LGIT'S COMMANDER'S LOG
December 2008

The Constitutional Limits Upon Strip Searches of Pretrial Detainees

QUESTION: Can a plaintiff arrested for minor traffic offenses be subjected to a strip search upon entry into a detention facility?

ANSWER: No. A pre-trial detainee, arrested for a minor offense not normally associated with violence, may not be strip searched unless there is an individualized reasonable suspicion that the arrestee is carrying or concealing a weapon or other contraband.

CASE: *Munyiri v. Haduch*, United States District Court for the District of Maryland
Decided November 2, 2008

In *Munyiri v. Haduch*, Rosemary Munyiri ("Munyiri") filed a suit under 42 U.S.C. § 1983 arising from her arrest by a Baltimore City Police Officer and her subsequent detention at the Baltimore Central Booking and Intake Facility. Included among the defendants were the Secretary of the Maryland Department of Public Safety and Correctional Services (Secretary Maynard) and the Warden of the Central Booking and Intake Facility (Warden Williams). The facts established that Munyiri is a Registered Nurse who works at The Johns Hopkins Hospital. On April 12, 2008, she left the hospital at 7:35 p.m. and began her commute home. Unbeknownst to her, an accident had occurred on I-83 North and Baltimore city police officers had blocked some of the northbound exits ramps. Munyiri entered one of the closed ramps by driving past or over road flares that had been deployed by a Baltimore City police officer. The officer pursued Munyiri in his vehicle and pulled her over. He charged her with three misdemeanor traffic offenses: (1) negligent driving; (2) failure of driver to "curb" upon signal by police vehicle; and (3) attempt by driver to elude uniformed police by failing to stop. Munyiri was transported to the Central Booking and Intake Facility ("CBIF"). Upon Munyiri's arrival, a nurse took her vital signs and informed her that she would be strip searched. Officers at CBIF ordered Munyiri to disrobe and conducted a physical search of her hair and a visual search of her body cavities. She was also ordered to squat and cough while disrobed. After the search, Munyiri was put in a holding cell, where she waited for twenty-four hours before being released on basil. At trial, the arresting officer failed to appear, and the charges against Munyiri were dismissed. She filed her civil suit three weeks later.

Munyiri alleged that Secretary Maynard and Warden Williams violated her Fourth and Fourteenth Amendment right to be free of an unreasonable search by implementing and maintaining a policy and practice of conducting strip searches and visual body cavity searches of all persons admitted to the CBIF, regardless of the charges filed against, or the circumstances surrounding the arrest of, the individual. Specifically, Munyiri asserted a claim of supervisory liability against Maynard and Williams in their individual capacities. Both

Maynard and Williams moved to dismiss on grounds of qualified immunity. The Court denied there motions on November 2, 2008, thereby allowing the case to proceed against these Defendants.

In denying the motions to dismiss, the Court ruled that Munyiri's Complaint adequately set forth the minimal facts needed to state a claim of supervisory liability for a Fourth Amendment violation. She alleged that both the Secretary and Warden had actual or constructive knowledge that their subordinates were engaged in performing unconstitutional strip searches; that their response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the offensive searches; and that there was affirmative, causal link between their inaction and the strip search of Munyiri. For these reasons, at least at this early stage of the case, the Court allowed Munyiri's claims against the Secretary and Warden to proceed. The ultimate outcome will depend on the evidence adduced during discovery.

NOTE: This case is an extension of *Jones v. Murphy* (*See* June 2007 Commander's Log), a case also concerning the strip search policy at CBIF. As these cases demonstrate, our federal district court is intolerant of any strip search policy that authorizes strip searches of persons arrested for an offense not likely to involve weapons or contraband. It is also important to note that Munyiri was a pre-trial detainee, not a convicted prisoner. A pre-trial detainee, arrested for a minor offense not normally associated with violence, may not be strip searched unless there is an individualized reasonable suspicion that the arrestee is carrying or concealing a weapon or other contraband. That is not to say that individuals may never be strip searched following an arrest. In fact, courts have said that it is objectively reasonable to conduct a strip search of one charged with a crime of violence before that person comes into contact with other inmates. For individuals charged with traffic violations or other nonviolent minor offenses, probable cause is necessary prior to strip searching that individual. On the other hand, although convicted inmates maintain some reasonable expectation of privacy while in prison, those privacy rights are less than those enjoyed by non-prisoners. Convicted inmates do not have a Fourth Amendment right to be free from strip searches, which can be conducted by prison officials with or without probable cause provided that the search is conducted in a reasonable manner. Again, it is always sound to review your facility's policy on strip searches and provide the appropriate training to officers or employees that perform strip searches on inmates.

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