

COMMONWEALTH VS. ERICKSON DAVEIGA.

Suffolk. November 3, 2021. - March 24, 2022.

Present: GAZIANO, LOWY, CYPHER, KAFKER, WENDLANDT, & GEORGES, JJ.

Firearms. Constitutional Law, Search and seizure, Investigatory stop, Reasonable suspicion. Search and Seizure, Motor vehicle, Reasonable suspicion. Practice, Criminal, Traffic violation, Motion to suppress.

A Superior Court judge erred in denying the criminal defendant's pretrial motion to suppress a firearm that a police officer observed on the floor of the vehicle in which the defendant was a passenger during a traffic stop, where, although no seizure occurred during police officers' encounter with the occupants of the vehicle on one street, a seizure occurred when the officers stopped the vehicle after it had proceeded down that street and onto another street, without engaging in any further traffic violation [346-350]; and where, the officers having effectuated the governmental purpose underlying the encounter on the first street (i.e., the officers addressed the underlying traffic violation of the vehicle blocking traffic) and thereafter allowing the vehicle to leave, the officers' authority to stop the vehicle ended, and the stop of the vehicle on the second street was therefore unreasonable [350-355].

INDICTMENT found and returned in the Superior Court Department on October 4, 2017.

A pretrial motion to suppress evidence was heard by *Michael D. Ricciuti, J.*, and the case was tried before *Robert L. Ullmann, J.*

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Susan E. Taylor for the defendant.

Benjamin Shorey, Assistant District Attorney, for the Commonwealth.

Rebecca Kiley, Committee for Public Counsel Services, *Jessie J. Rossman*, *Matthew R. Segal*, *Katharine Naples-Mitchell*, *Chauncey B. Wood*, & *Radha Natarajan*, for Committee for Public Counsel Services & others, amici curiae, submitted a brief.

GAZIANO, J. We consider in this case whether police may conduct a traffic stop on the basis of a traffic violation after having resolved the violation at a prior encounter, and then having allowed the vehicle to leave, and where no other traffic violation took place

before the stop. While on routine patrol, two Boston police officers in an unmarked vehicle approached a vehicle that was double-parked, blocking a narrow street. They pulled closely alongside the parked vehicle, with the driver's window of the unmarked car adjacent to the rear passenger's side window of the impermissibly parked vehicle. The defendant was sitting in the rear seat on the driver's side; one of the officers recognized him from prior interactions and attempted to engage him in cordial conversation. Following a brief discussion with the driver about the fact that the vehicle was impeding traffic and had to move, the officers allowed the vehicle to leave, purportedly to park elsewhere on the street.

The officers nonetheless continued to follow the vehicle, and after it went past multiple open parking spots and turned onto another street, they pulled the vehicle over to conduct a traffic stop. During the stop, an officer observed a gun on the floor of the rear seat compartment, near the defendant's feet; the defendant was ordered out of the vehicle and arrested. The defendant challenges the constitutionality of the traffic stop under art. 14 of the Massachusetts Declaration of Rights. We conclude that the traffic stop was unreasonable under art. 14 because police authority to conduct the stop ended when the officers resolved the parking violation in a separate, discrete encounter.

1. *Background.* The essential facts are undisputed. We present the facts based on the motion judge's findings, supplemented by other testimony at the hearing by one of the arresting officers. See *Commonwealth v. Washington*, 449 Mass. 476, 477 (2007). The motion judge explicitly credited that officer's testimony.

On an early morning in August 2017, Boston police Officers Joseph McDonough and Christopher Stevens were on routine patrol in the Uphams Corner area of Boston. Both officers had years of experience working in that part of Boston. They were driving an unmarked vehicle and were wearing plain clothes.

At approximately 4 A.M., while driving on Monadnock Street, the officers came across a double-parked Chrysler Pacifica, largely blocking the road, in violation of Boston Traffic Rules and Regulations, art. VI, § 7.¹ Monadnock is a narrow, one-way street at that point, and vehicles were permitted to park on both sides of the street. McDonough squeezed partway through on the vehicle's right, pulling alongside the passenger's side of the Pacifica and

¹Boston Traffic Rules and Regulations, art. VI, § 7, provides that "[n]o person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic on any street or highway."

positioning his driver's window within inches of its rear passenger's side window.

The Pacifica was occupied by four men: the driver, a front seat passenger, and two rear seat passengers. The defendant was in the rear seat behind the driver. McDonough told the driver, "You guys are blocking the street." The men responded that they were waiting for a friend. McDonough replied, "How am I going to get by? You're blocking the street." The driver then asked, "What do you want us to do?" McDonough looked across the rear seat at the defendant and noticed that he was staring straight ahead. McDonough was familiar with the defendant from at least thirty prior encounters, and had arrested him at least three times, including once in July of 2016 for a firearms offense. Nonetheless, McDonough considered that the two had a cordial relationship. The defendant referred to McDonough, who is bald, by the nickname "Baldy." Hours before this encounter, McDonough had seen the defendant walking, and the defendant had smiled and nodded at him.

In light of their relationship, McDonough thought that the defendant's demeanor in the Pacifica was unusual. He asked, "How are you, pal? Are you doing good today?" In a low tone, the defendant said that he was okay. The driver then told McDonough that he would move the Pacifica and park elsewhere, gesturing toward several open parking spots nearby. McDonough responded, "Yeah, sure, all right," and backed up to give the Pacifica more space to pull forward.

The Pacifica proceeded down Monadnock Street, passed the open parking spots the driver had indicated, and turned left onto Dudley Street, without committing any further traffic violations. Because a right turn would have been a more direct route back to Monadnock Street, the officers grew suspicious. McDonough then changed his mind about pulling over the Pacifica. After about ten to fifteen seconds, he activated the unmarked vehicle's blue lights, pursued the Pacifica, and pulled it over.

McDonough and Stevens got out of their vehicle and approached the Pacifica. McDonough walked to the driver's side window and asked the driver to produce his license and registration. The defendant then asked McDonough, "Baldy, what are you doing? Why are you doing this? Are you really going to do this now?" McDonough replied that he was conducting a motor vehicle stop. Meanwhile, Stevens stood on the passenger's side of the vehicle, looking into the rear compartment with a flashlight.

Stevens then said to McDonough, “Hey, Joe,” and quickly walked over to him. Based on Stevens’s reaction, McDonough inferred that Stevens might have seen a gun. McDonough ordered the defendant and the other occupants out of the vehicle. The officers found a gun on the floor near where the defendant’s feet had been. McDonough knew that the defendant did not have a license to carry firearms; the defendant then was placed in handcuffs.

The officers did not issue a traffic citation to the driver. According to his testimony at the hearing on the motion to suppress, McDonough could not recall whether he had had a ticket book with him, although one could have been delivered to him upon request.

The defendant was charged with carrying a firearm without a license, G. L. c. 269, § 10 (a); carrying a loaded firearm, G. L. c. 269, § 10 (n); and possession of ammunition without a firearm identification card, G. L. c. 269, § 10 (h) (1). He filed a motion to suppress the evidence seized, arguing that the traffic stop was unreasonable. The motion judge noted that the case “tests the limits of what are known as ‘pretext’ car stops,” but ultimately denied the motion. Following a jury trial, the defendant was convicted of carrying a firearm without a license and acquitted of the other charges.² He timely appealed to the Appeals Court, and we transferred the case to this court on our motion.³

2. *Discussion.* The defendant challenges the denial of his motion to suppress, on the ground that the traffic stop on Dudley Street violated art. 14. The defendant contends that the Pacifica was stopped twice, initially on Monadnock Street, and then again on Dudley Street. He argues that the latter stop was unreasonable because any authority to detain him ended after the first stop of the Pacifica, where police resolved the parking violation and then allowed the driver to leave and drive to another parking space. The defendant maintains that even if the initial encounter was not a stop, the stop on Dudley Street nonetheless was unreasonable, because the police had effectuated the purpose of the encounter,

²The defendant subsequently pleaded guilty to so much of the charge of possession of a firearm as alleged that he previously had been convicted of a violent felony, G. L. c. 269, § 10G.

³We acknowledge the amicus brief in support of the defendant submitted by the Committee for Public Counsel Services; American Civil Liberties Union of Massachusetts, Inc.; Charles Hamilton Houston Institute for Race & Justice; Massachusetts Association of Criminal Defense Lawyers, and New England Innocence Project.

to resolve the traffic violation, at which point their authority to hold the defendant ended. The Commonwealth argues that the encounter on Monadnock Street was not a stop and therefore had little, if any, legal significance. Once the officers observed a traffic violation, the Commonwealth suggests, they were warranted in thereafter stopping the Pacifica.

We have yet to address the question whether police may conduct a traffic stop on the basis of a traffic violation after having earlier addressed the violation and resolved the situation in a separate, discrete encounter. In order to resolve this question, we first must determine the precise moment of the seizure here.

“In reviewing a ruling on a motion to suppress evidence, we accept the judge’s subsidiary findings of fact absent clear error and leave to the judge the responsibility of determining the weight and credibility to be given . . . testimony presented at the motion hearing” (citation omitted). *Commonwealth v. Cordero*, 477 Mass. 237, 241 (2017). “We review independently the application of constitutional principles to the facts found” (citation omitted). *Id.* See *Commonwealth v. Buckley*, 478 Mass. 861, 864 (2018) (“we independently determine the correctness of the judge’s application of constitutional principles to the facts as found” [quotation and citation omitted]).

a. *Moment of seizure.* The parties agree that the second encounter was a traffic stop. They disagree, however, as to the nature of the first encounter and whether it, too, was a stop in the constitutional sense, during which the defendant was held. Pointing to the close proximity between the unmarked vehicle and the Pacifica, the defendant argues that the first encounter was a traffic stop.⁴

Because art. 14 is more protective than the Fourth Amendment to the United States Constitution in defining the moment of seizure, “we analyze the seizure under ‘the more stringent standards of art. 14 with the understanding that, if these standards are satisfied, then so too are those of the Fourth Amendment.’ ” *Commonwealth v. Evelyn*, 485 Mass. 691, 697 (2020), quoting *Commonwealth v. Lyles*, 453 Mass. 811, 812 n.1 (2009).

“Not every encounter between a law enforcement official and a member of the public constitutes an intrusion of constitutional dimensions that requires justification.” *Commonwealth v. Gomes*,

⁴At trial, Stevens explained that he and McDonough could not have pulled past the Pacifica without hitting its side mirrors or the side mirrors of the vehicle parked on the right side of the street.

453 Mass. 506, 510 (2009). “Police officers are free to make noncoercive inquiries of anyone they wish.” *Commonwealth v. Matta*, 483 Mass. 357, 363 (2019). See *Commonwealth v. Narcisse*, 457 Mass. 1, 5 (2010) (“police officers may approach individuals on the street to ask them about their business without implicating the balance between State power and individual freedom”). See also *Florida v. Bostick*, 501 U.S. 429, 434 (1991) (under Fourth Amendment, “a seizure does not occur simply because a police officer approaches an individual and asks a few questions”). “A person has been ‘seized’ by a police officer, if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave” (quotation and citation omitted). *Commonwealth v. Sykes*, 449 Mass. 308, 310-311 (2007). The pertinent inquiry is whether “an officer has, through words or conduct, objectively communicated that the officer would use his or her police power to coerce that person to stay.” *Matta, supra* at 362.

“[W]hile the attending circumstances of a police encounter are relevant, a ‘seizure’ must arise from the actions of the police officer.” *Id.* at 363. See *Lyles*, 453 Mass. at 815. “Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a ‘seizure’ has occurred.” *Sykes*, 449 Mass. at 311, quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968).

Where a police officer in a vehicle approaches a defendant who is also in a vehicle, specific factors may indicate the requisite show of authority. Among them are whether the officer stopped a moving vehicle, *Commonwealth v. Rodriguez*, 472 Mass. 767, 773 (2015); whether police were driving a marked cruiser, *Commonwealth v. Rock*, 429 Mass. 609, 611-612 (1999); whether the officers activated their lights or sirens, *Commonwealth v. Smigliano*, 427 Mass. 490, 491-492 (1998), and *Matta*, 483 Mass. at 364-365; and whether the police vehicle deliberately was used to block or impede the defendant’s egress, *Commonwealth v. Thompson*, 427 Mass. 729, 733, cert. denied, 525 U.S. 1008 (1998). This list is not exhaustive and does not curtail our consideration of the central question in each case, the totality of the circumstances in that particular instance.⁵ See *Lyles*, 453 Mass. at 814-816 (diversity of interactions between citizens and police

⁵Courts in other jurisdictions similarly have noted specific factors to assist in determining whether a vehicle encounter is a seizure. See, e.g., *State v. Edmonds*, 323 Conn. 34, 50-51 (2016); *People v. Paynter*, 955 P.2d 68, 73

calls for review of totality of circumstances). Thus, we also consider circumstances that are not unique to vehicle encounters. See *Commonwealth v. Martin*, 467 Mass. 291, 302-303 (2014).

Here, the officers first approached the Pacifica when it was double-parked in the middle of a one-way street, facing the direction of travel. To the left of the Pacifica was a driveway; to its right was a properly parked vehicle, leaving a gap through which the officers could squeeze only partially. Compare *Matta*, 483 Mass. at 364-365 (no seizure where marked cruiser approached parked vehicle), with *Rodriguez*, 472 Mass. at 773 (seizure where police pulled over moving vehicle). The officers were driving an unmarked vehicle, see *Rock*, 429 Mass. at 611-612, and did not activate their lights or sirens during the first encounter, see *Matta, supra*. The tone of the officers' conversation with the driver and the passengers was calm and cordial.

The defendant nonetheless argues that the Pacifica was stopped because police positioned their vehicle within inches of it; the defendant emphasizes that the officers had to back up to give the driver sufficient room to pull forward safely. We said in *Thompson*, 427 Mass. at 733, that a seizure occurs where an officer "parks a police cruiser with the intention and the effect of blocking a suspect's motor vehicle and preventing it from leaving." In that case, an officer deliberately positioned his police cruiser behind a parked Buick, blocking its exit from a parking lot. *Id.* at 731, 733.

Similarly coercive circumstances are absent here. Unlike the

(Colo. 1998). The Connecticut Supreme Court, for example, has focused on the number of officers and vehicles involved; whether the officers were uniformed; whether the officers were visibly armed or had their weapons drawn; whether the vehicles involved were marked police cruisers; whether the vehicles' sirens and emergency lights were activated, and whether the vehicles' headlamps or spotlights illuminated the defendant; whether the defendant was alone or otherwise appeared to be the target of police attention; the nature of the location, including whether it was public or private property; whether the defendant was surrounded or fully or partially blocked in by police; the character of any verbal communications or commands issued by the police officers; whether the officers advised the detainee of his right to terminate the encounter; the nature of any physical contact; whether the officers pursued after an initial attempt by the defendant to leave; and whether the officers took and retained possession of the defendant's papers or property. *Edmonds, supra*. In addition, the Colorado Supreme Court has considered whether the officer approached the defendant in a nonthreatening way and whether the officer's tone was conversational or whether it indicated that compliance might be compelled. See *Paynter, supra*. Notably, while enumerating these factors, these courts also have called for reviewing the totality of the circumstances.

officer in *Thompson*, McDonough did not position his vehicle between the Pacifica and its path of exit. He pulled alongside the vehicle's rear passenger's side and asked the occupants, "How am I going to get by?" Although the police vehicle came within inches of the Pacifica, McDonough did so because of the manner in which the Pacifica was double-parked and the narrowness of the street, which at that point was one-way, with cars parked along the right side. As underscored by their brief conversation, McDonough so positioned his vehicle to tell the occupants of the Pacifica that the street was blocked and to encourage them to move so traffic could pass along the street. See, e.g., *Narcisse*, 457 Mass. at 6 (no seizure where officer had short conversation with defendant about "activity" nearby); *Gomes*, 453 Mass. at 508, 510 (no seizure where officers asked defendant what he was doing in particular area). A reasonable person would not have believed that McDonough was asking the driver to stay where he was and continue blocking the street, where McDonough expressly indicated that he wanted the driver to move. Thus, without more, the proximity of the vehicles does not establish that a seizure occurred. See *Commonwealth v. Edwards*, 476 Mass. 341, 345 (2017) (blocking defendant's vehicle, alone, was not sufficient to show seizure; other factors also contributed to determination that seizure occurred); *Commonwealth v. Helme*, 399 Mass. 298, 299-300 (1987) (seizure occurred when officer activated "alley light," in addition to using cruiser to block egress of defendant's vehicle); *Commonwealth v. King*, 389 Mass. 233, 237, 241 (1983) (seizure where officer repositioned cruiser in front of parked vehicle after collecting driver's identification papers). We therefore conclude that a seizure did not occur during the officers' encounter with the occupants of the Pacifica on Monadnock Street.

The parties agree that the police did, however, seize the Pacifica after it had proceeded down Monadnock Street and had turned left onto Dudley Street, without engaging in any further traffic violation. McDonough activated the blue lights on the unmarked vehicle, followed the Pacifica, and pulled it over. See *Rodriguez*, 472 Mass. at 773 (stop occurred when police pulled defendant over); *Smigliano*, 427 Mass. at 491-492 (moment of seizure was when police activated their blue lights). Moreover, when the defendant asked why they were being pulled over, McDonough himself said that he was conducting a traffic stop. Thus, we conclude that the defendant was seized only once, and

that seizure took place on Dudley Street.

b. *Reasonableness of the seizure.* We turn to consider whether the traffic stop on Dudley Street was reasonable. See *Rodriguez*, 472 Mass. at 775-776 (“ultimate touchstone” of art. 14 is reasonableness [citation omitted]). The defendant maintains that even if the initial encounter was not a stop, the stop on Dudley Street nonetheless was unreasonable because police already had effectuated the governmental purpose underlying the stop on Monadnock Street, when they addressed the underlying traffic violation of blocking traffic, and thereafter allowed the Pacifica to leave. At the point where the violation was resolved, the defendant maintains, police authority to conduct a traffic stop terminated.

In general, when an officer observes a traffic violation, the officer may stop the vehicle to address that violation. See *Buckley*, 478 Mass. at 866; *Commonwealth v. Santana*, 420 Mass. 205, 207 (1995). The purpose of this authority, known as the authorization rule, is that “‘allowing police to make [traffic] stops serves [the] significant government interest’ of ensuring public safety on our roadways.” *Buckley*, *supra* at 869, quoting *Rodriguez*, 472 Mass. at 776.

At the same time, the observation of a traffic violation does not equip an officer with bottomless authority to seize a defendant. See *Commonwealth v. Cruz*, 459 Mass. 459, 465-466 (2011); *Commonwealth v. Torres*, 424 Mass. 153, 158 (1997). “It goes without saying that the driver cannot be held indefinitely until all avenues of possible inquiry have been tried and exhausted.” *Commonwealth v. Feyenord*, 445 Mass. 72, 80 n.9 (2005), cert. denied, 546 U.S. 1187 (2006). “[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’ — to address the traffic violation that warranted the stop and attend to related safety concerns” (citations omitted). *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). “Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose” (quotation, citation, and alteration omitted). *Id.* “Police authority to seize an individual ends ‘when tasks tied to the traffic infraction are — or reasonably should have been — completed.’” *Cordero*, 477 Mass. at 242, quoting *Rodriguez*, *supra*.

These limits reflect the reality that, during a traffic stop, “an intrusion into a driver or a passenger’s privacy is not minimal.” *Commonwealth v. Gonsalves*, 429 Mass. 658, 663 (1999). “A

passenger in the stopped vehicle may harbor a special concern about the officer's conduct because the passenger usually had nothing to do with the operation, or condition, of the vehicle which drew the officer's attention in the first place." *Id.*

"In evaluating whether the police exceeded the permissible scope of a stop, the issue is one of proportion." *Commonwealth v. Sinforoso*, 434 Mass. 320, 323 (2001). "Because there is no bright-line rule to determine proportionality, we must balance the need to make the stop . . . against the intrusion on the defendant" (quotation and citation omitted). *Commonwealth v. Bostock*, 450 Mass. 616, 622 (2008). "[P]olice conduct is to be judged 'under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved.'" *Santana*, 420 Mass. at 208, quoting *Commonwealth v. Ceria*, 13 Mass. App. Ct. 230, 235 (1982). See *Buckley*, 478 Mass. at 867. If objective circumstances exist showing that the government's interest in ensuring traffic safety has ended, the individual interest prevails, and police authority to conduct a traffic stop must terminate. Two circumstances that mark the end of the government's interest in ensuring traffic safety are (1) where an officer unreasonably prolongs a traffic stop after having addressed the underlying traffic violation, and (2) when an officer observes a traffic violation but unreasonably delays initiating a traffic stop on the basis of that violation.

As stated, we consistently have held seizures to be unreasonable where an officer prolongs a traffic stop after having completed the tasks tied to the encounter. For example, in *Torres*, 424 Mass. at 155, a State police trooper pulled over a vehicle that appeared to have been speeding. When the trooper knocked on the passenger's side window, a passenger got out of the vehicle, and the trooper asked him to stand by the rear of the vehicle. *Id.* In response to the trooper's request, the driver produced his license and registration, both of which were valid. *Id.* The trooper then turned to the passenger and asked him for identification. *Id.* at 155-156. When the passenger indicated that he did not speak English, the trooper motioned for the passenger's wallet. *Id.* at 156. The passenger complied, and the trooper opened the wallet, examining papers that appeared to contain notes of drug transactions. *Id.* The trooper then remained on the scene to investigate his suspicions of drug activity. *Id.*

We concluded that the trooper violated art. 14 by prolonging the stop beyond the driver's production of his license and regis-

tration. *Id.* at 154-155. We held that “a police inquiry in a routine traffic stop must end on the production of a valid license and registration unless the police have grounds for inferring that either the operator or his passengers were involved in the commission of a crime . . . or engaged in other suspicious conduct” (quotation and citation omitted). *Id.* at 158. We noted that “[o]nce any potential threat to the officer’s safety was dispelled and there was no reasonable suspicion that criminal activity was afoot, any basis for further detention evaporated.” *Id.* at 160, quoting *Commonwealth v. Torres*, 40 Mass. App. Ct. 6, 9 (1996), *S.C.*, 424 Mass. 153 (1997).

Similarly, in *Cordero*, 477 Mass. at 238, a State police trooper observed a vehicle with illegally tinted windows. While following the vehicle, the trooper used an onboard computer to confirm whether it was properly registered and its owner licensed; he learned that they were. *Id.* at 242. The trooper then stopped the vehicle, approached the driver’s side window, and asked the driver to produce his license. *Id.* at 239. After conducting a records check on the license, the trooper tested the window tint of the stopped vehicle and discussed the vehicle’s broken tail and brake lights with the driver. *Id.* at 239-240. At that point, the trooper did not end the stop; rather, he remained on the scene and questioned the driver about suspected drug activity. *Id.* at 240.

We concluded that the officer’s prolonging of the traffic stop was unreasonable; we explained that “once a police officer has completed the investigation of a defendant’s civil traffic violations, and the facts do not give rise to reasonable suspicion of criminal activity, the officer is required to permit the defendant to drive away.” *Id.* at 238.

Our decision in *Cordero* drew upon the United States Supreme Court’s analysis of the protections of the Fourth Amendment during police encounters with motor vehicles. See *Rodriguez*, 575 U.S. at 354. In *Rodriguez*, *supra* at 350, 355, the Court determined that an officer violated the Fourth Amendment when he conducted a dog sniff after having completed the “mission” of a valid traffic stop. The officer had observed a motor vehicle veer onto the shoulder of the highway for one or two seconds. *Id.* at 351. The officer’s mission, according to the Court, was circumscribed to “ordinary inquiries incident to [the traffic] stop,” including “checking a driver’s license, determining whether there [were] outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance,” as well as

“determining whether to issue a traffic ticket.” *Id.* at 355. The Court emphasized that such tasks “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.* This governmental interest ended when the officer issued a written warning, thus terminating the investigation into the traffic violation, as well as the officer’s authority to continue detaining the driver. *Id.* at 356-357.

In addition to precluding unnecessarily prolonged traffic stops, some Federal courts have held that police authority to conduct a traffic stop terminates where there is a substantial delay between the observation of a traffic violation and the stop. For example, in *United States v. Mendonca*, 682 F. Supp. 2d 98, 101 (D. Mass. 2010), agents received information from the United States Drug Enforcement Administration that a particular individual was trafficking in marijuana. An agent surveilled the individual driving on the highway and, at around 11 A.M., observed him speeding, following other vehicles too closely, and changing lanes without signaling. *Id.* The individual stopped at a motel for about one hour and left at approximately 12 P.M. *Id.* The agent then called another officer, told him about the traffic violations, and asked the officer to investigate; the officer identified the vehicle and initiated a traffic stop. *Id.*

The court held that “[a]lthough pretextual stops based upon traffic infractions are generally permissible,” the officer could not stop the vehicle on the basis of the traffic violations, where the objective circumstances showed that “the obvious rationale for the stop was to inspect” other suspicious activity. *Id.* at 104. Recognizing that the government’s interest had lapsed, the court noted that “a completed misdemeanor cannot hang over a suspect indefinitely until a time at which he has engaged in some other suspicious activity that officers believe warrants a pretextual stop.” *Id.* Compare *United States v. Sandridge*, 385 F.3d 1032, 1036 (6th Cir. 2004), cert. denied, 543 U.S. 1129 (2005) (“Driving without a valid license is a continuing offense — in contrast, say, to a speeding or a parking violation . . .”; thus, officer had reasonable suspicion to stop driver three weeks after learning driver had invalid license).

In addition to unreasonably prolonged stops and unreasonable delays, this case presents a third set of objective circumstances demonstrating that once the government’s interest in traffic safety has been met, the individual interests prevail, and police authority

to conduct a motor vehicle stop on the basis of an observed traffic violation terminates. Here, the officers approached the Pacifica with the “mission” of addressing the vehicle’s blocking of the street, an apparent violation of Boston Traffic Rules and Regulations, art. VI, § 7. See *Rodriguez*, 575 U.S. at 354. At that moment, the officers could have conducted a stop to investigate the parking violation and could have performed the various tasks tied to the enforcement of the traffic laws, such as asking the driver to produce his license and registration. The officers determined, however, that they would not issue a citation, and the Pacifica moved so as to stop blocking the street, thereby concluding the encounter and completing the “mission” of the investigation. See *id.* at 355; *Cordero*, 477 Mass. at 241-242. Because the driver of the Pacifica did not commit any further traffic violations, the government’s interest in ensuring traffic safety was met once the violation on Monadnock Street was resolved.

It is significant here that the traffic violation resulted from the manner in which the Pacifica was parked. Unlike, for example, reckless driving, any safety hazards were addressed once the driver moved the vehicle. See *Sandridge*, 385 F.3d at 1036 (traffic stop was valid three weeks after officer learned that driver did not have valid license, because driving without valid license is “continuing offense,” unlike “parking violation”). In this case, therefore, the government’s interest had lapsed, leaving solely the defendant’s important interest in personal security from arbitrary police conduct.

The defendant’s interests, following the initial encounter, are particularly compelling in this case where the objective circumstances so obviously show, as both parties agree, that the actual traffic stop was a pretext. See *Mendonca*, 682 F. Supp. 2d at 104 (objective circumstances showed traffic stop was obvious pretext, ending police authority to conduct it). Because the traffic violation already had been resolved, the defendant had even more reason to expect that police would not extend their intrusion than had the defendants in *Torres* and *Cordero*, where police conducted a traffic stop after observing a traffic violation, but prolonged the defendant’s detention to investigate other suspicions. By contrast, here, the police clearly indicated that their traffic-related investigation was complete. The defendant’s reasonable frustration at the subsequent police conduct is compounded where, as here, the defendant was a “passenger in the stopped vehicle” and not the driver who committed the traffic violation. See *Gonsalves*, 429 Mass. at 663.

In sum, like unreasonably prolonged traffic stops and unreasonable delays in stopping a vehicle for a motor vehicle violation, this case presents a third situation in which the government's interest in ensuring traffic safety ended prior to subsequent improper action by the officers. Here, the government interest ended when police resolved the illegal parking by the Pacifica on Monadnock Street. The defendant's individual interests thereafter prevailed, while the officers' authority to stop the Pacifica for the resolved traffic violation terminated. Because police otherwise lacked the authority to conduct a traffic stop on Dudley Street, the stop was unreasonable under art. 14.

3. *Conclusion.* The order denying the defendant's motion to suppress is reversed. Because the defendant was convicted of carrying a firearm without a license, and the Commonwealth would not be able to establish beyond a reasonable doubt that the defendant possessed an operational firearm without the evidence of the gun, the defendant's conviction cannot stand. Accordingly, the conviction must be vacated and set aside, and the matter remanded to the Superior Court.

So ordered.