



Legal Update

March 2018

The Appeals Court holds that police improperly seized the defendant by extending a street encounter when officers requested the defendant and his friends to produce identification without reasonable suspicion that criminal activity was afoot.

Commonwealth v. Harris, 93 Mass. App. Ct. 56 (2018): On September 23, 2015, three (3) Northeastern University police officers, Officers John Sweeney, Jonathan Sprague, and Andrew Good, were on patrol when they heard this radio broadcast: "two black males in their early 20's, one wearing a black hoody, and the other wearing a gray hoody, possibly with a third person, casing the bike racks by the university library."

Twenty minutes after hearing the radio broadcast, Officer Good saw two men fitting the broadcast description, along with a female, pass his car from the direction of the library. The three people were identified as the defendant, Jesse Harris, Dakari Ferguson-Boone, and Dajunnay Wade-Joseph. Officer Good got out of his cruiser and asked to speak with the group. Officers Sprague and Sweeney also approached and relayed that there had been

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a number of bicycle thefts in the area. The group told police that they had just eaten at a nearby restaurant. Another officer arrived on scene and each officer spoke separately with the defendant, Ferguson-Boone and Wade- Joseph. The motion judge found that during this encounter, "the officers' tone of voice was casual, conversational, and nonthreatening." The officers asked the two men to get off the bicycles and they complied, placing the bicycles on the ground. The officers asked whether the men had stolen the bicycles, and they responded that they had not. The police asked the defendant if he had previous issues with the police and he lifted his pant leg to reveal he had a GPS ankle bracelet.

The officers asked the group to provide identification. The defendant did not have identification, but told police his name and date of birth. While the police were verifying the identities of the group, one of the officers observed the defendant move to the left, lifting his sweatshirt and exposing a knife clipped to his waistband. At this point, the police seized the knife and began to conduct a patfrisk of the defendant who fled. As the defendant was running, he dropped a firearm. The defendant was ultimately located and arrested and charged with unlawful possession of a firearm and carrying a loaded firearm. The entire encounter lasted about fifteen minutes.

The defendant filed a motion to suppress which was denied. The motion judge determined that act of merely asking for biographical information did not automatically trigger a seizure and, in this case, the police encounter was more casual. With regard to the seizure of the knife, the judge found it was justified because it qualified as a dangerous weapon on school grounds. G. L. c. 269, §10(j). The defendant was found guilty after a bench trial and he appealed.

Conclusion: The Appeals Court held that the police unreasonably extended the encounter without reasonable suspicion by asking the three persons to produce identification after ordering them to dismount from their bicycles.

1st Issue: When was the defendant stopped for constitutional purposes?

First, the Appeals Court examined when the defendant was stopped. The initial encounter with the group was reasonable and police did not need reasonable suspicion to speak with the group. Police are free to approach persons on the street, to engage in conversation, and to ask questions without such encounters raising constitutional issues. The police are not different than ordinary people in this manner. However, when the police use words or actions to show authority, the dynamics of the interaction change. The standard that the courts have applied is an objective one that considers the totality of the circumstances and measures whether a person would feel free to leave.

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In *Commonwealth v. Lyles*, 453 Mass. 812 (2009), the SJC held that where a police officer asks for a person's identification and delays the encounter to run a warrant inquiry, a seizure has occurred because a person would not feel free to leave or terminate the encounter until the police returned the identification.

When the police asked the group for identification and began verifying their information, the informal field interrogation morphed into a formal stop. After the police initially spoke with the group, the situation changed when the police asked the defendant and Ferguson-Boone to get off their bicycles. Additionally, the police spoke to the defendant and the two (2) friends in separate conversations. Lastly, one of the officers testified that while he was calling in to dispatch to verify identifications, the other officers were keeping their eye on the defendant and Ferguson-Boone so that neither would leave while getting their information. All of these facts indicated that the encounter had become a seizure at this point and that the defendant was not free to leave.

2nd Issue: Did the police have reasonable suspicion to stop the defendant?

The Appeals Court held that the police lacked reasonable suspicion to stop the defendant and therefore the subsequent search of the defendant was not justified. The police had stopped the defendant before observing the knife on his person. At the time the police first approached the group they knew that there had been a report, twenty minutes earlier that two men were "casing" the university's bicycles racks. The defendant and his companion matched the description of those men and they were on bicycles.

Based on the information the police had when they observed the defendant, it was reasonable for the police to approach the men and investigate further. The initial encounter between the police and defendant did not effect a stop or seizure. However, as the police continued speaking with group during the encounter, they did not learn anything that would have given them reasonable suspicion. During the suppression hearing, one of the officers testified that they had no knowledge that a bicycle was actually stolen while they were talking to the group. Furthermore, the police encountered the men some distance away from the bicycle racks with lunch in their hands. There was no basis for police to extend the encounter beyond the initial purpose by requesting identification and conducting a criminal history or warrant check. By the time the police stopped and seized the group, they were missing reasonable suspicion of an existing or intended crime. The police should not have extended the encounter longer than what is reasonably necessary to effectuate the purpose of the stop.

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