State v. Reid, 1 Ala. 612 (1840)

Reid was a sheriff in Alabama. He began to carry a concealed pistol after a confrontation with a "dangerous and desperate character." That concealed weapon violated an Alabama law prohibiting "any person" from "carrying concealed about his person, any species of fire arms, or any Bowie knife, Arkansas tooth pick, or any other knife of the like kind, dirk, or any other deadly weapon." Reid was arrested, tried, found guilty, and sentenced to pay a $50 fine and spend six hours in prison. He appealed that conviction to the Supreme Court of Alabama. Reid claimed the state law was inconsistent with the provision in the state constitution declaring, "Every citizen has a right to bear arms in defence of himself and the State."

The Supreme Court of Alabama sustained Reid's conviction. Chief Justice Henry Collier's opinion ruled that the state constitutional right to bear arms did not prohibit legislation banning concealed weapons. How does Justice Collier reach this conclusion? How does he distinguish Bliss v. Commonwealth *(KY 1822), a case that declared a concealed weapons law unconstitutional? Do you believe the differences between the two cases turn on the differences in state constitutional language?*

CHIEF JUSTICE COLLIER

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A provision similar to that, with which the statute in question is said to come in collision, is contained in the constitutions of several of the States, and was doubtless suggested by the [English] *Bill of Rights* . . . which embodies many provisions in favor of the liberty of the subject, and is said to be for the most part, in affirmance of the common law. That enactment after declaring it against law, to raise or keep a standing army in the kingdom in time of peace, without the consent of Parliament, declares "that the subjects which are Protestants may have arms for their Defence, suitable to their Conditions and as allowed by law." . . .

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. . . The evil which was intended to be remedied by the provision quoted, was a denial of the right of Protestants to have arms for their defence, and not an inhibition to wear them secretly. Such being the mischief, the remedy must be construed only to extend so far as to effect its removal.

We have taken this brief notice of the English statute, as it may serve to aid us in the construction of our constitutional provision, which secures to the citizen the right to bear arms.

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. . . The constitution in declaring that, "Every citizen has the right to bear arms in defence of himself and the State," has neither expressly nor by implication, denied to the Legislature, the right to enact laws in regard to the manner in which arms shall be borne. The right guarantied to the citizen, is not to bear arms upon all occasions and in all places, but merely "in defence of himself and the State." The terms in which this provision is phrased seems to us, necessarily to leave with the Legislature the authority to adopt such regulations of police, as may be dictated by the safety of the people and the advancement of public morals. . . .

We do not desire to be understood as maintaining, that in regulating the manner of bearing arms, the authority of the Legislature has no other limit than its own discretion. A statute which, under the pretence of regulating, amounts to a destruction of the right, or which requires arms to be so borne as to

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render them wholly useless for the purpose of defence, would be clearly unconstitutional. But a law which is intended merely to promote personal security, and to put down lawless aggression and violence, and to that end inhibits the wearing of certain weapons, in such a manner as is calculated to exert an unhappy influence upon the moral feelings of the wearer, by making him less regardful of the personal security of others, does not come in collision with the constitution.

We are aware that the court of Appeals of Kentucky, in *Bliss v. Commonwealth* (KY 1822) . . . attained a conclusion seemingly the opposite of that to which our judgments incline. . . The twenty-third section of the tenth article of the constitution of Kentucky, provides "that the right of the citizens to bear arms in defence of themselves and the State, shall not be questioned;" and the question before the court was, did the act of the Legislature impugn the right secured by the constitution.

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. . . Whether the peculiar terms employed in the Kentucky constitution, viz: "That the right of the citizens to bear arms, &c. *shall not be questioned,*" influenced to any extent, the conclusion of the court, that the right could not be regulated, but must remain as it was at the time of its adoption, we are not prepared to say. Yet we are strongly inclined to believe, that the inhibition to question the right, was regarded as more potent than a mere affirmative declaration, intended to secure it to the citizen; and that while the one amounted to a denial of the right to legislate on the subject, the other would tolerate legislation to any extent which did not actually or in its consequences destroy the right to bear arms.

But the court say that it is a matter which will not admit of legislative regulation, and in order to test the correctness of its opinion, supposes one Legislature to prohibit the bearing arms secretly, and a subsequent Legislature to enact a law against bearing them openly; and then asks the question, whether the first, or last enactment would be unconstitutional. Under the provision of our constitution, we incline to the opinion that the Legislature cannot inhibit the citizen from bearing arms openly, because it authorizes him to bear them for the purposes of defending himself and the State, and it is only when carried openly, that they can be efficiently used for defence.

. . .

We will not undertake to say, that if in any case, it should appear to be indispensable to the right of defence that arms should be carried concealed about the person, the act "to suppress the evil practice of carrying weapons secretly," should be so construed, as to operate a prohibition in such case. But in the present case, no such necessity seems to have existed; and we cannot well conceive of its existence under any supposable circumstances.

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