

ILLINOIS PROSECUTOR SERVICES, LLC

PO Box 722, Carlinville, IL 62626
Phone: (217) 854-8041 Fax: (217) 854-5343
Website: www.ipsllonline.com
E-mail: don@ipsllonline.com



LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of October – 2017

Copyright © 2017 Illinois Prosecutor Services, LLC. All Rights Reserved.

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE WEEK

Month of October - 2017

In re Tyreke H., 2017 IL App (1st) 170406, September 28, 2017

The defendant was adjudicated delinquent when he was found in possession of a firearm.

FACTS: The 17-year-old defendant was riding his bicycle on a street when two police officers, wishing to speak with him not as a suspect but as a potential witness to a homicide, stopped their squad car in the defendant's path of travel in the middle of the street. After the defendant stopped his bicycle, the officers spotted a bulge in the defendant's pocket that resembled a firearm. The defendant confirmed his identity to the officers and admitted that he was in possession of a firearm "for his own protection." Thereafter, the defendant claimed he was unreasonably seized in violation of the Fourth Amendment. The trial court initially agreed and suppressed the evidence of the gun, then reconsidered and reversed its ruling, leading to the defendant's adjudication of delinquency for two counts of aggravated unlawful use of a weapon and one count of unlawful possession of firearms. This appeal followed.

ISSUES: Should the evidence of the firearm in the defendant's possession have been suppressed?

FINDINGS: The Juvenile argued that the police seized him when they blocked his path, forcing him to stop his bicycle and answer questions, and that they did so without any reasonable, articulable suspicion that Respondent had committed a crime. Conversely, the People argued that the trial court properly denied the Juvenile's motion because he was not seized in the first place; the encounter between the Officers and the Juvenile was consensual. In response to these arguments, the appellate court noted that a person has been seized when, considering the totality of the circumstances, a reasonable person would believe he is not free to leave. In this case, the Court concluded that the determination of whether the Juvenile was seized depended on whether, considering the totality of the circumstances, a reasonable 17-year-old would believe he was not free to leave. Here, the officers drove past the Juvenile on his bicycle and then quickly stopped just short of him, got out of their car, and faced him. According to the Court, a reasonable, innocent 17-year-old person, riding a bike along a public roadway, seeing a vehicle stop "just in front of him" and positioned in his path of travel such that he "would ride directly to" that car, and then seeing two officers wearing badges on their vests quickly emerge from the vehicle and face him, could only come to one conclusion: "that the officer[s] wanted no further movement and expected submission." The only conclusion a reasonable, innocent person could draw from the officers' actions was that they were demanding to speak with him then and there. The Court acknowledged that generally the police do not seize citizens when they approach them in public to ask a question. However, it recognized the difference between approaching a pedestrian on the sidewalk and stopping a bicyclist in a street. The Court concluded that no reasonable, innocent person would have viewed the Officer's actions as anything but a show of police authority, indicating that they wanted to speak with the Juvenile, and they wanted to do so right at that moment. Therefore, the Court held that the Juvenile was seized by the police when they first pulled in front of him. (2) Alternatively, the People argued that the seizure of the Juvenile was not unreasonable. In response, the Court noted that suspicionless detentions of citizens as potential witnesses to a crime, even if they are seizures, are not *per se* unconstitutional, but rather are subject to a reasonableness test. In determining the reasonableness of a seizure in this context, the Court held that it was necessary to consider (a) the gravity of the public concerns served by the seizure, (b) the degree to which the seizure advances the public interest, and (c) the severity of the interference with individual liberty. Here, the investigation underway was a homicide. Therefore, the gravity of public concern concerning that investigation was great. Next, the officers were targeting a specific person whose assistance was sought, and they believed (correctly) that they had found that specific person when they spotted the Juvenile. According to the Court, the stop could not have been more narrowly tailored toward the public interest in solving this homicide. Finally, concerning the severity of the Officer's interference with the Juvenile's individual liberty, the Court noted that here the Officers' detention of the Juvenile for questioning was interrupted when an Officer became suspicious of a possible firearm in the Juvenile's pants pocket. The detention then quickly devolved into a search and arrest. However, the Officer testified without contradiction that his intention had been to ask the Juvenile if he would be willing to come to the police station for questioning, and that the Juvenile would have been free to decline that request and be on his way. Consequently, the Court held that the Juvenile's original detention did not substantially interfere with his individual liberty. After considering the circumstances in this case, the Court concluded that the Juvenile's seizure was reasonable even though the Officers had not reasonable suspicion of criminal activity on the part of the defendant.

QUIZ QUESTIONS FOR THE MONTH OF OCTOBER - 2017

In re Tyreke H., 2017 IL App (1st) 170406, September 28, 2017

1. The Fourth Amendment does not prohibit all seizures; it only prohibits unreasonable seizures.
 - a. True.
 - b. False

2. In this case, the Officers wanted to ask the Juvenile if he was willing to voluntarily come to the police station to assist in the homicide investigation. To accomplish this, they stopped their squad car in front of the Juvenile, exited their car, and stood facing the him. Did this conduct on the part of the Officers constitute a detention of the Juvenile?
 - a. Yes.
 - b. No.

3. Police officers can reasonably detain a witness to a criminal offense even if the Officers have no reasonable suspicion to believe that the witness has committed a criminal offense
 - a. True.
 - b. False.

4. **ILLUSTRATIVE CASE:** A vehicle had killed a bicyclist in a hit-and-run incident. About a week later, with the crime still unsolved, the police set up a roadblock in that same area, at roughly the same time of night, as the hit-and-run incident, hoping to find motorists who might have information about it. One of the vehicles in the line of waiting cars, when it was its turn to pull up to the roadblock, swerved and almost struck an officer, leading officers to inquire further and ultimately leading to a failed sobriety test and a DUI conviction. Was the stop of the DUI defendant legal?
 - a. Yes.
 - b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF OCTOBER - 2017

In re Tyreke H., 2017 IL App (1st) 170406, September 28, 2017

2. The Fourth Amendment does not prohibit all seizures; it only prohibits unreasonable seizures.

a. True. The Constitution does not forbid seizures *per se*, only unreasonable seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6.

2. In this case, the Officers wanted to ask the Juvenile if he was willing to voluntarily come to the police station to assist in the homicide investigation. To accomplish this, they stopped their squad car in front of the Juvenile, exited their car, and stood facing the him. Did this conduct on the part of the Officers constitute a detention of the Juvenile?

a. Yes. The Court in this Month's case ruled that it did. ¶ 58.

3. Police officers can reasonably detain a witness to a criminal offense even if the Officers have no reasonable suspicion to believe that the witness has committed a criminal offense

a. True. In this Month's Case, the Court concluded: "But the U.S. Supreme Court has unanimously held that suspicionless detentions of citizens as potential witnesses to a crime, even if they are seizures, are not *per se* unconstitutional, but rather are subject to a reasonableness test. *Illinois v. Lidster*, 540 U.S. 419, 426 (2004).

4. **ILLUSTRATIVE CASE:** A vehicle had killed a bicyclist in a hit-and-run incident. About a week later, with the crime still unsolved, the police set up a roadblock in that same area, at roughly the same time of night, as the hit-and-run incident, hoping to find motorists who might have information about it. One of the vehicles in the line of waiting cars, when it was its turn to pull up to the roadblock, swerved and almost struck an officer, leading officers to inquire further and ultimately leading to a failed sobriety test and a DUI conviction. Was the stop of the DUI defendant legal?

a. Yes. In the case of *Illinois v. Lidster*, 540 U.S. 419, 426 (2004), the Court ruled "Given that the investigation involved a death, the Court found that the "relevant public concern was grave." The stop advanced this concern in that the checkpoints were uniquely tailored to identify people who might have been on the road the week earlier, by instituting them in the same area at the same time of night. And "[m]ost importantly," the stops were only a minimal intrusion on motorists, as the wait in line was "a very few minutes at most" and "[c]ontact with the police lasted only a few seconds." The Court thus upheld the seizure as reasonable.

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE WEEK

Month of October - 2017 - Alternative

In re Tyreke H., 2017 IL App (1st) 170406, September 28, 2017

A firearm was discovered on this defendant's person during a *Terry* frisk.

FACTS: The 17-year-old defendant was riding his bicycle on a street when two police officers, wishing to speak with him not as a suspect but as a potential witness to a homicide, stopped their squad car in the defendant's path of travel in the middle of the street. After the defendant stopped his bicycle, the officers spotted a bulge in the defendant's pocket that resembled a firearm. The defendant confirmed his identity to the officers and admitted that he was in possession of a firearm "for his own protection." Thereafter, the defendant claimed he was unreasonably conducted a *Terry* frisk of his person in violation of the Fourth Amendment. The trial court initially agreed and suppressed the evidence of the gun, then reconsidered and reversed its ruling, leading to the defendant's adjudication of delinquency for two counts of aggravated unlawful use of a weapon and one count of unlawful possession of firearms. This appeal followed.

ISSUES: Did the Officers improperly search this defendant?

FINDINGS: On appeal, the defendant argued that he had been illegally frisked by the Officers after they noted a "bulge" in his pants pocket. Here, an Officer testified that, as he approached within about four feet of the Juvenile, he saw the silhouette of a handgun in the Juvenile's jeans. The trial court ultimately believed the Officer and denied the defendant's motion to suppress. Noting that a frisk for weapons, following a valid stop, must be based on a reasonable suspicion that the individual is armed and thus dangerous, the appellate court agreed with the trial court that the Officer's observation of not merely a bulge, but the outline of a weapon, in the Juvenile's jeans was a specific and articulable fact that supported a reasonable suspicion that the Juvenile was armed. However, the complicating factor in this case was that a *Terry* frisk usually requires two things: (1) a reasonable suspicion that the detainee is involved in criminal activity (thus justifying the stop) and (2) a reasonable suspicion that the individual is armed (thus justifying the frisk). In this case, the Officers had no reasonable suspicion to believe that the Juvenile was involved in criminal activity; they believed that he was a witness to a homicide. Previously, the Court found the Juvenile's stop constitutionally valid, as it was a reasonable seizure based on the officer's need to obtain information from a potential witness to a homicide. Therefore, the question before the Court in this case was, during a valid but *suspicionless* seizure, if an officer develops a reasonable suspicion that the detainee is armed, can he conduct a protective search of that individual for weapons? According to the appellate court, the issue of the validity of the Officer's frisk of the Juvenile depends upon whether the Juvenile was legally detained in the first place. Here the Juvenile was detained for questioning concerning a recent homicide. This seizure was determined to have been legal based upon the Officer's need to gather information concerning the homicide. The appellate court then ruled that after the Juvenile had been legally seized, the Officers notice the silhouette of a handgun in the Juvenile's pocket. This observation provided the Officers with reasonable suspicion to believe that the Juvenile might be armed and dangerous. Consequently, the Officers were then authorized to frisk the Juvenile even though they had no reasonable suspicion to believe that the Juvenile had previously been involved in any criminal activity. In sum, the Court ruled that the officers seized the Juvenile when they stopped him in the middle of the street on his bike. Their seizure was reasonable, in that they targeted the Juvenile for questioning as a witness, not a suspect, in the most serious of crimes, a homicide. And once they had effected a reasonable seizure and only *then* developed a reasonable suspicion that the Juvenile was armed, the officers were entitled to conduct a protective pat-down of the Juvenile for weapons. Because the Juvenile's detention was valid his frisk was valid.

NOTE: The Court declined to express an opinion concerning other types of suspicionless encounters with the police; such a "consensual encounters" (which are not seizures at all) or seizures effected pursuant to the non-investigatory "community caretaking" function concerning public safety or assistance.

QUIZ QUESTIONS FOR THE MONTH OF OCTOBER – 2017 - ALTRNATIVE

In re Tyreke H., 2017 IL App (1st) 170406, September 28, 2017

3. A frisk for weapons, following a valid stop, is valid only if the Officer is absolutely certain that the suspect is armed and thus dangerous.
 - a. True.
 - b. False.

2. Illinois law provides that generally a bulge in the defendant's clothing, by itself, does not create reasonable suspicion. In this case, an Officer saw the silhouette of a handgun in the Juvenile's jeans as he approached him. Did the Courts believe that this observation was sufficient to justify a frisk of the Juvenile?
 - a. Yes.
 - b. No.

3. Generally, a Terry frisk usually requires two things: (1) a reasonable suspicion that the detainee is involved in criminal activity (thus justifying the stop) and (2) a reasonable suspicion that the individual is armed (thus justifying the frisk). In this case, the police did not suspect the Juvenile was involved in any criminal activity. Was the Juvenile's frisk valid even though he had been seized without suspicion of criminal activity?
 - a. Yes.
 - b. No.

4. **ILLUSTRATIVE CASE:** The police pull a car over for a traffic violation. The conduct of a passenger in the car provides the Officers with reasonable suspicion that he may be armed. The Officers frisk the passenger and discover a firearm. The frisk of the passenger was illegal because while the Officers had had reasonable suspicion to believe that the driver of the car violated the Vehicle Code, they had no reasonable suspicion to believe that the passenger was involved in any criminal activity before his frisk.
 - a. True.
 - b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF OCTOBER - 2017- ALTRNATIVE

In re Tyreke H., 2017 IL App (1st) 170406, September 28, 2017

4. A frisk for weapons, following a valid stop, is valid only if the Officer is absolutely certain that the suspect is armed and thus dangerous.
- b.** ***False.*** A frisk for weapons, following a valid stop, must be based on a reasonable suspicion that the individual is armed and thus dangerous. *Terry*, 392 U.S. at 10, 27; *Colyar*, 2013 IL 111835, ¶¶ 34-37. The reasonable suspicion must be more than a mere hunch, but the officer need not be absolutely certain the individual is armed.
2. Illinois law provides that generally a bulge in the defendant's clothing, by itself, does not create reasonable suspicion. In this case, an Officer saw the silhouette of a handgun in the Juvenile's jeans as he approached him. Did the Courts believe that this observation was sufficient to justify a frisk of the Juvenile?
- a.** ***Yes.*** The Court said: “We agree with the trial court that (the Officer's) observation of not merely a bulge, but the outline of a weapon, in Respondent's jeans was a specific and articulable fact that supported a reasonable suspicion that Respondent was armed.” ¶ 80
3. Generally, a *Terry* frisk usually requires two things: (1) a reasonable suspicion that the detainee is involved in criminal activity (thus justifying the stop) and (2) a reasonable suspicion that the individual is armed (thus justifying the frisk). In this case, the police did not suspect the Juvenile was involved in any criminal activity. Was the Juvenile’s frisk valid even though he had been seized without suspicion of criminal activity?
- a.** ***Yes.*** The Court ruled that the officers seized the Juvenile when they stopped him in the middle of the street on his bike. Their seizure was reasonable, in that they targeted the Juvenile for questioning as a witness, not a suspect, in the most serious of crimes, a homicide. And once they had effected a reasonable seizure and only *then* developed a reasonable suspicion that the Juvenile was armed, the officers were entitled to conduct a protective pat-down of the Juvenile for weapons.
4. **ILLUSTRATIVE CASE:** The police pull a car over for a traffic violation. The conduct of a passenger in the car provides the Officers with reasonable suspicion that he may be armed. The Officers frisk the passenger and discover a firearm. The frisk of the passenger was illegal because while the Officers had had reasonable suspicion to believe that the driver of the car violated the Vehicle Code, they had no reasonable suspicion to believe that the passenger was involved in any criminal activity before his frisk.
- b.** ***False.*** In the case of *Arizona v. Johnson*, 555 U.S. 323, (2009), the United States Supreme Court held that the passenger of a stopped car, not himself suspected of engaging in criminal behavior, could be patted down for weapons when officers developed a reasonable suspicion that he was armed.