

PENNSYLVANIA v. MIMMS

U.S. Supreme Court

December 5, 1977

434 U.S. 106

(This is a Per Curiam opinion, which means it was decided without any argument before the Court. Much to the dismay of the dissenting justices in this 6-3 decision. The 6 smart ones hold, in this great, great opinion, that, because of officer safety, we can order the driver out of a lawfully-stopped car. And, because of Terry v. Ohio, we can frisk him.)

Harry Mimms and a buddy are in downtown Philadelphia, in Harry's car, with Harry driving, and up to no good. I say that because Harry has a .38 caliber revolver tucked in his waistband and his buddy has a .32 caliber revolver in his jacket. (I'll explain later to you young officers exactly what a revolver is.) Harry's car has an expired license plate.

Two Philly officers spotted the expired license plate and pulled Harry over. One of the officers asked Mimms to step out of the car to produce his registration and driver's license and to accept the traffic summons. Harry, reluctantly, stepped from the car, pursuant to the officer's instructions, and, as he does, the officer noticed a large bulge in the waistband under his sports jacket. Fearing a weapon, the officer frisked him and pulled out the snub nose. Mimms was immediately arrested for violation of Pennsylvania's carrying-a-concealed-weapon statute.

At trial, the officer testified that it was his practice to always order all drivers out of their vehicles, as a matter of course, whenever making stops for traffic violations. Why? Because he felt safer doing it that way, outside the car.

Makes sense, the trial court thought, and he was convicted of the CCW charge.

However, the Pennsylvania Supreme Court reversed the conviction, holding that the officer's order to vacate the car was "an impermissible seizure." Why, you ask? Because, *"...the officer could not point to objective observable facts to support a suspicion that criminal activity was afoot or that the occupants of the vehicle posed a threat to police safety."* The Pennsylvania Big Court continued (wrongly), *"Since this unconstitutional intrusion led directly to observance of the bulge and to the subsequent pat down, the revolver was the fruit of an unconstitutional search, and, should have been suppressed."*

Here, the 6 wisest decided it was a good day to make new law and to restore reason. Accordingly, they reversed the Pennsylvania Supreme Court.

The U.S. Supreme Court decided that the situation was controlled by 2 things. Safety of the officer. And Terry v. Ohio.

"The order to get out of the car, issued after Mimms was lawfully detained, was reasonable and thus permissible under the Fourth Amendment. The state's proffered justification for such order - the officer's safety - is both legitimate and weighty and the intrusion into Mimms' personal liberty occasioned by the order, being at most a mere inconvenience, cannot prevail when balanced against legitimate concerns for the officer's safety."

And, finally, on the second point, *"... the answer is controlled by Terry v. Ohio. In that case we thought the officer justified in conducting a limited search for weapons once he had reasonably concluded that the person whom he had legitimately stopped might be armed and presently dangerous ... The bulge in the jacket permitted the officer to conclude that Mimms was armed and thus posed a serious and present danger to the safety of the officer ... any man of reasonable caution would likely have conducted the pat down."*

(Bottom line? Truly a landmark decision. Certainly one of my all-time favorite opinions. And one of the

all-time 5 best decisions for law enforcement. Oh, and a revolver? It's a handgun that never jams and is easy to clean. J. Edgar Hoover carried one.)