



**LGIT'S ROLL CALL REPORTER
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In any sexually invasive search, including a strip search, the contraband found on the suspect must be removed in a way that is not designed to instill fear in or pose an unnecessary risk of harm to the suspect.

QUESTION: In an otherwise lawful sexually invasive search of a suspect, does it matter how the contraband discovered is removed?

ANSWER: Yes. Courts will examine how the contraband was removed from the suspect's person as part of the "reasonableness" analysis under the Fourth Amendment.

**CASE: *United States v. Joseph Edwards*, U.S. Court of Appeals (4th Cir.)
Decided December 29, 2011**

In this case, the U.S. Court of Appeals for the Fourth Circuit whether or not a sexually invasive search of drug dealer on a public street violated the Fourth Amendment. The facts established that on January 14, 2009, at 6:00 p.m., Shawnetta Layton and Vontraya Dixon went to the Northern District Police Station in Baltimore alleging that, four hours earlier, Layton's ex-boyfriend, Joseph Edwards, had threatened them by brandishing a firearm. The officer who took the complaint advised Detective Dennis Bailey that Edwards had used a gun in a domestic assault, and that officers were in the process of obtaining an arrest warrant. Detective Bailey was familiar with Edwards and knew that he had a criminal record involving the use or sale of controlled dangerous substances (CDS). Detective Bailey and three other officers immediately tried to locate Edwards, canvassing neighborhoods that Edwards was known to frequent.

At 11:15 p.m., the officers located Edwards walking down a residential street. Although it was dark, a street lamp provided enough light for the officers to identify Edwards. The officers got out of their car and Detective Bailey asked Edwards to approach them. Edwards did so without exhibiting any characteristics generally associated with an individual who is armed. He did not clutch at his waistband area nor did the officers observe any "hand-to-hand" movements that could have indicated the presence of illegal drugs. In fact, the officers had no information at that time that Edwards had drugs on his person. The officers detained Edwards and placed handcuffs on him, securing his arms behind his back. They did so to ensure their safety, based on the information that Edwards might be armed. Edwards was then seated on the curb. Detective Bailey contacted the station to determine if the arrest warrant had been issued. He was told that the warrant had been signed. Edwards was placed under arrest.

Detective Bailey requested a police van to transport Edwards and then conducted what he described as a “pat-down.” He checked everywhere on Edwards’ person where a weapon might be concealed. Detective Bailey didn’t find any weapons and didn’t feel any objects indicating that Edwards might be armed. When the van arrived, the officers decided to “search” Edwards for, in Detective Bailey’s words, “a second time” before placing him in the van. Detective Bailey thought that more extensive search was needed to ensure the safety of the officers and of the van’s driver and because drug dealers often conceal CDS in their underwear. The search was conducted in the middle of the street, beside the police van. While Detective Bailey and the other officers surrounded Edwards, Detective Bailey unfastened Edwards’ belt, loosened it, and pulled Edwards’ pants and underwear six or seven inches away from his body. The officers directed a flashlight beam inside both the front and back of Edwards’ underwear. The officers saw that there was a plastic sandwich baggie tied in a knot around Edwards’ penis. Detective Bailey could also see that the sandwich baggie contained smaller blue ziplock baggies, which contained “a white rocklike substance.” Based on his training and experience, Detective Bailey concluded that the baggie and its contents were consistent with the packaging or distribution of CDS. At this point, one of the officers held Edwards’ pants and underwear open while Detective Bailey dropped the flashlight, put on gloves, took a knife that he had in his possession, and cut the sandwich baggie off Edwards’ penis with the knife. He then reached into Edwards’ underwear and removed the baggie and its contents. All four officers, all of whom were male, saw the drugs being removed; only two, however, had seen Edwards’ penis during the search. The one civilian witness, a nearby resident, could not see Edwards’ genitals or underwear from her doorway.

Edwards was charged under federal law with the intent to distribute cocaine. He moved to suppress the evidence, arguing that the officers’ search inside his underwear was unreasonable under the Fourth Amendment. His motion was denied. Edwards was convicted and sentenced to 120 months’ imprisonment. He appealed.

The Court of Appeals for the Fourth Circuit reversed the denial of Edwards’ motion to suppress. In doing so, the court first ruled that Edwards had been the subject of a “strip search” because the search included “the exposure of a person’s naked body for the purpose of a visual or physical examination.” The court continued, “[a] movement of clothing to facilitate the visual inspection of a suspect’s naked body. . . is a standard example of a strip search.” In essence, a suspect need not have been fully undressed for a search to be deemed a strip search. Next, the court determined that the second search, which was a search incident to arrest (as was the first, regardless of what Detective Bailey called it) was “unreasonable” because of the manner it was conducted, *i.e.*, the use of the knife. Edwards argued that the use of the knife was designed to cause fear and humiliation and the court agreed. In fact, the court ruled that the drugs were removed from Edwards’ person in an “unnecessarily dangerous” and, thus, unreasonable manner that violated the Fourth Amendment. In this regard, the court took note that the government had provided no reason why the concealed contraband could not have been removed in a less dangerous manner.

NOTE: This case does *not* stand for the proposition that the suspect must be allowed to remove contraband discovered under his or her clothing. Some physical contact is permissible, and indeed unavoidable, when police reach into a suspect’s clothing or

undergarments to remove contraband that the suspect has chosen to hide there. But the manner in which the search is conducted or the contraband *removed must not present an unnecessary risk of harm or danger to the suspect*. Perhaps if, as the court suggests, the detective had untied the baggie or removed it by hand or performed the search in “a private well-lit area,” the outcome would have been different. In any event, remember, that in sexually invasive searches such as this one, the court will look not only to the “why, where, when, and how” the search was conducted, but also as to the manner in which the contraband was removed.

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