



Commander's Log

February 2020

LEGAL UPDATE FOR MARYLAND CORRECTIONAL ADMINISTRATORS AND OFFICERS

Strip Searches of Visitors and the Fourth Amendment

Question: What legal standard applies to a strip search of a visitor to a jail or prison?

Answer: The standard under the Fourth Amendment for conducting a strip search of a jail or prison visitor is whether corrections officials have a reasonable suspicion, based on particularized and individualized information, that such a search will uncover contraband on the visitor's person on that occasion.

Case: *Angela Calloway v. Benjamin J. Lokey, et al.*
United States Court of Appeals (4th Cir.)
Decided January 21, 2020

Travis Talbert – The Prisoner

In February 2016, while incarcerated at the Bland Correctional Center in Bland, Virginia, Travis Talbert and another inmate were caught attempting to smuggle several pounds of tobacco into the prison. The plan was for Talbert's mother and the other inmate's sister to leave the tobacco at a predetermined spot on the prison's property for a third inmate to later retrieve, but the women were discovered and arrested shortly after hiding the tobacco. Talbert was sentenced to 30 days of

disciplinary segregation after admitting his involvement in the offense, and he was thereafter transferred to the Augusta Correctional Center, a more secure facility. Shortly after Talbert's transfer, Augusta's Institutional Investigator, Sergeant Benjamin Lokey, learned of Talbert's disciplinary conviction at Bland and the reasons for it.

Thereafter, Sgt. Lokey started to hear the name "Travis" from informants in the prison, with a few inmates suggesting generally that Sgt. Lokey should keep an eye on an inmate named "Travis." Having only the name "Travis" to go by, Sgt. Lokey was not sure that the tip referred to Talbert, but Talbert's history made Sgt. Lokey suspicious. Then, on Friday, July 15, 2016, Sgt. Lokey heard, while walking through the prison, that Talbert was "moving," a term that Sgt. Lokey knew to be prison slang for smuggling drugs. Based on this tip and his knowledge of Talbert's prior smuggling attempt, Lokey became concerned that Talbert would attempt to smuggle drugs into Augusta. Accordingly, as he left work that day, Sgt. Lokey asked Master Control Officer Jeremy Nelson---who was scheduled to monitor the security cameras posted in the visitation room during that weekend's visitation session---to pay particular attention to Talbert and any visitor he might receive.

As an officer assigned to the "master control" room, Officer Nelson had experience monitoring streaming



video of the inmates and their visitors to watch for activity that might be suspicious, such as excessive nervousness, movements between inmates and visitors dropping motions and adjustments of clothing. Indeed, there had been at least two instances when Officer Nelson's observations had led to the interception of contraband in the visitation room.

Angela Calloway – The Visitor

Around noon on July 17, 2016—just two days after Sgt. Lokey had heard that Talbert was “moving,”—Angela Calloway arrived at Augusta to visit Talbert. This was her second visit to Augusta to see Talbert. Ms. Calloway, a nursing assistant in her mid-thirties, had received permission to be one of Talbert's authorized visitors after the Virginia Department of Corrections had conducted a check of her criminal record. As she entered the facility on July 17, Ms. Calloway passed through the standard security screening procedures used for all visitors, which included removing her shoes, walking through a metal detector, and being “patted down.” Ms. Calloway's pat down was conducted by Sergeant Heidi Brown. Sgt. Brown observed that Ms. Calloway appeared nervous, but nothing extreme. Ms. Calloway was then taken to the visitation room and assigned to a table at the far end of the busy room. Talbert was brought in to begin the ninety-minute visit.

Angela Calloway's Behavior During the Visit

Officer Nelson closely monitored Talbert and Ms. Calloway from his position in the master control room by watching live video footage from two security cameras that he focused on their table. To Officer Nelson, Ms. Calloway appeared nervous during her visit. He noticed her fidgeting with her waistband on several occasions and adjusting her clothing several times in a manner that was consistent with moving contraband from underneath clothing to a position where it could be easier to retrieve. Officer Nelson also thought that Talbert was “keeping an eye” on the correctional officers as they made their rounds. Then, about an hour into the visit, Officer Nelson observed Ms. Calloway adjust her clothing in a way that looked to him like she had just unbuttoned and reached inside the front of her pants. Officer Nelson immediately notified Sgt. Lokey of what he had seen.

Based on Officer Nelson's report, Sgt. Lokey contacted the Unit Manager Jeffrey Brown, the highest-ranking officer on site at the time. Sgt. Lokey and Unit Manager

Brown discussed the situation and agreed that the visit between Talbert and Ms. Calloway should be interrupted and that Talbert should be taken from the visitation room for a strip search. They also agreed to speak to Ms. Calloway to request that she consent to a strip search.

Accordingly, shortly before 2:00 p.m., four corrections officers approached the table at which Talbert and Ms. Calloway were sitting. Two of them took Talbert out of the visitation room, while Sgt. Lokey and Unit Manager Brown escorted Ms. Calloway to an office off the main hallway. When Sgt. Lokey told Ms. Calloway that she had been seen on camera unbuttoning her pants, she vehemently denied it. She denied possessing any contraband, saying that she would never do something like that. At that point, Sgt. Lokey informed Ms. Calloway that they would need her consent to conduct a strip search. Ms. Calloway protested, saying that she did not understand as she had done nothing wrong. Sgt. Lokey insisted that Ms. Calloway give her consent, and that, if she didn't, she would not be permitted to come back to the prison. He told her that if she consented, and no contraband was found, she would be allowed back. Sgt. Lokey then handed Ms. Calloway a consent form authorizing the strip search and told her to look it over carefully. Ms. Calloway was crying by this point. She tried to look over the form as best she could and then signed it.

The Strip Search of Angela Calloway

After signing the form, Ms. Calloway was escorted to a private office by two female officers, who were told that Ms. Calloway had signed the consent form. When they reached the office, Ms. Calloway told the officers that she was menstruating, and so the three women relocated to a women's restroom. Because the door to that restroom did not lock down, one of the officers stood at the door to make sure that no one entered. The other officer required Ms. Calloway to remove her clothing one piece at a time, with each item being searched before another was removed. When all her clothing had been removed, Ms. Calloway was instructed to lift her arms and breasts, open her mouth, and lean over and shake her hair. The searching officer then put her hands through Ms. Calloway's hair to check it for hidden contraband. At the officer's direction, Ms. Calloway next went into the bathroom stall and removed her tampon, which the officer inspected before disposing of it. Ms. Calloway was then required to twice perform the “squat and



cough” maneuver and to spread her buttocks for the officers’ inspection. The search revealed no contraband. Ms. Calloway’s clothing was returned. She was also offered another tampon but said that she did not need one. After she dressed, Ms. Calloway was taken back to a room where Sgt. Lokey and Unit Manager Brown were waiting. Sgt. Lokey apologized and said that they would allow Ms. Calloway to resume her visit with Talbert. Talbert had been strip searched in another location and no contraband was found. Ms. Calloway remained upset but did complete her visit with Talbert and then left.

The Lawsuit, the Appeal, and the Decision on Appeal

Ms. Calloway filed a lawsuit in December 2016, naming seven corrections officers and the unit manager as defendants. She sought damages under 42 U.S.C. § 1983, alleging that the defendants had violated her Fourth Amendment rights against unreasonable search and seizure. The United States District Court granted the defendants’ motion for summary judgment, and Ms. Calloway appealed.

On appeal, the parties did not dispute the applicable legal principles for conducting a lawful strip search in the jail or prison context. The Fourth Amendment only prohibits unreasonable searches, balancing the need for the search against the invasion of personal rights it entails. In determining reasonableness, the justification for the search is considered along with the scope of the search, the way it is conducted, and the place where it is conducted. The court recognized that, in past jail and prison cases, greater privacy interests had been extended to corrections employees and visitors, as compared to the more limited privacy interests of pretrial detainees or prisoners. As such, **the court held that the legal standard for conducting a strip search of a jail or prison visitor---an exceedingly personal invasion of privacy---is whether jail or prison officials have a reasonable suspicion, based on particularized and individualized information, that such a search will uncover contraband on the visitor’s person on that occasion.** This standard requires a particularized and objective basis for suspecting the particular person as judged by the totality of the circumstances known to the officers at the time. In other words, more than a “hunch,” but less than probable cause.

In this case, based on the totality of the circumstances, the court ruled that the officers did have reasonable suspicion to conduct the strip search of Ms. Calloway. This reasonable suspicion included Talbert’s history pertaining to contraband, the “tip” that Talbert was “moving,” and the officers’ observations of Ms. Calloway. There was at least a moderate chance that Ms. Calloway was concealing contraband on her person and nothing more was required. The strip search---though embarrassing and perhaps frightening---did not violate Ms. Calloway’s Fourth Amendment rights.

NOTE: In establishing reasonable suspicion, the court noted that the officers were entitled to rely on the reports and observations of other officers. In this regard, the court recognized that the difficulties of operating a jail or prison must not be underestimated by the courts. The court said that, “[b]y necessity, the officers charged with maintaining safe and secure jails and prisons must assume different roles and responsibilities and be able to rely on each other to perform their differentiated tasks.” Here, there was no reason for Sgt. Lokey and Unit Manager Brown to doubt what Officer Nelson reported to them concerning what he saw on the cameras.

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