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LAW ENFORCEMENT OFFICER TRAINING CASES OF THE MONTH

By Don Hays

Month of January – 2019

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of January - 2019

People v. Tita G. Trajano, 2018 IL App (2d) 160322, August 22, 2018

BACKGROUND: Traiano was paid to aid elderly persons. She allegedly failed to perform acts that she knew or reasonably should have known were necessary to maintain the health of the elderly person and did not make a good-faith effort to care for the elderly person.

FACTS: A company contracted to provide live-in home health care for an elderly woman, who had severe Alzheimer's disease, and an elderly man, who, at 85, was blind in one eye, deaf in one ear, and had difficulty moving around without a cane or walker. The man may have had dementia, although he was never formally diagnosed with this.

This care included preparing meals; doing laundry; helping them bathe, dress, and use the bathroom if they wanted help; and generally keeping them safe. The company paid the defendant, Traiano, a small Filipino woman in her seventies, to perform these tasks.

On the day in question, Traiano heard the victim call out to her from his bedroom. Traiano went to the bedroom and saw that the victim had fallen out of bed and was on the hardwood floor. Traiano tried to help the victim, who was skinny but over six feet tall, stand up. Due to her age and weakness, she could not do it.

While she was attempting to help the victim, the woman called out to her. She had soiled herself while sitting on the couch, so Traiano left the victim and tended to the woman. This took around one hour.

Thereafter, Traiano tried to call her supervisor for assistance but received no answer. Eventually, Traiano was able to contact the elderly victim's son who helped move the victim back to his bed. While Traiano believed the victim was on the floor for "only a short while," experts believed that it took more than four and one-half hours to return him to his bed. As a result of this incident, the victim suffered physical injuries.

Based upon this conduct, Traiano was charged with criminal neglect of an elderly person. Following a jury trial, Traiano was convicted as charged and sentenced to 18 months of conditional discharge. This appeal followed.

***ISSUE*:** Was Traiano properly convicted of criminal neglect of an elderly person?

FINDINGS: On appeal, Traiano argued that she was not proved guilty beyond a reasonable doubt of criminal neglect of an elderly person. In response, the appellate court noted that to prove a defendant guilty of this offense, the People had to establish that (1) Traiano knowingly failed to call for assistance when she knew or reasonably should have known that this was necessary to maintain the victim's health and (2) such failure caused the victim's health to suffer.

A conviction for a violation of this offense would constitute a Class 3 felony (unless the victim dies; it would then constitute a Class 2 felony.) However, according to the Court, liability may not be imposed on a defendant "who has made a good-faith effort to provide for the health and personal care of an elderly person but through no fault of her own was unable to provide such care."

(1) Traiano first argued that the People failed to establish beyond a reasonable doubt that she knowingly failed to call for assistance when she knew or reasonably should have known that doing so was necessary to maintain the victim's health

The appellate court first considered whether Traiano knowingly failed to call for assistance when she knew or reasonably should have known that doing so was necessary to maintain the victim's health. According to the Court, a defendant acts with "knowledge" when she is "consciously aware" that her conduct is "practically certain" to cause the result. Whether a defendant acted with knowledge was a question of fact.

Further, knowledge is usually proved by circumstantial, rather than direct, evidence. Thus, knowledge may be established by evidence of the defendant's acts, statements, or conduct, as well as the surrounding circumstances, that supports a reasonable inference that the defendant was consciously aware that the result was practically certain to be caused.

The Court also noted that knowledge was different from what a defendant "should have known." "[S]hould have known" implicates "the standard of care which a reasonable person would exercise" and therefore pertains to the lesser mental states of "recklessness" and "negligence."

A person acts recklessly when she *consciously disregards* a substantial risk that a result will occur. A person acts negligently when she *fails to be aware* of a substantial risk that a result will occur. With these above principles in mind, the Court turned to the facts presented here.

Viewed in the light most favorable to the People, the Court held that the evidence here revealed that the victim, an 85-year-old man with many health issues, fell out of bed and onto a hardwood floor. He remained on the floor for approximately 4½ hours. During that time, Traiano, who had taken premed courses and who described herself as an "experienced caregiver," made only two phone calls, despite the fact that a detailed list of contact numbers was left in the victim's home. The two people Traiano called did not answer when she called, and she left no voicemail for either.

Further, Traiano acknowledged that neither of those persons would have been be able to provide immediate assistance. Traiano did not promptly call the victim's son, 911, or anyone else who could help her with the victim.

The Court held that although Traiano fed the victim (a few cookies), gave him water, and checked on him occasionally, a rational jury could find that Traiano knowingly failed to call for immediate assistance when she knew or reasonably should have known that calling for immediate assistance was necessary to maintain the victim's health.

Traiano argued that the People failed to meet their burden because they did not "show how [Traiano] would have known that despite her efforts to care for the victim, his immobility was 'practically certain' to cause a condition that has no physical manifestations and can only be diagnosed through laboratory tests."

In rejecting this argument, the Court noted that the statute does not require that the caregiver know the type of affliction that could manifest itself because of the caregiver's inaction. Rather, the statute requires only that the caregiver act as necessary to maintain the elderly person's health. Given that Traiano attempted to move the victim, continually checked on him, and made two phone calls about what to do, the Court held that it was reasonable to infer that she knew (or reasonably should have known) that leaving the victim on the floor for several hours would not maintain his health.

Alternatively, Traiano argued that she could not be held liable when no one else was concerned enough about the victim to call 911. The Court held that only Traiano's conduct was at issue here. In any event, Traiano gave these other persons only a "limited" version of what had happened and kept changing her account of how long the victim had remained on the floor.

Consequently, the Court held that a rational jury could have determined that this showed Traiano's consciousness of guilt, which supported its holding that Traiano was proved guilty beyond a reasonable doubt.

For these reasons, the Court concluded that Traiano was found to be guilty beyond a reasonable doubt.

(2) Next, Traiano argued that the People failed to prove beyond a reasonable doubt that she did not act in good faith in attempting to care for the victim.

In response, the Court noted that the statute provides: "Nothing in this Section shall be construed to impose criminal liability on a person who has made a good[-]faith effort to provide for the health and personal care of an elderly person * * * but through no fault of h[er] own has been unable to provide such care." 720 ILCS 5/12-21(d). Additionally, the Court ruled that two issues arise when construing this provision.

First, the statute does not indicate who has the burden of proving the exemption. Traiano argued that where a criminal statute contains an exemption and the legislature has not set forth a provision within the statute allocating the burden of persuasion as to the exemption, we presume that the burden is on the People, not the defendant. The People conceded that they had the burden of proving a lack of good faith.

Second, the statute does not define "good faith." Consequently, the appellate court used a dictionary to discover that "good faith" means "honesty" or "a state of mind consisting in * * * faithfulness to one's duty or obligation."

Thus, the Court held that the statute required the People to prove that Traiano did not make an honest and faithful effort to provide for the victim's health. The Court held that, viewing the evidence in the light most favorable to the People (because the jury found the defendant guilty), it concluded that the People met their burden.

According to the Court, the evidence established that Traiano was an “experienced caregiver.” After the victim fell onto the floor, she tried to get him up, but she was unable to move him. She then made only two phone calls, to people who she knew could not provide immediate assistance. Hours later, she received a call from her employer, who told her to call the victim’s son. Traiano did not make that call until the son returned home, and she told him that the victim had been on the floor for “[j]ust a little while.”

The Court ruled that although Traiano checked on the victim and gave him food and water, the jury could find that this was insufficient to constitute a “good-faith effort” to care for the victim, an elderly man with many ailments who was stranded on a hardwood floor for several hours.

Defendant argues that the State failed to meet its burden because “she honestly did the best she could under the circumstances.” Supporting her position, defendant notes that she, too, was elderly, was much smaller than Richard, and also had to care for Eileen.

We believe that such evidence actually strengthens the conclusion that defendant did not act in good faith. That is, given that defendant clearly could not provide Richard with needed care, an honest and faithful effort required her to seek immediate help from someone else. We also find unpersuasive defendant's contention that the State failed to establish that she acted with “malice.” We do not find that an absence of “good faith” requires the presence of malice. Rather, as noted above, it is merely the absence of an honest and faithful effort to provide needed care.

CONCLUSION: Since the People were able to prove that Traiano knowing failed to call for assistance when she knew or should have known that the failure to do so would injure the victim and Traiano did not make a good-faith effort to provide care for the victim, the appellate court affirmed the convict on Traiano for Criminal Neglect of an Elderly Person.

QUIZ QUESTIONS FOR THE MONTH OF JANUARY - 2019

People v. Tita G. Trajano, 2018 IL App (2d) 160322, August 22, 2018

1. Illinois law provides that a violation of the offense of the Criminal Neglect of an Elderly or Disabled Person shall constitute a Class A misdemeanor.

   a. True.

   b. False.

2. Under Illinois law, any person who knowingly allows an elderly or disabled person to be abused or neglected can be convicted of Criminal Neglect of an Elderly Person.

   a. True.

   b. False.

3. A person who makes a good-faith effort to provide for the health and personal care of an elderly person cannot be found guilty of committing to offense of the Criminal Neglect of an Elderly Person. Since this proof of a "good-faith effort" is an affirmative defense to this criminal offense, does the defendant have the burden of proving that he or she made a good-faith effort to provide for the care of the victim?

   a. Yes.

   b. No.

4. Traiano argued that she should not be held liable for failing to call 911 in this case because a number of other persons (including her own employer) were fully aware of the victim's condition and they also failed to call for emergency assistance. Did the appellate court agree with this argument of the defendant?

   a. Yes.

   b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF JANUARY - 2019

People v. Tita G. Trajano, 2018 IL App (2d) 160322, August 22, 2018

1. Illinois law provides that a violation of the offense of the Criminal Neglect of an Elderly or Disabled Person shall constitute a Class A misdemeanor.

   b. False. Criminal abuse or neglect of an elderly person or person with a disability is a Class 3 felony, unless it results in the person's death, in which case it is a Class 2 felony. 720 ILCS 5/ 12-4.4a (d) (2).

2. Under Illinois law, any person who knowingly allows an elderly or disabled person to be abused or neglected can be convicted of Criminal Neglect of an Elderly Person.

   b. False. The statute provides: "A caregiver commits criminal abuse or neglect of an elderly person or person with a disability when he or she knowingly does any of the following: ***." Consequently, only "caregivers" can be guilty of this offense.

3. A person who makes a good-faith effort to provide for the health and personal care of an elderly person cannot be found guilty of committing to offense of the Criminal Neglect of an Elderly Person. Since this proof of a "good-faith effort" is an affirmative defense to this criminal offense, does the defendant have the burden of proving that he or she made a good-faith effort to provide for the care of the victim?

   b. No. The Court held: "As defendant notes, "[w]here a criminal statute contains an exemption and the legislature has not set forth a provision within the statute allocating the burden of persuasion as to the exemption, we presume that the burden is on the State, not the defendant." *People v. Cannon*, 2015 IL App (3d) 130672. Here, the State concedes that it had the burden of proving a lack of good faith."

4. Traiano argued that she should not be held liable for failing to call 911 in this case because a number of other persons (including her own employer) were fully aware of the victim's condition and they also failed to call for emergency assistance. Did the appellate court agree with this argument of the defendant?

   b. No. The Court held: "Only defendant's conduct is at issue here. In any event, defendant gave (the other persons) only a "[l]imited" version of what had happened and kept changing her account of how long the victim had remained on the floor, lengthening that time as the weekend went on. A rational jury could have determined that this showed defendant's consciousness of guilt, which supports our holding that defendant was proved guilty beyond a reasonable doubt." See **¶ 28.**

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of January - 2019 - ALTERNATIVE

People v. Julian B. Dailey, 2018 IL App (1st) 152882, September 4, 2018

The van Dailey drove was stopped after an Officer witnessed what appeared to have been a drug transaction.

FACTS: An Officer noticed a van that was stopped in the middle of the street. The Officer saw a "male black" run from the sidewalk to the driver's side window, hand the van's driver currency, and receive "small items" in return. The Officer stated that he observed a "very quick exchange" of "small items" and could not determine what the items were or their consistency. Although he saw currency being given to the driver of the van, he could not determine the amount. The Officer acknowledged that he did not see any movement inside the van; rather, he observed the driver stick an arm out of the van and hand over small items. The person who received the items then looked in the Officer's direction and then fled in one direction, while the van went in the other direction "at kind of a high rate of speed." The Officer, who had been a police officer for 20 years, believed that he had observed a narcotics transaction. During his career he had observed several thousand such transactions.

The Officer followed the van and curbed it. The driver, Dailey, then exited the van. The Officer had not ordered the driver to exit the vehicle. As Dailey walked toward the Officer, he stated "I ain't got shit." The Officer exited his vehicle at the same time. As Dailey continued to approach, the Officer saw a "marble-size object" drop from Dailey's right hand and fall to the ground. The Officer walked past Dailey and picked up the object while a backup officer detained Dailey.

The Officer described the object as a plastic bag that had seven smaller Ziploc Baggies containing suspect heroin. This item was subsequently inventoried. After Dailey was placed in custody, the Officer informed him of the *Miranda* warnings. Dailey indicated that he understood his rights and then made a statement. He stated that his mother had just passed away and that he was trying to make some money to keep his buildings. Dailey further stated that he had "a drug case in the morning" and that his attorney told him to "do anything he could to stay out of trouble."

Dailey also stated that he had "a gun by a garage" and asked whether the Officers would let him go if he showed them the gun's location. The Officer and his partners then followed Dailey's directions to a certain backyard. There, Dailey indicated that a gun was inside a grill. The Officer exited his vehicle, walked over, reached through the fence, and opened a grill. Inside the grill was a loaded .45-caliber gun. Carey handed the gun to one of his partners and went to speak to the homeowner. The Officer then took Dailey into custody for the handgun. The handgun was subsequently inventoried.

During a subsequent conversation, Dailey was asked why he had the handgun. He indicated that "(drug dealers) were mad that he was making money and he was afraid they were going to pop him off." Following a bench trial, Dailey was found guilty of possession of a controlled substance and sentenced to 30 months in prison. This appeal followed.

ISSUE: Did the trial court properly deny Dailey's motion to suppress?

FINDINGS: On appeal, Dailey argued that the trial court erred when it denied his motion to suppress evidence because the police lacked "reasonable suspicion and probable cause" to stop his van after witnessing one hand-to-hand transaction.

In response, the appellate court noted that the Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." Additionally, when a police officer stops a vehicle and detains its passengers, a "seizure" within the meaning of the Fourth Amendment has occurred. Therefore, a vehicle stop is subject to the Fourth Amendment requirement of reasonableness in all the circumstances. The Court also held that it would analyze the reasonableness of traffic stops pursuant to the principles set forth in *Terry*.

Here, the Court held that Dailey was subjected to a *Terry* stop. Pursuant to *Terry*, a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to commit, a crime.

In order to justify a stop, the officer must point to specific, articulable facts which, when considered with natural inferences, make the intrusion reasonable. Under this "reasonable suspicion" standard, the facts necessary to justify a *Terry* stop do not need to rise to the level of probable cause and can be satisfied even if no violation of the law is observed, but the facts must go beyond a mere hunch.

Finally, the Court noted that a police officer's decision to conduct a *Terry* stop is a practical one based on the totality of the circumstances.

Here, given the totality of the circumstances, the Court concluded that the Officer's decision to stop the van that Dailey was driving was proper under *Terry*. The arresting Officer, who had observed several thousand narcotics transactions during his 20-year career, observed a man run up to a van stopped in the middle of the street and exchange currency for "small items," then run away.

Based upon these actions, the Court concluded that the Officer reasonably believed that he had observed a narcotics transaction. The Officer then proceeded to follow and curb the van, which had driven away at a high rate of speed. Moreover, once Dailey's vehicle was curbed, he exited it on his own accord without being instructed to do so and then proceeded to drop a small object to the ground as he walked toward the Officer.

The Court held that although Dailey was correct that the Officer admitted that he could not determine exactly what the "small items" were, there is no requirement that the Officer know that the items were definitely contraband or that he assign an innocent explanation to the exchange to this conduct before he is justified in making a *Terry* stop.

Rather, the question was whether the facts "available" to the Officer at that particular time would "lead an individual of reasonable caution to believe" that the stop was appropriate.

In this case, the Court declared that there were “specific, articulable facts” upon which the Officer relied to justify stopping Dailey, that is, a van was stopped in the middle of the road, an exchange of money for small items took place, and the parties involved immediately went their separate ways.

Here, given the totality of the circumstances, the Court held that the Officer relied upon “specific, articulable facts” to justify the stop of the van.

Considering the facts available to the Officer at the time, the Court concluded that “an individual of reasonable caution” would have reasonably believed that stopping the van was appropriate and, accordingly, the appellate court concluded that the trial court properly denied Dailey's motion to suppress evidence.

COMPARE:

People v. Ocampo, 377 Ill. App. 3d 150, 316 Ill. Dec. 286, 879 N.E.2d 353 (2007). Police lacked a reasonable suspicion of criminal activity to justify *Terry* stop based on seeing driver of car talking on cellular telephone before pulling closer to gas station, then seeing defendant come out from behind gas station, walk around car, tap on trunk, get inside, exchange a look and a short inaudible conversation with driver, and move as if he were taking something out of his pocket; though consistent with a drug transaction, defendant's movements were also consistent with scenarios not involving drugs, and police did not have any reason independent of defendant's observed actions to suspect criminal activity.

People v. Petty, 2012 IL App (2d) 110974, 367 Ill. Dec. 429, 981 N.E.2d 1157. Police officers had no more than a hunch of criminal activity, so that investigatory stop of driver who was observed by officers to make a hand-to-hand exchange with another driver with little to no conversation, was not supported by a reasonable articulable suspicion of criminal activity, thus supporting suppression of the cannabis found in driver's front pocket; driver was not in a known high-crime area, the officers came upon driver by coincidence, and driver's conduct was consistent with innocent activity and lacked furtive or evasive movements.

QUIZ QUESTIONS FOR THE MONTH OF JANUARY – 2019 - ALTERNATIVE

People v. Julian B. Dailey, 2018 IL App (1st) 152882, September 4, 2018

1. The Fifth Amendment protects persons from illegal seizures.

   a. True.

   b. False.

2. The Court in this case held that when a police officer stops a vehicle and detains its passengers, an "arrest" within the meaning of the Fourth Amendment has occurred.

   a. True.

   b. False

3. Did the appellate court find that the Officer conducted a *Terry* stop when he pulled Dailey's car over?

   a. Yes.

   b. No.

4. In this case, the arresting Officer was unable to tell exactly what Dailey exchanged for currency from his van. Did the appellate court hold that the Officer's stop of Dailey was "reasonable" despite the failure of the Officer to positively identify what was being delivered from the van?

   a. Yes.

   b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF JANUARY – 2019 - ALTERNATIVE

People v. Julian B. Dailey, 2018 IL App (1st) 152882, September 4, 2018

1. The Fifth Amendment protects persons from illegal seizures.

b. False. The ***Fourth Amendment*** provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." **See ¶ 13.**

2. The Court in this week's case held that when a police officer stops a vehicle and detains its passengers, an "arrest" within the meaning of the Fourth Amendment has occurred.

b. False. The Court held: "When a police officer stops a vehicle and detains its passengers, a ***"seizure"*** within the meaning of the fourth amendment has occurred. *People v. Timmsen*, 2016 IL 118181, ¶ 9, 401 Ill. Dec. 610, 50 N.E.3d 1092." **See ¶ 13.**

3. Did the appellate court find that the Officer conducted a *Terry* stop when he pulled Dailey's car over?

a. Yes. The Court held: "Here, the parties agree that defendant was subjected to a *Terry* stop." **See ¶ 14.**

4. In this week's case, the arresting Officer was unable to tell exactly what Dailey exchanged for currency from his van. Did the appellate court hold that the Officer's stop of Dailey was "reasonable" despite the failure of the Officer to positively identify what was being delivered from the van?

a. Yes. The Court held: "Although defendant is correct that Carey admitted that he could not determine exactly what the "small items" were, there is no requirement that Carey know that the items were definitely contraband or that he assign an innocent explanation to the exchange. See, *e.g.*, *People v. Love*, 199 Ill. 2d 269, (2002) (concluding that innocent explanations for the defendant's pulling an item from her mouth and giving it to a man in exchange for money were "implausible," when "common sense dictates that the man probably did not go out at 1:50 a.m. in late January for prechewed gum"). Rather, the question is whether the facts "available" to Carey at the time would "lead an individual of reasonable caution to believe" that the stop was appropriate. *Colyar*, 2013 IL 111835. **See ¶ 18.**