

MASSACHUSETTS SUPREME JUDICIAL COURT

Commonwealth v. Ortiz, 478 Mass. 820

90 N.E.3d 735 (2018) · No. SJC-12273 · Decided February 12, 2018

SUMMARY

The Massachusetts Supreme Judicial Court held that a driver's consent to search for narcotics or firearms "in the vehicle" did not authorize police to search beneath the hood or remove the air filter. Because the search exceeded the scope of consent and was not otherwise supported by probable cause or a lawful inventory-search rationale, the court affirmed suppression of the firearms and the defendant's related statements as fruits of the unlawful search. The court also held that the defendant's silence during the under-hood search did not expand the scope of his consent.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Massachusetts Supreme Judicial Court                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Chief Justice Gants; Justice Lenk; Justice Gaziano; Justice Lowy; Justice Budd; Justice Cypher; Justice Kafker                                                                                                                                                                                                  |
| JURISDICTION          | Massachusetts                                                                                                                                                                                                                                                                                                   |
| DECIDED               | February 12, 2018                                                                                                                                                                                                                                                                                               |
| DOCKET                | SJC-12273                                                                                                                                                                                                                                                                                                       |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                        |
| PROCEDURAL POSTURE    | The Commonwealth sought interlocutory review of a Superior Court order granting Ortiz's motion to suppress firearms and subsequent statements. A single justice allowed the interlocutory appeal, the matter was reported to the Appeals Court, and the Supreme Judicial Court granted direct appellate review. |
| STANDARD OF REVIEW    | The court accepts the motion judge's factual findings absent clear error and reviews de novo the correctness of the judge's application of constitutional principles to those facts.                                                                                                                            |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Massachusetts Supreme Judicial Court                                                                                                                                                                                                                                      |
| PARTIES               | Commonwealth v. Anthony C. Ortiz                                                                                                                                                                                                                                                                                |

TOPICS

search and seizure

fourth amendment

suppression of evidence

appellate procedure

standard of review

## PRACTICE AREAS

criminal procedure

constitutional law

appellate procedure

evidence

## QUESTIONS PRESENTED

1. Whether a driver's consent to search for narcotics or firearms "in the vehicle" authorizes police to search beneath the hood.
2. Whether that consent authorizes police to remove the vehicle's air filter.
3. Whether the defendant's silence while police searched beneath the hood expanded the scope of his initial consent.
4. Whether the firearms and the defendant's subsequent statements were fruits of an unconstitutional search.

## HOLDINGS

1. Consent to search for narcotics or firearms "in the vehicle" ordinarily authorizes a search of the vehicle's interior, including the passenger compartment, trunk, and containers in those areas where the objects could reasonably be found, but does not by itself authorize a search beneath the hood.
2. When the scope of consent is ambiguous as to whether a vehicular search may extend beneath the hood, police must obtain explicit consent before conducting that portion of the search.
3. A defendant's silence while handcuffed and removed from the vehicle does not expand a previously limited consent to authorize a search beneath the hood or removal of the air filter.
4. Because the search beneath the hood and under the air filter exceeded the scope of Ortiz's consent and was not supported by probable cause or a lawful inventory-search rationale, the firearms and subsequent statements related to possession of those firearms were properly suppressed as fruits of the unconstitutional search.

## KEY QUOTATIONS

*"A typical reasonable person would understand the scope of such consent to be limited to a search of the interior of the vehicle, including the trunk." (slip op. at 2)*

*"Under the Fourth Amendment and art. 14, unless it is reasonably clear that the consent to search extends beyond the interior of the vehicle, the police must obtain explicit consent before a vehicular search may extend beneath the hood." (slip op. at 13)*

*"Moreover, where such consent is not reasonably clear at the outset, the defendant's silence when the police open the hood cannot be an adequate substitute for consent." (slip op. at 13)*

## FACTUAL BACKGROUND

Police stopped Ortiz's vehicle because of excessively loud music and asked whether there were any narcotics or firearms in the vehicle. Ortiz responded, "No, you can check." After searching the passenger compartment and trunk without finding contraband, officers searched beneath the hood and removed the air filter, discovering two firearms. Ortiz was handcuffed during the search and did not object; he later made statements at the police station admitting ownership of the firearms and consenting to a vehicle search.

## PROCEDURAL HISTORY

After a traffic stop and consent-based vehicle search, Ortiz was indicted on firearm, ammunition, and receiving-stolen-property charges. The Superior Court judge found that Ortiz voluntarily consented to a search but that the police exceeded the scope of that consent by searching beneath the hood and removing the air filter; the judge suppressed the firearms and statements as fruits of the unlawful search. The Supreme Judicial Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Commonwealth v. Isaiah I., 448 Mass. 334, 337 (2007), S.C., 450 Mass. 818 (2008)
- Commonwealth v. Porter P., 456 Mass. 254, 256 (2010)
- Commonwealth v. Scott, 440 Mass. 642, 646 (2004)
- Commonwealth v. Rogers, 444 Mass. 234, 237-239, 246 (2005)
- Bumper v. North Carolina, 391 U.S. 543, 548-549 (1968)
- Commonwealth v. Walker, 370 Mass. 548, 555 (1976), cert. denied, 429 U.S. 943 (1976)
- Commonwealth v. Cantalupo, 380 Mass. 173, 178-179 (1980)
- Florida v. Jimeno, 500 U.S. 248, 251-252 (1991)
- Commonwealth v. Gaynor, 443 Mass. 245, 255-256 (2005)
- State v. Troxell, 78 S.W.3d 866, 869, 872 (Tenn. 2002)
- Commonwealth v. Carr, 458 Mass. 295, 299 (2010)
- Schneckloth v. Bustamonte, 412 U.S. 218, 226-227 (1973)
- Commonwealth v. Clarke, 461 Mass. 336, 351-352 (2012)
- Davis v. United States, 512 U.S. 452, 473 (1994) (Souter, J., concurring in the judgment)
- Michigan v. Mosley, 423 U.S. 96, 102 (1975)
- United States v. Coburn, 876 F.2d 372, 373-374 (5th Cir. 1989)
- United States v. Neely, 564 F.3d 346, 350-351 (4th Cir. 2009)
- United States v. Wald, 216 F.3d 1222, 1228-1229 (10th Cir. 2000)
- United States v. McSween, 53 F.3d 684, 685, 688-689 (5th Cir.), cert. denied, 516 U.S. 874 (1995)
- United States v. Sierra-Hernandez, 581 F.2d 760, 764 (9th Cir.), cert. denied, 439 U.S. 936 (1978)
- Commonwealth v. Bakoian, 412 Mass. 295, 305 (1992)
- Commonwealth v. Franco, 419 Mass. 635, 642 (1995)

- United States v. Jones, 356 F.3d 529, 534 (4th Cir.), cert. denied, 541 U.S. 952 (2004)

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