
COMMONWEALTH V. HICKS

By Joseph Greenlee

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In the early morning hours of June 28, 2014, Michael Hicks was observed carrying a concealed firearm into a convenience store by a remote camera operator conducting live surveillance. The camera operator reported Hicks to law enforcement. But by the time officers arrived, Hicks had exited the store and returned to his vehicle without incident. Nevertheless, the officers stopped Hicks as he drove out of the parking lot. One officer drew his firearm as another officer confiscated Hicks's firearm, removed Hicks from the car, and handcuffed him. At that point, the officers noticed the odor of alcohol on Hicks's breath, and upon searching Hicks, discovered a small bag of marijuana in his pocket.

The officers soon learned that Hicks possessed a permit allowing him to carry a concealed firearm—meaning that there was nothing unlawful about the conduct for which he was reported and stopped. Hicks was thus not charged with any crime related to carrying his firearm, but he was still charged with driving under the influence of alcohol, possession of marijuana, and disorderly conduct.

Hicks moved to suppress the evidence obtained from the stop, but his motion was denied. The court of common pleas, following Pennsylvania Superior Court precedent, found that the “[p]ossession of a concealed weapon in public creates a reasonable suspicion justifying an investigatory stop in order to investigate whether the person is properly licensed.”¹ Since the initial detention was deemed lawful, the rest of the stop was as well. Hicks was ultimately convicted of driving under the influence, fined, and sentenced to up to six months in jail.

The Pennsylvania Superior Court affirmed Hicks's conviction under the same rationale—that the possession of a concealed firearm without anything more is sufficient to create reasonable suspicion, allowing for a brief detention by law enforcement.

Hicks subsequently appealed to the Supreme Court of Pennsylvania. He claimed on appeal that the initial stop violated his Fourth Amendment right to be free from unreasonable searches and seizures.

The Supreme Court of Pennsylvania examined state law and noted that “an individual licensed to carry a firearm may do so in public, openly or concealed, within a vehicle or without, throughout every municipality in Pennsylvania.”²

Next, the court analyzed Fourth Amendment caselaw and noted that under United States Supreme Court precedent, a seizure occurs when, “in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.”³ Such a seizure is permissible in Pennsylvania if it is “supported by a reasonable and articulable suspicion that

the person seized is engaged in criminal activity and may continue only so long as is necessary to confirm or dispel such suspicion.”⁴

Evidence discovered during a lawful detention is admissible in court, even if the evidence is of a different crime than the one that justified the initial stop. But evidence discovered during an unlawful detention is tainted and generally excluded. Thus, the admissibility of the odor of alcohol on Hicks's breath, which was discovered after the initial detention, depended on the constitutionality of the initial detention—that is, it depended on whether seizing Hicks for merely carrying a firearm in public violated his Fourth Amendment rights.

The Commonwealth argued that the mere carrying of a concealed firearm establishes *per se* reasonable suspicion and thus authorizes a seizure. The Commonwealth's *amicus*—the Pennsylvania District Attorneys Association—emphasized that Hicks was stopped in a high crime area during early-morning hours.

Hicks, on the other hand, argued that “because an investigative detention must be premised upon reasonable suspicion of criminal activity, and because Pennsylvania law provides for the lawful carrying of firearms,” the mere carrying of a firearm is insufficient to create suspicion of criminal activity.⁵ Hicks's *amici*—Members of the Pennsylvania General Assembly, Firearms Owners Against Crime, the Firearms Policy Coalition, and the Firearms Policy Foundation—noted that several other courts have held a concealed firearm alone does not justify an investigative detention, and argued that the Fourth Amendment requires more.

The Supreme Court of Pennsylvania sided with Hicks, holding that “[u]nless a police officer has prior knowledge that a specific individual is not permitted to carry a concealed firearm, and absent articulable facts supporting reasonable suspicion that a firearm is being used or intended to be used in a criminal manner, there simply is no justification for the conclusion that the mere possession of a firearm, where it lawfully may be carried, is alone suggestive of criminal activity.”⁶

Noting the injustice done to Hicks, the court warned that freedom tends to be most vulnerable when the government acts to protect the public:

Crime and violence are ever-present threats in society, and it can be tempting to look to the government to provide protection from “dangerous” people with constant vigilance. However, the protections of the Fourth Amendment remain an essential bulwark against the overreaches and abuses of governmental authority over *all* individuals. Notwithstanding the dangers posed by the few, we must remain wary of the diminution of the core liberties that define our republic, even when the curtailment

1 *Commonwealth v. Hicks*, 208 A.3d 916, 923 (Pa. 2019).

2 *Id.* at 926.

3 *Id.* at 927 (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)).

4 *Id.* (quoting *Commonwealth v. Strickler*, 563 Pa. 47, 58 (2000)).

5 *Id.* at 928.

6 *Id.* at 937.

of individual liberty appears to serve an interest as paramount as public safety.⁷

Here, Hicks was forcibly seized, disarmed at gunpoint, removed from his vehicle, and handcuffed all for lawfully exercising his right to bear arms. The court determined that such an encroachment on liberty—even in the name of safety—is more than the Constitution allows.

⁷ *Id.* at 946.