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LED BULLETIN

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PRE-TRANSPORT FRISK FOR COMMUNITY CARETAKING — IF VOLUNTARY TRANSPORT, MUST GET CONSENT TO FRISK

Introduction

Our update yesterday triggered a smart followup from State Police Lt. Scott Shea: “Does *Demos D.* overrule an earlier case out of East Brookfield with Officer Ramos?” The answer: “no.” For the full story on frisks and community caretaking, review the following:

Community caretaking transport

Police officers may frisk a person before placing him in their cruiser and transporting him for a community caretaking purpose. *Comm. v. Demos D.*, ___ Mass. App. Ct. ___ (2025): When a Lawrence police officer stopped a vehicle for a traffic violation, he noticed a 16 year old juvenile named Demos in the back seat. Demos had been reported missing by DCF, so the officer decided to transport him to the station and contact DCF for a pickup. Although the officer did not have any specific information suggesting that Demos might be armed and dangerous, he still frisked Demos prior to placing him in the cruiser. That is when the officer discovered a handgun in Demos’ waistband. An arrest followed.

In *Demos*, the Appeals Court followed the vast majority of states and decided: Any time police validly require someone to get in their cruiser for transport, there is a risk that the person might possess a dangerous item that he can use to inflict harm on an officer or himself. As a result, officers may frisk a person before transporting him for a community caretaking purpose.

The Appeals Court stopped short of creating a blanket rule that anyone transported gets automatically frisked. Some obvious exceptions come to mind — a missing eight year old boy or disoriented twelve year old girl. That said, the court had no problem with the officer’s decision to frisk Demos, who was 16, present on the side of the road in a high crime area, and accompanied by a known gang member.

Voluntary transport

On the other hand, officers may not frisk a person who accepts an offer of transport. Instead, they must explain that the offer is contingent on whether the person agrees to be frisked. *Comm. v. Mejias*, 96 Mass. App. Ct. 1103 (2019): Mejias was stumbling along a dark road in East Brookfield when Officer Ramos pulled alongside and asked where he was headed. Mejias said he had argued with his girlfriend and was walking to the store for cigarettes. He had been drinking, and he asked for a ride to the store.

Officer Ramos offered a ride home instead, which Mejias accepted. The officer got out and performed a frisk, finding a pistol. Mejias was arrested.

Officer Ramos testified that, while he recognized Mejias from an earlier call where he had learned about Mejias' long criminal history, he had no legal reason to detain and transport him. Ramos felt Mejias was not drunk enough to be placed into protective custody. Ramos also acknowledged that Mejias posed no immediate safety concerns. Unlike the missing 16 year old in the *Demos* case, Mejias was free to accept or refuse a cruiser ride. This is why Officer Ramos lacked the authority to compel Mejias to submit to a frisk.

According to the Appeals Court, the result would have been different if Officer Ramos had offered a ride and explained that a consent frisk was a condition of receiving this assistance. Mejias then would have had the option of being frisked and getting police "taxi service" or walking away.¹

Hope this helps you on the street,

John Sofis Scheft, Esq.

¹ *Comm. v. Vanya V.*, 75 Mass. App. Ct. 370 (2009) (one justice wrote: "I do not question the good motives of the police officer . . . However, . . . [i]t strikes me as unreasonable for a person to lose the right to be protected from an unconstitutional frisk for a free ride that was never asked for").