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A search incident to a lawful arrest, even one for possession of narcotics, does not automatically carry with it the right to conduct a strip search

QUESTION: Does a search incident to a valid arrest always include the ability to conduct a strip search of the suspect?

ANSWER: No. A strip search can only be justified by a reasonable, particularized suspicion that evidence will be found on or in the body of the arrestee.

CASE: *State v. Gregory Maurice Harding*, Court of Special Appeals of Maryland, Decided December 10, 2010

In this case, the Court of Special Appeals discussed, at length, the legal principles governing “strip searches” under the Fourth Amendment and Maryland law. The facts established that on September 2, 2009, Detectives Richard Hearn and Timothy Stadler of the Vice and Narcotics Section of the Baltimore County Police Department received information from a reliable informant that Gregory Maurice Harding was selling crack cocaine out of a blue Audi, with Maryland tag 7EPG15, in the Towson and Parkville areas. Another detective in the unit had received a complaint several months earlier that a man named Harding was selling crack cocaine at a liquor store on Perring Parkway and McClean Boulevard. Eight days later, on September 10, Detectives Hearn and Stadler were conducting undercover surveillance on Joppa Road when they spotted a blue Audi with the license tag number that had been supplied by the informant. The detectives requested that a marked car driven by Sergeant John Matthews make a traffic stop if possible. Sergeant Matthews paced the Audi and found that it was traveling 50 miles per hour in a 35 mile per hour zone. Sergeant Matthews then made a traffic stop. Harding was driving the Audi at the time of the stop.

As a routine part of the traffic stop, Sergeant Matthews checked Harding’s driver’s license number and vehicle registration with communications. While the check was still in progress, the detectives called a K-9 unit to the scene. The K-9 unit arrived less than two minutes after the initial stop. The K-9 alerted twice on the Audi, once at the driver’s door and again at the driver’s seat. In response, the officers thoroughly searched the Audi under the *Carroll* doctrine. They looked in the car’s door panels, air vents, hidden compartments, and everywhere else they could without causing damage. Based upon his specialized training and experience, Detective Stadler was familiar with the places in a

vehicle where narcotics could be concealed. He searched all of those areas to the best of his ability but no narcotics were found. Harding was arrested in light of the K-9 alerts and searched. Detective Hearn conducted the search, reaching into Harding's pockets and patting down his pants legs. He recovered \$1,474 in cash from Harding's front and back pockets. No drugs were found.

At this point, Detective Hearn concluded that it would be necessary to search Harding beyond the limits permitted in a routine search incident to arrest. He told Harding that he had a reasonable suspicion to believe that he was concealing CDS on his person and that he would be further searched at the police station. Again, based on his specialized training and experience, Detective Hearn knew that drug dealers often concealed drugs in their pant legs. He also knew that it took more than a cursory search to find CDS concealed in this manner. Upon arriving at the station, Detective Hearn obtained approval for a strip search from his supervisor. He then placed Harding in a back room shielded from public view and ordered him to remove his pants. Harding complied, and when Detective Hearn shook the pants, a baggie of crack cocaine dropped out and fell to the floor.

Harding was indicted for possession of cocaine with intent to distribute. Prior to his trial, he moved to suppress the baggie of crack cocaine. The trial court granted Harding's motion, finding that the strip search was not based upon a reasonable particularized suspicion that Harding was concealing CDS on his body. The State appealed the ruling.

On appeal, the Court of Special Appeals reversed the suppression order and returned the case for trial. In doing so, the Court first observed that it is the search incident to arrest that almost always provides the "launching pad" for a strip search. The court next observed that although the term "strip search" is an "umbrella" term, it almost always includes the progressive disrobing of the suspect. As an umbrella term, strip searches can range from a "reach-in" (where the officer searching a clothed suspect reaches between an individual's clothing and his skin), to a visual body cavity search (which involves only the careful scrutiny of the mouth of such a cavity, including requiring the suspect to bend and squat), to a manual body cavity search (for which a warrant or court order is generally needed). The court concluded, however, that "although the level of exposure and the level of embarrassment [during a strip search] can be progressive," there can only be one legal standard governing such searches. The court identified this standard as one of "reasonable particularized suspicion." This means that, in addition to probable cause for the underlying arrest, a strip search requires particularized suspicion that evidence of the crime of arrest will be found on or in the body of the arrestee. The probable cause for arrest may or may not give rise to such suspicion. The search incident to the arrest may or may not give rise to such suspicion. In short, search-specific particularization is required on an ad hoc basis, meaning that it is developed in response to each specific situation.

In this case, the officers had a reasonable particularized suspicion that Harding was concealing narcotics on his person. The factors giving rise to this suspicion included the information from the informant, the complaint received by the other detective, the fact

that the suspect was in the area described by the informant and complainant, the fact that the suspect was driving the car described by the informant and complainant, the fact that Harding was the only person in the car, the locations of the K-9 alerts, and the negative results of both the search of the car and of Harding's person at the scene. The totality of these circumstances established the particularized suspicion that Harding was concealing drugs on his person and that only a more invasive search would reveal them. As a result, the strip search performed at the station was valid.

NOTE: As was done in this case, it is best to justify a strip search through a process of elimination. In other words, despite steps taken incident to arrest, the circumstances still point to the suspect's having contraband, *i.e.*, drugs, on his person. Specialized training and experience greatly assist in this regard. Also, keep in mind that the manner in which a strip search is conducted also will be carefully scrutinized by the courts. The "modality" concerns pertaining to strip searches include things such as privacy or unnecessary embarrassment or hygienic concerns, or, in more extreme cases, medical risk to the health of the suspect. Finally, it bears repeating that although a *manual* body cavity search may be seen as the far end of the strip search spectrum, a judicial warrant or court order generally is needed to conduct one. And, although exigent circumstances can excuse the absence of a warrant or order, the circumstances must be truly compelling.

By John F. Breads, Jr., Director of Legal Services, Local Government Insurance Trust

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