

Is strip searching inmate arrested for petty offense a Fourth Amendment violation?

Albert Florence was a passenger in a car his wife was driving when they were stopped by police in Burlington County. He was asked for identification and then arrested on an outstanding warrant from Essex County regarding a charge of civil contempt.

While being held in a Burlington jail, [Florence was subjected to a strip search](#) under a policy that required the inmate to strip naked while an officer observed “all body openings and the inner thighs.” He later was transferred to an Essex County lockup, where he underwent the same body search. It was routine procedure in both counties to strip-search all detainees, no matter how minor the offense. After being held overnight in Newark, Florence was released, because civil contempt is not an indictable offense.

He is now the prime plaintiff in a federal civil lawsuit scheduled to be heard Oct. 12 by the U.S. Supreme Court.

The issue before the court is whether or not routine strip-searching of an inmate arrested for a petty offense — in the absence of suspicion that he may be secreting drugs, a weapon or other contraband — violates the Fourth Amendment of the Constitution, which prohibits unreasonable searches. The lower federal courts are divided on the subject, although a majority holds that actual suspicion is required prior to such a search.

But Florence’s case has a twist. In New Jersey, such searches have been illegal under state statute for 22 years. That state law says a person arrested for commission of an offense “other than a crime” shall not be subjected to a strip search unless “there exists probable cause that a weapon, drug or evidence of a crime will be found.” Florence did not sue for violation of his rights under state law, but for violation of his federal constitutional rights. In order to sue state and local officials for monetary damages under the Federal Civil Rights Act, a person must allege a violation of his/her rights protected by the “Constitution and laws” of the United States.

Moreover, a state official is immune from such suits unless there is clearly established law that the search was unlawful.

At the trial level, Judge Joseph Rodriguez found that the law was clearly established and that the jail officials should have been aware that their policies violated the detainee’s rights. The U.S. Court of Appeals in Philadelphia, in a 2-1 decision, disagreed with Rodriguez. The majority ignored New Jersey law, and held that it was within the discretion

of jail officials to decide that institutional security required strip-searching of all detainees despite the “extreme intrusion on privacy” it represented.

An amicus brief, submitted to the Supreme Court by the ACLU in the name of five former New Jersey attorneys general, argues that the court of appeals got it wrong. The former state officials said: While search in violation of state law does not result in a per se violation of the Fourth Amendment, the focus on “reasonable suspicion” in the New Jersey statute is consistent with Fourth Amendment jurisprudence.

The issue is now in the hands of the nine justices of the Supreme Court.

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