



LGIT'S *COMMANDER'S LOG* MARCH 2013

QUESTION: Does the holding in *Florence v. Board of Chosen Freeholders* preclude the strip searching of any arrestee who is not going to be admitted to the general jail population?

ANSWER: No. The *Florence* decision holds that it does not violate the Fourth Amendment to require a visual strip search of every arrestee who is going to be admitted to the general population, regardless of the offense for which the person is arrested and without the need for individualized suspicion. Strip searches of arrestees who are not going to be admitted to the general population must be justified by the particular circumstances leading to the search.

**CASE: *Eric Jones, v. Susan Murphy, et al.* (Memorandum Opinion)
U.S. District Court for the District of Maryland, Decided March 5, 2013**

Between August 2002 and April 2005, the five plaintiffs in this case were each arrested on charges *not* involving weapons, drugs, or felony violence and brought to the Baltimore Central Booking Intake Center (“Central Booking”). Central Booking is divided into two sections, the booking area and the housing area. Every arrestee brought to the booking area goes through a process that includes a brief medical exam, a more thorough search than the pat search at the entryway, intake at the booking window, and a fingerprint and photo identification. Arrestees do not enter a “general population” after the initial search during the booking process. Rather, they are held on the booking floor in group holding cells containing up to 20-25 arrestees. Arrestees remain in group holding cells until presentment before a court commissioner, generally within 24 hours of their arrival at Central Booking. Some are admitted to the general jail population; others are not. Also, the presence of contraband in the holding cells has been a continuing problem.

The “more thorough search” in the booking area requires the arrestee to either strip naked or drop his underwear, squat, and cough as part of a search before being taken to a group holding cell. No contraband was found on any of the plaintiffs and it was not suspected that any of the plaintiffs were carrying contraband. All of the plaintiffs were released directly from the booking floor upon presentment before a court commissioner. None was admitted to the general population on the upper floors of Central Booking.

The plaintiffs sued on the grounds that each was strip searched without any individualized finding of reasonable suspicion by Central Booking employees that he was concealing drugs, weapons, or other contraband.

The strip searches in this case were performed long before the Supreme Court's 2012 decision in *Florence v. Board of Chosen Freeholders*. Prior to the decision in *Florence*, the controlling law in the Fourth Circuit precluded strip searches of those arrested for offenses not likely to involve weapons or contraband in the absence of any individualized finding of reasonable suspicion. The *Florence* decision, however, established that it does not violate the Fourth Amendment to require a strip search of every arrestee who will be admitted to the general population of a jail regardless of the offense for which he is arrested and without the need for individualized suspicion that the arrestee may have contraband or weapons. In *Florence*, the Supreme Court once again paid deference to its long standing opinion in *Bell v. Wolfish*, the 1979 case in which the Court said that "deference must be given to the officials in charge of the jail unless there is 'substantial evidence' demonstrating their response to the situation is exaggerated." Since, the plaintiffs in this case had not yet been presented to a judicial officer for a determination of whether they would be admitted to the general population at the time they were strip searched, they argued that the holding in *Florence* did not apply to them.

The court, however, found that the case presented an "exception" to the general holding in *Florence*. Although the plaintiffs had not been presented to a judicial officer and were released from Central Booking rather than being admitted to the general jail population, they were held in physical facilities that put them in substantial contact with other detainees, including some who were later admitted to the general population. Also, the presence of contraband in these holding cells was a known problem. Accordingly, "without addressing either the wisdom or the constitutionality of a blanket strip search policy at Central Booking", the court granted the defendants qualified immunity from suit and liability.

NOTE: This is the first opinion in Maryland recognizing the possible exceptions to the holding in *Florence*. Understand that in *Florence*, the Supreme Court did not rule on the types of searches that would be reasonable in instances where, for example, a detainee will be held without assignment to the general jail population and without substantial contact with other detainees. Further, the court did not hold that it is *always* reasonable to conduct a full strip search of an arrestee whose detention has not yet been reviewed by a judicial officer and who could be held in available facilities apart from the general population. In other words, there are exceptions to every rule, and exceptions will be found to the principles concerning strip searches announced in *Florence*. However, if a detainee who is not admitted to the general jail population is strip searched, detention center administrators must be prepared to detail the circumstances, including potentially the detainee's contact with other detainees and the potential presence of contraband in a particular housing area that warranted the strip search.

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