

# BACE LAW REPORT

---

LEGAL NEWSLETTER

VOLUME 4, NO. 2 - FEBRUARY 2010

## Please Step Out of the Vehicle: Exit Orders in Massachusetts

Eventually, one will be stopped for a routine driving infraction; whether it is the classic New England method of rolling through a stop sign, drifting over a solid line, speeding, or passing through a “yellow” light, traffic stops can be a challenging experience for a motorist. While you may expect to be issued a ticket and then permitted to continue on your way, what you may not expect is to be ordered out of your car. Critical constitutional rights dictate the circumstances under which one can be lawfully ordered to exit their vehicle. What is the standard that allows an officer to order you to exit? When is an exit order justified? This paper attempts to review the relevant legal issues associated with an “exit order,” and the implications of an unlawful order.

The authority of a police officer to issue an exit order is especially limited in Massachusetts.

During a routine traffic stop, the police may not order a driver or passenger from the vehicle unless there is reasonable apprehension of danger to the officer or to others. *Commonwealth v. Gonsalves*, 429 Mass. 658, 662-63 (1999). It must be shown that this apprehension is reasonable. That is, only where it is shown that a reasonably prudent person in the officer’s position would also be warranted in the belief that their safety or the safety of others was in jeopardy is that apprehension said to be justified. *Commonwealth v. Rivera*, 67Mass. App. Ct. 362 (2006). Thus, for the exit order to be warranted it must be based on specific and articulable facts that support the officer’s concern for his safety; a mere hunch or suspicion of this peril is not enough to issue an exit order. *Commonwealth v. Nunez*, 70 Mass. App. Ct. 752 (2007). These ‘facts’ can include situational events that may allow the officer to perceive a threat, be it imminent or remote. Failing to slow down or pull over when being pursued by an officer, failing to comply with an officer’s order to remain in the vehicle, or “squirly” behavior of a passenger attempting to conceal something are all

grounds for an officer to justifiably issue an exit order to a driver or her passengers.

### **Case Example**

The recent case in *Hooker* is a particularly enlightening example of an officer overstepping his bounds in issuing an exit order. A Boston police veteran in an unmarked vehicle observed a taxi carrying the defendant, Hooker. While traveling behind the taxi, the officer observed the defendant looking back in his direction. The taxi attempted to make a left hand turn before swerving back the right, nearly hitting an oncoming car and ending up on a curb. The Officer proceeded to stop the taxi for the violation. *Commonwealth v. Hooker*, 52 Mass. App. Ct. 683, 683-685 (2001).

As he walked toward the taxi, he observed the defendant moving around in the back seat. He surmised from this movement that he was attempting to conceal something in the seat. The defendant continued to shakily glance in the officer's position as he approached. *Id.*

The officer soon recognized the defendant as someone he had arrested twice before for domestic violence and in connection with a stolen vehicle. He had, in the past, been unruly and violent, leading the Officer to believe he would act in this manner toward him again. *Id.*

Upon questioning the taxi driver as to why he made such a sudden change in direction, the taxi driver explained to the officer that the defendant had requested he not go that direction. A high crime area, the defendant was afraid that the officer he had observed following the taxi would continue to do so into the area. *Id.*

Because of the movements the Officer observed and due to the defendant's apparent nervousness and his prior experience with the defendant as a violent person, the Officer asked Hooker to get out of the taxi so that he could search the seat. Upon doing so, he found a substantial amount of cocaine hidden under the defendant's jacket. *Id.*

The issue for the court was whether or not this exit order was warranted. As discussed, in a routine motor vehicle stop, the police may not order a driver or passenger out of a lawfully stopped vehicle without reasonable apprehension of danger. There was no concurrent illegal activity taking place when the police pulled the taxi over, and the mere fact that the defendant "looked nervous" and persistently looked at the officer behind him was not remarkable or sufficient enough to warrant Officer Devane's exit order. *Id.* at 687. Furthermore, the defendant's movements in the backseat were neither

indicative of criminality nor a ground for reasonable apprehension; the fact that the car was pulled over close to a high crime area was also not, by itself, sufficient to allow the officer to order Hooker out of the car. The defendant was not, as the officer had expected, violent or threatening in any way, and the mere apprehension that he may act a certain way was unreasonable. *Id.*

In *Hooker*, the court determined that while the officer contests that he asked the defendant to exit the vehicle voluntarily, a reasonable person would have considered the "request" to be a command. The exit order was based on a hunch that the defendant may have disposed of items or may have acted in a violent or threatening manner, and therefore the search and exit order were unreasonable and exceeded constitutional bounds. *Id.* at 688. The evidence acquired as a result of the exit order in *Hooker* was suppressed, and the court overturned the Defendant's conviction.

The exclusionary rule holds that any evidence obtained in an illegal search or seizure is inadmissible in court. This means that it cannot be introduced as evidence at trial. The rule applies to the federal courts and state courts. Under the "fruit of the poisonous tree" doctrine, any derivative evidence uncovered because of an illegal search or

seizure is also inadmissible.

In the Commonwealth, the prosecution is prohibited from using any evidence items illegal seized under either federal constitutional standards or state standards. *Commonwealth v. Upton II*, 394 Mass. 363 (1985). Thus, in the context of an exit order, in the event the exit order is deemed unlawful it gives rise to a strong argument that any evidence seized as a result should be excluded.

Essentially, any arbitrary or otherwise random command to exit the vehicle, without any justifiable concern for the officer's safety is unlawful.

While it is almost always wise to be courteous and polite to an officer and cooperate with any investigation, call your attorney immediately whenever you have been ordered out of a vehicle unlawfully. In the event that evidence is obtained as a result of the exit order, or any subsequent search, retaining an attorney will be critical in order to attempt to suppress such evidence.

ADVERTISING: This newsletter is a form of advertising, and does NOT create an attorney-client relationship of any kind. The information in this newsletter should NOT be relied upon, and should NOT be considered legal advice. Legal advice can only be issued after a careful review of the facts of your particular matter.