

David Mathew Hicks Exonerated Of 2007 Ma- terial Support Of Ter- rorism Conviction

David Mathew Hicks was acquitted on February 18, 2015 by the United States Court of Military Commission Review of his 2007 conviction of materially supporting terrorism in Afghanistan. The Court ruled he had been convicted of conduct that wasn't a crime when it occurred.

Hicks is an Australian citizen who was 24 when he traveled to Pakistan in 1999. In mid-2000 he joined Lashkar-e Tayyiba (LET). Hicks received two months of military training at a LET camp in Pakistan, and then joined [an attack](#) on "Indian forces by firing a machine gun at an Indian Army bunker."

In January 2001 Hicks traveled to Afghanistan with LET's assistance to attend al Qaeda training camps. He received basic military and guerrilla warfare training at al Qaeda's al Farouq camp, which is near Kandahar, Afghanistan. Hicks met Usama bin Laden at the al Farouq camp. In June and August 2001 Hicks received military training at Tarnak Farm in Afghanistan and surveillance training in Kabul, Afghanistan. Hicks was in Pakistan visiting a friend on September 11, 2001, and they watched television coverage of the attacks on the United States on that day.

In September 2001 Hicks returned to Afghanistan and he joined a group of al Qaeda and Taliban fighters near the Kandahar Airport. He was armed with an AK-47 assault rifle.

In November 2001 he brought his AK-47 to Konduz, Afghanistan where he went to the front lines outside the city to join the ongoing fighting against the Northern Alliance (The official name of the Northern Alliance was the United Islamic Front for the Salvation of Afghanistan, and it received aid from Iran, Russia, Turkey, India, Tajikistan, the U.S., and other countries.) Hicks fled when the al Qaeda and Taliban positions were overrun. He sold his AK-47 to raise money to pay for a taxi in an attempt to flee to Pakistan.

In early December 2001 the Northern Alliance captured Hicks in Baghlan, Afghanistan. The Northern Alliance sold prisoners to the U.S. Hicks [was sold for](#) \$5,000 and he was transferred to U.S. control on De-



David Hicks in November 2013 when he appealed his conviction (Reuters)

cember 15, 2001. There was no allegation that Hicks ever fired on or caused harm to any American.

In 2004 Hicks executed an Affidavit alleging he was sexually abused, routinely deprived of sleep, beaten, kept in solitary confinement almost 24 hours a day, and administered unidentified medication. He also stated he saw other detainees savaged by dogs.

In 2006 the Military Commissions Act (MCA) was enacted, and several violations of it were filed against Hicks.

After more than five years incarceration at Guantanamo Bay, the U.S. agreed to dismiss the most serious charges against Hicks in exchange for his [Alford plea](#) to one count of "providing material support "from in or about December 2000 through in or about December 2001, . . . to an international terrorist organization engaged in hostilities against the United States, namely al Qaeda... in violation of 10 U.S.C. § 950v(b)(25)." Conditions demanded by the U.S. included: Hicks' 5 years at Guantanamo Bay could not be credited to reduce his sentence, he must not speak to the media for one year after completion of his sentence, he must not take legal action against the United States for his treatment and incarceration, and he must withdraw allegations he was illegally abused and treated while under U.S. custody.

On March 30, 2007 Hicks' Alford plea was accepted by the military tribunal, although he insisted he did nothing wrong. Hicks became the first person convicted by the U.S. military tribunal at Guantanamo Bay.

On May 1, 2007 Hicks was sentenced to seven years confinement, with all but 9

months suspended. On May 20 he was transferred to Australia to complete his sentence.

Eleven days later, on December 26, the U.S. designated LET as a Foreign Terrorist Organization.

Hicks was eventually transferred to Guantanamo Bay, Cuba where he was incarcerated as an unlawful enemy combatant.

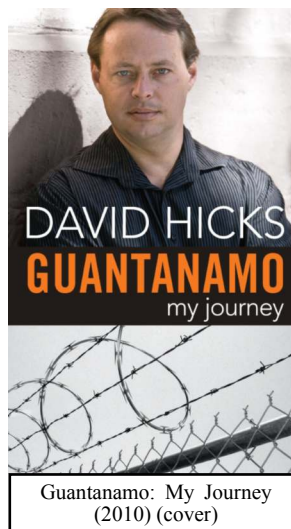
months suspended. On May 20 he was transferred to Australia to complete his sentence.

Hicks did not appeal his conviction and sentence.

More than six years after his arrest in Afghanistan, the 32-year-old Hicks was released from custody on December 29, 2007. A year later his control order barring media contact expired. He told the media that he was innocent and only took a plea deal out of duress to get out of Guantanamo Bay and physical and psychological mistreatment by the U.S.

In 2010 Hicks' autobiography "*Guantanamo: My Journey*," was published in Australia.

After a trial Salim Hamdan had been convicted under the same material support of terrorism statute that Hicks had been convicted of violating. Hamdan appealed. On October 16, 2012 the United States Court of Appeals ruled in [the case of](#) *Salim Hamdan v. United States*, 696 F. 3d 1238 (Ct of Appeals, Dist. of Columbia Circuit, 10-16-2012), that the material support of terrorism charge that Hamdan had been convicted of could not be applied retroactively to his conduct that allegedly occurred prior to enactment of the MCA in 2006.



Guantanamo: My Journey (2010) (cover)

Based on the *Hamdan* case Hicks appealed his conviction on November 5, 2013.

After Hicks filed his appeal, on July 14, 2014 the D.C. Circuit Court of Appeals vacated the material support of terrorism conviction of Ali Hamza Ahmad Suliman Al Bahlul. In *Al Bahlul v. United States*, 767 F.3d 1 (D.C. Cir. 2014) (en banc). [The Court ruled](#) the statute couldn't be retroactively applied to Al Bahlul's alleged conduct prior to 2006.

Briefing continued in Hicks' case, with the U.S. arguing he waived his right to appeal, and so his appeal should be dismissed. However, in its brief filed on January 16, 2015 the U.S. [conceded that](#) if his appeal is allowed and, "If the Court so reaches the merits, then it should decline to affirm Hicks's material-support conviction under *Buhlul*."

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On February 18, 2015 the U.S. Court of Military Commission Review issued its decision in *David M. Hicks v. USA*, No. 13-004 (U.S. Ct. Mil. Comm. Review, 2-18-2015). The Court first ruled that irrespective of the arguments related to Hicks' possible waiver of his right to appeal, the Court had *de novo* power to [review his appeal](#) because "this Court enjoys broad authority under 10 U.S.C. § 950f(d) to "affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved." Then after considering the merits of Hicks' appeal, the Court cited the *Bahlul* case in ruling, "The findings of guilty are set aside and dismissed, and appellant's sentence is vacated."

David Hicks, now 39, [told the Guardian newspaper](#) after he learned of the court's ruling:

"Obviously it feels good that I'm an innocent man. I don't believe it should be surprising to anyone considering the circumstances over the years. ... the American and Australian authorities were aware of my innocence from day one, It is just unfortunate that because of politics, I was subjected to five and a half years of physical and psychological torture that I will now live with always."

[Click here to read the ruling](#) in *David M. Hicks v. USA*, No. 13-004 (U.S. Ct. Mil. Comm. Review, 2-18-2015).

Hicks' autobiography "Guantanamo: My Journey" is not available from Amazon.com in the United States. However, the electronic Kindle version is available from Amazon's Australian website [by clicking here](#).

Source:

[David M. Hicks v. USA](#), No. 13-004 (U.S. Ct. Mil. Comm. Review, 2-18-2015)

[David Hicks](#), Wikipedia.org (last visited 2-18-2015)

[Hicks to appeal](#), then sue over conviction, By Phillip Coorey and Natalie O'Brien, *The Age*, October 17, 2012

[U.S. Acknowledges Conviction of David Hicks](#), Guantanamo Detainee, Should Not Stand, By Raymond Bonner (Special to ProPublica), ProPublica.org, Jan. 28, 2015

[David Hicks](#): It feels good to be an innocent man, By Daniel Hurst, Michael Safi and agencies, *The Guardian* (Australia), February 19, 2015

[Al Bahlul v. United States](#), 767 F.3d 1 (D.C. Cir. 2014) (en banc)

Gary Alan Mauz Exonerated Of Disorderly Conduct For Calling Neighbor A "Whore"

On June 23, 2015 a three-judge panel of the Pennsylvania Superior Court [overturned the disorderly](#) conduct conviction of Gary Alan Mauz for calling his neighbor a "whore," and making other derogatory comments to her. The appeals court [noted that](#), "We find Appellant's comments reprehensible but not criminal."

At about 10 p.m. on April 24, 2013 Victoria Battistini was in the backyard of her home in Warrington, Pennsylvania when she saw from a street light that her neighbor Mauz was standing at the front door of his home. Battistini had a fenced backyard and Mauz' house was diagonal from her house.

Battistini heard Mauz directing comments toward her that included, her "fat mom humps [her] dog," and "whore." The two were separated by Battistini's backyard fence and they were not physically close to each other.

The next day Battistini called the police, reporting that Mauz' comments made her feel "uncomfortable and scared." The officer that responded cited Mauz for misdemeanor disorderly conduct on the basis he used obscene language towards Battistini, and he had created a hazardous or physically offensive condition for her.

Mauz had a bench trial during which the prosecution's only witnesses were Battistini and the investigating officer. Mauz was found guilty on June 20, 2014 of disorderly conduct for making a hazardous or physically offensive condition under 18 Pa.C.S.A. § 5503(a)(4). He was fined \$50 and ordered to pay court costs.

Mauz appealed, arguing the State introduced insufficient evidence to sustain his disorderly conduct conviction.

The Pennsylvania Superior Court's [unanimous ruling](#) on June 23, 2015 acquitted Mauz of his disorderly conduct conviction. The Court's ruling in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, No. 2068 EDA 2014 (Superior Court of Pennsylvania, 6-23-2014) [states in part](#):

Appellant argues the Commonwealth produced insufficient evidence to sustain a conviction under § 5503(a)(4).

...
"The offense of disorderly conduct is not

intended as a catch-all for every act which annoys or disturbs people; it is not to be used as a dragnet for all the irritations which breed in the ferment of a community." ...
"It has a specific purpose; it has a definite objective, it is intended to preserve the **public peace**."



Victoria Battistini (Victoria Battistini's Facebook page)

...
We concluded the defendant's action did not jeopardize "the public peace." In making statements that were "briefly irritating", the defendant did not commit disorderly conduct.

...
... we believe the evidence is insufficient to establish that Appellant acted with the intent to cause **public** annoyance, inconvenience or alarm.

Furthermore, we do not believe Appellant recklessly created a risk of a hazardous or physically offensive condition under § 5503(a)(4). ... Here, Appellant made a few brief, offensive remarks to Battistini and then retreated into his home. The two were separated by a fence, and the record fails to reflect that anyone else heard Appellant's statements.

We also do not believe Appellant's conduct created a physically offensive condition ... Appellant [] did not invade Battistini's physical privacy, as the encounter occurred when she was present in her yard and visible to Appellant from his own yard.

...
For all of the foregoing reasons, we conclude the record ... does not contain sufficient evidence to support Appellant's conviction under § 5503(a)(4). We therefore vacate the judgment of sentence. (Note: The words in bold are in the judge's opinion)

Mauz' retrial is barred by double jeopardy.

[Click here to read the ruling](#) exonerating Gary Mauz in *Commonwealth of Pennsylvania vs. Gary Alan Mauz*, No. 2068 EDA 2014 (Superior Court of Pennsylvania, 6-23-2014).

Source:

[Commonwealth of Pennsylvania vs. Gary Alan Mauz](#), No. 2068 EDA 2014 (Superior Court of Pennsylvania, 6-23-2014)

[Pennsylvania judge vacates](#) disorderly conduct conviction of man who called neighbor a 'whore', By Joel Landau, *New York Daily News*, June 24, 2015

