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State v. Malachi

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Back in 1982, the science-fiction movie “Blade Runner” was released in theaters. Initially criticized by critics¹ for its slow pace, the movie eventually became a cult classic and has since been praised by many as one of the best science fiction movies of all time. In the movie, “blade runners” are mercenaries hired to track down synthetic humans (androids) called “replicants.”² A sequel titled “Blade Runner 2049” was released in 2017 but no one really seemed to care since the movie lost money despite this time receiving positive critical reviews.

I was reminded of this movie by a recent case in which one of the significant facts was the officer’s testimony that a suspect “bladed, turned his body away, and started to walk away.” “Blading” is a term used often by officers to describe the turning of one’s body, sometimes as an indicator that a person is about to fight, is about to flee, or as in our case today, is attempting to conceal something. I was unable to find this particular definition of “blade” in a dictionary, although I found several other interesting meanings for this term.³

More importantly, the case that brought this all to mind serves as a good review of the law of “stop and frisk.” In State v. Malachi,⁴ an anonymous caller called 911 shortly after midnight to report that an African American male wearing a red shirt and black pants had just placed a handgun in the waistband of his pants in the rear parking lot of a gas station. Officers responded to the scene and saw a group of six to eight people in said parking lot including just one that matched the description given by the caller.

As the first officer got out of his car, the suspect (later identified as Terance Germaine Malachi) looked directly at him, “bladed, turned his body away, and started to walk away.” The officer immediately went up to him and grabbed his arm. With the help of another officer, the suspect, who was squirming, was led away from the crowd of people where he was told he was not under arrest and was placed in handcuffs. An officer then frisked the suspect and seized a revolver from his right hip waistband. He then was arrested and charged with carrying a concealed weapon and possession of a firearm by a felon. At trial and on appeal, the defendant argued that reasonable suspicion did not exist for the seizure or frisk and therefore, the gun should be suppressed. Let’s review each of these in turn.

Reasonable Suspicion for the Stop

The defendant argued that the anonymous tip was not enough to supply reasonable suspicion for his seizure. In this limited point, he was correct – the law is settled that an anonymous tip, by itself, does not rise to the level of reasonable suspicion. The leading case on the value of anonymous tips is a U.S. Supreme Court case

¹ What else would you expect a critic to do except “criticize?” Comes with the title, right?

² The movie was loosely based on a book called “Do Androids Dream of Electric Sheep?” If I didn’t know better, I would have guessed that was more likely the title of some annoying children’s song on one of those CDs your wife makes you play in the minivan during long road trips to keep the toddler happy. Not that I have any experience with that.

³ Which of course I will share as we go. I should also mention that there is at least one more blade-related movie. “Blade” (1998) starring Wesley Snipes as a vampire-hunter and based on a comic book character was actually Marvel’s first movie hit in the days before the “Marvel Cinematic Universe” became so popular.

⁴ COA 16-752-2 (March 5, 2019).

from 2000, Florida v. J.L.⁵ In this case, which is very similar factually to ours, an anonymous caller reported to the Miami-Dade police that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. Nothing was known about the informant, but when officers responded to the bus stop they saw three black males and one of them was wearing a plaid shirt.

Apart from the tip, the officers had no reason to suspect any of the three males of illegal conduct and they did not observe a firearm or any unusual activity from them. An officer approached J.L. (the man in plaid), told him to put his hands up on the bus stop, frisked him, and seized a gun from his pocket. The U.S. Supreme Court held that an anonymous tip that a person is carrying a gun, by itself, is insufficient to create reasonable suspicion to allow an officer to stop and frisk a person, so the gun seized from J.L. should have been suppressed.

In today's case, however, the court found that there was more than just the anonymous tip to support reasonable suspicion for the stop. The officer testified that he was in full uniform and in a marked patrol car when he arrived at the gas station. Upon seeing the officer, the defendant "turned his body in such a way as to prevent the officer from observing a weapon." Based on the officer's training and experience, that type of turn was "blading," as "when you have a gun on your hip you tend to blade it away from an individual." He saw this action followed by the defendant trying to move away as being an indication that he was armed with a weapon.

This type of "overt action" has previously been held to constitute reasonable suspicion when coupled with the defendant being in a high crime/high drug area and trying to walk away upon seeing officers. For example, in State v. Sutton,⁶ reasonable suspicion for a stop existed when a subject walking down the street in a high crime area saw the officer and used his right hand to grab his waistband while continuing to walk away. Similarly, in State v. Watson,⁷ an officer had reasonable suspicion to detain a person who saw him while standing in front of a high crime convenience store and then immediately put items in his mouth as he retreated into the store. There was no testimony noted in the Malachi case about whether this gas station was a high crime/drug area but unlike Sutton and Watson there was the presence of the initial anonymous tip. After examining the issue, the Court of Appeals ruled that officers did have reasonable suspicion to seize Malachi based on these facts.⁸

Reasonable Suspicion for the Frisk

As you know, reasonable suspicion to make a brief investigative stop does not automatically give police the ability to frisk for weapons. In order to conduct a frisk (absent consent), the officer must also have a reasonable suspicion that the subject is armed and dangerous. There has been some recent confusion about whether this requires both proof that the subject is armed AND proof that the subject is dangerous or whether a reasonable suspicion that the subject is armed automatically proves that danger is present.

The confusion has come in large part because of a Fourth Circuit opinion from a panel of judges which indicated that "armed" and "dangerous" are two different questions, each requiring some proof. This ruling got a lot of publicity back in early 2016 when it was issued. However, some have missed or forgotten that the full panel of the Fourth Circuit overturned that opinion less than a year later in United States v. Robinson.⁹ The new Robinson opinion states that an officer may lawfully conduct a frisk if he or she reasonably suspects that the

⁵ 529 U.S. 266 (2000). When I hear about "blading," I first think of inline skating or rollerblading, even though I don't think I have ever worn a pair of inline skates or rollerblades. I was a mediocre roller skater back in the day, though. If you think I would look foolish on a pair of roller skates, there is also a thing called "body blading" where people descend a slope wearing a suit with wheels on the feet, knees, body, and arms. I've never done this either, of course, but I encourage you to google pictures of these people. They look like trick-or-treaters in bad Transformer costumes.

⁶ 232 N.C. App. 667 (2014). An old definition for "blade" is "a dashing young man" as in: "Here comes a blade who lives down the street."

⁷ 119 N.C. App. 395 (1995).

⁸ This is a good time for my frequent reminder that good and thorough articulation of facts and observations is important. If the officer here fails to testify descriptively about the suspect's movements upon seeing the police, this motion to suppress is likely successful. Always be as detailed as possible when writing your report and testifying since it could make the difference between a good case and a dismissed one.

⁹ 846 F.3d 694 (2017). "Blading" is also apparently a well-known term in professional wrestling where a wrestler uses a hidden blade to cut themselves (usually in the forehead) during a match to cause bleeding to make the fight look more real. I don't know about this because the only wrestlers I could name are Hulk Hogan and that guy that goes "Woool!" all the time. (Actually, I don't remember his name either.)

person is “armed and therefore dangerous. . . The risk of danger is created simply because the person, who was forcibly stopped, is armed.”¹⁰

Therefore, in Malachi, all the officer had to show to justify the frisk was a reasonable suspicion that the defendant was armed. The court of appeals held that based on the initial tip, followed by the “blading” behavior of the defendant, his later squirming, and the fact that he did not inform the officers that he was armed (as a lawful concealed carry permittee would have been required to do), there was ample reasonable suspicion that Malachi was armed and the frisk was constitutional.

As a result, Malachi’s conviction for Possession of a Firearm by a Convicted Felon was upheld. In addition, Malachi was a Habitual Felon and has been sentenced to serve an active sentence of 100 to 132 months in a place where you aren’t allowed to possess any kind of blade.

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ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they’re pretty cool guys.



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¹⁰ The impact of this ruling on the ability of police to control lawfully possessed firearms during investigative stops might be good subject for later update – stay tuned.