

I Object!

– James Eckert, Esq.

“Hicks” Stops

If a car is pulled over, the cops will need more than reasonable suspicion to hold the driver while they scrounge around elsewhere for evidence. Under *People v Hicks*, the police do have authority to detain an individual on only reasonable suspicion under certain circumstances: "*Hicks* allowed a brief investigatory detention so that victims of a recent robbery could participate in a showup ... There, the efficacy of the prompt showup procedure depended on the defendant's and witnesses' simultaneous presence" (*People v Ryan*, 12 NY3d 28, 30 [2009]). Because the detention for a showup is limited in duration, because it will cause either the arrest or the release of the detained person, police may detain someone briefly for that purpose. It requires reasonable suspicion to believe that the detained person committed the crime, and the ability to conduct a showup to either develop probable cause, or release the person after non-identification.

However, *Hicks* does not create a blanket ability to detain people for short periods while the police search for evidence. The Public Defender's Office recently won at the Court of Appeals on this issue. The police were investigating a carjacking. Five hours later police detained the defendant on less than probable cause (the Court of Appeals did not reach the issue of whether it was also less than reasonable suspicion). While the defendant was detained, other police had the witness view a photo array. The Court of Appeals held:

"Proper administration of the photo array did not require defendant's presence and, in fact, the police officer did not even know that the non-victim witness had become available to view the photo array when defendant's detention began. Nor were there any other exigencies that might have permitted holding defendant while the photo array was conducted ... Thus, the only permissible inference that can be drawn is that this detention was undertaken simply to make it convenient for the police to arrest defendant if a positive identification subsequently occurred". (*People v Ryan, supra.*)

It's true that police can hold a defendant, based only on reasonable suspicion, to conduct a showup, but this authority is limited to those facts which require the presence of the defendant, and where it is clear that he will be released if not identified. *Hicks* is not blanket authority to detain someone, even briefly - *Ryan* was held 13 minutes - while police search for evidence to justify the detention. Unless attenuated, the fruits of the illegal detention must be suppressed.