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*policing with perspective*

## **MPTC IN-SERVICE: UPDATE<sup>4</sup>**

### ***Exit order of passenger***

***Once an occupant is arrested, police may order the other occupants out of a vehicle based solely on the possibility that evidence related to the arrest might be concealed or destroyed by them if they remained inside. Any ensuing frisk of an occupant must be based on a reasonable suspicion of danger.*** *Comm. v Young*, 78 Mass. App. Ct. 548 (2011).

- **Facts.** Boston police responded to a dispatch to investigate a “shot spotter activation”<sup>2</sup> in a high crime area, but found nothing.

On their way back towards the precinct at 10:25 p.m., they heard the screeching of tires and saw a blue Cadillac speeding down the street. The officers stopped the car and observed the driver looking at the other two occupants – a man in the front seat, a woman in the back. Protruding from the driver’s pocket was a baggie, which one of the officers immediately recognized as the kind used to hold drugs. The officer removed the baggie and found that it contained Ecstasy pills (two tablets were orange with Superman logos). The driver was arrested and placed in the police cruiser.

One of the officers then ordered the defendant, Justin Young, out of the front passenger seat. Young reacted by tensing up his shoulders. The officer again ordered Young out of the car, and he hesitated, keeping his arms and body in the car with his back towards the officers. The officer ordered Young to show his hands and move away from the vehicle. The officer began to frisk him. Unprompted, Justin Young said: “I have a gun in my waistband . . . My summer’s gone.” He did not have a license to carry and was charged with unlawful possession of a firearm and ammunition.

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<sup>2</sup> A “shot spotter” detects the sound of gunshots. Once activated, the shot spotter transmits a notification to dispatch personnel, which allows them to send officers to the area where the shots originated. The reliability of this technology was not debated during this case and had no bearing on the court’s decision.

- **Analysis.**
  - **Initial stop.** Reasonable belief that a civil motor vehicle infraction has occurred provides a lawful basis for a traffic stop. Here, the court approved the initial stop, which was based on a violation of G.L. c. 90, § 16 - “screeching tires” that created a “harsh, objectionable . . . noise.”
  - **The exit order.** The police properly ordered defendant Young out of the vehicle based on a search incident to *the driver’s* arrest. A search incident to arrest is intended to prevent an individual from destroying or concealing evidence of the crime, or to prevent him from acquiring a weapon. If officers had the authority to search based on the driver’s arrest, they were not required to do so with passengers still sitting in the car.

Here, regardless of whether Young or the female passenger possessed contraband like the driver, their presence in the car enabled them to conceal or destroy evidence “as effectively as [the driver] himself could have were he not restrained in the nearby cruiser.”<sup>3</sup> Thus, the search was justified to prevent the passengers from concealing or destroying any contraband still inside the car.<sup>4</sup>

- **The frisk.** The frisk of the defendant subsequent to his removal from the vehicle was also proper. Although the driver’s arrest only allowed the officers to order the passengers out of the vehicle while they performed a search of the vehicle’s interior, the defendant’s behavior in response to the exit order changed the nature of the encounter. The stop occurred at night in a high crime area, shortly after a “shot spotter” activation occurred. After the defendant was ordered to exit, he raised his shoulders, showed signs of nervousness, required several exit orders, failed to exit completely, and hid his hands. The circumstances and the defendant’s actions amounted to a reasonable suspicion of danger and justified the frisk.
- **The admission.** The defendant’s admission that he had a gun did not trigger any *Miranda* issues. When he made the statement, he was not under arrest and, equally important, his comment was not a response to police questioning. As a result, the necessary foundation for *Miranda* -- custody + interrogation - was totally lacking.

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<sup>3</sup> The same logic also pertains to accessing a weapon in the vehicle. Once the arrestee is removed, passengers might grab a weapon as easily as they might destroy evidence, but the court only based its support for the officers’ exit order on the possible destruction of evidence. This left open the question whether, if the arrest had been for a non-evidence related violation, such as operating after suspension, the police would have been justified in ordering the passengers to exit the car simply based on the arrest.

<sup>4</sup> Since the court concluded that the search was proper as a search incident to arrest based on the possible destruction of evidence, it did not resolve whether the search may also have been justified as a search incident to arrest solely because the crime the driver was arrested for gave the officers “reason to believe” that evidence of the crime would be found in the vehicle. For the same reason, the court did not resolve whether the motor vehicle exception applied.