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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of June – 2024 - ALTERNATIVE

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

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People v. Deshaun Carpenter, 2024 IL App (1st) 220970, March 29, 2024.

THE CASE: The car that Carpenter drove was stopped by the police for having a broken taillight and for having an item hanging from the rearview mirror that substantially obstructed Carpenter's vision. After conducting a thorough search of Carpenter's car, they discovered a firearm concealed in the back of the driver's seat. Was Carpenter properly convicted of being a felon in possession of a firearm?

FACTS: According to the author of this majority opinion, the following are the facts of this case. "Deshaun Carpenter was driving an "older model" Dodge Nitro with one broken taillight and a small object suspended from the rearview mirror when three officers curbed the car, ordered Carpenter out, and asked whether "narcotics" or "weapons" were in the vehicle. An officer admitted on cross-examination that a single broken taillight was not a lawful basis for a stop. **[Editor's Note: The Justice never explained exactly why the Officer made such an admission or if the majority of this Court agreed with that admission. Perhaps the Justice believed that because this traffic stop occurred in the afternoon, a broken taillight might be insufficient to justify a traffic stop. Some cases have seemed to indicate such a result, but this Court neglected to cite any such case.]** Further, in the body-camera footage, the officers never mention the obstruction hanging from the rearview mirror. Notwithstanding, they tore apart the car and found a loaded firearm embedded within the driver seat."

Carpenter was charged with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a)) and aggravated unlawful use of a weapon (id. § 24-1.6(a)(1), (a)(3)(A-5); (a)(1), (a)(3)(C)). He moved to suppress the loaded handgun as the fruit of an illegal search, but his counsel withdrew the motion after conferring with Carpenter. Following a bench trial, the court convicted Carpenter of constructive possession of the handgun. On appeal, Carpenter argued that (1) the People did not prove beyond a reasonable doubt that he knew about the handgun and (2) ineffective assistance of counsel in withdrawing the motion to suppress.

ISSUE: Was Carpenter properly convicted of UUWF?

SUB-ISSUE #1: Did the circuit court properly find that Carpenter constructively possessed the firearm?

THE LAW: The People prove constructive possession by establishing the defendant (i) knew the handgun was present and (ii) had immediate and exclusive control over the area where the handgun was located.

A. CONTROL: Did Carpenter have "control" over the firearm?

CONCLUSION AND REASONING: The appellate court declared that the issue of "control" was not in dispute, nor could it be. According to the majority of this Court, Carpenter was driving the car and had control over the area where the gun was found. The parties dispute only the first prong—whether Carpenter knew that a handgun was embedded within the driver's seat.

B. KNOWLEDGE: Did Carpenter have "knowledge" of the firearm?

ARGUMENT: Carpenter contended the People presented no evidence from which a rational trier of fact could have inferred that he knew of the handgun. He pointed out that in the body cam footage, he denied (i) possession of a firearm and (ii) ownership of the car. No physical evidence, like fingerprints, connected him to the handgun or the chambered round. None of his possessions were in the car. No witness testified about when he got into the car, just that he had been stopped on suspicion of committing minor traffic violations.

CONCLUSION AND REASONING: According to the author of this majority opinion, "(t)he trial court's findings of fact support Carpenter's contentions. That is to say, while the trial court concluded that Carpenter had

knowledge of the handgun, its underlying findings supported the opposite conclusion. The trial court noted the absence of evidence that Carpenter owned the car or had ever used it before, asserting: “There's no evidence as to how he got the gun, got the car. There is no evidence as to how long he had it.” This, according to the author of this majority opinion was evidence that Carpenter lacked knowledge about the car and, thus, the handgun.” In short, the majority disagreed with the findings of the circuit court and concluded, “(t)he record contains nothing from which a rational trier of fact could infer that Carpenter knew the handgun was embedded within the structure of the seat of a car he was never proven to have owned or operated. So, we must reverse on that ground alone.”

SUB-ISSUE #2: DWB. [Driving While Black].

QUESTION: After finding that the People failed to prove that Carpenter did not have constructive possession of the firearm and, therefore, could not have had constructive possession of that firearm, the majority opinion declared, “fundamental justice calls for us to raise a concern vital to public safety although it has no role in our resolution on the merits.” This “vital” concern was the question, “would this stop have proceeded as it did had Carpenter been white?”

MAJORITY: The majority of this Court declared that “(w)hat is known as “driving while Black” (DWB) is a pernicious reality that corrodes trust in law enforcement and the legal system. DWB involves police using “stereotypical thinking and hunches” and “dubious investigative techniques” in traffic stops.” The author concluded that “addressing the specter of DWB is crucial to the dismantling of this systemic injustice. Several essential indicators of DWB are laid bare by the evidence, including (i) minor infractions as a pretext for investigating unrelated suspicions; (ii) stereotypes or assumptions about race based on police conduct or statements during the stop; (iii) prolonged detention inconsistent with the nature of the stop; (iv) a search without proper justification, usually based on stereotypes rather than reasonable suspicion, (v) unequal enforcement, such as pulling over a person of color, for a violation seldom of consequence in a white neighborhood; (vi) targeting neighborhoods or areas predominately populated by people of color; and (vii) use of disrespectful behavior, aggression, or excessive force by police. Individually or together, the elements do not indicate or imply racial bias, and most police officers strive to act properly and respectfully. Nevertheless, the more indicators, the more likely the stop was for DWB.”

DISSENT: The Dissent disagreed with the majority’s conclusion that the People introduced insufficient evidence to show that Carpenter constructively possessed the firearm. It further noted that while it shared the majority’s concern about racial profiling, this was not the appropriate case to make such findings. Here, Carpenter never raised any such complaint, and the People never had a chance to contest this issue.

CONCLUSION: Based upon its finding that the People failed to prove that Carpenter had constructive possession of the firearm, the appellate court reversed Carpenter’s UUWF conviction.

[EDITOR’S NOTE: The majority’s DWB findings was, in fact, mere dicta and was not a declaration on the merits of this case. In its opinion, the majority declared, “Relatedly, despite our discussing DWB generally and not on the merits, the dissent curiously treats our observations as an adjudication. *Infra* ¶ 50 (citing *Singleton v. Wulff*, 428 U.S. 106, 96 S. Ct. 2868, 49 L.Ed.2d 826 (1976), which reproached appellate court for reaching the merits of an issue not presented by the parties). In our view, abstaining from saying anything about DWB, which our dissenting colleague urges us to do, condones the officer's actions here and continues to normalize a practice that exposure, not silence, will eliminate.”

In response to this declaration, the Dissent thus responded, “ [Courts] do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do we normally decide only questions presented by the parties.’ ” *People v. Givens*, 237 Ill. 2d 311, 324, 343 Ill. Dec. 146, 934 N.E.2d 470 (2010) (quoting *Greenlaw v. United States*, 554 U.S. 237, 244, 128 S. Ct. 2559, 171 L.Ed.2d 399 (2008)) (reversing the appellate court based on its sua sponte determination that a tenant did not have authority to consent to a search by police of a bedroom in the tenant's apartment occupied by overnight guests).

QUIZ QUESTIONS FOR THE MONTH OF JUNE – 2024 - ALTERNATE

People v. Deshaun Carpenter, 2024 IL App (1st) 220970, March 29, 2024.

1. Under Illinois law, possession of a firearm falls in two categories, actual and constructive.
 - a. True.
 - b. False.

2. For purposes of proving constructive possession, this Court noted that the People must prove two factual elements. Which of the following is not one of those named elements of constructive possession.
 - a. The defendant knew the handgun was present.
 - b. The defendant had previously possessing a firearm.
 - c. The defendant had immediate and exclusive control over the area.

3. In this case, the Officers justified stopping the car Carpenter drove by noting that an object was seen hanging from the car's rearview mirror. As the law stands today, can the fact that an object is hanging from the rearview mirror of a car alone justify stopping that car?
 - a. Yes.
 - b. No.

4. The appellate court, in this case, declared that Carpenter's conviction must be reversed because the stop of Carpenter's car was illegally based upon racial profiling (or as they called it, Driving While Black).
 - a. True.
 - b. False.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF JUNE – 2024 - ALTERNATE

People v. Deshaun Carpenter, 2024 IL App (1st) 220970, March 29, 2024.

1. Under Illinois law, possession of a firearm falls in two categories, actual and constructive.

a. True. As this appellate court declared, “Possession falls into two categories: actual and constructive. See People v. Wise, 2021 IL 125392, ¶ 24, 450 Ill. Dec. 844, 182 N.E.3d 656 (noting pertinent statute prohibits possession “on” and “about” a person).

2. For purposes of proving constructive possession, this Court noted that the People must prove two factual elements. Which of the following is not one of those named elements of constructive possession.

b. The defendant had previously possessing a firearm.

3. In this case, the Officers justified stopping the car Carpenter drove by noting that an object was seen hanging from the car’s rearview mirror. As the law stands today, can the fact that an object is hanging from the rearview mirror of a car alone justify stopping that car?

b. No. As the majority in this case noted, “The General Assembly has responded, precluding stops on the then-lawful basis offered by the officer in this case. See Pub. Act 103-32, § 5 (eff. Jan. 1, 2024) (adding 625 ILCS 5/12-503(c-5)) (directing, “[n]o motor vehicle, or driver or passenger of such vehicle, shall be stopped or searched by any law enforcement officer solely on the basis of a violation or suspected violation of [the material obstruction] subsection”).

4. The appellate court, in this case, declared that Carpenter’s conviction must be reversed because the stop of Carpenter’s car was illegally based upon racial profiling (or as they called it, Driving While Black).

b. False. The majority repeatedly announced that it did not use its findings concerning the Officer’s use of DWB as a basis for its finding in this case. It was merely making an “observation.” The Court, without providing the People with an opportunity to dispute its “observation,” declared that the Officers stopped Carpenter based upon racial profiling and took this opportunity to condemn this conduct. It then expressed puzzlement when the dissenting justice treated its “observations” as an adjudication.