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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of May – 2025 - ALTERNATIVE

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People v. Gerald Dorsey, 2025 IL App (1st) 240933, March 31, 2025.

THE CASE: Officers walked up to the car Dorsey was loading and spotted a partially concealed firearm in a box inside of the car and within easy reach of Dorsey. They immediately grabbed Dorsey and handcuffed him. Was Dorsey seized when he was grabbed and handcuffed? Was he arrested? If so, was the Terry seizure and arrest of Dorsey legal?

FACTS: Two Officers received a call from another Officer who was conducting surveillance on an unrelated matter. The surveillance Officer stated that he saw the defendant (Gerald Dorsey) walking between a residence and an SUV parked on the street, “just unloading boxes” and putting them in the back of the SUV. (In the BWC footage, Dorsey can later be heard claiming that his family had just been evicted from their apartment.). The only other elaboration in the record was that a responding Officer testified that the report he received was “of a man with a gun.” A responding Officer confirmed that he learned no other information from the surveillance Officer or from his own observation. [Strangely, the appellate court took great pains to show that no officer ever saw Dorsey do anything even remotely illegal. “We are emphatic on this point because, more than once in its briefs on appeal, the State claims that (the surveillance) Officer, in his call to a responding Officer, reported that he saw defendant remove a gun from his waistband and place it into a tote box in the back of the SUV. This rather important information may be contained within the police report, but it was not part of the evidence in this case. A responding Officer, the only witness, never testified to being told anything of this nature by the surveillance Officer or by anyone else. We cannot consider information that was not placed into evidence.]

In any event, the surveillance Officer called for assistance. The two responding Officers soon pulled up, in plain clothes and an unmarked car. They parked and walked briskly toward Dorsey, who was standing near the back of the SUV. The rear tailgate was open, but it seems from the BWC that Dorsey was in the process of closing it. As the officers approached, one Officer saw what looked like the handle of a gun sticking out of a tote box. The BWC confirmed that observation. It also confirmed that the officers immediately grabbed Dorsey, unequivocally seizing him from the very start of the encounter. And within seconds, they had moved him over to the police vehicle, where they handcuffed him. One Officer explained that Dorsey was handcuffed for two reasons. For one, there was a gun within “arm's reach” of him. That was obvious enough from the BWC. For another, when the officers grabbed defendant and pulled him away from the SUV, “it felt like he was trying to resist.” [Evidently, the trial court did not believe this second basis. After viewing the BWC footage, the court found that Dorsey did not resist the officers.]. According to one responding Officer, he did not consider Dorsey to be under arrest at this time. He was seized, to be sure, as he was not free to leave, but the seizure was a Terry detention, in his view, not an arrest. As the Officer put it, Dorsey was “being detained for further investigation,” namely, to determine whether he was licensed to carry a gun. The officers removed the suspected gun and confirmed that it was both real and loaded. So they asked Dorsey if he had a FOID card or a CCL. Dorsey acknowledged that he had neither. At that point—no more than 30 seconds after he was first handcuffed—Dorsey was under arrest.

Dorsey argued in the trial court that he was arrested when he was handcuffed, almost immediately after his encounter with the police began, and that the mere possession of a gun no longer created probable cause for an arrest. Therefore, the firearm must be suppressed. The People countered that Dorsey was not arrested until the officers learned that he lacked a FOID card or CCL, at which point they had probable cause; the initial seizure was a brief Terry detention, with handcuffing for officer safety. The reason for the detention was to allow the officers to determine whether Dorsey had a valid firearms license. That was all the State said by way of articulating the reasonable suspicion necessary for a Terry stop. The trial court declared that because the police seized Dorsey before they discovered he had no FOID card or CCL, his seizure was illegal. From this ruling, the People brought this appeal.

ISSUE #1: Was Dorsey seized or arrested when the Officers grabbed him and cuffed him up?

FINDINGS: The appellate court concluded that it did not matter whether Dorsey was arrested or merely detained according to Terry. The Officers lacked the authority to either seize or arrest Dorsey based upon the circumstances of this case.

The People first claimed that the officers had reasonable suspicion for a Terry stop and, for that matter, probable cause to arrest, regardless of whether Dorsey had a CCL. As the People interpreted the statute governing unlawful possession of weapons, Dorsey was in violation of the law even if he had a CCL, so the Officers had at least reasonable suspicion, if not probable cause, without needing to know whether Dorsey was the holder of a CCL. According to the People, Dorsey was

illegal in possession of the partially concealed firearm when the Officers seized him. [According to Dorsey, Section 24-1(a)(4)(iv) provides: “the criminal prohibition in subsection (a)(4) of section 24-1 does not apply to or affect transportation of weapons that meet one of the following conditions: (iv) are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act.” 720 ILCS 5/24-1(a)(4). The Firearm Concealed Carry Act (Concealed Carry Act), in turn, provides that a CCL holder, among other things, may “carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his or her person.” 430 ILCS 66/10(c)(1). According to Dorsey, that exception described his conduct here (putting aside for the moment that he did not have a CCL). The firearm inside the tote box was partially concealed and, given that it was within arm's reach of Dorsey, was “about his person.”

The People argued, however, that the above cited exception did not apply in this case. They argued that the phrase “does not apply to or affect transportation of weapons” provides an exception only for the transportation of firearms, not the mere possession of them. Since Dorsey was not transporting the concealed firearm, the exception did not apply to him and the Officers were justified in conducting a Terry stop. The appellate court rejected this interpretation of the People and concluded that the phrases “apply to” and “affect transportation of” each independently modify the word “weapons.” Thus, the criminal prohibition in subsection (a)(4) does not “apply to *** weapons” or “affect transportation of weapons” “that meet one of the following conditions,” including compliance with the Concealed Carry Act. Dorsey reasoned that an individual with a CCL would be acting in compliance with the law under the facts known to the Officers at the time Dorsey was first seized. Therefore, the Officers did not have a reasonable suspicion to believe that he was violating Section 24-1(1)(4) of the Weapons statute.

ISSUE #2: Did the Officers have sufficient probable cause to justify Dorsey’s arrest after they spotted the partially concealed firearm in the tot box?

FINDINGS: Citing the case of People v. Bloxton, 2020 IL App (1st) 181216, the appellate court concluded that the mere possession of a firearm no longer automatically provides probable cause to support the arrest of the person possessing that firearm.

ISSUE #3: Can the possession of a firearm be used to justify a Terry stop of the person possessing that firearm?

FINDINGS: The appellate court declared that the possession of a firearm can sometimes assist in providing sufficient reasonable suspicion to justify a Terry stop of the possessor of the firearm. However, it eventually concluded that the possession of the firearm alone was no long enough to justify a detention of the person possessing that firearm.

ISSUE #4: Did the possession of the firearm alone justify a Terry stop of Dorsey?

FINDINGS: This appellate court concluded that the mere possession of a firearm alone will not justify a Terry stop of the possessor of the firearm to allow the officer an opportunity to determine whether the possessor of that firearm possesses a CCL. Specifically, the Court declared that “(c)onduct that, on its face, is nothing more than the exercise of a protected constitutional right cannot automatically subject a citizen to police detention. Because this right is subject to reasonable regulation, however, nothing prevents the police from inquiring, in a consensual encounter, into the status of the citizen's licensure. Or if the police have a valid, independent basis for an investigatory stop, the police may ask the individual if he or she possesses a CCL, and the license holder is required to disclose that he or she possesses a concealed firearm, present his or her license, and identify the firearm's location. 430 ILCS 66/10 (h). But the mere possibility that anyone with a gun might not have a valid license is not enough to justify a seizure. For that, the police must have specific and articulable reasons to believe that this person, observed in these circumstances, does not have a valid license—or that he is otherwise implicated in imminent criminal activity. According to this Court, the police, no doubt, will often present such reasons at a suppression hearing. But here they did not. They acted on nothing more than “a man with a gun” in public. And that alone is not—not any longer—a basis for a seizure or detention of any kind, even if the officers were “understandably worried about the possibility of violence and want[ed] to take quick action” to avert it.

EDITOR’S NOTE: In this case, the Officers acted promptly to secure the firearm and the suspect after discovering the concealed firearm. Ironically, in effect, the appellate court concluded that the Officers “jumped the gun” in so doing without first discovering additional grounds to justify a Terry seizure of Dorsey other than his mere possession of the firearm.

CONCLUSION: In this case, the appellate court affirmed the judgment of the circuit court which granted Dorsey’s motion to suppress.

QUIZ QUESTIONS FOR THE MONTH OF MAY – 2025 - ALTERNATIVE

People v. Gerald Dorsey, 2025 IL App (1st) 240933, March 31, 2025.

1. A person is “seized” when he or she is arrested or is the subject of a Terry stop.
 - a. True.
 - b. False.
2. In this case, Dorsey was immediately grabbed and placed in handcuffs after the Officers spotted a concealed handgun inside of the vehicle Dorsey was loading. Did the conduct of the Officers constitute a Terry seizure of Dorsey?
 - a. Yes.
 - b. No.
3. Could the Officers in this case legally have placed Dorsey under arrest based upon the presence of a partially concealed handgun inside the vehicle Dorsey was loading?
 - a. Yes.
 - b. No.
4. The Court in this case concluded that the fact that Dorsey possessed a firearm “about his person” was alone sufficient to justify his brief detention based upon a need of the Officers to protect themselves.
 - a. True.
 - b. False.

QUIZ QUESTIONS FOR THE MONTH OF MAY – 2025 - ALTERNATIVE

People v. Gerald Dorsey, 2025 IL App (1st) 240933, March 31, 2025.

1. A person is “seized” when he or she is arrested or is the subject of a Terry stop.

a. True. As this Court in this case declared, “an arrest and a Terry stop are ‘seizures’ in which the individual is not free to leave ***.”
2. In this case, Dorsey was immediately grabbed and placed in handcuffs after the Officers spotted a concealed handgun inside of the vehicle Dorsey was loading. Did the conduct of the Officers constitute a Terry seizure of Dorsey?

a. Yes. The Court concluded that Dorsey was, in fact, seized when he was grabbed and handcuffed. It simply determined that this Terry seizure was illegal under the circumstances of this case.
3. Could the Officers in this case legally have placed Dorsey under arrest based upon the presence of a partially concealed handgun inside the vehicle Dorsey was loading?

b. No. Citing the case of People v. Bloxton, 2020 IL App (1st) 181216, the appellate court in this case concluded that the mere possession of a firearm no longer automatically provides probable cause to support the arrest of the person possessing that firearm.
4. The Court in this case concluded that the fact that Dorsey possessed a firearm “about his person” was alone sufficient to justify his brief detention based upon a need of the Officers to protect themselves.

b. False. The Court in this case declared that the Officers acted on nothing more than a call about “a man with a gun” in public. And that alone was not—not any longer—a basis for a seizure or detention of any kind. This was the case even if (according to the Justices) the officers were understandably worried about the possibility of violence and want[ed] to take quick action” to avert it.