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THE EXISTENCE OF PROBABLE CAUSE TO ARREST DOES NOT AUTOMATICALLY JUSTIFY A STRIP SEARCH, A VISUAL BODY CAVITY SEARCH, OR A MANUAL BODY CAVITY SEARCH

QUESTION: Does the right to conduct a full custodial search incident to arrest authorize an officer to conduct a strip search or other invasive search of the arrestee's person?

ANSWER: No. The right to conduct a strip search or other invasive search of the arrestee's person is dependent on the existence of exigent circumstances and, even if such circumstances exist, the search must be performed reasonably, taking into account the manner in which and the location where the search is performed.

CASE: *PAULINO v. STATE*, Court of Appeals of Maryland, Decided June 4, 2007

In *Paulino v. State*, the Court of Appeals considered whether a strip search and visual body cavity search conducted by officers incident to an arrest were reasonable under the Fourth Amendment. After considering all of the facts, the Court concluded they were not. The facts in the *Paulino* case established that on September 29, 2000, Detective Elliot Latchaw and other members of the Baltimore County Police Department received information from a confidential informant who told them that, later that evening, John Paulino ("Paulino") would be in the 1100 block of North Point Road in Dundalk and would be in possession of a quantity of a controlled dangerous substance. The informant also said that Paulino typically hid the controlled dangerous substance in the area of his buttocks. Acting on this information, at approximately 11:15 p.m., officers established surveillance in a parking lot in the 1100 block of North Point Road. A short time later, Paulino was observed in the passenger seat of Jeep Cherokee which entered the lot and proceeded toward a car wash. Officers converged on the car wash and blocked Paulino's vehicle as it entered one of the bays. Paulino was removed and placed on the ground. Since he was wearing his pants low on his butt, his under shorts were exposed. One of the officers lifted up Paulino's shorts and another detective, who was wearing gloves, spread Paulino's butt cheeks and observed the plastic bag containing drugs. He then removed the drugs. The search and seizure were conducted in the presence of approximately 12 police officers and the persons in the Jeep.

Paulino was charged with possession with intent to distribute cocaine and possession of cocaine. Subsequent to his arrest, Paulino filed a motion to suppress, which was denied. He was found guilty of possession with intent to distribute, and sentenced to a mandatory

ten-year prison term. Paulino appealed, challenging only the scope of the search and not the validity of his arrest. The Court of Special Appeals affirmed his conviction. The Court of Appeals then agreed to hear the case.

The Court of Appeals reversed the conviction. In doing so, the Court first addressed the scope of searches incident to arrest. An officer is allowed to conduct a search incident to arrest in order to remove any weapons the arrestee might seek to use in order to resist arrest or effect his escape or to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. The search incident to arrest, however, does not necessarily justify a strip search or bodily intrusion. To the contrary, the Court of Appeals held that the justification for a strip search, or even a more invasive body cavity inspection or search, is not only narrow, but is dependent on the existence of exigent circumstances, namely the safety of the officer and the preservation of evidence. Such invasive searches cannot be justified merely by the probable cause to arrest.

The Court agreed with Paulino that the search conducted was a strip search. The Court also determined that a visual body cavity search had been performed as well. Since these kinds of searches are much more invasive than a general custodial search incident to arrest, the Court concluded that they can only be justified by the urgent and compelling need for police action. Even then, such searches must be conducted reasonably under the circumstances presented. In Paulino's case, the Court found that there were no exigent circumstances justifying the search and that the location in which it was conducted made it unreasonable. The Court said that "[t]he search was conducted in the very place in which he was arrested, a car wash. Similarly, there is no indication . . . that the police made any attempt to limit the public's access to the car wash or took any similar precaution that would limit the ability of the public or any casual observer from viewing the search." The Court believed that Paulino could easily have been moved to a more private location, including one of the police vehicles, to be searched, as opposed to being immediately searched in the bay of the car wash. Accordingly, the Court held that the search unreasonably, and unconstitutionally, infringed on Paulino's personal privacy interests.

NOTE: The Court of Appeals defined a strip search as "any search of an individual requiring the removal or rearrangement of some or all clothing to permit the visual inspection of the skin surfaces of the genital areas, breasts, and/or buttocks." Whenever a strip search, or other invasive search, including a visual or manual body cavity search, is performed, the reviewing court will balance the need for the search against the invasion of personal rights that it entails. In each case, the determinative factors will be: (1) the scope of the particular intrusion; (2) the manner in which it is conducted; (3) the justification, or exigency, for initiating it; and (4) the place in which it is conducted.

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