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LED BULLETIN

An important legal update for the Massachusetts law enforcement community
July 12, 2019

Restricted application of “interfering with police officer”

Interfering with a police officer is a recognized common-law crime that requires physical obstruction or threats of violence. *Comm. v. Adams*, 482 Mass. 514 (2019): The police department suspended Mark Adams’ license to carry firearms (LTC). Officers went to Adams’ home to serve the suspension notice and retrieve his 15 firearms and ammunition.

Adams stepped outside to speak with the officers and became argumentative and visibly upset. He repeatedly yelled that he was not going to give up his guns, and that he intended to telephone his attorney. He told his wife, who had come to the door, not to allow officers inside. Adams attempted to go back inside, but an officer put his hand on the front door and held it shut.

While this was going on, an officer went up the front stairs and walked into the house to speak with Adams’ wife. Adams told his wife not to answer any questions and to telephone his attorney. He protested: “I am 100% not giving up my guns!” He told officers that he would never give them the combination to his gun safe.

Adams again attempted to enter his home. The officers told him to stop, but he quickened his pace toward the front door. One officer tackled Adams and, after a struggle, placed him under arrest for, among other things, “interfering with a police officer.”

Even though officers have been using this crime for decades, *Adams* is the first SJC decision to discuss the proper application of “interfering with a police officer.”

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The SJC acknowledged that this common-law crime is recognized in Massachusetts and, properly applied, requires that the suspect:¹

- **Knew, or should have known, that the officer was engaged in the lawful performance of a duty; and**
- **Physically obstructed or threatened violence against the officer;**
- **With the intent of obstructing or hindering the officer in the performance of that duty.**

Here, Mark Adams received written notice of his gun license suspension and refused to cooperate.

This was not enough. Adams may have been upset and argumentative, but he did not physically obstruct or hinder officers from carrying out their duty. He simply tried to go back into his house; he did not prevent them from entering. His statements did not constitute a threat of violence either. Therefore, the SJC overturned Adams’ conviction of interfering.

The SJC’s definition of “interfering” is much more restrictive than past practice. Certain applications of “interfering” – recommended by Attorney Scheft based on prior court cases and complaint language – will most likely be rejected in the wake of *Adams*. Consider the chart for clarity:

Proper Application

- **Physical obstruction or hindering.²**
- **Verbal threats of violence/force.**

Improper Application

- **Videotaping** officers in a way that does not physically prevent them from performing their duty.
- **Verbal criticism of police** as long as the comments are not threatening.
- **Refusing to identify oneself or provide ID.** Officers must rely solely on specific statutes in specific situations (e.g., 90, § 25 for motorists; 272, § 60 for littering; 85, § 11E for bicyclists).³

¹ A common-law crime was created by judicial decisions a long time ago. It is not, like the vast majority of Massachusetts crimes, defined in a statute by the legislature. Common-law crimes are rare in Massachusetts and, in addition to “interfering with a police officer,” prohibit escape, obstruction of justice, and affray (a public fight that scares at least one member of the public).

² Attorney Scheft advises that the concept of “physical obstruction or hindering” does apply to juvenile runaways who refuse to accompany an officer who is trying to bring them home or to a temporary shelter or court.

³ Attorney Scheft no longer advises that officers use “interfering” for citizens who refuse to ID themselves in situations where officers have the legal authority to, for example, issue a seatbelt ticket to a passenger, issue a marijuana civil ticket, or apply for a criminal complaint. This is a major restriction following *Adams*.

Firearms surrender may be immediate

Critical point: The Licensing Authority (LA) decides whether administrative suspension results in immediate confiscation of guns and ammunition. The *Adams* case clarified the two routes that the LA may take when suspending or revoking a firearms license on the basis that the holder is no longer “suitable.” The LA decides, at the time of revocation/suspension, whether to:

- **Immediately confiscate.** The LA may provide notice to the “unsuitable” individual seeking immediate surrender of the license, firearms, and ammunition. 140, § 131(f). The fact that the license holder plans to appeal is irrelevant. These items must be surrendered to police “without delay.” Failure to do so is a crime under 269, § 10(i).⁴
- **Delay confiscation.** The LA may, instead, choose to notify the license holder of a suspension/revocation *without* seeking immediate surrender of firearms and ammunition. In these cases, license holders may possess their guns while their appeals are pending in the courts. See 140, § 129D.

The LA in Adams properly ordered immediate confiscation. However, police on scene still needed legal authority to enter – a warrant, consent, or exigent circumstances – in order to seize the actual guns. Here, Adams’ suspension was based upon a report filed by the Department of Children and Families (DCF) alleging that he injured his wife in front of their son at home. This was serious misconduct that rendered Adams “unsuitable” to lawfully possess firearms.

The police officers, who showed up at Adams’ house, properly demanded that he surrender his firearms, ammunition and license immediately, and his failure to do so, without delay, could be properly charged under 269, § 10(i).⁵

However, the fact that Adams refused to allow police to enter his home was a separate constitutional issue. At that point, police lacked consent to enter. They also did not have exigent circumstances. Adams’ wife could have been ordered to remain outside, and there was nobody else inside the house who could have removed, concealed or accessed the guns. Absent consent or exigent circumstances, officers should have applied for a search warrant before entering and seizing the guns.

To avoid any risk of unlawful access, police could have secured Adams’ home from the outside while they obtained a warrant. *Comm. v. Blake*, 413 Mass. 823 (1992) (securing home on basis of probable cause to search for evidence of crime, includes ability to prevent anyone from entering home to remove or conceal evidence).

Hope this helps you on the street,
John Sofis Scheft

⁴ The penalty for a 269, 10(i) violation: HC NMT 2½ years; or Fine NMT \$1,000.

⁵ At that point, officers could have removed him from the scene and applied for a criminal complaint or, if deciding that the defendant committed a breach of peace in their presence, arrested him for this misdemeanor.