

Strip Searches by Law Enforcement Officers (Part I)

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This blog post is divided in two parts. This is Part I. Part II will be posted tomorrow.

Introduction. These posts will discuss strip searches by law enforcement officers that usually occur during investigative stops, frisks, arrests, executing search warrants, and related actions. These posts will not include strip searches at jails, which are discussed [here](#) by Jamie Markham.

Unlike other Fourth Amendment issues, there have been relatively few appellate rulings on the lawfulness of strip searches by law enforcement officers. Although the United States Supreme Court has ruled on strip searches in jails and schools (see the citations and links to *Florence* and *Safford* below), it has not done so with searches by officers, although it once commented in a case involving an unrelated issue that “the interests supporting a search incident to arrest would hardly justify disrobing an arrestee on the street.” *Illinois v. Lafayette*, 462 U.S. 640, 645 (1983). Fortunately, there have been several North Carolina cases that offer guidance to officers concerning the legality of these searches. Officers who are unsure about these searches may wish to consult their agency’s legal advisor or other legal resource, particularly because their agency may impose stricter standards in conducting them than permitted by case law.

Definition of strip search. What constitutes a “strip search”? Interestingly, there has not been a precise definition set out by the United States Supreme Court or North Carolina appellate courts. The United States Supreme Court noted in the jail search case of *Florence v. Board of Chosen Freeholders*, 132 S. Ct. 1510, 1515 (2012), that a strip search is an “imprecise term” and did not choose to define it. See also the school strip search case of *Safford Unified Sch. Dist. #1 v. Redding*, 557 U.S. 364 (2009). For a North Carolina case noting the lack of a precise definition of a strip search by its appellate courts, see *State v. Robinson*, ___ N.C. App. ___, 727 S.E.2d 712, 719 (2012).

I will use for this discussion the following definition of a strip search: A strip search generally involves all or part of the following: a removal, pulling down, or rearrangement of some or all of a person’s clothing to provide an outside view of the genital or anal areas or exposure of female breasts, a search of the clothing, or a squat and cough or similar act that requires a person to expose anal or vaginal cavities for visual inspection.

(Note: For a discussion of the legal standards required to justify the more physically intrusive body-cavity search, which involves a digital touching or other probing of the anal or vaginal cavity by another person, see pages 228-29 of *Arrest, Search, and Investigation in North Carolina* (4th ed. 2011).)

Fourth Amendment privacy interest. The reasonableness of a search under the Fourth Amendment often involves a balancing of the governmental interest in conducting a search with a person’s interest in being left alone by government officials. With strip searches, court cases often recognize that a person has a heightened privacy interest in not being unclothed involuntarily, observed unclothed, or have their private parts observed or touched.

Consent searches. Because a strip search involves an intrusion beyond a typical search of a person’s body, courts carefully examine whether the scope of a person’s consent to search his or her body included a strip search. An example is *State v. Stone*, 362 N.C. 50 (2007). The defendant was confronted by an officer who recognized the

defendant as a drug dealer. The officer asked for and received the defendant's consent to search after the defendant denied having any drugs or weapons on his person. The officer checked the rear of the defendant's sweat pants and then moved his hands to the front of the waistband. The defendant said "Whoa" when the officer pulled the defendant's sweat pants away from his body and trained his flashlight on the defendant's groin area. The North Carolina Supreme Court ruled that a reasonable person in the defendant's position would not have understood that his general consent to search allowed the officer to undertake these "very intrusive measures." The court noted that its ruling is necessarily predicated on the facts and "we observe that different actions by the officer could have led to a different result." For example, if the officer before or during the intrusive search had made clear to the defendant what the officer was planning to do. Or perhaps if the defendant had not objected by saying "Whoa" during the search.

In [State v. Neal](#), 190 N.C. App. 453 (2008), the North Carolina Court of Appeals distinguished *Stone* and ruled that the defendant's consent to search included a strip search. A vehicle was stopped and an odor of marijuana emanated from the passenger side where the defendant had been seated. She consented to a frisk and a search of her purse; no weapons were found but \$1,095 in small bills were in her purse. When a canine search of the vehicle passenger area was being conducted, the defendant acted very nervously and fidgeted, often putting her hands in and out of the back part of the waistband of her pants. The officers also noticed a "bulge" in the back of her pants, and she was instructed to keep her hands away from her waistband. An officer informed her that he wanted to conduct a better search to determine what was located in the back of her pants, and he had contacted a female officer for assistance. When asked if she would mind undergoing a "more thorough" search, she responded that she would not. The female officer conducted a strip search in the privacy of a women's bathroom during which the defendant was extremely cooperative and never expressed any objections. The court noted, unlike *Stone*, a reasonable person would have understood that the officers intended to conduct a strip search of the defendant.

What do we learn from these consent-to-search cases? A court will look to all the circumstances to determine if the consent to search was voluntarily given, including whether the defendant cooperated during the strip search, and whether a reasonable person would have understood that the scope of the search included a strip search.

If a strip search is not justified by consent, a court may consider whether or not other grounds supported the search. These will be discussed in tomorrow's post.