



LEGAL UPDATE · RESOURCES

911 Call and “Something More”

By **Daigle Law Group**

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DAIGLE LAW GROUP

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Walker v. Donahoe deals with a sensitive topic, suspicious activity surrounding a past school shooting. Of course, when we have a tragedy hit our community it puts us on even higher alert to make sure it never happens again. Some of the surrounding circumstances around today’s incident include the area where the suspect was walking and the date, February 14, 2018, which was very close to a known shooting by a 19-year-old gunman in Parkland, Florida, who shot and killed 17 persons and wounded several others with an assault rifle inside Marjory Stoneman Douglas High School. Furthermore, although it is generally legal in West Virginia to openly carry firearms, including assault rifles, the officers in our case knew there were some limitations to this law, including the law that a person under the age of 18, who is not married or otherwise emancipated, is prohibited from possessing or carrying a concealed weapon or any deadly weapon.

Let us look at what happened and how these officers handled it.

FACTS

On February 21, 2018, a concerned citizen called 911 and reported a man with an assault rifle walking westbound along Route 33 through a suburban residential and commercial area. Corporal Brian Donahoe and Deputy Brandon Pauley were dispatched to locate the armed man. From the caller’s report, the officers knew that Teays Valley Christian School was less than a mile ahead of the armed man.

A brief time later, the officers saw the armed man, later identified as Michael Walker, walking toward Teays Valley Christian School. Walker was wearing military-style clothing, and he was carrying a backpack and an uncased AR-15-style assault rifle on his back. Upon seeing Walker, the officers believed that he could be under the age of 18 because of his youthful appearance and the fact that he was walking rather than driving.

The officers stopped Walker and obtained his identification papers, which indicated that he was 24 years old. Corporal Donahoe then called the Sheriff’s dispatch office for a criminal history check to ascertain whether Walker had any criminal conviction that would disqualify him from carrying a firearm. The Sheriff’s dispatch office promptly responded to Corporal Donahoe’s request for a criminal history check and reported that Walker had been convicted of a misdemeanor drug offense and acquitted of a charge of obstructing a law enforcement officer. At this point, believing that Walker was eligible to carry

a firearm, Corporal Donahoe returned Walker's identification papers and told him that he was free to go. The entire encounter lasted less than nine minutes.

Walker sued the officers under 42 U.S.C. § 1983. Walker claimed that Corporal Donahoe's detention of him constituted an unreasonable Fourth Amendment seizure, and that Deputy Pauley was liable as a bystander of Corporal Donahoe's conduct. The district court dismissed the lawsuit. The district court found that the facts known to Corporal Donahoe when he detained Walker supported a reasonable suspicion that: 1) Walker posed an imminent threat to the students and staff at Teays Valley Christian School, and 2) Walker was violating West Virginia law, which prohibits minors under the age of eighteen from carrying firearms. Walker then appealed.

FOURTH CIRCUIT COURT OPINION

Walker claimed that in a state like West Virginia, where it is legal to openly carry a firearm, the act of openly carrying a firearm can never establish reasonable suspicion to support a stop and investigatory detention. Walker further argued that there was no lawful basis to consider a person's open carry of an AR-15 differently from any other lawful firearm under state law.

The Fourth Circuit Court of Appeals disagreed. The court noted that in states where individuals are permitted to openly carry firearms, the exercise of this right, without more, cannot justify an investigatory detention. However, the court recognized that lawful possession of a firearm, "plus something more," can contribute to reasonable suspicion that a person is involved in criminal activity, and therefore justify an investigatory detention.

The court also stated that Supreme Court and Fourth Circuit case law has held that different firearms have different features, capabilities, and typical uses, which may be considered in a reasonable suspicion analysis, particularly when comparing handguns to AR-15 and other assault rifles.

After finding that the possession of a firearm can be a circumstance justifying an investigatory detention, the court held that Corporal Donahoe established "something more" than the fact that Walker was openly carrying a firearm that justified his detention.

That "something more" includes the following points: it was proper for Corporal Donahoe to consider the type of firearm that Walker was carrying, an AR-15-style assault rifle. Corporal Donahoe testified that such rifles have been "the weapon of choice for the deadliest mass shooters of the past decade," to include massacres including: at a movie theater in Aurora, Colorado; at Sandy Hook Elementary School in Newtown, Connecticut; at a holiday party in San Bernardino, California; at the Pulse nightclub in Orlando, Florida; at a music festival in Las Vegas, Nevada; at a church in Sutherland Springs, Texas;

and at Marjory Stoneman Douglas High School in Parkland, Florida.

Also of note was the fact that the Parkland school shooting occurred just a week before Walker was stopped and detained while carrying an AR-15-style rifle. Corporal Donahoe stated that he had been on heightened alert for possible copycat crimes. Significantly, the Parkland shooter used an AR-15-style assault rifle to kill and injure his victims. Walker was also walking toward and within a mile of Teays Valley Christian School when Corporal Donahoe detained him. Walker was also dressed to look like a soldier, in a black sleeveless shirt and camouflage pants.

And lastly, Walker was walking rather than driving, suggesting that he might be a minor and perhaps a student at Teays Valley Christian School. Based on these facts, the court held that it agreed with the district court that Corporal Donahoe had reasonable suspicion that Walker was intent on perpetrating a mass shooting at Teays Valley Christian School. The court declined to decide the issue of whether Corporal Donahoe had reasonable suspicion that Walker was under the age of 18 and therefore illegally carrying a firearm.

TAKEAWAYS

The reasonableness of any seizure depends on the totality of the circumstances surrounding the stop. Corporal Donahoe did everything right here, even in a heightened situation. The “something more” that was going on was simply sound logic and good police work. Take note of potential situations in your community and of course take those 911 calls seriously. They may turn out to be a guy walking around with an assault weapon for no reason, but better to be safe than sorry.

Walker v. Donahoe, 3 F.4th 676 (4th Cir. 2021)

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