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## **Officer Safety During MV Stops**

***January 30, 2020: Important update for the Massachusetts law enforcement community***

***New standard: During a vehicle stop, officers can no longer automatically frisk upon an exit order.*** Our Supreme Judicial Court decided *Comm. v. Torres-Pagan* (SJC 12697) on January 29, 2020.

***What happened?*** Two Springfield police officers saw Manuel Torres-Pagan operating a vehicle with a cracked windshield and an expired inspection sticker. The officers signaled for the car to pull over. Torres-Pagan drove a short distance and parked in a driveway. The officers left their cruiser. Torres-Pagan stepped out without receiving instructions to do so. He stood between the open door and front seat, facing the officers, his hands visible. Torres-Pagan then repeatedly looked back at the inside of his car.

An officer ordered Torres-Pagan to stand still and he complied. The officers handcuffed him and conducted a frisk, finding a knife in his pocket. They asked if he had other weapons in his car. He said “yes.” Officers recovered a pistol on the floor near the driver’s seat. He did not have a firearms license.

***What did the SJC decide?*** Though surprised that Torres-Pagan left his vehicle, the officers had an insufficient basis to find his conduct suspicious or furtive. He stepped out into full view. He was not visibly hiding or reaching for anything. His other conduct – turning to look toward his front seat – suggested only that Torres-Pagan had “something of interest in his vehicle.”

According to the SJC, Torres-Pagan’s behavior did not give officers a reasonable suspicion to believe that he was “armed and dangerous” – the standard long required for officers to conduct a frisk. Once the SJC found the frisk improper, they suppressed the firearm found afterwards.

### ***What is different going forward?***

- ***Old rule.*** *Comm. v. Torres*, 433 Mass. 669 (2001) allowed officers to automatically frisk an occupant once they ordered him to get out because he posed a safety risk.

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- **New rule.** While the SJC decided that officers may issue an exit order for safety on *less than reasonable suspicion*, a follow up frisk is no longer automatic. Officers must have a reasonable suspicion to take the additional protective action of physically frisking the occupant and vehicle.<sup>1</sup>
- **Reason for change.** An exit order is designed to resolve a safety concern related to the car itself — without having to engage in the greater intrusion of putting hands on the suspect to check his or her body for weapons.

This distinction makes sense. As much as a person's body, clothing, and hand-held belongings make good places to hide weapons, a car certainly provides more opportunity to store and conceal weapons — plus the vehicle itself may be used as a weapon. Once an officer issues the exit order for safety concerns and removes the driver or passengers, their access to hidden weapons and the vehicle-as-weapon is eliminated.

Officers remain free to give an exit order when they see abnormal movement inside a car, or notice a driver scanning his surroundings or perhaps leaving it in “drive” in a manner suggesting possible flight (endangering officers and the public).

At the same time, officers must decide whether what they saw and/or learned about an occupant adds up to a reasonable suspicion that he is armed and dangerous. That separate assessment is necessary to perform a frisk.

The SJC made a final point. The criminal history of the location of the stop may be part of the reasonable suspicion calculation, but only if the police are aware of recent and dangerous activity there. Officers may no longer rely on vague statements about “high crime” areas.

**Practical application of the new rule.** Officers must use other tactics before automatically handcuffing and frisking people during traffic stops. Consider some intermediate steps that might have made a difference for the Springfield officers involved with Torres-Pagan.

- **Ask questions.** Officers could have asked Torres-Pagan to explain his suspicious conduct — e.g., “What are you looking at?” If Torres-Pagan does not respond, officers elevate to reasonable suspicion. If Torres-Pagan mentions a child or dog in the car, officers can take a quick look. If that's accurate, the police may simply continue their traffic stop outside the vehicle. If untrue, police might take the extra step of frisking.

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<sup>1</sup> The high court did not address whether, if the frisk of an occupant is justified by reasonable suspicion, officers may automatically frisk the vehicle before placing him back inside. In the author's opinion, this longstanding rule survives until further notice. The historical reason — for allowing officers who frisk the body to automatically frisk the vehicle — is the right of officers to know that the suspect will not gain easy access to a weapon at the time he is allowed to re-enter the vehicle. This reason still makes sense.

- **Direct the suspect to shut the door and move away.** Basic commands like these will improve officer safety if the suspect complies. If the suspect does not, officers elevate to reasonable suspicion and take the extra precaution of frisking.
- **Move to a better position.** Once Torres-Pagan looked repeatedly toward the vehicle, nothing prevented one of the officers from moving over to the car, shining his light inside, and looking for anything dangerous or suspicious. This intermediate action may have lessened the officers' safety concerns or justified a follow up frisk (or even probable cause if a gun or other evidence came into full view).

**Conclusion.** In conclusion:

- **Do not just lump exit orders, handcuffs, and frisks together based on any safety concern.**
- **Exit order and intermediate steps.** Instead, get people out based on any concrete safety concern. If appropriate, take other intermediate, non-intrusive safety steps (like asking questions, directing the suspect to move, and looking in the vehicle yourself).
- **Frisk.** Only take the extra step of frisking an occupant and the vehicle based on a reasonable suspicion that the occupant is armed and dangerous.
- **Handcuffing.** Finally, just because a frisk is justified does not mean that pre-arrest handcuffing automatically follows. Officers must have a reason why the extra restraint provided by "cuffs" was necessary under the circumstances. Reasons approved by courts in the past include investigating a crime of violence; officer outnumbered; officer in a precarious location (e.g., up on a roof; stop in an area where no backup available); nighttime stop (insufficient by itself); size and strength of subject; prior record or reputation of subject.

Hope this helps you on the street,  
*John Sofis Scheft*