

SUPREME COURT OF PENNSYLVANIA

Commonwealth v. Cost

Cost · No. 39 EAP 2018 · Decided January 22, 2020

SUMMARY

This is a concurring opinion by Justice Wecht, joined by Justice Donohue, in the Supreme Court of Pennsylvania's decision in Commonwealth v. Cost. The opinion addresses when a police-citizen interaction becomes an investigative detention under the Fourth Amendment, focusing on the retention of identification and the conduct of a background or warrant check. The concurrence argues that, under the totality of the circumstances, a reasonable person would not feel free to leave in such circumstances.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Wecht
JURISDICTION	Pennsylvania
DECIDED	January 22, 2020
DOCKET	39 EAP 2018
DISPOSITION	affirmed
PROCEDURAL POSTURE	Harold Cost appealed to the Supreme Court of Pennsylvania from the Superior Court's order reversing the Court of Common Pleas' order and remanding for further proceedings.
STANDARD OF REVIEW	Whether the circumstances constituted a mere encounter or an investigative detention requiring reasonable suspicion is determined under an objective, totality-of-the-circumstances test; the analysis considers all circumstances evidencing a show of authority or exercise of force.
PRECEDENTIAL VALUE	Published concurring opinion; the concurrence is persuasive but not independently binding.
PARTIES	Harold Cost v. Commonwealth of Pennsylvania

TOPICS

[fourth amendment](#)[search and seizure](#)[criminal procedure](#)[probable cause](#)[suppression of evidence](#)

PRACTICE AREAS

criminal procedure

constitutional law

QUESTIONS PRESENTED

1. Whether police officers' retention of Cost's identification while conducting a background or warrant check transformed the encounter from a mere encounter into an investigative detention.
2. Whether, under the totality of the circumstances, a reasonable person in Cost's position would have felt free to leave.

HOLDINGS

1. The combined circumstances of taking a person's identification, retaining it, and running a background check establish an investigative detention because a reasonable person would not feel free to leave without the identification and would understand that the police were conducting an investigation.
2. Questioning a person whether he possesses anything the officer needs to know about substantially escalates the encounter because a reasonable person would understand the question as referring to weapons or contraband and as signaling an investigative motive and suspicion of criminality.

KEY QUOTATIONS

“Dispossessed of his identification and thus detained as a practical matter, and aware that the officer deems him worthy of official investigation, any reasonable person worthy of that description would conclude that he was “detained” for “investigative” purposes; that is to say, no reasonable person, would feel free to leave under such circumstances.” (at 8)

“We must strive to ensure that the hypothetical reasonable person against whom we measure constitutional rights is recognizable as such to real people in the real world.” (at 12)

FACTUAL BACKGROUND

Police officers encountered Harold Cost and another person at night in an area the officers characterized as a high-crime neighborhood. The officers requested identification, retained the identification cards, and radioed the identifying information to other police personnel to conduct a background or warrant check. During the encounter, an officer also asked whether the men possessed anything that he needed to know about; the officers did not ask Cost to sit in a police vehicle.

PROCEDURAL HISTORY

The Philadelphia County Court of Common Pleas entered an order on April 20, 2017. The Superior Court, in an order entered June 11, 2018, reversed that order and remanded to the Court of Common Pleas. Cost appealed to the Pennsylvania Supreme Court, where Justice Wecht filed a concurring opinion.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The Superior Court's remand to the Philadelphia County Court of Common Pleas was left in place.

CASES CITED

- United States v. Mendenhall, 446 U.S. 544, 554 (1980)
- Commonwealth v. Livingstone, 174 A.3d 609, 619, 621 (Pa. 2017)
- Reid v. Georgia, 448 U.S. 438, 440 (1980)
- Commonwealth v. Lyles, 97 A.3d 298, 301-06 (Pa. 2014)
- Commonwealth v. T. Jones, 378 A.2d 835, 837-40 (Pa. 1977)
- Commonwealth v. Au, 42 A.3d 1002, 1003-08 (Pa. 2012)
- United States v. Williams, 356 F.3d 1268, 1276 (10th Cir. 2004)
- I.N.S. v. Delgado, 466 U.S. 210, 216 (1984)
- Florida v. Royer, 460 U.S. 491, 498, 501-02, 523 n.3 (1983)
- Michigan v. Chesternut, 486 U.S. 567, 573 (1988)
- Utah v. Strieff, 136 S. Ct. 2056, 2069 (2016) (Sotomayor, J., dissenting)
- State v. Daniel, 12 S.W.3d 420, 427 (Tenn. 2000)
- United States v. Jordan, 958 F.2d 1085, 1087 (D.C. Cir. 1992)
- United States v. Place, 462 U.S. 696, 708 (1983)
- A. Jones v. United States, 154 A.3d 591, 596 (D.C. 2017)
- Ramsey v. United States, 73 A.3d 138, 147-48 & n.19 (D.C. Ct. App. 2013)
- United States v. Cordell, 723 F.2d 1283, 1285 (7th Cir. 1983)
- United States v. Waksal, 709 F.2d 653, 660-62 (11th Cir. 1983)
- State v. Pollman, 190 P.3d 234, 240 (Kan. 2008)
- In re Roca, 173 A.3d 1176, 1187 (Pa. 2017)
- United States v. Banks, 540 U.S. 31 (2003)
- Ohio v. Robinette, 519 U.S. 33 (1996)