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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of April – 2023

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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People v. Charles Drain, No. 4-21-0355, 2023 IL App (4th) 210355, March 3, 2023.

THE CASE: Drain was stopped after he failed to change lanes while approaching a stopped police squad car. A K-9 sniff of Drain's car revealed contraband. Was the detention of Drain, his questioning, and the K-9 sniff legal?

THE FACTS: The arresting Officer (a K-9 Officer) was conducting a traffic stop involving an unrelated motorist on an Interstate. Upon concluding the stop, the Officer saw a car, which the Officer later determined was driven by defendant, approaching from behind in the lane closest to them. The Officer explained that the Interstate was flat and that nothing obstructed his view of the roadway or the shoulder. As such, he was able to see a "considerable distance" and saw Drain's car approaching from far away. At that time, the traffic on the Interstate was light. There was a semi-tractor trailer in the lane to the left of Drain's car, but no other vehicle was in front of or behind either Drain's car or the semi-tractor trailer. The Officer raised his hand and pointed, indicating to Drain "to get over." However, Drain did not activate his turn signal or move into the lane to his immediate left, and he drove by the Officer while still in the lane nearest to him. According to the Officer, the semi-tractor trailer "had almost completely passed [Drain] at that time." The Officer acknowledged that as Drain's vehicle passed the squad car, Drain's brake lights were activated.

Believing that Drain had violated "Scott's Law" (Section 11-907(c) of the Illinois Vehicle Code) because it was possible for him to switch lanes by slowing down and moving over before passing the squad car, the Officer pulled Drain's car over. While examining Drain's documents, the arresting Officer told Drain, "Your license looks good to go." He then informed Drain that he was going to write a warning, and he began to fill it out. While the Officer was still in the process of writing the warning, a second Officer arrived at the scene. The arresting Officer asked the second Officer to finish writing the warning. He did so because he had decided to conduct a canine sniff around Drain's vehicle. The K-9 alerted, and cocaine was found in Drain's car.

Drain moved to suppress the evidence the police discovered in his car and argued that there was no probable cause to stop him based on a Scott's Law violation because a semi-tractor trailer blocked him from moving into the left lane, so he complied with the law by slowing down as he passed Hunt. Drain also argued that all his statements made while in the arresting Officer's squad car should be suppressed because Drain was not read his Miranda warnings until after the police located the cocaine in his trunk. Finally, Drain maintained that the search of his vehicle was illegal because the police delayed the stop to conduct the canine sniff, and his behavior in the arresting Officer's squad car did not give rise to a reasonable suspicion for the search. The trial court denied the motion to suppress. The court found that there was "clearly a Scott's Law violation" because Drain could have braked and gotten behind the semi-tractor trailer so that he was not adjacent to the arresting Officer's squad car when he drove past. The court further found that, while "there was some delay, about 11 minutes," the delay was not unreasonable because, during that time, the arresting Officer was checking LEADS, Drain's driver's license, his criminal history, and his rental agreement. Further, the arresting Officer was "still writing the warning ticket at the time [the second Officer] arrive[d]." Finally, the court found that Drain's Miranda rights were not violated while he spoke with the arresting Officer in his patrol car, because that interaction was not a custodial interrogation. From his subsequent conviction, Drain brought this appeal.

ARGUMENT: Drain argued that the trial court erred in denying his motion to suppress because (1) there was no probable cause for the traffic stop, (2) the police questioned him without Miranda warnings while he sat in the front of the arresting Officer's squad car, (3) the police unlawfully prolonged the stop to conduct a canine sniff, (4) no reasonable suspicion existed to conduct the canine sniff, and (5) the People failed to present evidence to establish the dog's reliability.

THE LAW: When a defendant challenges the trial court's ruling on a motion to suppress, the reviewing court conducts a two-part analysis. Specifically, the Court examines whether the trial court's factual findings are against the manifest weight of the evidence, and we review de novo the trial court's ruling on the motion to suppress. The trial court's findings of fact are given great deference, and they will not be deemed against the manifest weight of the evidence unless the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence.

ISSUE #1: Probable Cause for the Stop: Drain argued that the trial court erred in denying his motion to suppress because the Officer did not have probable cause to stop his vehicle. Specifically, he argued that when he passed the Officer's squad car, "and even before," it "would not have been possible" or safe to make a lane change because a semi-tractor trailer was in the lane to the left of his vehicle. He asserted that he appropriately reduced his speed and proceeded with caution until he

passed the Officer's squad car, such that he acted in compliance with section 11-907(c)(2). The People responded that it was possible for Drain to have safely switched lanes so that he would not have been next to the Officer's squad car when he passed it.

THE LAW: At the time of the offense, *Scott's Law* provided: "Upon approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying *** warning lights, a person who drives an approaching vehicle shall: (1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least 4 lanes with not less than 2 lanes proceeding in the same direction as the approaching vehicle; or (2) proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe." 625 ILCS 5/11-907(c). The primary objective in construing a statute is to give effect to the legislature's intent, which is best gleaned from the statutory language, given its plain and ordinary meaning.

FINDINGS: In determining that probable cause for the stop existed, the trial court concluded that section 11-907(c)(2) did not apply, because that provision applies only if changing lanes would be impossible or unsafe. The trial court found that Drain could have safely braked and moved into the left lane behind the semi-tractor trailer. According to the appellate court, these findings were not against the manifest weight of the evidence. Specifically, the appellate court concluded that the trial record established that the trial court properly considered only whether it was possible for Drain to safely change lanes. Having found that it was possible here but that Drain failed to do so, the trial court did not err in concluding that probable cause existed to stop Drain's car.

ISSUE #2: Whether the Officer's Questioning of Drain Was a Custodial Interrogation? Drain then argued that the trial court should have suppressed the statements he made to the Officer while he sat in the front seat of the Officer's squad car because he was in custody and was not given *Miranda* warnings. Specifically, Drain maintained that he was in custody when the Officer told him "I'm going to have you come back to my squad car" and had Drain sit in the front passenger seat. He contended, therefore, that the Officer should have given him the *Miranda* warnings before questioning him, and since he did not, all subsequent statements should have been suppressed.

FINDINGS: The appellate court held that the stop occurred during the daytime, and the Officer was the only officer present when he requested that Drain accompany him to the squad car. Drain complied with that request, and there were no indicia of a formal arrest at that time, as the Officer did not handcuff defendant, nor did he have his weapon drawn. Importantly, the Officer directed Drain to sit in the front passenger seat of his squad car, which was strong evidence that defendant was not in custody. The Court held that Drain was not in custody for purposes of *Miranda*.

ISSUE #3: Whether the Traffic Stop Was Unlawfully Prolonged for a Canine Sniff. Drain argued that the trial court erred in denying his motion to suppress because the police unlawfully prolonged the seizure beyond the time reasonably required to complete the mission of the traffic stop in order to conduct a canine sniff that was not supported by reasonable suspicion. The People responded that the police did not unlawfully prolong the stop.

FINDINGS: Here, the trial court found that the officers did not unreasonably delay the stop because the arresting Officer conducted all the necessary inquiries and was "still writing the warning ticket at the time [the second Officer] arrive[d]." The appellate court concluded that these findings were not against the manifest weight of the evidence.

ISSUE #4: Evidence of Canine's Reliability. Drain argued that the trial court erred in denying the motion to suppress, because the People failed to present evidence regarding the canine's training and the reliability of the canine sniff. Defendant contends that, as such, the court could not find that probable cause existed for the search of his vehicle. The People responds that it was Drain's burden to challenge the reliability of the sniff in the trial court. The People further responds that, in any event, the People did offer evidence that the Officer and the canine were trained, and that the canine alerted to drugs in accordance with the Officer's experience with the canine.

FINDINGS: The appellate court noted that the Officer testified that he and his dog were fully qualified to conduct drug sniffs. Further, Drain had the burden of proof when challenging the reliability of the drug sniff. Since Drain failed to produce any evidence that challenged that reliability, the trial court correctly rejected this argument.

CONCLUSION: The appellate court affirmed Drain's conviction and sentence for the unlawful possession of cocaine.

QUIZ QUESTIONS FOR THE MONTH OF APRIL – 2023

People v. Charles Drain, No. 4-21-0355, 2023 IL App (4th) 210355, March 3, 2023.

1. Illinois law provides that drivers, when approaching a stationary emergency vehicle displaying hazard lights, must switch lanes or reduce speed if changing lanes would be impossible or unsafe.
 - a. True.
 - b. False.

2. In this case, the arresting officer witnessed Drain fail to switch lanes as he approached a stationary emergency vehicle (the Officer's squad car). Was this conduct on the part of Drain sufficient to justify his detention?
 - a. Yes.
 - b. No.

3. The arresting officer requested the Drain set in the front passenger seat of his squad car and then asked Drain various questions. Drain argued that the Officer's failure to advise him of his *Miranda* rights prior to asking him questions violated his Fifth Amendment rights. Did the appellate court agree with this argument?
 - a. Yes.
 - b. No.

4. Drain argued that the People failed to present evidence regarding the canine's training and the reliability of the canine sniff. The appellate court held that in cases such as this, the People have the burden of proving the reliability of the K-9 that was used to detect contraband in Drain's car.
 - a. True.
 - b. False.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF APRIL – 2023

People v. Charles Drain, No. 4-21-0355, 2023 IL App (4th) 210355, March 3, 2023.

1. Illinois law provides that drivers, when approaching a stationary emergency vehicle displaying hazard lights, must switch lanes or reduce speed if changing lanes would be impossible or unsafe.
a. True. Cited as 625 ILCS 5/11-907(c)) this subsection is known as “Scott's Law.”
2. In this case, the arresting officer witnessed Drain fail to switch lanes as he approached a stationary emergency vehicle (the Officer’s squad car). Was this conduct on the part of Drain sufficient to justify Drain’s detention?
a. Yes. The appellate court determined that Drain’s failure to change lanes while approaching the stopped squad car was sufficient to justify a traffic stop.
3. The arresting officer requested the Drain set in the front passenger seat of his squad car and then asked Drain various questions. Drain argued that the Officer’s failure to advise him of his *Miranda* rights prior to asking him questions violated his Fifth Amendment rights. Did the appellate court agree with this argument?
b. No. The Court determined that under the circumstances of this case, Drain was not in custody for purposes of *Miranda* when the Officer asked him questions.
4. Drain argued that the People failed to present evidence regarding the canine's training and the reliability of the canine sniff. The appellate court held that in cases such as this, the People have the burden of proving the reliability of the K-9 that was used to detect contraband in Drain’s car.
b. False. The appellate court held that if the defendant wished to challenge the reliability of the canine and the drug sniff, it was his burden to present evidence demonstrating that they were unreliable. Since Drain failed to do so in this case, the appellate court rejected his argument.