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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of August – 2024 - ALTERNATIVE

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of August - 2024 - ALTERNATIVE

People v. Michael A. Pellegrino, 2024 IL App (2d) 230343, July 18, 2024.

THE CASE: After being arrested for DUI, Pellegrino refused to undergo a breath/alcohol test. Pellegrino moved to rescind his statutory summary suspension. The trial court granted Pellegrino's petition after finding that the arresting Officer lack probable cause to arrest Pellegrino. When, exactly, was Pellegrino placed under arrest?

FACTS: In the early morning of the day in question, the arresting Officer was dispatched to a gas station in connection with a report that a vehicle had hit a deer and was swerving in the road. When the Officer arrived, she noticed a parked white Cadillac Escalade. The Officer approached the driver's side of the vehicle. Neither her squad car's lights nor its siren was activated. She did not have her gun drawn when she approached. The Officer saw that the vehicle had an "excessive amount" of mud on its tires. Pellegrino was seated in the driver's seat and was on the phone with someone. The Officer asked Pellegrino to roll down his window. He complied, and the Officer immediately saw that his eyes were "glassy", and his speech was slurred. She also smelled "an odor of alcoholic beverage emitting from the vehicle and what appeared to be his person." The Officer asked Pellegrino if he "hit a deer or hit something." Pellegrino answered that he "had no clue" whether he hit anything. The Officer then requested that Pellegrino give her the keys to the vehicle. According to her, its engine was still running at that point. The Officer acknowledged that, when Pellegrino surrendered his keys, he was not free to leave. At some point during their conversation, Pellegrino told the Officer that he had consumed three vodka and sodas. The Officer asked Pellegrino where he was coming from. He replied, "outer space." She then asked where he was going. He replied that he was going to Pluto. The Officer asked defendant to step out of his car so that she could conduct field sobriety tests. Pellegrino advised her that one of his legs was paralyzed, so she did not have him perform the one-leg-stand and the walk-and-turn tests. However, she administered the horizontal gaze nystagmus test; Pellegrino failed the test. Based on her observations, she placed Pellegrino under arrest for DUI.

Following a hearing, the trial court granted Pellegrino's petition to rescind his statutory summary suspension. It also ordered the evidence collected by the Officer suppressed. The trial court concluded that the Officer's act of taking Pellegrino's keys was an arrest, yet, at that point, the Officer lacked probable cause to arrest defendant for DUI. The court stated: "[T]he question that lingers in the Court's mind is what observations did [the Officer] make prior to [seizing defendant's keys]. There is very limited conversation that takes place. I'm not sure if she's able to—if she sees the glassy eyes at that point or if that comes later. I don't know. The speech is delayed. I can't describe that as slurred. I didn't hear testimony as to what were the slurred words that she thought she observed. She says odor of alcohol coming from his breath which is, again, sometimes unusual. Usually when they're still in the vehicle, it's coming from inside the vehicle. Then we confirm it when the person is out of the vehicle." From this ruling, the People brought this appeal.

ARGUMENTS: On appeal, the People argued that the circuit court erred in concluding that Pellegrino was placed under arrest when the arresting Officer took his car keys.

FIRST ISSUE: Did the Officer's act of taking Pellegrino's keys constitute an arrest?

CONCLUSIONS AND REASONING: Initially, the appellate court noted that the trial court granted Pellegrino's motion to suppress because the arresting Officer's act of taking his keys was an arrest, yet, at that point, she lacked probable cause for that arrest. The appellate court then noted that there are three tiers of police-citizen encounters: (1) an arrest of a citizen, which must be supported by probable cause; (2) a temporary investigatory seizure conducted pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), where an officer may conduct a brief, investigatory stop of a citizen when the officer has a reasonable, articulable suspicion of criminal activity and such suspicion amounts to more than a mere 'hunch'; and (3) police-citizen encounters that are consensual, which involve no coercion or detention and do not implicate any fourth amendment [(U.S. Const., amend. IV)] interests." The appellate court then noted that there appeared to be no dispute that no seizure occurred before the

Officer took Pellegrino's keys. Similarly, both parties agreed that taking Pellegrino's keys amounted to a seizure. The crux of the parties' dispute was whether the seizure was an arrest requiring probable cause (as the trial court concluded) or a Terry stop (see Terry v. Ohio, 392 U.S. 1 (1968)) requiring only a reasonable, articulable suspicion of criminal activity (as the People argued).

In concluding that the Officer arrested Pellegrino when she took Pellegrino's keys, the trial court relied on the case of People v. Bailey, 2019 IL App (3d) 180396, where, in a case similar to this case, the Officer took the defendant's keys. The Bailey court concluded that the defendant in that case was arrested when the Officer took his car keys and declared, "[f]or purposes of the fourth amendment, an individual is 'seized' when an officer 'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" In this case, the appellate court concluded that the "glaring flaw" in the Bailey court's reasoning was that it apparently equated any "seizure" with an "arrest" requiring probable cause. According to this Court, the Bailey court overlooked the fact that seizures also include Terry stops, which require only a showing of a reasonable suspicion of criminal activity. Further, the Court noted that using physical force or a show of authority does not differentiate an arrest from a Terry stop. Rather, in determining whether a seizure is an arrest, courts consider various factors, such as "the drawing of a police officer's weapon, the tone of voice, the use of handcuffs, physical touching, and the threatening presence of several officers." However, the Court also noted that even handcuffing the subject of a Terry stop and placing that subject in a squad car does not necessarily transform the stop into an arrest. "Since the facts of each case differ, *** the permissible bounds of [a Terry] stop must be flexible enough to take the least intrusive measures necessary within the dictates of reasonable prudence to maintain the status quo."

With these principles in mind, the appellate court concluded that, although a seizure might have occurred when the Officer took Pellegrino's keys (and the People conceded that one did), that seizure was merely a Terry stop rather than an arrest. According to the Court, the Officer did not draw her weapon, use a threatening tone of voice, place Pellegrino in handcuffs, or touch him, and, at the time she took Pellegrino's keys, she was the only officer at the scene. Also, the Court concluded that taking Pellegrino's keys to prevent him from driving away was only minimally intrusive. Therefore, the Court declared that the trial court erred in finding that Pellegrino was arrested when the Officer took Pellegrino's keys.

SECOND ARGUMENT: Was the arresting Officer justified in making a Terry stop?

CONCLUSIONS AND REASONING: Because the seizure that occurred here was a Terry stop, the relevant question was whether the Officer had a reasonable, articulable suspicion that Pellegrino had been driving under the influence of alcohol. The Court noted that the Officer testified that when Pellegrino rolled down his window, she smelled the strong odor of an alcoholic beverage. According to the Officer, Pellegrino was slow to respond to her inquiry about whether he had hit a deer or something else with his vehicle. According to the Officer's testimony at the suppression hearing, Pellegrino "looked around as if he was confused" before responding that he had "no clue." The body camera recording of the Officer's encounter with the defendant showed him exhibiting what can fairly be described as a "blank" or "vacant" facial expression, suggestive of impairment from alcohol. Moreover, the Officer testified that Pellegrino's eyes were "glassy," which would also contribute to a reasonable suspicion that Pellegrino was under the influence of alcohol. Assuming this testimony was truthful, the appellate court concluded that the Officer's testimony about the odor of alcohol and the appearance of his eyes, along with the circumstances apparent from the body camera recording, was sufficient to establish a reasonable suspicion that Pellegrino was driving under the influence of alcohol, and, thus, justified a Terry stop. However, the appellate court also noted that the trial court in this case never made any findings regarding the credibility of the Officer's testimony because it erroneously concluded that taking Pellegrino's keys amounted to an arrest. Therefore, this Court remanded this case back to the trial court so that the trial court could determine the credibility of the Officer.

RESULT: The appellate court remanded this case back to the trial court to allow the trial court to determine whether the testimony of the Officer was sufficiently credible to support a finding that the Officer had sufficient reasonable suspicion to justify a Terry stop of Pellegrino. If the Officer had sufficient reasonable suspicion to justify a Terry stop, Pellegrino's detention was legal. If, however, the testimony of the Officer was not credible, then the Terry stop was illegal, and the evidence must be suppressed.

QUIZ QUESTIONS FOR THE MONTH OF AUGUST – 2024 - ALTERNATIVE

People v. Michael A. Pellegrino, 2024 IL App (2d) 230343, July 18, 2024.

1. The Appellate Court in this case listed three types of police/citizen encounters: An Arrest; an Investigative Stop; and a Consensual Encounter. Which type of encounter did the trial court conclude occurred in this case?
 - a. an Arrest.
 - b. an Investigative Stop.
 - c. a Consensual Police/Citizen Encounter.

2. The Appellate Court listed several factors to consider when determining whether a police/citizen encounter was a *Terry* stop or an arrest. Which of the follow was not one of the factors listed by the Court?
 - a. the Officer's act of drawing a weapon.
 - b. the Suspect's prior experience with the police.
 - c. the Tone of voice used by the Officer.
 - d. the Officer's act of touching the suspect.

3. The trial court in this case found that the Officer's testimony was incredible and did not support a finding that the Officer had sufficient reasonable suspicion to justify the detention of Pellegrino.
 - a. True.
 - b. False.

4. According to the appellate court, did the Officer's act of taking Pellegrino's keys constitute an arrest of Pellegrino?
 - a. Yes.
 - b. No.

QUIZ QUESTIONS AND ANSWERS FOR THE MONTH OF AUGUST – 2024 - ALTERNATIVE

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1. The Appellate Court in this case listed three types of police/citizen encounters: An Arrest; an Investigative Stop; and a Consensual Encounter. Which type of encounter did the trial court conclude occurred in this case?
 - a. an Arrest.** The trial court concluded that the Officer's act of taking Pellegrino's keys constituted an arrest. The appellate court disagreed with that finding.
2. The Appellate Court listed several factors to consider when determining whether a police/citizen encounter was a Terry stop or an arrest. Which of the follow was not one of the factors listed by the Court?
 - b. the Suspect's prior experience with the police.** This was not one of the factors.
3. The trial court in this case found that the Officer's testimony was incredible and did not support a finding that the Officer had sufficient reasonable suspicion to justify the detention of Pellegrino.
 - b. False.** The Appellate Court ruled that because the trial court erroneously concluded that the Officer's act of taking Pellegrino's keys constituted an arrest, the court failed to make a finding as to the credibility of arresting Officer's testimony. That was the reason that this case was remanded so that the trial court could make such a finding.
4. According to the appellate court, did the Officer's act of taking Pellegrino's keys constitute an arrest of Pellegrino?
 - b. No.** The trial court concluded that it did. The appellate court disagreed with that finding.