. The defendant made eye contact with the officer while still reaching down to the right side. The support officer continued to approach the Saturn and, with the help of another support officer, "extracted" the defendant from the car. A search of the Saturn revealed a .22 caliber Smith & Wesson firearm in the passenger side compartment and a magazine on the passenger side floorboard.

**Conclusion:** The Appeals Court concluded that the police possessed reasonable suspicion to believe an unlawful gun sale had occurred based on the behavior of the defendant, as well as the timing and location of the defendant's interaction with the co-defendants.

The Appeals Court found that the police had reasonable suspicion at the time they stopped the defendant who was a passenger in a vehicle. See *Commonwealth v. Edwards*, 476 Mass. at 345. The defendant argues that the police did not have reasonable suspicion based on the surveillance information relayed by the narcotics officer. According to the defendant, there is no evidence to suggest that the location was known to police for illegal gun sales and no explanation of the reasons for the surveillance. Similarly, the police did not have any prior interactions with the men involved. Lastly, the defendant contends that the fact that the gun was transferred to the defendant by another does not give rise to reasonable suspicion, because ownership of a gun is not in and of itself illegal. The mere possession of a handgun [is] not sufficient to give rise to a reasonable suspicion that the defendant was illegally carrying that gun." *Commonwealth v. Couture*, 407 Mass. 178, 183 (1990).

Contrary to the defendant's arguments, the Appeals Court found that there was a transfer of a gun based on the behavior of the men, as well as the timing and location of the incident. **First**, the timing of the men's arrival permitted the narcotics officer to infer that the men met by prearrangement. **Second**, none of the men stayed to get a haircut or for any other reason unrelated to this transaction. After speaking briefly in the barbershop, all the men left and walked down a nearby driveway, which was sheltered from view. One man stayed at the head of the driveway. Based on this observation, the narcotics officer could infer that the man was serving as a lookout. **Third**, a gun was passed from

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hand to hand in a matter of seconds and pocketed, followed by a prompt departure by all of the men. The circumstances of the transfer of the gun gave rise to reasonable suspicion, not a mere hunch. The participants chose to leave the barbershop, where what they were doing could be witnessed, and to move outside to a secluded area. They hastily transferred the gun and left immediately. "The officer 'could reasonably infer from the conjunction of these facts that criminal activity might be afoot.'" *Commonwealth v. Thompson*, 427 Mass. 729, 734, cert. denied, 525 U.S. 1008 (1998).

**Lastly**, the location of the transaction also was significant because it was in a driveway, not in a building housing a business dedicated to the sale, rental, or lease of firearms during customary business hours. While transferring a firearm may be lawful, the fact that the transfer might have been lawful does not mean that the officers lacked reasonable suspicion that it was not. See *Commonwealth v. Deramo*, 436 Mass. 40, 44 (2002) ("[T]he police officer was not required to 'exclude all possible innocent explanations of the facts and circumstances'"). Reasonable suspicion does not mean absolute certitude; it means facts that would cause an officer to draw the reasonable inference that unlawful activity was taking place. Here, from what the narcotics officer could observe, the transfer of a gun was made without any presentment of proof of licensure, authorization, or exempt status, and therefore it was likely that the defendant was "participating in a gun [transaction] . . . [and] that the [transaction] was unlawful." *Commonwealth v. Rupp*, 57 Mass. App. Ct. 377, 382 (2003).

**Commentary:** This case reinforces the parameters of **G.L. c. 140, § 131E**, and what is necessary to purchase a firearm. A person must have one of the following in order to purchase a firearm:

- (i) a valid Class A or Class B License To Carry firearms ("LTC") issued pursuant to **G.L. c. 140, § 131**;
- (ii) a valid firearm identification card ("FID") issued pursuant to **G.L. c. 140, § 129B**, together with a valid permit to purchase a firearm issued pursuant to **c. 140, §131A**; or,
- (iii) a valid permit to purchase a firearm issued pursuant to **G.L. c. 140, § 131A**, together with valid proof of exempt status pursuant to **G. L. c. 140, §129C**.

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