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A “reach-in” search is not automatically permitted as a search incident to arrest; it must be based upon reasonable suspicion that the suspect is concealing drugs on or about his person.

QUESTION: Can a “reach-in” search be conducted automatically incident to a suspect’s arrest?

ANSWER: No. To justify a “reach-in” search, the officer must have reasonable suspicion to believe that the suspect is concealing drugs on or about his person.

CASE: *Octavian Allen and Drew Smith v. State of Maryland*
Court of Special Appeals of Maryland, Decided February 4, 2011

In this case, the Court of Special Appeals examined the “reach-in” search and when and how such a search can be conducted. The facts established that on March 27, 2008, Detective Willie E. Farrar, Jr., of the Baltimore City Police Department was patrolling the 100 block of North Clinton Street, a popular place to buy narcotics. At approximately 8:00 p.m., Detective Farrar observed a group of males, including Octavian Allen and Drew Smith, standing at the corner of Esther Place and Clinton Street. As cars passed by, the men shouted: “We got the fat 20’s here.” Based on his training and experience in the sale, identification, and distribution of street level drugs, Detective Farrar knew that “fat 20’s” was a term used to refer to \$20 worth of cocaine. When a truck pulled up, Detective Farrar observed Allen approach it and speak briefly with the driver. Allen was accompanied by several of the men, including Smith. Detective Farrar knew Smith from a previous drug distribution arrest on the same block. The driver of the truck gave Allen money and Allen removed several small objects from his sleeve and gave them to the driver. At that point, Detective Farrar believed he was witnessing a narcotics sale. He called for an arrest team to stop the truck and arrest the group of men. He gave a description of the men, including Allen.

Detective James Beal responded and approached Allen, who was standing alongside several parked cars near a garage on Esther Place. There were no residences on the block; just garages that were closed. Detective Beal placed Allen under arrest and searched him incident to arrest. He first searched Allen’s pockets and pants legs, and then checked for slits in Allen’s waistband. Detective Beal didn’t find any drugs.

Detective Beal then pulled back Allen's pants and saw a plastic bag protruding from between his buttocks. While holding the waistband of Allen's pants out, Detective Beal directed Allen to spread his legs and squat. A bag dropped from between Allen's buttocks to his underwear and Detective Beal reached in and pulled it out. The bag contained 28 orange Ziploc bags filled with narcotics. Officer Beal did not touch Allen while recovering the narcotics, and the only people present during the search were six or seven police officers. Detective Beal stood right behind Allen while conducting the search, and based upon his positioning, no one else could have seen Allen's buttocks.

Smith was approached by Detective Andrew Wiman who asked him if he had anything illegal on his person. Smith answered "some weed." Detective Wiman recovered the marijuana from Smith's pocket and searched him incident to arrest. During the search, Detective Wiman pulled back the waistband of Smith's pants and saw a plastic baggie half concealed in Smith's buttocks. Detective Wiman reached down and pulled it out. The baggie contained 24 Ziploc bags filled with narcotics. Smith's search took place on a block with storage garages on one side and residences on the other. The residences and garages were divided by a wide alley. The search took place near the storage garages and there was no one present other than Smith and several officers. Only Detective Wiman, however, was in position to see Smith's buttocks.

Allen and Smith were charged with cocaine distribution. Prior to their trials, they moved to suppress, claiming that the officers had conducted invasive strip searches of their persons which exposed both their genitals and buttocks. They claimed that there were no exigent circumstances justifying the searches and that civilians were present at the locations in which they were searched and saw what was taking place. The trial court resolved the credibility issue in the officers' favor and denied the motions to suppress. Allen and Smith were convicted and appealed.

The Court of Special Appeals upheld the rulings on the motions to suppress and affirmed the convictions. In doing so, the court first held that there was ample probable cause for the arrests based on the testimony of the detectives. The focus then became the validity of the searches incident to arrest. The State characterized the searches as "reach-in" as opposed to "strip searches." A reach-in search involves a manipulation of the arrestee's clothes such that a police officer is able to reach in and retrieve contraband without exposing the arrestee's private areas. The State's characterization was based on the officers' testimony that neither Allen's nor Smith's genital area nor buttocks were publically exposed. The court first noted that a strip search is not the type of search that the police may conduct automatically incident to arrest; rather the reasonableness of such a search must be determined by balancing the need for the intrusion against the invasion of personal privacy rights. The location and manner in which the search is conducted are also considered. In this case, the court said whether the searches were classified as "reach-ins" or "strip" was not dispositive because even a "reach-in" search is still intrusive and demeaning. Consequently, such a search cannot be made automatically incident to arrest. Rather, the reasonableness of even a reach-in search is dependent on the scope of the intrusion, the manner in which it is conducted, the need for it, and where it is conducted. In this case, the court, based on the officers' testimony, found that there

was reasonable suspicion to believe that Allen and Smith were concealing drugs on their bodies. The searches were also conducted in a proper manner as steps were taken to protect the arrestees' privacy. For these reasons, the convictions were upheld.

NOTE: "Reach-in" searches may be reasonable, as were the ones in this case, even if they occur in a public place. Officers, however, must take steps to protect the suspect's privacy. When conducting a "reach-in" search, officers need to take all steps necessary to ensure that passersby cannot see what is taking place. The best practice is to limit "reach-in" searches in drug cases to the suspect's buttock area. In a perfect world, only the searching officer would be in position to view the suspect's buttocks or genitals. If the officer in any way manipulates the suspect's private areas to obtain a better view, the search will likely be deemed a visual or manual body cavity strip search. This type of search, if performed in a public area, must be justified by exigent circumstances, and not mere reasonable suspicion.

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