



Legal Update

February 2018

The SJC upholds the rule of Commonwealth v. Santana and concludes that as long as there is any legal justification for a traffic stop, the officer's underlying motive for the stop is not relevant.

Commonwealth v. Rogelio Buckley, 478 Mass. 861 (2018): On January 25, 2013, Whitman police conducted surveillance of an apartment building that they suspected was involved in drug activity. Later that evening, police saw the Defendant, Rogelio Buckley, and a female drive away in a vehicle with its lights off. The vehicle was estimated to be driving 42 miles in a 30 mph zone. The police stopped the vehicle for speeding. During the stop, the police smelled burnt marijuana coming from the vehicle. The driver consented to the police searching the vehicle. When police ordered the Defendant, the front seat passenger, to exit the vehicle, they observed a firearm on the floor of the front passenger seat. Police arrested the driver and the Defendant for firearms offenses. Police later found a plastic bag containing crack cocaine between the Defendant's feet on the floor of the police cruiser. The Defendant filed a motion to suppress the evidence seized during the traffic stop. The motion was denied and the Defendant was convicted of firearms and drug charges.

For specific guidance on the application of these cases or any law, please consult with your supervisor or your department's legal advisor or prosecutor.

The Defendant primarily argued on appeal that the evidence seized from the vehicle should be suppressed because it was seized as a product of a pretext stop. Second, the Defendant argued that the police exceeded scope of stop when they asked the driver about the smell of marijuana. Third, the Defendant claimed that the driver's consent to search the vehicle was not voluntary.

1st Issue: Did the police stop the vehicle for speeding as a pretext to investigate potential drug activity?

The SJC concluded that the police were justified in stopping the Defendant for speeding. According to the Defendant, the standard established in the *Commonwealth v. Santana*, 420 Mass. 205 (1995), case should be overturned because it permits police to conduct pretext stops. The SJC determined that the authorization test that was developed in the case was still valid. Under the authorization test, "a traffic stop is reasonable for art. 14 purposes 'so long as the police are doing no more than they are legally permitted and objectively authorized to do,' regardless of the underlying intent or motivations of the officers involved." *Buckley, supra* at 865. In *Santana*, the SJC clarified that the "authority to conduct a traffic stop where a traffic violation has occurred is not limited by the fact that the police may have believed that the driver was engaging in illegal drug activity." In his appeal, the Defendant argued that the Court should examine the police officer's true motive to investigate suspected criminal conduct during a traffic stop.

The SJC found that if it overturned the authorization test, courts would be required not only to determine whether the police initially possessed some underlying motive that failed to align with the legal justification for their actions, but also to assess whether the police were acting on improper motive when engaging in the challenged action. The authorization test avoids speculative probing of a police officer's true motives while providing an administrable rule that can be applied by police in the field as well as reviewing courts. Moreover, many traffic violation statutes regulate moving cars and relate directly to the promotion of public safety; even those laws that have to do with maintaining a vehicle's equipment in accordance with certain standards may also be safety-related. Permitting stops based on reasonable suspicion or probable cause that these laws may have been violated gives police the ability to immediately address potential safety hazards on the road. Although a vehicle stop does represent a significant intrusion into an individual's privacy, the government interest in allowing such stops for the purpose of promoting compliance with our automobile laws is clear and compelling."

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The Defendant raised the issue that pre-textual stops, particularly stops motivated by the race of the driver, can result in racial profiling. The Court first ruled that the Defendant ignored the distinction between art. 14 and the equal protection principles of arts. 1 and 10 of the Massachusetts Declaration of Rights. Previously, in *Commonwealth v. Lora*, 451 Mass. 425, 436 (2008), the SJC found that racial profiling “is at base a claim that police selectively enforced the laws in contravention of the Fourteenth Amendment and arts. 1 and 10.” Because the Court had determined there was racial profiling, the Court was permitted to inquire into officers’ subjective motives in that case because it, “involved a challenge to a traffic stop based on equal protection grounds.” The *Lora* case established that when considering the purpose of a stop or assessing its validity, the Court would do so pursuant to the equal protection principles of arts. 1 and 10 — not art. 14’s guarantee against unreasonable seizures — and only where a driver has alleged that race was the reason for the stop.

The SJC next ruled that racial profiling was not an issue in this case because the Defendant raised no allegation of impermissible discrimination and did not challenge the traffic stop on equal protection grounds. The Court observed that the Defendant conceded in his appellate brief that he did not argue on appeal that he was racially profiled.

2nd Issue: Did police exceed the scope of the stop when they questioned the driver about the smell of marijuana?

The SJC concluded that the police did not exceed the scope of the stop when the plainclothes detectives arrived on scene and asked the driver about the odor of marijuana emanating from the vehicle. “In evaluating whether the police exceeded the permissible scope of a stop, the issue is one of proportion.” *Commonwealth v. Sinforoso*, 434 Mass. 320, 323 (2001). “The nature of the stop, for a traffic offense, defines the scope of the initial inquiry by a police officer.” See *Commonwealth v. Cordero*, 477 Mass. 237, 241 (2017) (“A routine traffic stop may not last longer than reasonably necessary to effectuate the purpose of the stop.” “Where an officer conducts an uneventful threshold inquiry giving rise to no further suspicion of criminal activity, he may not prolong the detention or expand the inquiry.” *Commonwealth v. Feyenord*, 445 Mass. 72, 78 n.5 (2005). The initial stop was justified based on the police officer’s observations the vehicle was speeding, which defines the permissible scope of the officers’ inquiry. The Defendant failed to cite any authority suggesting that it was impermissible for the plainclothes detectives to join the police at the location of the stop. The stop remained constitutional so long as the officers did not exceed its permissible scope. There was nothing in the record to indicate that the “tasks tied to the traffic infraction were already completed.” *Rodriguez v. United States*, 135 S. Ct. 1609, 1614 (2015).

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After stopping the vehicle, the police officer explained to the driver that he had stopped her for speeding and requested her license and registration; she produced a registration certificate but was unable to produce a license. The police had yet to confirm the driver's name and date of birth when the other officers arrived and spoke to the driver about the smell of marijuana. Once in the process of making a valid stop for a traffic violation, "officers are not required to 'ignore what they see, smell or hear.'" *Commonwealth v. Bartlett*, 41 Mass. App. Ct. 468, 471 (1996).

3rd Issue: Did the driver voluntarily give police consent to search the vehicle?

The SJC held that the driver freely and voluntarily consented to the search of the vehicle. The SJC relied on the testimony elicited during the motion hearing where the driver told the police they could check to see if she had any marijuana in the car. The fact that the driver affirmatively offered the search naturally supported the judge's conclusion that her consent was voluntary. See *Commonwealth v. Sanna*, 424 Mass. 92, 97-99 (1997) (concluding that "the police had properly entered the defendant's home on the consent given by the father"). Further, the record lacked any evidence to suggest that the officers' conduct during the vehicle stop was at all coercive. Finally, the fact that the police did not inform the driver of her right to refuse did not, as the Defendant argued, invalidate her consent. "The fact that a person is not informed by the police that he has a right to refuse to consent to an entry or search is a factor to be considered on the issue of voluntariness, but is not determinative of the issue." *Sanna, supra* at 97 n.10. There was no evidence in the record to conclude that the driver did not freely and voluntarily consent to the search of the vehicle.

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