

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 May – 2023 - - ALTERNATIVE

Copyright © 2023 Illinois Prosecutor Services, LLC. All Rights Reserved.

LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of May - 2023 - - ALTERNATIVE

United States v. Demetrius C. Morris, No. 22-CR-30012-SPM-2, 2023 WL 2864916, April 10, 2023.

CASE: The arresting Officer saw Morris carrying a firearm. Did this justify Morris's arrest and the search of his car.

FACTS: The arresting Officer was assigned to patrol his village at night, surveilling the heavily trafficked area where a gas station is located for most, if not all, of his shift. The Officer considered the area a "high crime" area – according to the Officer, ninety-eight percent of the police department's calls are for this area. According to the Officer, the area had a lot of gunfire along with armed robbery, criminal trespass, fights, vehicle break-ins, and several murders. In his eight months as a police officer for the Village, prior to this encounter, he had made sixty arrests for illegal firearms.

The gas station at the center of this area also sold liquor and was open twenty-four hours a day. The doors to the store are locked every night at 11:00 p.m., but the store remained open to customers via a service window. It is adjacent to two nightclubs and two gentlemen's clubs. On the night in question, the Officer drove his patrol car to a parking lot approximately eighty yards away from the gas station and parked behind a telephone pole with his car facing towards the store. While sitting in his patrol car and looking through his 12x magnification binoculars towards the well-lit gas station, the Officer saw an "SUV" with no front license plate back into a parking space next to the service window. Both the State of Illinois and the State of Missouri require front and rear license plates with few exceptions. The Officer explained that "cars that usually back in are trying to conceal either the rear plate or the fact that they don't have a rear plate on the vehicle." He also noted from his experience that some of those vehicles are later identified as stolen.

From his location, the Officer saw Morris exit the SUV from the driver's side and put something under his arm. As Morris faced the service window, the Officer could see some of the object under his arm – the barrel and tactical light of a firearm. The Officer explained that he had never seen a concealed carry licensee in the State of Illinois tuck a firearm in that way under his arm and the firearm presented a safety issue due to the inability of the holder to ensure that it was pointed in a safe direction. As Morris stood at the window for service, a male clerk motioned to Morris indicating he would not serve Morris while he was armed with the firearm. Morris then walked towards the SUV and knocked on the rear passenger side window. The window rolled down and, in full view, Morris placed the firearm, described as a black handgun with a drum magazine, into the SUV. After seeing the firearm in full, the Officer radioed another officer to describe the individual and the firearm. At this point, the Officer stated that it was his intention to approach and detain Morris to ascertain if he had a Firearm Owners Identification ("FOID") card and a concealed carry license.

After backup arrived, the arresting Officer drove across the parking lot and parked in front of the SUV, blocking it in. As the Officer exited his squad car, Morris walked back to the SUV after going to the service window of the gas station a second time. The Officer ordered Morris to stop but Morris ignored the order and hurried back to the SUV to get to the driver's side. Morris continued to ignore the Officer's order, and the orders of the additional officer on the scene. The Officer eventually tased Morris and he was handcuffed. After exiting the SUV, the passenger was also handcuffed. Approximately six minutes into the encounter, the arresting Officer determined that Morris did not have a FOID card or a concealed carry license through his patrol car computer. The Officer searched the SUV and discovered a Glock 9-millimeter handgun with a drum magazine and tactical light. The firearm was modified with a "Glock switch" that allowed fully automatic fire. The Officer also confirmed that the SUV was stolen out of St. Louis County in Missouri.

After Morris was charged in federal court with numerous offenses, he moved to suppress the evidence.

ARGUMENT: Morris argued that the seizure of his person violated the Fourth Amendment because the officer lacked reasonable suspicion and probable cause. As a result, Morris argued, the search of the vehicle was unlawful as fruit of the poisonous tree and incriminating statements made by Morris while under interrogation were also inadmissible. The Government argued that the officer was reasonable in his belief that criminal activity was afoot when he and the other officer engaged and quickly seized Morris. The Government additionally contended that the officer also had probable cause to arrest Morris on the belief that Morris had violated various weapons laws.

ISSUE #1 The Legality of Morris's Seizure? Was Morris illegally seized in this case?

THE LAW: A motion to suppress seeks to exclude evidence obtained in violation of a defendant's constitutional rights.

The Fourth Amendment provides “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...” This negative right requires that searches and seizures be founded on objective justification. A law enforcement officer may seize a suspect for a brief detention “which give the officers a chance to verify (or dispel) well-founded suspicions that a person has been, is, or is about to be engaged in criminal activity.” Reasonable suspicion is more than a “hunch” but less than probable cause and must be supported by specific and articulable facts. A court must examine the totality of the circumstances in order to determine whether a search or seizure is reasonable under the Fourth Amendment. The evaluation of the circumstances is “based on commonsense judgments and inferences about human behavior.” During an investigatory stop, probable cause may be required when restraint becomes intrusive to a point where it is tantamount to an arrest, also known as a de facto arrest. “Probable cause denotes more than a mere suspicion, but does not require certainty.” Probable cause exists if the “facts and circumstances within the officer's knowledge ... are sufficient to warrant a prudent person, or one of reasonable caution, [to] believ[e], in the circumstances shown, that the suspect has committed, is committing, or is about to commit an offense.”

FINDINGS: The District Court noted that the focus of Morris's argument was placed on his initial stop, which he characterized as illegal, thus tainting the search of the SUV and his resulting incriminating statements. He also focused on the firearms law in Illinois related to carrying a firearm in a vehicle. To address these arguments, because the protections of the Fourth Amendment are limited in scope to unreasonable searches and seizures, the Court held that it must find the touchpoint where the Fourth Amendment concerns were first implicated and then assess whether a violation occurred.

Initially, the Court noted that it was important to state that reasonable suspicion is only required when a suspect has been seized. If a reasonable person feels free to disregard the police and go back to whatever he was doing, reasonable suspicion is not required. A seizure occurs when the suspect yields to a show of authority. In this case, the arresting Officer stated that Morris did not submit to his show of authority – he ignored the Officer's order and retreated back to the SUV. At this point, the Court concluded, Morris was not seized under the Fourth Amendment. It was not until the second Officer tased Morris that a seizure occurred. The Court held that at that point, reasonable suspicion was required. The Court determined that the Government, to prove the existence of reasonable suspicion mostly relied on Morris' earlier open-carry of a firearm and his flight from officers in a high-crime area.

Addressing flight first, the Court noted that evasive behavior is a factor to consider when determining reasonable suspicion. While a person has the right to ignore police approaching to ask questions, flight runs counter to that. Moreover, the Court held that the evidence in this case supported a finding that the area in which the flight happened – a heavily trafficked area of a city that gets the bulk of emergency calls to police, a large amount illegal firearm arrests, and some violent crimes – was legitimately known to the officers to be a “high-crime” area. The Court also held that police officers may rely on their experience and training to form reasonable suspicion based on their surroundings. Further, in this case, the arresting Officer also suspected that the SUV was stolen based on the behavior of Morris and the area in question. More importantly however, the Court noted that the Officer credibly testified that he spotted a firearm under Morris' arm when he initially left his SUV and walked towards the service window. The Court acknowledged that while gun possession by itself was not inherently unlawful, in Illinois licensed concealed carry remains the only legal way to bear a firearm in public in Illinois because the open carry of a firearm remained illegal in Illinois. See 720 ILCS 5/24-1.6(a).

The Court concluded that together these factors provided, at a bare minimum, reasonable suspicion to seize Morris and use the least intrusive means to verify or dispel the Officer's suspicion in a short period of time. This led the Officer to inquire as to whether Morris had a FOID card. The Officer testified that he did not remember Morris' response. But, again, the Court held that even Morris' FOID card ownership would not have dispelled the Officer's suspicion about the open-carry violation. Morgan could only dispel his suspicion by searching the SUV, which he did, yielding further evidence.

ISSUE #2: The Legality of the Arrest? Did the Officers illegally arrest Morris prior to developing probable cause?

FINDINGS: The Court noted that an Officer's act of drawing weapons and handcuffing an individual does not necessarily convert a suspect's seizure into an arrest, especially when officer safety is a concern. The Court concluded that the circumstances in this case show that the arresting Officer had probable cause to effectuate a full-blown arrest and search of the SUV at the point Morris was tased. According to the Court, a prudent person with the officers' knowledge and experience would be more than just suspicious that Morris illegally open-carried a firearm. (i.e., “Aggravated Unlawful Use of a Firearm.”) Therefore, the Court held that assuming an arrest occurred at that point, that arrest was valid and the ensuing search incident to that arrest was justified to recover the firearms and other incriminating evidence.

CONCLUSION: The District Court denied Morris's motion to suppress.

QUIZ QUESTIONS FOR THE MONTH OF MAY – 2023 - - ALTERNATIVE

United States v. Demetrius C. Morris, No. 22-CR-30012-SPM-2, 2023 WL 2864916, April 10, 2023.

1. A well founded suspicion that a suspect has committed, is committing, or is about to commit a criminal offense can sometimes justify the detention of that suspect by an Illinois Law Enforcement Officer.
 - a. True.
 - b. False.

2. This Court stated that an Officer may need probable cause to believe that a suspect has committed or is committing a criminal offense in order to legally continue to detain that suspect after a “de facto arrest” occurs. When does a “de facto arrest” occur?
 - a. When a reasonable person, in the possession of the suspect, would not feel free to leave.
 - b. When Officers use physical force to gain control of the suspect.
 - c. When the restraint of a suspect by an Officer becomes so intrusive that it is tantamount to an arrest.

3. In this case, when did the District Court determine that Morris was “detained” by the Officers.
 - a. When the Arresting Officer first ordered Morris to stop.
 - b. When the Officers handcuffed Morris and searched his car.
 - c. When the Second Officer tased Morris.

4. The car which Morris was driving was found to be stolen. Could this fact be used to justify the initial detention of Morris?
 - a. Yes.
 - b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF MAY – 2023 - - ALTERNATIVE

United States v. Demetrius C. Morris, No. 22-CR-30012-SPM-2, 2023 WL 2864916, April 10, 2023.

1. A well founded suspicion that a suspect has committed, is committing, or is about to commit a criminal offense can sometimes justify the detention of that suspect by an Illinois Law Enforcement Officer.
 - a. ***True.*** As the Court held: “A law enforcement officer may seize a suspect for a brief detention “which give the officers a chance to verify (or dispel) well-founded suspicions that a person has been, is, or is about to be engaged in criminal activity.” United States v. Vega, 72 F.3d 507, 515 (7th Cir. 1995). Reasonable suspicion is more than a “hunch” but less than probable cause and must be supported by specific and articulable facts. Illinois v. Wardlow, 528 U.S. 119, 123 (2000).
2. This Court stated that an Officer may need probable cause to believe that a suspect has committed or is committing a criminal offense in order to legally continue to detain that suspect after a “de facto arrest” occurs. When does a “de facto arrest” occur?
 - c. ***When the restraint of a suspect by an Officer becomes so intrusive that it is tantamount to an arrest.***
3. In this case, when did the District Court determine that Morris was “detained” by the Officers.
 - c. ***When the Second Officer tased Morris.***
4. The car which Morris was driving was found to be stolen. Could this fact be used to justify the detention of Morris?
 - b. ***No.*** The fact that the car was stolen was not confirmed until after Morris was detained and arrested. Prior to confirming the fact that the car was stolen, the Officers merely had a hunch that was the case. Officers generally cannot use information discovered after an arrest occurs to establish the validity of that arrest. Generally, the issue is what did the Officers know prior to the arrest and not what they discovered after the arrest.