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Policing with Perspective

Good decision by campus officers to conduct a field encounter with people who may have been “casing” a bike rack, but officers lacked reasonable suspicion to detain the original suspects. *Comm. v. Harris*, – Mass. App. Ct. – (March 19, 2018): Three Northeastern University police officers heard a radio broadcast stating that two black males in their early 20’s, one in a black hoodie and one in a gray hoodie, and a possible third person, were “casing the bike racks” at the library. 20 minutes later, one of the officers saw two men fitting the description, along with a female, pass by his car from the direction of the library. The two males, Jesse Harris and Dakari Ferguson-Boone, were riding bicycles. The female, Dajunnay Wade-Joseph, was walking with them. The officer asked if he could speak to them, but they continued to move away.

A second officer approached the group and asked to speak to them. He explained there had been a number of bicycle thefts in the area and asked where they were coming from. The group said they had eaten at the food court and had a container from that restaurant with them.

A third officer arrived, and the three officers spoke to each person individually. They asked the men to get off the bicycles, and they complied. The officers asked whether the men had stolen the bicycles, and they said they had not.

When asked if he had previous issues with the police, Harris showed them a GPS-monitored ankle bracelet on his leg. The officers asked all three for identification. Harris could not produce identification, but gave his name, date of birth, and address. Wade-Joseph produced her university student ID card, and Ferguson-Boone provided his ID as well.

The officer speaking to Harris called dispatch to verify his information. The officer speaking to Ferguson-Boone waited to speak to dispatch next. As he did so, he observed Harris make a movement to his left side, causing his shirt to ride up and expose a knife clipped to his waistband. The officer grabbed the knife and removed it. The third officer told Harris to place his hands on his head for a frisk. Harris began to comply, then fled. He dropped a firearm as he was chased by police. The encounter had lasted 10-15 minutes from the point when officers first engaged the group until Harris’ flight.

- ***A detention occurred when officers secured identification from each person and began calling for record/warrant checks.*** By that point, what began as an informal field interrogation had “crossed the line into a coercive exercise of police power.” The men had been asked to get off their bicycles, and the interrogation, which lasted for several minutes, became more formal with three separate conversations occurring. Once identification was requested, received, and called in, none of the subjects would have felt free to leave. This was further emphasized by the fact that while

the officer was calling in Harris' information, the other officers kept an eye on him and Ferguson-Boone so they would not leave.

- **Police lacked reasonable suspicion of criminal activity at the time of detention.** When police first approached the group, they knew there had been a report, 20 minutes old, that two men were "casing" the bike racks, that the two men in the group matched the description given, and that those two men were now on bicycles. It was certainly reasonable on those facts to approach the men and investigate possible bicycle theft, which was how the encounter began. However, over the next several minutes, the officers learned nothing that could have added to their suspicion. The men stated that the bicycles were not stolen. One member of the group was a student at the university, and their explanation that they had been at the food court was verified by the take-out container at least one of them was carrying.

At that point, police no longer had reasonable suspicion to detain the group. The only possible criminal activity they were aware of was *possible* bicycle theft, but they had no information that a bicycle theft had *actually* occurred. The men were some distance away from the bike racks, with lunch in their hands.

To summarize: There was no basis for the police to extend the encounter beyond its initial purpose by requesting ID and conducting a warrant check. The police conducted their seizure before they observed the knife in Harris' waistband. Because the police lacked reasonable suspicion of an existing or intended crime, the group should have been permitted to move on.

The recovered knife, gun and ammunition were suppressed.

- **Attorney Scheft commentary.** The officers did a good job in this case. Their response, their professionalism is obvious. And we know that, in real time, how the police handle a situation looks very different from the post-action breakdown authored by the court.

That said, I do think this case reminds us of an evolving perspective by the court on officer interactions. It can be summarized as follows:

- ***Non-authoritarian field encounters - with lots of discussion - are favored and effective!*** The NUPD officers here did a great job of calmly approaching the group and engaging in dialogue. Anything you can do (or teach your officers to do) to encourage investigative dialogue is key.
- ***Asking for ID to run a record/warrant check begins a detention requiring reasonable suspicion.*** *Comm. v. Lyles*, 453 Mass. 811 (2009) established this bedrock principle. Do not be in a hurry to get someone's ID until you are confident in your reasonable suspicion. Do not walk around, as some officers do, with the mindset that you are entitled to run a record/warrant check just because you approached a potential suspect.

- *Reasonable suspicion must relate to a specific type of crime.* Officers cannot begin, or extend, a detention simply because a person might, in some generalized way, be engaged in criminal conduct. Here, the officers intervened because of a potential bike theft. The three people ceased being suspects for that crime; yet officers kept the intervention going because of generalized suspicion (“Hey, this guy’s got an ankle bracelet!”). These are what I call, “derivative detentions,” and they used to be an accepted part of police work. Now, they are no longer tolerated because of the court’s belief that such detentions are usually based on unfair hunches and bias.

The lesson for the working cop: The time to explore issues that come up is during the initial field encounter. Otherwise, let the people leave when they are no longer suspects in the crime you originally responded to.

Hope this helps you on the street,
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