

Summary of SC92402, *State of Missouri v. Kevin E. Hicks*

Appeal from the Jackson County circuit court, Judge Sandra C. Midkiff

Argued and submitted Sept. 6, 2012; opinion issued Feb. 26, 2013; modified on the Court's own motion 03-19-13

Attorneys: Hicks was represented by Ellen H. Flottman of the public defender's office in Columbia, (573) 882-9855; and the state was represented by James B. Farnsworth of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of two counts of first-degree robbery and multiple sexual offenses appeals, alleging that his incriminating statements to police were made involuntarily in reliance on an agreement the state has not honored and that his second conviction for robbery violates double jeopardy. In a 6-0 decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri affirms the convictions for the sexual offenses and one count of first-degree robbery. The man's statements were not made involuntarily. Despite knowing the prosecutor would not agree to certain specifics – including a specific date for the man's release from prison – the man willingly spoke with the detectives, repeatedly saying he wished to make amends. The man's conviction and sentence for the second count of first-degree robbery, however, is vacated. The state concedes that it violates the double jeopardy clause of the United States Constitution to subject the man to multiple convictions for taking multiple items of property in the course of a single, continuous act of force.

Facts: Six men accosted a male and female outside the male's home in August 1992 in Kansas City. The men kept the male downstairs at gunpoint and forcibly stole keys and a videocassette recorder from him. The assailants then took the female victim to an upstairs room and sexually assaulted her. The crimes remained unsolved until 2008, when DNA collected shortly after the incident from a rape kit matched the DNA of Kevin Hicks' cousin. Investigators developed a list of six suspects, including Hicks, based on the cousin's known associates from 1992. Five of these six suspects – including both Hicks and his cousin – had been suspects in the crimes in 1992. In March 2008, Kansas City police detectives visited Hicks in prison, where he was serving sentences for a series of crimes unrelated to those in August 1992. He admitted some involvement in the 1992 incident but was vague and did not provide details. He also indicated that he had knowledge of other unresolved crimes. The detectives suggested Hicks obtain an attorney to negotiate an agreement with the prosecutor, but he declined and continued to speak with them, voluntarily providing significant information without any reciprocal promise of lenience or any plea agreement.

Ultimately, a Jackson County assistant prosecutor offered that, if Hicks provided information leading to the filing of criminal charges against individuals involved in criminal activities, the prosecutor's office would agree that "Hicks be sentenced to a term of imprisonment for his involvement and participation in these crimes to be served concurrently with [his] current prison sentences." Hicks was dissatisfied, indicating he did not want to serve time in prison beyond his

then-scheduled 2018 release date. He was advised the prosecutor's office would not agree to specify a release date because they did not know exactly what he would divulge. He agreed to talk, giving the detectives a detailed account of the August 1992 incident, including the identity of his five accomplices, although he denied personally engaging in any sexual contact with the female victim. He told the detectives he had provided this information because he wanted to take responsibility for his actions, was ashamed of his conduct, felt empathy for the victims and wanted to be a better person. In July and September 2008, Hicks participated in videotaped interviews with the detectives. At the end of the first of these interviews, he reiterated that he was cooperating because "it's the right thing to do" and because he empathized with the victims.

In October 2008, Hicks was charged by indictment with two counts of first-degree robbery, six counts of forcible sodomy (one of which was dismissed before submission to the jury), one count of forcible rape and one count of attempted forcible rape. After he was indicted, it became apparent that, if convicted, Hicks' sentences for any sexual offenses would have to run consecutively to his sentences for the robbery pursuant to section 558.026.1, RSMo. Hicks moved to suppress his pretrial statements, claiming that mandatory consecutive sentencing would violate his agreement with the state. Following a hearing regarding the motion to suppress, the court overruled the motion in an oral ruling, memorializing that ruling in a written order issued after the trial. Hicks was convicted for all nine counts submitted to the jury. He was sentenced to 15 years in prison for each of the robbery convictions to run concurrently to each other. He also was sentenced to 30 years in prison for each of the seven sex-related convictions, to be served concurrently to one another but consecutively to the sentences for the robbery convictions, as required by section 558.026.1. The court ordered that the new sentences run concurrently to the sentences he already was serving. Hicks appeals.

AFFIRMED IN PART; VACATED IN PART.

Court en banc holds: (1) Hicks' statements underlying his guilty plea were not made involuntarily. The prosecutor's agreement was that Hicks would be sentenced to "a term of imprisonment for his involvement and participation in these crimes[,] to be served concurrently." Section 558.026.1, however, requires sentences for sexual offenses to run consecutively to those for non-sexual offenses. Missouri case law recognizes that the phrase "term of imprisonment" can have two usages. On one hand, courts use the phrase to refer to the aggregation of all the sentences given a particular offender. Otherwise, courts use the phrase to refer to a single sentence. Hicks proposes a third meaning, arguing he accepted his plea bargain based on the belief that a "term of imprisonment" refers to an aggregate term in which all his sentences are served concurrently to each other. Under this belief, he would have received only a single grouping of concurrent sentences. This interpretation of the agreement, however, is not reasonable under the circumstances. The agreement reasonably could not have meant anything other than one aggregate term of imprisonment, composed of multiple sentences. Because his mistaken belief about the sentence the prosecutor was offering is unreasonable, his guilty plea stands. The evidence shows that Hicks prepared to implicate himself and others in at least two separate incidents in addition to the August 1992 home invasion and that he was reasonably aware that he could face conviction for both sexual and non-sexual offenses arising from the August 1992 attack. He knew the prosecutor refused to agree to specifics such as a certain release date, and yet Hicks willingly participated in the interrogations, repeatedly stating he

wished to make amends for his past wrongs and to improve himself. These facts support the trial court's finding that Hicks' statements were not involuntary.

(2) Hicks' conviction and sentence for the second count of first-degree robbery is vacated. As Hicks notes, it violates the double jeopardy clause of the United States Constitution to subject him to multiple convictions for taking multiple items of property in the course of a single, continuous act of force. The state concedes this point, agreeing with Hicks' characterization of the law.