

Commonwealth v. Powell, 459 Mass. 572 (2011):

Scenario:

An attempted field interview escalated in to an investigatory stop, resulting in the seizure of a firearm.

Facts:

At approximately 11:00p.m., two plain clothes Boston Police officers were patrolling the Roxbury section of Boston in an unmarked police cruiser when they observed an altercation developing between two groups of individuals. As the officers drove by the two groups, they observed the defendant look away from them, walk through one of the groups, and then begin grasping at his waistband area. Once the defendant made it through the group, he started to run.

One of the officers exited the cruiser and began following the defendant. As the defendant ran, he was clutching something with his right hand at his right side. The officer continued to follow the defendant as he ran to a driveway by a nearby garage. As he continued to run, the officer observed the defendant pull out a firearm with his right hand. The officer drew his gun, pointed it at the defendant, and twice yelled, "Drop it." The defendant turned and ran towards a fence along the driveway. As he tried to climb the fence, the defendant dropped the gun to the ground. He was subsequently apprehended after a short chase.

Holding:

Motion to Suppress the firearm DENIED. The Supreme Judicial Court held that the defendant was not seized while the officer was merely following behind the defendant at a sufficient rate of speed to keep him in sight. At that juncture, the officer did not exercise any show of authority, command the defendant to stop, or impede or block his path. The investigatory stop did not occur until the officer drew his weapon, pointed it at the defendant, and told him drop the weapon. The Court found, at that point, based on his observations of the gun, the prior concealment of the gun, and the defendant's apparent age, the officer had reasonable suspicion that the defendant was illegally carrying a firearm.

NOTE: Merely carrying a firearm does not give rise to reasonable suspicion that the person is carrying it unlawfully because many people register their firearms and carry them lawfully. However, concealment of a firearm and a reasonable belief that the suspect is too young to obtain a L.T.C. does give rise to the requisite reasonable suspicion. An officer may also ask an individual if he/she lawfully possesses an F.I.D. or L.T.C. Commonwealth v. Famania. But see Commonwealth v. Haskell, 438 Mass. 790 (2003) (holding that if a field interview or investigatory stop escalates into a custodial situation, the officer must either provide Miranda warnings prior to asking for an F.I.D. or L.T.C., or in the alternative, demand that the defendant produce an F.I.D. or L.T.C. for the firearm, pursuant to G.L. c. 140, § 129C).

Commonwealth v. Famania, 79 Mass. App. Ct. 365 (2011):

Scenario:

A field interview escalated in to an investigatory stop and patfrisk.

Facts:

While in their cruiser on a routine patrol, two Springfield police officers overheard a dispatch call “regarding a tall, black male wearing blue jeans, a black shirt with a black backpack.” The call stated that the man was walking on Liberty Street away from the bus station and that he had a handgun in his backpack. The officers decided to see if they could locate the man, and they proceeded down Liberty Street toward the bus station. They spotted someone fitting the man’s description walking along Liberty Street away from the bus station. The officers turned their cruiser around, stopped behind the subject, exited from the cruiser, walked up to the subject and asked him: “Hey, can I talk to you for a minute?” The officers stood about five feet from him, and did not display any excessive sign of authority.

The defendant seemed hesitant, his eyes were wide, and he started stepping back slowly and looking around and over his shoulders, as if looking to flee. The defendant then slightly shuffling backwards, stepped away from the officers, and began to reach up to the backpack’s shoulder straps, starting to take it off. The officers seized the bag so the defendant could not get access to a potential firearm.

The backpack was made of “very thin, soft leather,” and the officer who took possession of it could feel the distinct shape of what he thought was a handgun. He proceeded to open the backpack and found a loaded handgun inside. The officers asked the defendant whether he had a license to carry or an F.I.D. card, and he admitted he did not. The officers then placed the defendant under arrest.

Holding:

Motion to suppress the firearm DENIED. The Appeals Court found that the initial encounter with the defendant was a field interview. The field interview did not escalate in to an investigatory stop until the officers seized the backpack from the defendant. The Appeals Court found that the police dispatch, corroborated by the officers’ observations of the defendant, provided reasonable suspicion that the defendant was illegally carrying a firearm. Moreover, based on the nature of the offense, and the defendant’s actions, the officers had reasonable articulable facts to believe that the defendant was armed and dangerous, justifying a patfrisk.

NOTE: In this case, the officer was able to feel the distinct shape of a firearm, justifying a further search of the bag. However, where a patfrisk of a container would not suffice to dispel suspicion that a weapon was inside, a preliminary patfrisk need not be performed.

Commonwealth v. Narcisse, 457 Mass. 1 (2010):

Scenario:

A field interview escalated in to an investigatory stop and patfrisk.

Facts:

At approximately 10:00p.m., three Boston Police officers were driving in an unmarked cruiser in a high-crime area (known for nightly gunfire and drug activity) when they observed two males walking on the street. The officers pulled alongside and, not recognizing the men, decided to conduct a field interview in order to discover what the men were doing. While still in their cruiser, the officers asked the men who they were and whether they lived in the area. The men provided their names to the officers, and the defendant told the officers he was from Randolph and that he was coming from a nearby store. A local Boston “impact player” had been killed in Randolph the night before and the Boston Police Department was concerned about the possibility of a retaliatory shooting.

One of the officers asked the men if they could step over to the sidewalk for further discussion, and the men complied. The officers got out of their vehicle and informed the men that there had been “activity in the area.” After further conversation, one of the officers informed the two men that the officers were going to patfrisk them. During the ensuing patfrisk, the officers recovered a loaded .22 caliber firearm from the front pocket of the defendant’s jacket.

Holding:

Motion to Suppress the firearm **ALLOWED**. The Supreme Judicial Court found that the initial encounter with the two men was a field interview. The field interview, however, turned in to an investigatory stop, requiring reasonable suspicion, when the officer informed the men that he was going to patfrisk them. The Supreme Judicial Court held that the officers did not have reasonable suspicion to conduct an investigatory stop nor did they have reasonable articulable facts to believe that the defendant was armed and dangerous to conduct a patfrisk.

Commonwealth v. Martin, 457 Mass. 14 (2010):

Scenario:

A field interview escalated in to an investigatory stop and a patfrisk.

Facts:

At approximately 10:30p.m., two Boston Police Officers, dressed in plain clothes and driving in an unmarked vehicle, were looking for a particular juvenile to execute an arrest warrant. While driving, the officers observed the defendant wearing a sweatshirt with the hood up around his face. The officers could not see the defendant's face, but thought he might be the juvenile they were looking for.

The officers turned around and drove alongside the defendant, who ignored them and continued walking with his head down. The officers then rolled down a window, identified themselves as police officers, and asked the defendant his name. After some hesitation, the defendant responded, "Jamal Daly," which was not the name of the juvenile they were looking for. The officers also asked the defendant for his date of birth; he replied, "September, 1987." When they asked him for his age, he stated, "Seventeen."

Because the officers believed the defendant was lying about either his birth date or age, one of the officers exited their vehicle and approached the defendant. The other officer remained inside the vehicle. The defendant appeared nervous and took a few steps back. As he did so, the officer was able to confirm that the defendant was not the juvenile they were looking for.

The officer, however, asked the defendant if he had any weapons. When he received no answer, the officer attempted to patfrisk the defendant, informing him that "for safety," he was going to conduct a patfrisk. The defendant pushed the officer's hands away, and stated, "You can't touch me." The officer told the defendant to "calm down" and proceeded with the patfrisk, which revealed a loaded firearm.

Holding:

Motion to suppress the firearm ALLOWED. The Supreme Judicial Court held that the initial encounter with the defendant was a field interview. The field interview, however, escalated in to an investigatory stop, requiring reasonable suspicion, when the officer first attempted to patfrisk the defendant. The Supreme Judicial Court found that the officers did not have reasonable suspicion to conduct an investigatory stop nor did they have reasonable articulable facts to show that the defendant was armed and dangerous to conduct a patfrisk.

Commonwealth v. Franklin, 456 Mass. 818 (2010):

Scenario:

An attempted field interview escalated in to an investigatory stop, resulting in the seizure of a firearm.

Facts:

At approximately 6:40p.m., four police officers from the Boston Youth Violence Strike Force were patrolling the Mattapan section of Boston in an unmarked cruiser. The officers observed two young males talking in front of 43 Harmon Street. None of the officers knew either of the men. As the police car approached the two men, the defendant looked at the car, stopped talking, and began “looking around.” After the police car stopped, the defendant immediately took off running down the street away from the police car. One of the officers said, “He’s running,” and three of the officers got out of the car, with two of them running behind the defendant. As they ran, the two officers saw the defendant holding his hand to his waist area.

The defendant ran toward a six foot tall stockade fence. Both officers saw him throw an item over the fence and heard a metallic sound when the item hit the ground on the other side of the fence. The defendant was stopped by the officers as he attempted to climb over the fence. He was brought to the ground and handcuffed. One of the officers looked over the fence and saw a handgun on the asphalt.

Holding:

Motion to Suppress the firearm DENIED. The Supreme Judicial Court found that the seizure of the defendant did not occur until the officers grabbed him as he was climbing over the fence. The Court was clear to note that the defendant’s flight was not prompted by anything that the officers did, and the officers did not exercise any show of authority, command the defendant to stop, or block or impede his path until he climbed the fence. The Court found that when the officers grabbed the defendant, they had reasonable suspicion to believe that he was illegally carrying a firearm based on his running with his hand to his waist, his throwing motion, and the subsequent sound of metal hitting the ground.

NOTE: Again, in this case, the officers had reasonable suspicion to believe that the defendant was illegally carrying a firearm based on the concealment and subsequent throwing of the firearm.

Commonwealth v. Mathis, 76 Mass. App. Ct. 366 (2010):

Scenario:

A field interview escalated in to an investigatory stop and patfrisk.

Facts:

At approximately 10:30p.m., two Boston Police officers were patrolling in an unmarked cruiser when they observed the defendant standing in front of a building with a no trespassing sign. The officers approached him, identified themselves as police officers, and while seated in their vehicle, asked the defendant why he was in the area. The officers also requested documentary identification, ran a warrant check, and then returned the identification to the defendant. During this exchange, the defendant was breathing heavily, stuttering, and having difficulty getting his words out correctly. As a result, one of the officers asked the defendant, "You got anything on you I need to know about?" The defendant, in turn, admitted to possessing a bag of marijuana and attempted to place his hand in his pocket. The officers instructed the defendant to remove his hand from his pocket and then exited their cruiser. The defendant began to look down to the ground and made several more attempts to put his hands into his pockets. Based on that activity, one of the officers conducted a patfrisk of the defendant. During the patfrisk, several vials of crack fell from the defendant's pockets.

Holding:

Motion to Suppress the cocaine DENIED. The Appeals Court found that the defendant was not seized until the time of the patfrisk. Although the officers took the defendant's identification, it was returned to him immediately after the warrant check. Contrast Commonwealth v. Lyles. The Appeals Court held that at the time of the patfrisk the officers had developed reasonable suspicion for an investigatory stop, based on the defendant's admission to possessing illegal drugs, and that the frisk was justified by the defendant's labored breathing, stuttering, lack of eye contact and repeatedly attempting to place his hands in his pockets.

Commonwealth v. Lyles, 453 Mass 811 (2009):

Scenario:

A field interview escalated in to an investigatory stop and warrant arrest.

Facts:

At approximately 1:30p.m., two plain clothes Boston Housing Authority police officers were on patrol when they observed the defendant in the area around a community housing development, which had been the subject of numerous drug activity complaints. The defendant was alone, and he was not known to either officer. Based only on their observation of the defendant as he walked along a public sidewalk, the officers, who were visibly armed, got out of their unmarked vehicle, approached the defendant, displayed their badges, and identified themselves as police officers. The officers then inquired as to the defendant's name, and asked him for identification. The defendant provided identification to the officers. While they were still standing on the sidewalk, one of the officers proceeded to radio for a check of outstanding warrants, and when he discovered that there was a warrant, placed the defendant under arrest. During the subsequent booking procedure, the officers found nineteen plastic bags of heroin and \$263 in cash on the defendant's person.

Holding:

Motion to suppress the heroin and money ALLOWED. The Supreme Judicial Court held that an unjustified investigatory stop occurred when the officers took the defendant's identification and retained it without his permission while they conducted a warrant check. Contrast Commonwealth v. Mathis. The Court found that at that juncture, the officers did not have reasonable suspicion to conduct an investigatory stop.

NOTE: As can be seen by contrasting the Mathis and Lyles cases, there is a very fine line when an officer takes possession of an individual's identification during a field interview. To reduce the risk of converting a field interview in to an investigatory stop, an officer can simply ask for identifying information (such as name, date of birth, etc.); ask an individual for identification, but make it clear that the individual is not compelled to comply; and, if an identification is received, return it to the individual as soon as the identifying information is viewed and there is verification that the individual is who s/he purports to be.

Commonwealth v. DePina, 456 Mass. 238 (2009):

Scenario:

Investigatory stop and patfrisk.

Facts:

At approximately 9:46p.m., three officers were traveling in an unmarked police cruiser when they heard a radio dispatch for a shooting. Shortly thereafter, one of the officers observed a person generally matching the description of the shooter, within two to three blocks of the scene of the reported shooting. The officers drove down the street, stopped their cruiser in the middle of the street near the defendant, and left their vehicle to approach the defendant. The defendant, who had been heading south on a sidewalk on the same street, pedaling a foot scooter, reversed direction and began traveling in the opposite direction away from the approaching officers.

The officers were dressed in dark T-shirts marked with the words “Gang Unit” on the back, blue jeans, and sneakers. Two of the officers’ T-shirts bore clearly marked State Police emblems on the front. The third officer’s T-shirt was marked “FBI” on the front. All three had visible firearms, radios, handcuffs and badges.

As they advanced toward the defendant, one of the officers said to him, in a “normal voice,” “Can I talk to you? Can you come over here?” The defendant stopped, looked over his shoulder, and made quick motions with his hands in the area of his waistband. The officers then heard an object hit the ground with the sound of “[m]etal on pavement,” and one of the officers immediately seized the defendant's hands and drew the defendant toward him and away from the object the defendant had dropped. Using a flashlight, one of the officers located a firearm and called out that the defendant had dropped a gun.

Holding:

Motion to suppress the firearm DENIED. The Supreme Judicial Court held that the officers’ initial approach of the defendant amounted to an investigatory stop, but found that the officers had reasonable suspicion. The Court noted that the reasonable suspicion was based on the police dispatch regarding the 911 call, the physical proximity to the crime scene, proximity in time to the commission of the crime, the defendant’s obvious effort to avoid encountering the police, and the danger to public safety. In discussing the fine line between a field interview and an investigatory stop, the Court noted that when three armed officers wearing “Gang Unit” shirts emerged from a single vehicle and pursued the defendant, continuing to close in on him even after he reversed direction to avoid them, a reasonable person would have believed that he was not free to ignore the officer’s request that he “come over here” to answer their questions.

Commonwealth v. Gomes, 453 Mass. 506 (2009):

Scenario:

A field interview escalated in to an investigatory stop and patfrisk.

Facts:

At approximately 4:00a.m., three uniformed Boston Police officers were patrolling the Theater District (established to be a high-crime area) in two marked cruisers. While patrolling this area, the officers observed the defendant (known to be an impact narcotics player) and a second individual standing together in a doorway to a building, engaging in what appeared to be a drug transaction. In response, the police officers stopped their cruisers, exited their vehicles, and started to approach the defendant. As they did so, one of the officers saw the defendant put his right hand up to his mouth and appear to swallow something. The officer asked the defendant what he was doing there, and he immediately conducted a patfrisk for weapons. While the defendant was being patted down, a clear plastic bag containing five individually packaged rocks of “crack” cocaine slid out of his pant leg and onto the ground.

Holding:

Motion to suppress the cocaine ALLOWED. The Supreme Judicial Court held that an investigatory stop did not occur until the officer began to patfrisk the defendant. Once the patfrisk began, a reasonable person would have believed that he was not free to leave. The Supreme Judicial Court found that although the officers had reasonable suspicion to conduct an investigatory stop for a potential narcotics violation, they did not have reasonable articulable facts to show that the defendant was armed and dangerous, justifying the patfrisk, which lead to the discovery of the drugs.

NOTE: This case is a good reminder that an officer should consider the type of crime that s/he is investigating when s/he is considering conducting a patfrisk. Where an officer is investigating a crime of violence or the type of crime for which the offender would likely be armed (including the unlawful carrying of a firearm), little more is required after the stop to justify the protective frisk. In this case, the Supreme Judicial Court did not consider drug distribution such an offense.

Commonwealth v. Lopez, 451 Mass. 608 (2008):

Scenario:

During a field interview, evidence was recovered after being dropped by the defendant.

Facts:

At approximately 2:00a.m., the defendant was riding a bicycle over a bridge from Holyoke into South Hadley. In full uniform and a marked cruiser, a police officer followed the defendant onto Main Street. The officer then stopped his cruiser, and motioning at the defendant to come to him, he asked, “Can I speak with you?” In a marked cruiser and also in full uniform, a second police officer pulled up behind the first officer, exited her cruiser, and approached the defendant. Neither officer physically blocked the defendant from leaving. The defendant then placed his bicycle on the sidewalk and walked to the first officer. The second officer observed that the defendant had dropped something near his bicycle. She approached the bicycle and found two clear packets containing a white substance later determined to be crack cocaine. After finding the packets, the officers placed the defendant under arrest.

Holding:

Motion to suppress the cocaine DENIED. The Supreme Judicial Court found that the initial encounter with the defendant was a field interview and not an investigatory stop. Once the drugs that the defendant dropped were discovered, the officers had probable cause to arrest the defendant.

NOTE: This case highlights the distinction between an officer asking a question and giving an order. Although there is no bright-line rule, a police officer typically does not effect a seizure merely by asking questions, unless the circumstances of the encounter are sufficiently intimidating that a reasonable person would not believe that s/he was free to leave and ignore the questioning. Contrast with DePina.

Commonwealth v. Sykes, 449 Mass. 308 (2007):

Scenario:

An attempted field interview escalated in to an investigatory stop, resulting in the seizure of a firearm.

Facts:

At approximately 6:00p.m., four officers wearing “Boston Police Department Anti-Crime Unit” clothing were traveling in an unmarked cruiser when they overheard a call for service. When the officers arrived, they observed a group of men huddled on the side of the street.

The defendant, who was on a bicycle, began to move away from the group. He turned and looked back in the direction of the officers several times as he rode away. The officers pulled their vehicle alongside the defendant and asked if he would speak with them. In response, the defendant sped up. The officers correspondingly did the same.

The defendant turned on to another street, hit a tree, and abandoned the bicycle. He proceeded on foot back up the street, clenching his waistband. The officers left their vehicle and chased the defendant. The defendant discarded an object as he crossed the street and ran away from the officers. He was subsequently stopped and placed under arrest. The discarded object was retrieved and determined to be a loaded .38 caliber revolver.

Holding:

Motion to suppress the firearm DENIED. The Supreme Judicial Court held that an investigatory stop did not occur until the officers exited their cruiser and began to chase the defendant immediately after he collided with the tree, abandoned his bicycle, and ran away from them. At that juncture, the Court found that the officers had reasonable suspicion to conduct an investigatory stop.

NOTE: Following or observing someone without more, such as using a siren or lights, attempting to block or control an individual’s path, direction, or speed, or commanding an individual to stop, is not pursuit.

Commonwealth v. DePeiza, 449 Mass. 367 (2007):

Scenario:

A field interview escalated in to an investigatory stop and patfrisk.

Facts:

Shortly after midnight, two Boston Police officers observed the defendant walking through the Dorchester section of Boston while talking on his cellular telephone. As the officers drove past the defendant in their unmarked vehicle, he attracted their attention because of his odd way of walking. As he held his telephone to his ear with his left hand, he held his right arm stiff and straight, pressed against his right side. Based on these observations, the officers reversed direction and, without activating their lights or sirens, drove past the defendant a second time. As they approached the defendant again they called out to him.

The officers then engaged him in a short conversation during which the defendant continually shielded his right side from the officers' view, as if trying to hide something. At some point during that conversation, both officers stepped out of their car. The officers noticed the defendant looking from left to right and shifting his weight from side to side, actions which, in the officers' experience were signs that the defendant was nervous and likely to run. The defendant told the officers that his family lived nearby, but that he was from New York City. Without being asked, he offered his student identification and driver's license to the officers. As the defendant reached for his identification, the officers noticed two additional details that further raised their suspicions. First, as the defendant reached into his right rear pants pocket, he continued to turn his right side away from them in an awkward motion. Second, they noticed that the right pocket of his jacket appeared to contain "something heavy." As a result, one of the officers reached out to patfrisk the defendant, who jumped back. The officer explained that he wanted to conduct a patfrisk, and reached out again to conduct the frisk. A gun was subsequently recovered from the defendant's right jacket pocket.

Holding

Motion to suppress the firearm DENIED. The Supreme Judicial Court found that the initial encounter with the defendant was a field interview. The encounter did not turn in to an investigatory stop, requiring reasonable suspicion, until the officer informed the defendant that he was going to patfrisk him. The Court found that the officers had reasonable suspicion to conduct an investigatory stop for illegally carrying a firearm based on the time of night, the character of the area (known for firearm violence), and what appeared to be a concealed weapon. Based on the nature of the offense being investigated, the defendant's "straight arm" gait and his attempts to hide his pocket, the officers also had reasonable articulable facts to believe that the defendant was armed and dangerous, justifying the patfrisk.

Commonwealth v. Thomas, 429 Mass. 403 (1999):

Scenario:

During a field interview, evidence was recovered providing probable cause to arrest the defendant.

Facts:

An undercover police officer sought to purchase cocaine from a female party. After receiving the request, the female party went across the street and interacted with the defendant. After interacting with the defendant, the female party returned to the undercover officer. The undercover officer provided the female party with two marked bills in exchange for a bag of drugs and then left the area.

Shortly thereafter, a second officer observed the defendant and the female party on the steps of a building and approached them to conduct a field interview. The officer asked the defendant for his name and address and then inquired if he had any money on him. The defendant produced the two marked bills from his jacket pocket. The officer subsequently placed the defendant under arrest. During booking, several bags of crack cocaine were located on the defendant.

Holding

Motion to suppress the drugs and money DENIED. The Supreme Judicial Court found that the initial interaction was a field interview since the officer did not order the defendant to either answer his questions or turn over the money. Once the money was discovered, the officer had probable cause to arrest the defendant.

Commonwealth v. Rock, 429 Mass. 609 (1999):

Scenario:

A field interview escalated in to an investigatory stop and frisk.

Facts:

Two plainclothes officers were on patrol in an unmarked vehicle when they heard a radio dispatch about a shooting. Within ten minutes of the shooting, the officers saw two males running in close proximity to the area of the reported shooting. The officers followed the men in the unmarked cruiser without activating their blue lights or sirens. At one point, the officers turned the wrong way up a one-way street. When the men voluntarily stopped running, one of the officers exited the cruiser, identified himself, and asked, “Guys, can I talk to you for a second?” The men were sweating, breathing heavily, appeared nervous and were looking at each other and in all directions. One of the officers saw a bulge under the defendant’s shirt and noticed that he kept moving around so as to not allow the officers to see his right side. A patfrisk was subsequently conducted and a gun was recovered from the defendant.

Holding:

Motion to suppress the firearm DENIED. The Supreme Judicial Court held that the initial encounter was a field interview and did not rise to the level of an investigatory stop, requiring reasonable suspicion, until the officers conducted the patfrisk. The Court also found that based on the nature and content of the radio call, supplemented by first-hand observations, the officers had reasonable articulable facts to believe that the defendant was armed and dangerous, thereby justifying the patfrisk, which resulted in the discovery of the firearm.

NOTE: An officer turning and then driving a cruiser the wrong way up a one-way street does not necessitate a finding that pursuit has begun.

Commonwealth v. Gunther G., 45 Mass. App. Ct. 116 (1998):

Scenario:

A field interview escalated in to an investigatory stop, resulting in the seizure of a firearm.

Facts:

At approximately 12:30a.m., a police officer in a marked cruiser observed three males on Winter Street in the Dorchester section of Boston. The officer had just overheard three radio transmissions involving three men in that area, one with a firearm; that shots were fired; and that someone was being attacked by a dog. The officer stopped his cruiser, got out, and asked the three males to come over and talk with him. Two of the men approached, but the defendant began backing away. As a second officer arrived on the scene, the first officer began to walk toward the defendant. The first officer again asked the defendant to talk with him, but the defendant ran away when the officer was within about ten feet of him. The officer subsequently chased after the defendant and observed him make a throwing motion. A firearm was later recovered in that area.

Holding:

Motion to suppress the firearm DENIED. The Appeals Court held that the officer's initial interaction with the defendant was a field interview that did not amount to an investigatory stop requiring reasonable suspicion. The stop did not occur until the officer commenced his pursuit of the defendant. The Court found that the combination of the radio reports of a firearm and shots fired, the defendant's initial backing away from the officers, and his subsequent flight amounted to reasonable suspicion for an investigatory stop.

Commonwealth v. Think Van Cao, 419 Mass. 383 (1995):

Scenario:

A Field Interview where the defendant consented to being photographed.

Facts:

A Boston Police officer, dressed in full uniform, approached a group of individuals as they were walking together in a parking lot and asked them several questions including their names, dates of birth, and addresses. After he asked the questions, the officer performed a warrant check on the youths, which took no more than five minutes. Contrast Lyles and Mathis where the officers held on to the actual identifications during the warrant check.

During that time period, a second officer arrived on scene with a Polaroid camera. The second officer asked the youths, including the defendant, “you don’t mind if we take a picture of you, right?” to which the defendant replied, “No, I didn’t do anything wrong, go ahead.” The defendant spoke with his friends during the encounter and appeared to be under no physical distress nor did he indicate that he wanted to leave. The photograph was subsequently utilized to identify the defendant as the perpetrator of another crime. The defendant moved to suppress the photograph.

Holding:

Motion to suppress the photograph DENIED. The Supreme Judicial Court found that the encounter was a field interview, which did not amount to an investigatory stop requiring reasonable suspicion.

NOTE: The Supreme Judicial Court noted in this case “that the better practice would be for officers conducting FIOs to inform the individuals approached that the encounter is consensual and that they are free to leave at any time.”