UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2488

September Term, 2014

ANTONIO JAMAL DYSON

v.

STATE OF MARYLAND

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: November 13, 2015

Following a jury trial in the Circuit Court for Charles County, Antonio Jamal Dyson, appellant, was convicted of possession of cocaine and sentenced to incarceration for one year and one day.[1] Dyson appealed, presenting the following question for our review:

> Was it a violation of the Fourth Amendment, or Article 26 of the Declaration of Rights, to strip-search Appellant, who was being held, only until the next session of court, on a bench warrant for violation of probation?

Because we answer no, we shall affirm the judgment of the circuit court.

BACKGROUND

In the early hours of Saturday, November 16, 2013, Officer John Campbell of the Charles County Sheriff's Office responded to a call that the La Plata Police Department had discovered that Dyson had an outstanding warrant for distribution of narcotics. Officer Campbell served the warrant on Dyson, placed him under arrest, and transported him to the Charles County Detention Center at approximately 5:30 a.m. At the time of the arrest, Officer Campbell also performed a search of Dyson's outer garments.[2]

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[1] After this appeal was filed, the circuit court granted a motion for reconsideration of sentence and suspended all but 100 days of Dyson's sentence with 97 days credit for time served.

[2] Officer Campbell described this search:

> "I have a standardized search from head to toe. Collar; outer garments; pockets, you know, inspecting the outer clothing pockets; the waistline; start . . . and then I go to the pants pockets . . . the front, the rear, bottom; I look up their . . . pants; kind of visibly . . . visibly and physically inspect for any bulges on their socks. That's pretty much it.

Upon arriving at the detention center, Dyson entered the facility's sally port where Correctional Officer Andrew Hunt performed a frisk search of Dyson.[3] After being led through a metal detector and exiting the sally port, Dyson was brought to a changeover room because Correctional Officer Hunt was "aware that [Dyson] had a Circuit Court warrant." In this room, Dyson was strip searched and placed in a jump suit "[i]n order to enter the general population."[4] Correctional Officer Hunt described what occurred during the strip search:

> I asked him to remove his clothing; sit it on the . . . sit it on the wood bench; and he complied with that. When he pulled his long johns and grey underwear down, he turned a little bit away from me and was fondling . . . fond . . . fondling his genital area at that time. So he turned back to me. When he turned back and faced me, I noticed a piece of plastic, paper or something like that protruding from the foreskin of his penis.[5]

[3] Correctional Officer Hunt described the frisk search:

> [Y]ou pat the individual down. You . . . you turn their . . . their pockets inside out in order to remove any money, contraband, any belongings that they're [not] supposed to have on their person on the outer areas of their . . . person . . . of their clothing.

[4] Charles County Sheriff Policy 5-206 provides: "TO PROTECT THE SAFETY OF THE INMATES AND STAFF AND THE SECURITY OF THE INSTITUTION, STRIP SEARCHES WILL BE DONE ON ALL INMATES PRIOR TO THEIR PLACEMENT IN THE GENERAL POPULATION."

[5] The search described by Correctional Officer Hunt comports with Charles County Detention Center policy for strip searches:

> 1. A strip search will always be done in private, out of the view of other inmates and only the staff members actually doing the strip search will be in the room with the inmate.

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* * *

> I asked him to hand it to . . . to . . . to take it out and hand it to me, and when he hand it to me I observed a rock . . . white rock with a clear coating around the exterior of the rock in a white clearish manufactured baggie.
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> * * *
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> I recognized it to be cocaine through my training and experience as a Correctional Officer.

At this time, Dyson was taken to a secured cell for transfer to the detention center's general population.

Prior to trial for possession of cocaine arising from this strip search, Dyson challenged the constitutionality of the strip search. The circuit court found the search reasonable and denied Dyson's motion to suppress the evidence, stating:

> It seems to me that it is reasonable, well that there is at the very least a diminished expectation of privacy once you're in custody. It would seem to me that if Mr. Dyson was going

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> 2. Instruct the inmate to remove their [sic] clothing, place clothing on the bench and move out of reach of the clothing.
> 3. Instruct the inmate to stand erect, feet apart, arms extended outward, then visually inspect for contraband, body vermin, cuts, bruises, needle scars and any other injuries. Areas to be inspected include:
>   a. Pockets,
>   b. Linings,
>   c. Fly, waistband, cuffs, seams, collars, hatbands,
>   d. Inside of all garments,
>   e. Soles, heels and insides of shoes,
>   f. Socks (inside and outside).
> 4. Instruct the inmate to remove any artificial devices (such as false teeth, wigs, hair pieces and prosthesis) and notify the medical section.

> from that holding cell or from being patted down at sally port I should say to the Commissioner in a relatively short time, then I think I'm on board 100 percent. But I think the fact that he's going to be there 48 hours and, and he may have been incorrect. I don't know. But I believe him when he said it. And that the Officer believed he was going to a general population. I think those two facts and the fact that this is a visual search and . . . [*State v.*] *Harding*[, 196 Md. App. 384 (2010),] . . . does talk about literally a manual search, and this is a visual search. He's in custody. I think under those circumstances the search is reasonable.

STANDARD OF REVIEW

Our standard of review in suppression cases is well-settled:

> In reviewing a Circuit Court'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. We view the evidence and all reasonable inferences drawn from that evidence in the light most favorable to the prevailing party on the motion. Although we extend great deference to the hearing judge's findings of fact and will not disturb them unless clearly erroneous, we review, independently, the application of the law to those facts to determine if the evidence at issue was obtained in violation of the law and, accordingly, should be suppressed.

State v. Nieves, 383 Md. 573, 581-82 (2004) (Internal citations omitted).

DISCUSSION

Relying chiefly upon *Nieves*, Dyson contends the trial court erred in denying his motion to suppress evidence discovered as a result of what he deems an unreasonable strip search. Specifically, he asserts that because he was merely awaiting a hearing before a judge for "an unspecified 'violation of probation,'" the strip search was unreasonable. He asserts that it was unreasonable to subject him to a strip search simply

because he was brought to the detention center on a weekend and would not receive a court hearing until Monday. He draws the Court's attention to "two categories of detainees who are not placed into 'general population,' including those who are detained, either: (1) for an appearance before a judge or commissioner, later the same day; or (2) for 'weekends,'" referring to those serving sentences on weekends. These categories of detainees are not strip-searched.

The State counters that the search was reasonable to ensure the safety of the detention center, relying upon the Supreme Court's recent decision in *Florence v. Board of Chosen Freeholders of the County of Burlington*, 566 U.S. ___, 132 S. Ct. 1510 (2012). In the alternative, the State argues that even if the search was unreasonable, it should not be subject to the exclusionary rule because "the actions of [Correctional Officer Hunt] were not the type of highly culpable conduct that the exclusionary rule is directed to deter."

The Fourth Amendment guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. It "only prohibits those searches and seizures that are unreasonable under the circumstances." *Nieves*, *supra*, 383 Md. at 583 (Citation omitted). "In determining the reasonableness of a search, each case requires a balancing of the

government's need to conduct the search against the invasion of the individual's privacy rights." *Id.* (citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).[6]

State v. Nieves

In *State v. Nieves*, the Court of Appeals described the interplay between the Fourth Amendment and strip searches.[7] The Court explained that although "[i]t is clear that strip

[6] Dyson also relies upon Article 26 of the Maryland Declaration of Rights. Article 26 is generally construed to have the same scope and meaning as is given to the Fourth Amendment and we see no reason to depart from that jurisprudence.

[7] Although the Court of Appeals in *Nieves* did not provide a specific description of the strip search performed on the defendant, it defined the term and stated that the search fit within that definition:

> The term "strip search" has been defined and used in differing contexts in Fourth Amendment jurisprudence. In general, strip searches involve the removal of the arrestee's clothing for inspection of the under clothes and/or body. Some have defined strip searches to also include a visual inspection of the genital and anal regions of the body. Black's Law Dictionary (7th Ed.2004) defines a strip search as "a search of a person conducted after that person's clothes have been removed, the purpose usually being to find any contraband the person might be hiding." Likewise, in the instant case, the Hagerstown Police Department procedural rules (Departmental Rules), define 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". There is a distinction between a strip search and other types of searches, such as body cavity searches, which could involve visually inspecting the body cavities or physically probing the body cavities. Based upon the record, it appears that a strip search was conducted rather than a physical body cavity search.

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searches by their very nature can be degrading and invasive . . . , strip searches have been permitted under the Fourth Amendment in various settings." *Id.* at 586–87. "Strip searches commonly have been upheld for two reasons: (1) as a means to maintain the security of the detention facility; and (2) as a search incident to arrest." *Id.* at 587.

In *Nieves*, a defendant who had been involved in a minor traffic accident with a police vehicle was unable to provide identification and found to be driving a vehicle registered to a missing female. *Id.* at 575-76. Because the missing female's disappearance had allegedly been linked to drugs and because of the defendant's previous arrests for drug-related offenses, the police strip-searched Nieves, following his arrest and during the booking procedures at the police station. The search yielded two small bags of cocaine. *Id.* at 577. Nieves was later convicted of possession with intent to distribute and the lesser included offense of possession of cocaine. *Id.* at 579.

On appeal, the Court of Appeals held "that the reasonable, articulable suspicion standard applies in the strip search incident to arrest context." *Id.* at 596. Applying this standard, the Court held that the strip search of Nieves was unreasonable. The Court explained:

> The very nature of the minor traffic violations for which Nieves was apprehended did not create a suspicion that he was carrying weapons or contraband at the time of arrest. Rather, during the suppression hearing, Lieutenant Johnson testified that he ordered a strip search of Nieves for the

(…continued)
383 Md. at 586 (Internal citations omitted). This definition comports with the strip search performed on Dyson under the Charles County Detention Center Policy.

> following reasons: (1) because of Nieves' prior drug arrests and (2) because at the time of his arrest, Nieves was driving the truck of a missing female, who had a history of drug involvement and was reported missing.
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> * * *
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> Lieutenant Johnson's rationale falls short of meeting the reasonable, articulable suspicion standard. Prior drug arrests do not necessarily yield reasonable suspicion that an individual is secreting weapons or drugs on his person at the time of his arrest on a drug offense, because to allow the reasonable, articulable suspicion standard to be satisfied based upon a person's status, rather than an individualized assessment of the circumstances, would undermine the purpose for requiring officers to justify their reasons for searching a particular individual. Also, the fact that the defendant was driving the truck of a missing female associated with drugs confuses the nature of the inquiry of whether there was reasonable, articulable suspicion that Nieves was carrying weapons or drugs. The circumstances surrounding another person cannot be imputed to the person who is the subject of the search because the inquiry must be particularized and objectively based upon the person suspected of carrying weapons or contraband.

Id. at 596-98 (Internal citations omitted).

Florence v. Board of Chosen Freeholders of the County of Burlington

Following the decision of the Court of Appeals in *Nieves*, however, the Supreme Court of the United States also addressed strip searches in the context of institutional security. In *Florence v. Board of Chosen Freeholders of the County of Burlington*, Florence was arrested following a traffic stop based upon an outstanding bench warrant in the state's computer database for falling behind on payments of a fine and failing to appear at a court hearing related to a prior guilty plea. 132 S. Ct. at 1514. In truth, Florence had paid the fine two years prior to the traffic stop, but for unexplained reasons,

the warrant remained in the state's database. *Id.* Florence was transported to the local county detention center where he was subjected to a strip search:

> Burlington County jail procedures required every arrestee to shower with a delousing agent. Officers would check arrestees for scars, marks, gang tattoos, and contraband as they disrobed. Petitioner claims he was also instructed to open his mouth, lift his tongue, hold out his arms, turn around, and lift his genitals. (It is not clear whether this last step was part of the normal practice.) Petitioner shared a cell with at least one other person and interacted with other inmates following his admission to the jail.

Id. (Internal citations to the record omitted).

A majority of the Supreme Court ruled that the strip search was constitutional, emphasizing the importance and difficulty of maintaining institutional security in detention centers. The Court embraced previous case law indicating that "correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities [and that] the task of determining whether a policy is reasonably related to legitimate security interests is 'peculiarly within the province and professional expertise of corrections officials.'" *Id.* at 1517 (quoting *Bell*, *supra*, 441 U.S. at 548) (Other internal citations omitted).

Both because "[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals," and "[j]ails can be even more dangerous than prisons because officials there know so little about the people they admit at the outset," the Court

held that strip searches on arrestees who were to be transferred to the general population were reasonable.[8] *Id.* at 1520, 1521.

Dyson's Search

In ruling on Dyson's motion to suppress, the circuit court found that: (1) Dyson was going to be held for 48 hours; (2) Correctional Officer Hunt believed Dyson would be transferred to general population; and (3) the search performed was a purely visual search. Dyson does not dispute these findings, which, moreover, are supported by the suppression court's record. Under those facts, and in light of *Florence*, we hold that the strip search of Dyson was reasonable. In *Florence*, the Court permitted a search that was materially indistinct from the search performed on Dyson. Both visual strip searches resulted from arrests for outstanding bench warrants for seemingly minor offenses, but for which the individual was intended to be held for more than a few hours in a detention center's general population. *See also Cantley v. W. Virginia Reg'l Jail & Corr. Facility Auth.*, 771 F.3d 201, 206 (4th Cir. 2014) (It is not clearly established that it was unconstitutional for a correction officer to conduct a visual strip search in a private room of an arrestee, who was to be held until the next morning in a holding cell with possibly a dozen or more arrestees). Unlike *Nieves*, which involved a search in a police station, the State's proffered justification for the search was institutional security and not the

[8] The Supreme Court did not address the issue of whether a strip search would be reasonable in circumstances when "a detainee will be held without assignment to the general jail population and without substantial contact with other detainees." *Florence*, 132 S. Ct. at 1522-23. It does not appear, from the evidence presented at Dyson's suppression hearing, that these circumstances were present here.

arrestee's prior criminal record. Therefore, the trial court did not err in denying Dyson's motion to suppress the evidence acquired during the search.[9]

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] Dyson argues that the Detention Center's policy regarding the search of weekend prisoners is unreasonable and a "Catch-22" because those serving time on weekends are not searched, while those arrested on weekends and waiting for a Monday judge are searched. However, we agree with the State that:

> Dyson's "Catch-22" analogy falls flat because no "Catch-22" exists. As Officer Hunt explained, inmates sentenced to serve weekends have already been classified and serve their sentence in a part of the jail separate from the general population. Inmates arrested on weekends, on the other hand, have to undergo an initial classification process that requires them to be "changed over" in preparation for transfer to the general population of the jail. There is nothing absurd or unreasonable about the jail's classification policy.