Circuit Court for Washington County
Case No. C-21-CR-23-000755

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 796

September Term, 2024

ELIJAH JAMES MILLER

v.

STATE OF MARYLAND

Wells, C.J.,
Leahy,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: January 6, 2026

The Circuit Court for Washington County denied appellant Elijah Miller's motion to suppress drug evidence obtained from a warrantless search incident to arrest in which an officer recovered drugs from Miller's crotch area. A jury subsequently convicted Miller of possession of fentanyl, possession with intent to distribute fentanyl, and driving without a license. Miller presents a single question for our review, which we have slightly rephrased:

I. Did the suppression court err in denying Miller's motion to suppress the drug evidence officers seized after conducting a sexually invasive search incident to arrest?

For the reasons that follow, we hold the suppression court did not err and therefore affirm the denial of Miller's motion to suppress.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 1:00 a.m. on a residential street, Officers Wheat and Huff of the Hagerstown Police Department were on patrol when they conducted a traffic stop of Miller and another individual. A license check revealed that Miller was "ID only and on probation, meaning he does not possess a valid driver's license." Officer Wheat asked Miller to step out of the vehicle and conducted a pat-down search for weapons. During the pat down, Officer Wheat "felt an item not consistent with the human anatomy" in Miller's crotch area. Suspecting the object to be controlled dangerous substances, Officer Wheat placed Miller in handcuffs and escorted him to the rear of the vehicle for a more thorough search.

During Officer Wheat's testimony, his body-worn camera footage for the pat down was played for the court. The video showed Officer Wheat conducting the pat down, during

which Miller claimed multiple times that the item Officer Wheat was feeling was Miller's "nuts." Officer Wheat is heard saying "Don't pull away from me Elijah" and explained in testimony that he was attempting to "prevent fleeing or a use of force." A third officer at the scene is heard telling Miller not to "be stupid" twice.

Officer Huff conducted the more thorough search, which was also recorded by his body-worn camera. While another officer shined a flashlight, Officer Huff testified that he "pulled [Miller's] multiple layers of clothing and his, he had a pair of pants, I believe another pair of shorts, numerous layers away from his body. Directly outward not down to prevent exposing him from -- to the public if there were anyone in the area." From Miller's crotch area, Officer Huff retrieved "a cellophane bag that was approximately the size of a tennis ball. The bag contained 40 individual gel capsules that contained an off-white brown powder," which was later confirmed to be fentanyl. Two other officers were present during the search in addition to Officers Huff and Wheat.

Officer Huff testified that, other than a motorized bicycle that drove by prior to the search and the passenger in the vehicle who walked away before the search commenced, he did not "notice anyone walking along the street." The body-worn camera footage shows that windows of nearby houses were dark and no vehicles drove by. Miller testified that his friend's sister "walked around the corner and seen me getting searched and she just shook her head." Miller also testified that the search made him feel "a little violated" and that he had expected to be taken to the jail for a strip search rather than searched "on a public street."

When asked why he searched Miller at the scene rather than transporting him first, Officer Huff explained that "[t]here's been numerous instances where we've made arrests with someone that had CDS concealed on their person and they were able to remove it from their, where they have it concealed, destroy it, crush it in the rear of the patrol car, try to consume it." He further testified that "it's very common for someone to slip their handcuffs from the rear to the front and be able to . . . reach in concealed areas and consume[], ingest or destroy contraband."

In denying Miller's motion to suppress, the circuit court made multiple factual findings. The court found that the search was a "reach in plus, perhaps," and that "the waistband was pulled away . . . four to six inches . . . from the abdomen" for "only a few seconds." The court observed that "[f]rom the video it's clear that downrange from the bodycam there were no pedestrians or drivers or passersby in the area at the time of the waistband pull."

Regarding Miller's testimony about his friend's sister who saw the search, the court found that "[w]hether she can see from her location the defendant's genitals, I'd say is suspect at best. Just because the angle she would have had to have to look down over the officer if in fact she came from behind and into the crotch area of the defendant." The court further found that "there were officers, at least two officers there shielding. One with the flashlight and one with doing the actual search that would have shielded a view from windows on that side of the defendant."

The court concluded that it "does not believe it was unreasonable based on the testimony of the officers that contraband has been destroyed, gone missing, been eaten or otherwise spoiled in the process of taking a suspect into the police station for a more thorough search even when handcuffed behind the person's back." Thus, the court found this explanation sufficiently justified the reach-in search incident to Miller's arrest.

STANDARD OF REVIEW

"In reviewing a [c]ircuit [c]ourt's grant or denial of a motion to suppress evidence under the Fourth Amendment, we ordinarily consider only the information contained in the record of the suppression hearing and not the trial record." *State v. Nieves*, 383 Md. 573, 581 (2004). "[W]e defer to that court's findings of fact unless we determine them to be clearly erroneous, and, in making that determination, we view the evidence in a light most favorable to the party who prevailed on that issue, in this case the State. We review the [suppression] court's conclusions of law, however, and its application of the law to the facts, without deference." *Faith v. State*, 242 Md. App. 212, 235 (2019) (citing *Taylor v. State*, 448 Md. 242, 244 (2016)).

DISCUSSION

I. The Sexually Invasive Search of Miller was Constitutionally Reasonable.

A. Parties' Contentions

Miller argues the police officers conducted a sexually invasive search of him in a public place that was both unreasonable and lacked exigency. Although Miller concedes that police had valid justification for initiating the search incident to arrest, he contends the

scope, manner, and location of the search were unreasonable under the *Bell* framework this Court adopted from *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). Miller asserts his case is similar to *Paulino v. State*, 399 Md. 341 (2007), and *Faith v. State*, 242 Md. App. 212 (2019), in that the officers did not take steps to protect Miller's privacy and instead conducted a sexually invasive search in a "dense residential neighborhood" in front of potential onlookers. Miller also maintains the officers lacked exigency to conduct the sexually invasive search at the scene of arrest, which Miller argues is a required showing in addition to the *Bell* factors. Further, Miller argues any officer concern about evidence destruction "could easily have been addressed" by taking precautions while transporting Miller to the police station.

The State contends the search here was a reach-in search that was "no more intrusive than necessary" to retrieve the contraband because Officer Huff pulled out Miller's waistband horizontally and reached in, rather than pulling the waistband downward. The State also argues the place and manner of the search were reasonable because it was conducted at 1:00 a.m., the lighting was dark, and there were no passersby. The State asserts that Officer Huff took precautions to protect Miller's privacy by relocating him to the rear of the car where he was shielded from public view. Compared to Miller's reliance on *Paulino* and *Faith*, the State maintains this case is more similar to *Partlow v. State*, 199 Md. App. 624 (2011); *Allen v. State*, 197 Md. App. 308 (2011); and *United States v. Williams*, 477 F.3d 974 (8th Cir. 2007). Finally, the State asserts that even if the search was unreasonable, it was justified by exigent circumstances because the evidence showed

Miller "presented a specific threat to the drugs," rather than a generalized one, based on his behavior while the officers patted him down and handcuffed him. The State argues that "[e]ven handcuffed, Miller would have been able to conceal or destroy the drugs while being transported."

B. Analysis

The Fourth Amendment to the United States Constitution protects "against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are "per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." *State v. Harding*, 196 Md. App. 384, 425 (2010) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)) (emphasis omitted). "The State bears the burden of rebutting the presumption that a warrantless search, such as the one at issue here, was unreasonable." *Faith*, 242 Md. App. at 235.

The recognized exception to the warrant requirement at issue in the present case is the ability of officers to search individuals incident to their arrest in order to locate weapons and "preserve evidence on [their] person for later use at trial." *United States v. Robinson*, 414 U.S. 218, 234 (1973) (citation omitted). Although the police may search a person incident to an arrest, they must still do so reasonably under constitutional constraints. A search incident to arrest aimed at preventing the "destruction or removal of evidence"—inherently based on the exigency of the situation—ordinarily must be limited to "an arrestee's outer garments, including pockets." *Faith*, 242 Md. App. at 236 (quoting *Stackhouse v. State*, 298 Md. 203, 215–16 (1983)).

Maryland courts evaluate the constitutionality of sexually invasive searches—those that go beyond the outer garments—under the *Bell v. Wolfish* four-factor balancing test. We consider: "(1) the scope of the particular intrusion; (2) the manner in which the search was conducted; (3) the justification for initiating the search; and (4) the place in which the search was performed." *Faith*, 242 Md. App. at 237 (citing *Bell*, 441 U.S. at 559). This Court has summarized:

> Even when police have sufficient grounds for a sexually invasive search, there is also the distinct question of the modality of conducting such a search. The concern in such a case is not with justification at all, but rather with the manner in which even a fully justified further search or examination is carried out. Those modality concerns focus on such things as privacy or unnecessary embarrassment[.]

Faith, 242 Md. App. at 238 (internal quotes and citations omitted). As a whole, the reviewing court must balance "the need for a particular search against the invasion of personal rights that the search entails." *Id.* (quoting *Paulino*, 399 Md. at 355) (further citation omitted). "A sexually invasive search may be conducted incident to arrest if police have a reasonable articulable suspicion that the arrestee is concealing drugs on her body." *Faith*, 242 Md. App. at 258.

As with any search incident to arrest, conducting a sexually invasive search incident to arrest must turn on the exigencies of the circumstances. *See id.* at 236. However, because "a sexually invasive search constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual," *id.* (citing *Sims v. Labowitz*, 885 F.3d 254, 260–61 (4th Cir. 2018) (cleaned up), the exigency must present "a specific threat to known evidence," *Stackhouse*, 298 Md. at 213. We understand our Fourth Amendment

jurisprudence to mean that reasonableness and exigency go hand in hand; one affects the other in that the *Bell* reasonableness factors reduce or increase the level of exigency required to sustain a sexually invasive search incident to arrest.

Since Miller concedes there was justification for the search, our analysis focuses on its modality (*i.e.*, the scope, manner, and place) and the level of exigency that was required in the context of the modality factors. The three modality factors are often overlapping. Our analysis reviews each relevant case in comparison to the present case.[1]

There are four touchstone Maryland cases on sexually invasive searches conducted incident to arrest, all of which are cited by the parties. *See Faith v. State*, 242 Md. App. 212 (2019); *Partlow v. State*, 199 Md. App. 624 (2011); *Allen v. State*, 197 Md. App. 308 (2011); and *Paulino v. State*, 399 Md. 341 (2007). Miller argues his search was most analogous to *Faith* and *Paulino*, while the State argues it was more comparable to *Partlow* and *Allen*.

In *Faith v. State*, we held the sexually invasive search at issue was unreasonable "in light of the manner, location, and non-exigent circumstances in which it was conducted." 242 Md. App. at 235. However, we believed the scope of the invasion to be reasonable. There, a female sergeant was called to search Faith at the site of her arrest—on the side of a busy highway while her child, her friend, and multiple male officers stood by—based on

[1] Although both parties cite and compare the present case to *United States v. Williams*, 477 F.3d 974 (8th Cir. 2007), we do not discuss *Williams* as it is non-persuasive authority.

the track marks on her arms and her observed behavior. *Id.* at 218–20. A pat down had not revealed anything warranting a more invasive search. *Id.* at 218. Believing she had drugs, the sergeant had Faith pull her pants and underwear away from her body so the sergeant could look in. *Id.* at 227. During the search, the sergeant saw a condom protruding from Faith's vagina, which Faith then elected to remove herself without being transported to police barracks to be strip searched. *Id.* at 227–28.

We classified the search as a "visual body search because the sergeant required the rearrangement of clothing to enable her to view Faith's vaginal area" to determine whether drugs were present. *Id.* at 256.[2] In finding the search's scope to be reasonable, we noted that "[l]ook-in and reach-in searches typically are less invasive than strip searches requiring removal of clothing and body cavity searches involving inspection of internal genital and anal cavities." *Id.* Thus, although look-in and reach-in searches are not *per se* reasonable, they afford the person being searched a higher degree of privacy than other types of sexually invasive searches in that the scope of the invasion is reduced. *Id.* However, Faith's search was made unreasonable by the manner in which it was conducted, its location, and the lack of exigent circumstances necessitating a roadside search.

Regarding the manner and location of the search, we explained that "Faith's search was both actually and potentially witnessed by onlookers. . . . Faith was required to unzip and open the front of her shorts, then hold out her underwear for [the sergeant] to look in,

[2] We also refer to visual body searches as "look-in" searches. *Faith*, 242 Md. App. at 256.

while moderate to heavy traffic drove past and her companion and son waited within view." *Id.* at 262. Because of these circumstances, we concluded that "by itself, shielding others from viewing an arrestee's private parts while a sexually invasive search is taking place in public view at a public location [does not] amount[] to taking into consideration privacy as much as was possible." *Id.* at 261 (cleaned up). In addition to holding the roadside search unreasonable, we also explained that it was not justified by exigent circumstances because the State provided only "the inherent exigency attributable to the easily disposable nature of the drugs," rather than an exigency particularized to Faith. *Id.* at 270.

Here, Miller's search was similar to Faith's in the scope/method of the intrusion, since Faith experienced a look-in where Miller experienced an almost simultaneous look-in plus reach-in retrieval. However, the similarities stop there. We see key differences in the justifications for the searches, the locations, and the levels of exigency needed to warrant searching at the arrest site. The officers searching Miller knew with reasonable certainty that Miller was concealing drug evidence in his crotch area and the search was not conducted in the public view, so the officers did not need as much exigency as those in *Faith* to justify conducting the search at the arrest site

In *Paulino v. State*, our highest court held the sexually invasive search to be unreasonable because the search was so "extremely intrusive" compared to the justification. 399 Md. at 356. There, officers searched Paulino incident to arrest at a well-lit car wash at nighttime based on a confidential informant's tip that Paulino would be in possession of drugs and usually hides them "in the area of his buttocks." *Id.* at 344–45.

Rather than conducting a look-in search to validate the location of the drugs, Paulino laid on the ground while the officer lifted Paulino's shorts up, put on a pair of gloves, and spread the cheeks of his buttocks to discover and remove drugs. *Id.* at 346. The drugs had not been visible before the officer spread Paulino's cheeks apart. *Id.*

The Court first held that the scope of the search was "highly intrusive and demeaning"[3] since it was an anal cavity search. *Id.* at 356. Regarding the manner and location of the search, the Court concluded "the search as conducted was unreasonable" because the record "d[id] not indicate that the officers made any attempt to protect Paulino's privacy interests" despite manipulating and exposing his buttocks in a public location. *Id.* at 358–59. The Court also explained that even if the police were justified in searching Paulino, they were not "justified in searching him to the extent he was searched under the circumstances," *i.e.*, there was no testimony at the suppression hearing as to any exigency justifying a cavity search in a public location. *Id.* at 357, 360.

Here, the scope and manner of the intrusion into Miller's privacy was not nearly as egregious as the public cavity search of Paulino, meaning the level of exigency required to justify Miller's search was much lower. Not only was Paulino searched more intrusively, but he was searched at a well-lit car wash. Comparatively, Miller was searched in the

[3] The Court explained: "The type of search that Paulino was subjected to, and other searches that entail the inspection of the anal and/or genital areas have been accurately described as demeaning, dehumanizing, undignified, humiliating, embarrassing, repulsive, degrading, and extremely intrusive of one's personal privacy." 399 Md. at 356 (cleaned up) (internal cites omitted).

middle of the night on a street where all the nearby houses were dark. Even so, the officers here moved Miller between his car and a police vehicle, only pulled his waistband away from his body for a few seconds, and had two officers blocking any possible onlookers (none of which were seen on the camera footage). In further distinction from *Paulino*, Officers Wheat and Huff testified during the suppression hearing that Miller exhibited resisting or concealing behaviors which the trial court credited as providing sufficient exigency to search at the scene of the arrest.

We next discuss the two cases the State more heavily relies on. In *Partlow v. State*, we held the sexually invasive search, which "fell somewhere between a reach-in and a strip search," to be reasonable. 199 Md. App. at 643, 646. There, officers searched Partlow at the scene of his arrest after feeling a baseball-sized object in his underwear, which was already exposed from Partlow wearing his belted pants below his buttocks. *Id.* at 643. The searching officer first tried retrieving the object by pulling away Partlow's underwear, but the object would not come loose. *Id.* at 643. The officer then "used a pocketknife to cut away a small portion of the underwear to retrieve the item, leaving a portion of [Partlow's] buttocks exposed." *Id.* However, Partlow was "wearing a long coat or shirt that covered his underwear" so that the exposed part was actually concealed. *Id.* at 644–45. Therefore, we concluded the scope and manner of the intrusion were reasonable in the context of the level of suspicion the officers had that Partlow was concealing drugs in his underwear. *Id.* at 645. We also explained that although the search occurred on a public street, the area was "fairly wooded" on the side Partlow faced, the closest houses were thirty to forty yards

away, it was "fairly dark," and only police officers were present. *Id.* Thus, the search was reasonable. Notably, we did not address exigency as a separate factor in this case. *See id.* at 645–46 (referencing "exigent circumstances" only once in the opinion when distinguishing Partlow's search from *Paulino* to explain that Partlow's search was reasonable).

There are more similarities in Partlow's and Miller's searches in comparison to those in *Faith* and *Paulino*. Partlow and Miller were both searched on residential streets after officers felt objects suspected to be drug evidence on their persons. Although they were searched in public locations, they were not in public view. Although Partlow's search was arguably more intrusive because it involved both an attempted look-in and the officer cutting a portion of his underwear with a knife, it was still reasonable considering the justification and surrounding circumstances. In comparison, Officer Huff was able to quickly remove the contraband from Miller's crotch area without further exposing him.

Finally, in *Allen v. State*, we held both sexually invasive searches to be reasonable. 197 Md. App. at 323. There, officers conducted two searches incident to arrest after witnessing individuals engaged in what appeared to be drug sales on a block known for narcotics distribution. *Id.* at 311–12. During the searches, the officers pulled back both appellants' waistbands and observed a plastic bag protruding from each of their buttocks. *Id.* at 312–13. The officers in both searches then reached into their respective arrestee's pants and retrieved the plastic bags which contained narcotics. *Id.* We concluded the scope and manner of the reach-in searches were reasonable because

> the police officers merely pulled the appellants' pants and underwear away from their waist, at which point the police observed a plastic bag protruding from the appellants' buttocks. Appellants' clothing was not removed, and the private areas of their bodies were not publicly exposed. The officers took steps to protect appellants' privacy.

Id. at 324.

Likewise, similarly to *Partlow*, we held the location to be reasonable since "[t]here were no residential houses on the block, only [storage] garages that were closed," and "the searches were conducted so that no one, other than the searching officer, could have observed appellants' buttocks." *Id.* at 312, 325. Although the location was technically public, we explained that "[a] 'reach-in' search may be reasonable under the Fourth Amendment, even if it occurs in a public place, if the police take steps to protect the suspect's privacy." *Id.* at 325. Finally, we reiterated that officers need only "reasonable suspicion to believe that drugs are concealed on the suspect's body" to conduct a sexually invasive search incident to arrest, which can arise from officers' common knowledge that "drug traffickers often secrete drugs in body cavities to avoid detection." *Id.* at 323–24 (citations omitted). Considering the justification and reduced scope of the intrusion when compared to *Paulino* (which was "highly intrusive" without any protections to Paulino's privacy), we explained that exigent circumstances were not required. *Id.* at 326–27.

Again we conclude *Allen* is more comparable to Miller's search than *Faith* and *Paulino*. The searches were technically in public, but not in public view. The level of suspicion present—arguably much higher than the reasonable suspicion required—gave rise to the type of searches conducted—a look-in plus reach-in. The officers took

precautions to protect the suspects' privacy by only pulling their waistbands away from their bodies, such that only the searching officers could see in.

In all, we agree with the State that the present search is more comparable to those in *Partlow* and *Allen* than those in *Faith* and *Paulino*. In conducting the present search, Officer Huff pulled Miller's layers away from his body, rather than downward, to locate and retrieve the drugs that he knew were located near Miller's crotch as a result of the pat down. Officer Huff pulled Miller's waistband "four to six inches" from his body for "only a few seconds." The search was technically in public, but was not in public view as the only two people that could have seen down into Miller's underwear were the officer shining the flashlight and the officer conducting the search. Miller concedes the search was justified: Officer Wheat felt a large item not consistent with human anatomy. Therefore, the threshold for reasonableness—and by extension the necessicity to demonstrate exigent circumstances—are much lower than those in cases such as *Faith* and *Paulino*.

Although the category of the search (a look-in plus reach-in) does not make it automatically reasonable, the circuit court's factual findings that Officer Huff pulled Miller's waistband "four to six inches" from his body for "only a few seconds" lend themselves to this conclusion. Upon our own review of the body-worn camera footage and the testimony, we cannot conclude those findings were clearly erroneous. As Miller concedes that Officer Huff was justified in initiating the more thorough search, we believe the intrusion itself—a very brief "pull-away" search—and the manner in which it was conducted—between two vehicles with two officers blocking Miller on the side—did not

exceed the necessity of the circumstances. While certainly still humiliating and embarrassing, we cannot say the scope of the intrusion was unreasonable based on the justification for the search.

Although we conclude the search was reasonable as conducted without an additional need for exigency, the evidence produced at the suppression hearing supports a rational conclusion that Miller presented a specific threat to the drugs had the officers transported him before conducting the search. Officer Huff testified from his experience about "numerous instances" when suspects had successfully "concealed, destroy[ed,] crush[ed]" or "tr[ied] to consume" drugs while being transported in the patrol car. In Officer Huff's experience, "it's very common for someone to slip their handcuffs from the rear to the front" and access concealed contraband.

More importantly, perhaps, the record supports the officers' specific concern that Miller would attempt to destroy the drugs if they remained in his pants. Miller tried to claim that the drugs were his "nuts," he tried to "pull away" from Officer Wheat after Officer Wheat felt the drugs, and he grabbed Officer Huff's hand when Officer Huff tried to handcuff him, requiring the officers to repeatedly remind Miller not to "be stupid." Clearly, Miller was attempting to hide the fact that he was in possession of drugs, supporting a finding that he presented a threat of destroying the evidence during transport. Thus, Officer Huff's experiences with drug destruction during transport, combined with Miller's resistance during the encounter, provides sufficient basis for an exigency requiring the search be completed at the arrest location.

THE JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.