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The State of South Carolina

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July 5, 1990

The Honorable James R. Metts, Ed.D.
Sheriff, Lexington County
Lexington County Sheriff's Department
Post Office Box 639
Lexington, South Carolina 29072

Dear Sheriff Metts:

You have written this Office requesting an opinion as to whether the Lexington County Sheriff's Department may visually strip search any arrestee who is brought into the secured area of the Lexington County jail. You have also asked whether there is a difference in the type of search you may conduct if you know at the time of booking that the arrestee will be released within a reasonable period of time and will not be placed in the jail's general population.

A visual strip search, of course, calls in to question the protections afforded by the Fourth Amendment to the United States Constitution which secures the right of persons to be free from unreasonable searches and seizures. See also South Carolina Constitution, Article 1 Section 10. The United States Supreme Court enunciated the following standard when determining whether the visual strip search of a serious felony pretrial detainee who was unable to meet bond requirements and who had had a contact visit with an individual from outside of the jail was reasonable under the Fourth Amendment.

> In each case it requires a balancing of the need for the particular search against the invasion of the personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Bell v. Wolfish, 441 U.S. 520 at 559 (1979). While the South Carolina Supreme Court has issued no opinion concerning the constitutionality of visual strip searches of pretrial detainees, the Bell v. Wolfish standard has been applied by numerous courts in various jurisdictions, including the Court of Appeals for the Fourth Circuit. Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981). See also Felton v. Rice, No. 87-6690 (4th Cir. March 16, 1988) (UP); Abshire v. Walls, 830 F.2d 1277 (4th Cir. 1987). It is necessary, in resolving the question of the validity of a visual strip search, to make a determination in each case based upon the particular facts involved in order to ascertain whether the search bears a substantial relationship to the security or other needs of the law enforcement authority as balanced against the detainee's privacy interests. Id.; Watt v. City of Richardson Police Dept., 849 F.2d 195 (5th Cir. 1988); Ward v. County of San Diego, 791 F.2d 1329 (9th Cir. 1986); Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1983); Jones v. Bowman, 694 F.Supp. 538 (N.D. Ind. 1988); John Does 1-100 v. Boyd, 613 F.Supp. 1514 (D.C. Minn. 1985); Creamer v. Raffety, 145 Ariz. 34, 699 P.2d 908 (1984).

The various courts hold generally that an individual arrested and detained on a minor offense unrelated to drugs, weapons, violence, or the discovery of evidence may be subjected to a visual strip search only if a reasonable suspicion exists that the particular detainee is concealing weapons or contraband. Masters v. Crouch, 872 F.2d 1248 (6th Cir. 1989); Weber v. Dell, 804 F.2d 796 (2nd Cir. 1986); Stewart v. Lubbock Co. Texas, 767 F.2d 153 (5th Cir. 1985); Jones v. Edwards, 770 F.2d 739 (8th Cir. 1985); Giles v. Ackerman, 746 F.2d 614 (9th Cir. 1984); Hill v. Bogans, 735 F.2d 391 (10th Cir. 1984); Mary Beth G. v. City of Chicago, supra; Logan v. Shealy, supra; Jones v. Bowman, supra; Cruz v. Finney Co. Kansas, 656 F.Supp. 1001 (D. Kan. 1987); Smith v. Montgomery Co., Md., 643 F.Supp. 435 (D. Md. 1986); Smith v. Montgomery Co., Md., 607 F.Supp. 1303 (D.C. Md. 1985); Smith v. Montgomery Co., Md., 689 F.Supp. 556 (D.C. Md. 1985); Fann v. City of Cleveland, Ohio, 616 F.Supp. 305 (D.C. Ohio 1985); John Does 1-100 v. Ninneman, 612 F.Supp. 1069 (D.C. Minn. 1985); Kathriner v. City of Overland, MO., 602 F.Supp. 124 (E.D. Missouri 1984); Hunt v. Polk Co., Iowa, 551 F.Supp. 339 (1982); Smith v. Montgomery Co., Md., 547 F.Supp. 592 (1982); Tinetti v. Wittke, 479 F.Supp. 486 (E.D. Wis. 1979); Rankin v. Coleman, 476 So.2d 234 (Fla. 1985); Creamer v. Raffety, supra.

Also, while length of detention and intermingling of a temporary pretrial detainee with the general jail population of convicted individuals or longer term pretrial detainees is a factor to be considered in resolving the individualized question of whether or not to conduct a visual strip search, it may not serve as the sole

justification for a visual strip search of an individual held for a minor misdemeanor or traffic offense not normally associated with violence, contraband or weapons as intermingling can be limited or avoided by the appropriate authority and because less intrusive means are available to accomplish the same result. (i.e. use of "pat down", segregation, metal detectors). Thompson v. City of Los Angeles, 885 F.2d 1439 (9th Cir. 1989); Masters v. Crouch, supra; Giles v. Ackerman, supra; Hill v. Bogans, supra; Jones v. Bowman, supra; Cruz v. Finney Co. Kan., supra; Smith v. Montgomery Co., Md., 607 F.Supp. 1303 (D.C. Md. 1985); John Does 1-100 v. Boyd, 613 F.Supp. 1514 (D.C. Minn. 1985); Tinetti v. Wittke, supra. The fact that a pretrial detainee may be intermingled with the general jail population does not alone justify an indiscriminate strip search policy, Smith v. Montgomery Co., Md., supra, although that coupled with other factors has led courts to conclude that a visual strip search was not violative of the Fourth Amendment's requirement that the searches be reasonable. Thompson v. City of Los Angeles, supra, (grand theft felony sufficiently associated with a felony and detainee placed in general jail population); Dobrowolskyj v. Jefferson Co., Ky., 823 F.2d 955 (6th Cir. 1987), (charge of menacing involves violence and weapon and detainee placed in general jail population); Lusky v. T. G. and Y. Stores, 749 F.2d 1423 (10th Cir. 1984) reversed and remanded on other grounds 471 U.S. 808, (drug offense and detainee placed in general jail population); Dufrin v. Spreen, 712 F.2d 1084 (6th Cir. 1983), (felonious assault involves violence and detainee placed in general jail population).

However, factors which have been found to support a reasonable suspicion to justify a visual strip search but which should also be individualized, specific and objective, include the nature of the offense (i.e. felony or involving violence, weapons, drugs, contraband), the detainee's history of arrests and convictions for offenses concerning felonies, violence, weapons, or contraband, the detainee's appearance and conduct, and the result of any other search. Id.; Masters v. Crouch, supra, (charge of violence); McDaniel v. State, 20 Ark. App. 201, 726 S.W.2d 688 (1987), (suspect in felony offense). See also: John Does 1-100 v. Boyd, 613 F.Supp. 1514 (D.C. Minn. 1985), (need individualized suspicion directed specifically to the detainee); Hunt v. Polk Co., Iowa, supra, (jailer must point to specific, objective, individualized facts). But see: Watt v. City of Richardson Police Dept. 849 F.2d 195 (5th Cir. 1988), (a prior conviction for a minor drug offense alone was insufficient to justify visual strip search due to the age and expungement of the prior conviction, lack of cause for suspicion from the detainee's demeanor, and fact that bail was imminent); Holton v. Mohon, 684 F.Supp. (N.D. Tex. 1987), (Although arrest for D.U.I. may involve alcohol or drugs, there was no reasonable suspicion to conduct a visual strip search of this particular detainee); Logan v. Shealy, supra, (strip search of a D.U.I. detainee was unreasonable).

It appears your determination as to whether or not to conduct a visual strip search should be made on a case by case basis. With respect to minor traffic or misdemeanor offenders where the offenses do not involve violence, contraband, weapons, drugs, or the discovery of evidence, you should proceed with great caution and only when the search can be based on specific, reasonable suspicion. Reasonable suspicion has been supplied in certain instances based upon the felonious or violent nature of the offenses, offenses involving weapons or contraband, the detainee's history of arrests and convictions for felonious or violent offenses or offenses involving weapons or contraband, the detainee's appearance and conduct, or the result of any other search of the detainee.

I would stress, also, that the cases involving visual strip searches were, at times, unpredictable. This opinion attempts only to provide an overview of the general law and decisions from some courts on your questions. The rationales advanced for upholding the constitutionality in some instances were deemed invalid in others, therefore, you should proceed cautiously and view each case individually.

Sincerely,

Salley W. Elliott

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Assistant Attorney General

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REVIEWED AND APPROVED BY:

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