

### **SACRAMENTO**

400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
T: 916.321.4500  
F: 916.321.4555

### **BAKERSFIELD**

1675 Chester Ave., Ste. 320  
Bakersfield, CA 93301  
T: 661.864.3800  
F: 661.864.3810

### **SAN LUIS OBISPO**

1432 Higuera Street  
San Luis Obispo, CA 93401  
T: 805.786.4302  
F: 805.786.4319

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## **Male Pretrial Detainee's Constitutional Rights Were Not Violated When A Female Cadet Performed A Partial Strip Search On Him**

In *Byrd v. Maricopa County Sheriff's Department*, (--- F.3d ---, C.A.9 (Ariz.), May 18, 2009), the United States Court of Appeals for the Ninth Circuit considered whether a female cadet's partial strip search of a pretrial detainee violated the detainee's constitutional rights to equal protection, due process, and his right to be free from unreasonable searches. The Court of Appeals held that the detainee failed to show that his constitutional rights had been violated by or during the search.

### **Facts**

Charles Byrd ("Byrd") was a pretrial detainee at the Durango Jail in Maricopa County, Arizona ("Jail"). In October 2004, Jail began experiencing widespread problems with fights and contraband. Jail coordinated a search of Byrd's entire housing unit with the help of cadets from the Maricopa County Sheriff's Office Training Academy. On the day of the search, Jail officers came into Byrd's cell carrying taser and pepper guns and ordered him to remove all of his clothing except for his boxer shorts. The officers then ordered Byrd to walk into a common area where 25 to 30 cadets and 10 to 15 detention officers were waiting to conduct searches. One-third of the cadets and officers were women.

Kathleen O'Connell ("O'Connell") was the cadet that performed the search of Byrd. O'Connell approached Byrd from behind when his arms were above his head and his legs were spread. In the process of the search, which O'Connell said lasted between 10 and 20 seconds, she ran her hands across the waistband of Byrd's boxer shorts and pulled the waistband out a few inches to see if anything was hidden in the waistband. O'Connell did not look into Byrd's boxer shorts. O'Connell also frisked Byrd's groin and buttocks over his boxer shorts.

Byrd filed a lawsuit against the Sheriff's office, O'Connell and other officials alleging that the search violated his right to be free from

unreasonable searches, his due process right to be free from punishment, and his right to equal protection of the laws. Byrd claimed that the search caused him public humiliation and psychological trauma. The federal district court granted judgment in favor of all of the defendants except for O'Connell. Byrd's claims against O'Connell proceeded to a jury trial. The jury found in favor of O'Connell.

### **Decision**

The Court of Appeals upheld the decisions of the trial court. The Court of Appeals found that the trial court did not err in dismissing Byrd's equal protection claim. The court found that while Byrd did allege that a female performed the partial strip search, he failed to allege that the Jail or its officials acted with a discriminatory animus toward male prisoners when it allowed a member of the opposite sex to perform the searches.

The jury found that the search of Byrd was performed because of an identified security need and that O'Connell did not conduct the search in an inappropriate manner. Byrd did not challenge these findings on appeal. In part because of the jury's findings, the court rejected Byrd's argument that the cross-gender aspect of the search violated his due process right to be free from punishment and his right under the Fourth Amendment to be free from unreasonable searches.

Under the Due Process Clause of the United States Constitution, pretrial detainees may not be punished prior to an adjudication of guilt. Prisoners, on the other hand, may be subject to punishment as long as that punishment is not cruel and unusual. Whether a condition of confinement or a particular action amounts to punishment depends "on whether the action taken, or condition imposed, was accompanied by punitive intent." Here, there was no indication that O'Connell or the Sheriff intended to harm Byrd or knew that that the cross-

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gender search would cause Byrd harm. Also, the search was reasonably related to a legitimate security need. The court concluded that Byrd failed to show that his right to due process was violated by the search.

The court also concluded that the trial court did not err in finding that the search was reasonable under the Fourth Amendment. Pretrial detainees are entitled to at least the same protections of their constitutional rights as a convicted inmate. In order to gauge the reasonableness of a search, one must consider whether the search was "reasonably related to a legitimate penological interest." This analysis 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."

Here, the search was performed because Jail identified a security need. There was a legitimate need for the search given the reports of contraband and fighting. The scope of the search was reasonable because inmates could have been concealing contraband in their private areas. The court found that the manner of the search was not unreasonable just because it was conducted by a member of the opposite sex. It ultimately concluded that the manner of the search was reasonable because O'Connell used gloves during the search, she performed the search swiftly and professionally, and the search took less than 60 seconds. Also, the cross-gender aspect of the search was justified because there was a shortage of adequate personnel.

The reasonableness of a search of an inmate or detainee must be determined in the context of the problems that face prison administrators. Here, there was undisputed evidence that Maricopa County was experiencing staffing issues and did not have adequate male staff to perform the searches. Given these circumstances, the Court of Appeals held that it could not conclude that the district court erred in finding that the search was reasonable under the Fourth Amendment.

### **Questions**

If you have any questions concerning the

content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

Mona Ebrahimi | 916.321.4500