

Embody v. Ward

On a Sunday afternoon, dressed in camouflage, Leonard Embody slung an “AK47” pistol (*pictured below*) across his chest loaded with a 30 round Magazine and struck out for Radnor Lake Natural Area, a State Park in Nashville. Walking through the park, Embody encountered citizens - one of whom threw up his hands in surrender when he saw him. Others, naturally concerned, contacted the Park Ranger who located Embody and requested to see his handgun permit, which was produced. The Ranger then tried to determine if the weapon was actually covered by the permit. Tennessee law defines a handgun as a firearm with a barrel length of less than 12 inches that is designed or modified to be fired with one hand. The barrel of the AK47 pistol was 11.5 inches long and the end of the barrel had been painted orange. Unsure if the weapon was legal as a handgun, the Ranger left Embody to wander the park while he went back to contact his supervisor. After getting instruction from the Chief Ranger, the Park Ranger and his supervisor returned with Metro Police to find Embody in a parking lot. They “took him down,” seizing his weapon to make a determination as to its legality. After the weapon was determined to be a handgun under the law, it was returned to Embody and he was allowed to go on his way. The incident took about two and a half hours.

Embody filed a lawsuit against the officers for violation of his rights. He alleged his Second Amendment right to bear arms was violated by the temporary seizure of his gun. He alleged his Fourth Amendment right was violated by his two and a half hour detention while the officers investigated if the firearm was legal. Embody’s claim was dismissed by the District Court and he appealed to the 6th Circuit Court of Appeals who issued their decision August 30, 2012.

The court pointed out that an investigative detention must first be supported by reasonable suspicion of a crime, must be limited to an investigation only of the issue reasonably suspected and the investigation must be diligently pursued by the investigating officer to prove or dispel the suspicions.

The Court held that the open carrying of the firearm in question gave the officer “ample reason” to suspect that Embody possessed an illegal firearm. The fact that the tip had been painted orange further increased the officer’s suspicion that an attempt was being made to disguise an illegal weapon. The Court noted that the scope of the detention was related to the suspicion for the stop, and was therefore reasonable, and the officer was diligent in trying to resolve the matter as expeditiously as possible under the circumstances. “The officers stopped him only as long as it took to investigate the legitimacy of the weapon and, at his insistence, bring a supervisor to the park. No Fourth Amendment violation occurred.”

The Second Amendment claim was likewise defeated. The Court held that 42 U.S.C. § 1983 actions were designed to vindicate federal law, not state law. Officers alleged failure to comply with state law does not violate the Constitution. If the violation of the Second Amendment he argued is meant to be that it prevents Tennessee from outlawing guns, then even if that were true, the officers would have qualified immunity from liability. Either way the claim is dismissed.

