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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of September – 2017

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH
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People v. Javier Pulido, 2017 IL App (3rd) 150215, August 16, 2017

This case concerns the stop and search of a vehicle.

FACTS: The police were informed that van would be carrying a large quantity of drugs. An Officer pulled the van over for speeding. The Officer did not have any information about the driver of the vehicle nor did he have a warrant for the driver's arrest. The Officer did not know what type of drugs were potentially involved or where inside the vehicle the suspected narcotics were located. While the Officer spoke with the driver, a second Officer arrive with a canine. The canine performed a "free-air sniff" of the van and alerted. Meanwhile, the arresting Officer was issuing a speeding warning to the driver for driving seven miles per hour over the speed limit. While so doing, the arresting Officer asked the driver for consent to search his van. According to the Officer, the driver consented. Both Officers searched the inside of the van, as well as the engine compartment, but did not find any narcotics. Despite the troopers' failure to recover any narcotics from the search, the driver and his van were transported to the local police department. About 35 minutes elapsed from the time the driver was pulled over and the time he arrived at the police department. The canine again "sniffed" the van and this time alerted on a back seat. Again, the defendant consented to a search of his van. A more thorough search eventually revealed methamphetamine in the van's air filter. After the trial court denied the driver's motion to suppress and he was convicted of transporting drugs, the driver brought this appeal.

***ISSUES*:** Was the stop and search of this van legal?

FINDINGS: On appeal, the defendant first argued that his initial stop for speeding was unlawful.
(A) The appellate court ruled that for a traffic stop to be reasonable, the officer must have at least "reasonable, articulable suspicion" that a violation of traffic law has occurred. Here, the defendant was traveling seven miles per hour above the posted speed limit. For this reason, the Court ruled that the Officer's decision to stop the defendant's vehicle was lawful at its inception.
(B) Next the defendant argued that the Officers unreasonably prolonged the original stop when they conducted a canine "sniff" of his van. The Court ruled that a suspicionless canine sniff conducted during a lawful traffic stop does not violate the Fourth Amendment, so long as it does not unreasonably prolong the duration of the traffic stop. The Court held that the reasonable duration of a traffic-stop context is determined by the seizure's "mission"—to address the traffic violation that warranted the stop, and attend to related safety issues. Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to [the traffic] stop." Typically, such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. Here, the Officer pulled the defendant over for speeding. After obtaining the defendant's information, the Officer and the defendant returned to the Officer's squad car so that the Officer could run the information through LEADS and write the defendant a warning. Before the Officer finished writing the defendant a warning and receiving the confirmation from LEADS, the canine Officer arrived on the scene and conducted the free-air sniff. After the canine alerted on the vehicle, the Officer was

informed by radio that the defendant's LEADS check was clear. Consequently, the Court ruled that a free-air sniff conducted during this lawful traffic stop did not violate the Fourth Amendment.

(C) Finally, the defendant argued that the Officers unreasonably searched the car. The Court noted that in this case there were two searches conducted of the van. (1) Concerning the search at the location of the stop, the Court ruled that a positive alert to the presence of narcotics by a dog trained in the detection of narcotics is a permissible method of establishing probable cause. Thus, the canine's positive alert on the defendant's van established probable cause to search the van, unless the canine was shown to be unreliable. The Court further held that this canine was shown to have been reliable even though it's "certification" had expired prior to his incident. Therefore, the Court declared that the search of the van at the scene was reasonable based upon the alert of the canine. (2) Concerning the second search, the Court noted that the Officers searched the entire vehicle at the scene of the stop and failed to find any contraband. More significantly, they produced no indication that the vehicle may have had a hidden compartment that would justify moving the vehicle to the police department for a second search.

For this reason, the Court ruled that the probable cause the police possessed after the dog first alerted dissipated when the Officers found nothing during their search. Therefore, the Court held that the Officers lacked the authority to move the van. For this reason, the second warrantless search of the van at the station was ruled unreasonable even though the defendant again consented to the search. The second consent was determined to be invalid due to the illegal seizure and movement of the van.

QUIZ QUESTIONS FOR THE MONTH OF SEPTEMBER – 2017

People v. Javier Pulido, 2017 IL App (3rd) 150215, August 16, 2017

1. For a traffic stop to be legal, the arresting Officer must have at least probable cause to believe that the driver of the car has violated a traffic law.

   a. True.
   b. False.

2. In this case, a canine conducted a "free air" sniff of the suspect car. Did this "sniff" cause the detention of this defendant to be unreasonably extended?

   a. Yes.
   b. No.

3. Did the Officers in this case conduct a "reasonable" search of the suspect van at the scene of the traffic stop?

   a. Yes.
   b. No.

4. Pulido consented to a search of his van during his traffic stop and again at the police station. Therefore, the Officers were justified in transporting the van to the local police station and there conducting a second search.

   a. True.
   b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF SEPTEMBER – 2017
People v. Javier Pulido, 2017 IL App (3rd) 150215, August 16, 2017

1. For a traffic stop to be legal, the arresting Officer must have at least probable cause to believe that the driver of the car has violated a traffic law.

b. False. The Court ruled: "For a traffic stop to comport with the reasonableness requirement of the constitutional guarantees, the officers must have at least 'reasonable, articulable suspicion' that a violation of traffic law has occurred." *People v. Hackett*, 2012 IL 111781, ¶ 20 (quoting *Gonzalez*, 204 Ill. 2d at 227). Therefore, the Office need only have "a reasonable suspicion" rather than probable cause.

2. In this case, a canine conducted a "free air" sniff of the suspect car. Did this "sniff" cause the detention of this defendant to be unreasonably extended?

b. No. The Court ruled: "A free-air sniff conducted during a lawful traffic stop does not violate the Fourth Amendment, as long as it is done, as it was here, within the time reasonably required to complete the mission of the initial traffic stop." *Caballes*, 543 U.S. at 407. The "sniff" was OK as long as it occurred while the second Officer was writing out the defendant's warning ticket.

3. Did the Officers in this case conduct a "reasonable" search of the suspect van at the scene of the traffic stop?

a. Yes. The Court held: "Based on the totality of the evidence, the State established that (the dog) was reliable in determining that contraband was or at some time had been present in defendant's car or on his person." Thus, the Court concluded that the People had probable cause to believe that the suspect van contained contraband. Therefore, the initial search of the van at the scene of the stop was reasonable.

4. Pulido consented to a search of his van during his traffic stop and again at the police station. Therefore, the Officers were justified in transporting the van to the local police station and there conducting a second search.

b. False. The Court in this case concluded: "(w)e do not believe an Illinois citizen who is pulled over on a highway and subsequently consents to a search of his vehicle intends to voluntarily and knowingly consent to have his vehicle removed from the highway and relocated to the local police station for a further search once the initial search on the highway is completed. The officers' decision to relocate defendant's vehicle in the instant case exceeded the scope of defendant's alleged consent. The officers engaged in impermissible conduct when they seized defendant's vehicle without probable cause and transported it to the police department for a more prolonged and invasive search. It is of no consequence that defendant later 'consented' to the second search as the second search was inextricably bound with the illegal conduct of the officers."

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH
Month of September - 2017 ALTERNATIVE CASE

Joseph Doornbos v. City of Chicago, et al., No. 16-1770, August 18, 2017

Doornbos sued several plain-clothes Officers and alleged they used excessive force while arresting him.

FACTS: A plain-clothes Officer noticed a person (Doornbos) exit a subway and suspected that the Doornbos was illegally drinking beer in the subway. According to the Officer, he approached Doornbos, identified himself as an Officer and started to ask about the beer. As the Officer drew near to Doornbos, he reached out with one hand to grab Doornbos's arm. The officer explained that he reached out to frisk Doornbos for weapons. When asked why he thought Doornbos might be armed, the Officer said that it was a high-crime area, it was dark, Doornbos may have been breaking the law by drinking beer, and Doornbos was wearing a jacket with "deep pockets" in which he "could have hidden anything." When Doornbos fled, the Officer and two fellow plain-clothes Officers ran him down, tackled him, and placed him in custody. Doornbos's version of the incident is very different. He claimed he had no beer as the left the train and he was jumped by an unknown person. Fearing he was being assaulted, Doornbos yelled for help and tried to flee. According to Doornbos, at no time prior to his flight did the unknown person identify himself as a police officer. Thereafter, Doornbos was acquitted of resisting arrest. He then sued the Officers for excessive use of force. The case went to trial and the jury returned a verdict in favor of the officer-defendants. On appeal, Doornbos argued he should get a new trial due to the district court's trial errors.

ISSUE: Did the rulings of the District Court entitle Doornbos to a new trial?

FINDINGS: Doornbos argued that the district court erred refusing to instruct his jury on the legal standard for frisks, i.e., that an officer must have a reasonable suspicion that a person is armed and dangerous before initiating a frisk.

(A) The Court of Appeals concluded that the district court erred when it refused to include an instruction on frisks. Based on the Officer's own version of events, he grabbed Doornbos to frisk him. The Court held that the district's court's refusal to include the frisk instruction was a problem here because the Officer's testimony suggested that the frisk was unjustified and thus unconstitutional. To "proceed from a stop to a frisk," the Officer was required to have reasonable suspicion that Doornbos was "armed and dangerous." When asked why he suspected Doornbos was armed and dangerous, the Officer provided four reasons: it was a high-crime area, it was dark, Doornbos may have been breaking the law by drinking beer, and Doornbos was wearing a jacket with "deep pockets" in which he "could have hidden anything." According to the Court of Appeals, these were not sufficient "articulable facts that would establish the separate and specific condition that the detainee has a weapon or poses some danger." Three of the Officer's factors were so general they would have applied to everyone at the station. It was dark in a high-crime neighborhood, and people were wearing big coats with deep pockets because it was February. Without more, such justifications were too general because they could be applied to practically any person that had been around the area when the officers showed up that night. Nor did suspicion that Doornbos might have been drinking a beer on public property transform these general factors into reasonable suspicion that he was "armed and dangerous." The Officer testified that he did not never saw Doornbos drink the beer. Nor did he testify that Doornbos appeared intoxicated or otherwise acted erratically in a way that might indicate dangerousness. There was no indication that Doornbos might be armed. In sum, the Officer's own testimony suggested that

he initiated an unlawful frisk while policing in plain clothes, and that conduct proximately caused the violent confrontation. The Court held that this information was relevant for the jury in assessing whether the Officer's use of force was reasonable under the "totality of the circumstances." The district court's decision not to include an instruction on frisks deprived the jury of the law it needed to reach a sound verdict.

(B) Doornbos also argued that the court erred by telling the jury that a plainclothes officer need not identify himself as an officer when conducting a *Terry* stop (and implicitly when conducting a frisk). The Court of Appeals agreed with Doornbos.

The Court held that "absent reasonable grounds to think that identification would present an unusual danger, it is generally not a reasonable tactic for plainclothes officers to fail to identify themselves when conducting a stop." The tactic provokes panic and hostility from confused civilians who have no way of knowing that the stranger who seeks to detain them is an Officer. This creates needless risks. According to the Court, "self-defense is a basic right," and many civilians who would otherwise peaceably comply with a police officer's order would understandably be ready to resist or flee when accosted—let alone grabbed—by an unidentified person who is not in a police officer's uniform. Absent unusual and dangerous circumstances, the Court held that this tactic is unlikely to be reasonable when conducting a stop or a frisk. For these reasons, the Court concluded that Doornbos was entitled to a new trial.

QUIZ QUESTIONS FOR THE MONTH OF SEPTEMBER – 2017 ALTERNATIVE CASE

Joseph Doornbos v. City of Chicago, et al., No. 16-1770, August 18, 2017

1. To conduct a legal "stop and frisk," an Officer must prove both that the stop of the suspect was based, at least, upon reasonable suspicion and that the Officer reasonably believes that the suspect may be "armed and dangerous."
   a. True.
   b. False.

2. In this case, the Officer approached Doornbos, reached out his hand, and grabbed him. Did the Court consider this conduct to constitute a "frisk" even though the Officer was never able to "pat" Doornbos down before he fled?
   a. Yes.
   b. No.

3. Generally, is it reasonable for a plain-clothes Officer to fail to identify himself or herself as a police Officer when engaged in the seizure or frisk of a suspect?
   a. Yes.
   b. No.

4. **RECENT CASE:** The police were searching for a dangerous drug kingpin. They were told his arrest warrant was for the highest class of felony, that he was "armed and dangerous, that he had resisted arrest on several prior occasions and that he had threatened violent resistance if the police attempted to re-arrest him." The officers were dressed in plain clothes. They mistakenly thought they saw the suspect on a motorcycle at a stop light. The officers rushed the motorcycle rider and tackled him, all without identifying themselves. The motorcycle rider resisted. The struggle continued after the initial tackle and the officers still did not identify themselves. After the rider was finally restrained, the officers realized they had arrested the wrong person. The Court in this case ruled that it was unreasonable for the Officers to fail to identify themselves.
   a. True.
   b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF SEPTEMBER – 2017
ALTERNATIVE CASE

Joseph Doornbos v. City of Chicago, et al., No. 16-1770, August 18, 2017

1. To conduct a legal "stop and frisk," an Officer must prove both that the stop of the suspect was based, at least upon reasonable suspicion and that the Officer reasonably believes that the suspect may be "armed and dangerous."

   a. True. That is what the Court in this case declared. It said: "The Court determined that a stop and a frisk is reasonable when two separate conditions are satisfied: "First, the investigatory stop must be lawful. That requirement is met . when the police officer reasonably suspects that the person apprehended is committing or has committed a criminal offense. Second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous." Id. at 326–27 (emphases added); see also Huff v. Reichert, 744 F.3d 999, 1009 (7th Cir. 2014).

2. In this case, the Officer approached Doornbos, reached out his hand, and grabbed him. Did the Court consider this conduct to constitute a "frisk" even though the Officer was never able to "pat" Doornbos down before he fled?

   a. Yes. The Court declared: "Based on (the Officer's) own version of events, he grabbed Doornbos to frisk him. (The Officer) testified that he announced himself as a police officer, and displayed his badge, handcuffs, and gun. He testified that he next went "to reach him, to reach with my left hand to his right side" to conduct a frisk "to make sure [Doornbos] did not have a weapon." Doornbos "pushed [the Officer's] hand away" and attempted to flee. Based on the totality of the circumstances, at least as told by (the Officer), a reasonable person could have believed he was being searched when (the Officer) stretched his arm out. So too could Doornbos when (the Officer) reached out to grab him.

3. Generally, is it reasonable for a plain-clothes Officer to fail to identify himself or herself as a police Officer when engaged in the seizure or frisk of a suspect?

   b. No. The Court ruled "Absent reasonable grounds to think that identification would present an unusual danger, it is generally not a reasonable tactic for plainclothes officers to fail to identify themselves when conducting a stop." Hudson v. Michigan, 547 U.S. 586, 594 (2006)

4. **RECENT CASE:** The police were searching for a dangerous drug kingpin. They were told his arrest warrant was for the highest class of felony, that he was "armed and dangerous, that he had resisted arrest on several prior occasions and that he had threatened violent resistance if the police attempted to re-arrest him." The officers were dressed in plain clothes. They mistakenly thought they saw the suspect on a motorcycle at a stop light. The officers rushed the motorcycle rider and tackled him, all without identifying themselves. The motorcycle rider resisted. The struggle continued after the initial tackle and the officers still did not identify themselves. After the rider was finally restrained, the officers realized they had arrested the wrong person. The Court in this case ruled that it was unreasonable for the Officers to fail to identify themselves.

   b. False. In the case of Catlin v. City of Wheaton, 574 F.3d 361 (7th Cir. 2009), the Court of Appeals declared that: "because of the unusually dangerous character of the suspect," the officers reasonably thought that identifying themselves before tackling the motorcyclist would have made the arrest more dangerous. The suspect was armed, had a history of violence, and had professed his intent to resist arrest. Given these factors, the officers "could have reasonably concluded that they needed to use the element of surprise to their advantage."