



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

Roadside Sexually Invasive Searches Related to Traffic Stop Arrests for CDS

Question: Are roadside sexually invasive searches made as a result of a traffic stop arrest related to CDS allowable without exigent circumstances?

Answer: No. To perform a sexually invasive search on the side of a public roadway, exigent circumstances must exist. Simply taking steps to shield the suspect's private areas from public view is not enough.

Case: *Shawna Lynn Faith v. State of Maryland*
Court of Special Appeals of Maryland
Decided August 2, 2019

The Traffic Stop, The Request for K-9, and the Vehicle Search

On April 21, 2017, Frederick County Sheriff's Deputy Douglas Storee was engaged in traffic enforcement in a marked police vehicle on Interstate 70, near the exit for Route 144. The speed limit was 70 mph and traffic was moderate to heavy. At 7:15 p.m., Deputy Storee observed a vehicle traveling westbound following another vehicle too closely. The vehicle was no more than a car and a half length behind the other. Deputy Storee activated his emergency lights and initiated a traffic stop. The vehicle pulled onto the right

shoulder of the highway and Deputy Storee positioned his vehicle behind it. His emergency lights remained activated. The driver was identified as Shawna Lynn Faith. There was a female passenger in the front seat and Ms. Faith's three-year old son was in the back seat. Ms. Faith was wearing cut-off jean shorts and a top that did not cover her arms.

While informing Ms. Faith of why he made the stop, Deputy Storee noticed track marks on her arms. He asked her where she was coming from, and she said she was returning to Cumberland, after taking someone else's child to Baltimore. During the conversation, the deputy noticed that both women seemed to be squinting, as if their eyes were sensitive to light, another sign of drug use.

Based on what he had heard and seen, Deputy Storee returned to his car and requested a K-9 Unit at the scene. The K-9 Officer arrived two minutes later, while Deputy Storee was still completing paperwork related to the stop. His emergency lights were also activated. In accordance with standard procedure, the occupants were asked to exit the vehicle before the canine scan began. The adult occupants were patted down for weapons and then walked back to Deputy Storee's vehicle. They stood near the front of the vehicle, on the passenger side. The dog alerted at the doors of Ms. Faith's car. Deputy Storee called for an officer to conduct a "female search" and proceeded to search the

vehicle. While the vehicle was being searched, Sergeant Amanda Ensor arrived, parking her vehicle behind the other police vehicles. Her emergency lights were also activated. The vehicle search yielded drug paraphernalia, crack cocaine, and suspected heroin residue on a metal spoon.

The Sexually Invasive “Look-In” Search and the Recovery of More Drugs

Sergeant Ensor asked Ms. Faith to move to the rear of and behind Deputy Storee’s vehicle. Deputy Storee, the K-9 Officer, the female passenger and the child remained near the front of the vehicle, standing closer to the grassy area adjacent to the shoulder. Sergeant Ensor was facing oncoming traffic with her back towards the other officers and the vehicle’s occupants. Ms. Faith stood in front of Sergeant Ensor, near the front of the K-9 officer’s vehicle.

Sergeant Ensor told Ms. Faith that she was going to be searched. It was still daylight at the time. She told Ms. Faith to unbutton her shorts but not pull them down. Ms. Faith complied. Sergeant Ensor then told her to pull her shorts and underwear away from her body. Ms. Faith did so, and Sergeant Ensor looked in and saw a condom protruding from Ms. Faith’s vagina. She asked Ms. Faith to walk back towards the front of Deputy Storee’s vehicle and asked the K-9 Officer for an evidence bag. Deputy Ensor told Ms. Faith that, if she wanted, she could be taken to the Law Enforcement Center to have the condom removed there. Ms. Faith declined and said she would remove the condom herself. Ms. Faith and Sergeant Ensor walked up to Ms. Faith’s car and Ms. Faith opened the door and sat on the edge of the passenger seat. Ms. Faith, who was fully clothed, reached into her clothing and pulled the condom out of the side of her shorts. She was screened from view by the open car door, and Sergeant Ensor made sure no one was looking in her direction. Inside of the condom were a total of 19 individual bags of suspected crack cocaine. Ms. Faith was arrested.

The Charges, Motion to Suppress, and Conviction

Ms. Faith was charged with numerous offenses, including possessing cocaine with the intent to distribute. She moved to suppress the evidence against her, arguing, in part, that Sergeant Ensor had conducted an unconstitutional “visual body cavity” search of her person. The circuit court denied the motion. Ms. Faith was convicted and sentenced to eighteen months imprisonment. She appealed.

The Decision on Appeal

The Court of Special Appeals reversed the circuit court, overturning Ms. Faith’s conviction. The court concluded that the roadside search was unreasonable, and therefore unconstitutional, in light of the manner, location, and non-exigent circumstances in which it was conducted.

In reaching its decision, the court reviewed numerous Maryland and other court decisions dealing with searches that involve viewing or inspecting a suspect’s private areas, whether they be incident to arrest or otherwise. The court conceded that the term “strip search” has been defined and used in differing ways by courts, including Maryland courts. In Maryland, a “strip search” has become an umbrella term, encompassing inspections of naked individuals, visual inspection of genital and anal areas, and manual inspection of body cavities. Certainly, and at its most basic, a strip search involves the removal of an arrestee’s clothing for inspection of the underclothes and/or body. However, the term has been used by courts to include visual inspections of the genital and anal regions of the body or searches requiring the removal or rearrangement of some or all clothing to permit visual inspection of the genital areas, breasts, and/or buttocks.

In this case, to avoid confusion, the court elected to use the term “sexually invasive search” instead of “strip search.” It defined a “sexually invasive search” as one that “involved movement of the



clothing to facilitate the visual inspection of a person's naked body." Next, the court said that a sexually invasive search can include a roadside "look-in" search or a roadside "reach-in" search. A "look-in" search is a visual inspection of the genital area, through manipulation of but no removal of clothing, no touching, and no visual inspection of internal body cavities. A "reach-in" search involves the manipulation of a person's clothing to enable an officer to "reach in" and retrieve contraband without exposing the arrestee's private areas to others. Although look-in and reach-in searches often go together, this is not always the case. Both searches, however, are sexually invasive searches, and less intrusive forms of strip searches.

Regardless of whether a search is deemed a strip search or a sexually intrusive search, it will be measured by the four factors identified by the Supreme Court in 1979 in the case of *Bell v. Wolfish*:

(1) the scope of the particular intrusion;
 (2) the manner in which the search was conducted;
 (3) the justification for initiating the search; and (4) the place in which the search was performed.

In this case, the search of Ms. Faith by Sergeant Ensor was deemed to be a sexually invasive "look-in" search. As such, the scope of the search, although reasonable, was deemed to be intrusive and demeaning. As to the justification for initiating the search, the court said that a sexually invasive search may be conducted incident to arrest if police have a reasonable articulable suspicion that the arrestee is concealing drugs on her body. Here, the K-9 alert, the discovery of drugs in the car, and the observations of the officers, more than justified the suspicion that Ms. Faith had drugs on her person.

The court's real concerns, and the ones that led to reversal, were the manner and location of the search. The court observed that the question of whether a sexually invasive search is conducted in a private or public setting is especially relevant to the determination of reasonableness. Here, the court found that, despite Sergeant Ensor's efforts, Ms.

Faith's search was both actually and potentially witnessed by onlookers. The court observed that "an interstate highway is a quintessentially public location." And, absent exigent circumstances, there was no urgency to conduct the search on the side of the highway when it was still daylight. Ms. Faith had made no attempt to flee and her pat-down did not reveal the presence of a weapon. As a result, the court concluded that the search could have, and should have, been conducted in a more private location, including in one of the vehicles or at the Law Enforcement Center. In sum, the court held that the location of the search and the lack of exigency made it unconstitutional.

Note: The court's ultimate concern was that, without a showing of exigent circumstances, every search made as a result of a traffic stop arrest related to CDS could trigger a "look-in" search, even in the most public of circumstances. Exigent circumstances necessary to conduct a "strip search" or "sexually invasive search" in a more public location could include an attempt to destroy or dispose of contraband, possession of a weapon, and even medical distress. And, although "consent" is a recognized exception to the warrant requirement, it can be expected that, when it comes to strip searches or other forms of sexually invasive searches, courts will tend to be skeptical. **When it comes to any search that involves a suspect's private areas, the rules for officers must be: (1) the more privacy the better, and (2) if, by necessity, the search takes place in a more public location, exigent circumstances must exist to justify it.**

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