

Florence v. Board of Chosen Freeholders of County of Burlington

--- U.S. --- (2012)

Decided April 2, 2012

FACTS: In 1998, Florence was arrested in Essex County, NJ. He was sentenced to pay a fine in monthly installments. In 2003, after he fell behind in his payments, a bench warrant was issued. He caught up his payments but “for some unexplained reason, the warrant remained in a statewide computer database.” When he was stopped for a traffic offense two years later, he was arrested for the (presumably) outstanding warrant and taken to the Burlington County Detention Center.

At the jail, he was subjected to a delousing shower and was examined for “scars, marks gang tattoos, and contraband” pursuant to the jail’s procedures. He also claimed he was instructed to “open his mouth, lift his tongue, hold out his arms, turn around, and lift his genitals” although there was some question as to whether the last was actually part of the normal practice. Florence did share a cell with other inmates following his admission. He was transferred to the Essex County Correctional Facility six days later and was further examined by officers there, a process that “applied regardless of the circumstances of the arrest, the suspected offense, or the detainee’s behavior, demeanor, or criminal history.” He was released the next day when the charges against him were dismissed.

Florence sued the jails and related other parties under 42 U.S.C. §1983, claiming violations of his Fourth and Fourteenth Amendment rights. He claimed that “persons arrested for a minor offense could not be required to remove their clothing and expose the most private areas of their bodies to close visual inspection as a routine part of the intake process.” He argued instead that such searches could only be done “if they had a reason to suspect a particular inmate of concealing a weapon, drugs, or other contraband.” The District Court certified the case as a class-action, with the class being identified as “individuals who were charged with a nonindictable offense under New Jersey law” processed at the facilities named in the lawsuit, and who were “directed to strip naked even though an officer had not articulated any reasonable suspicion they were concealing contraband.”

Ultimately the District Court granted summary judgment in Florence’s favor, finding such searches unreasonable. Upon appeal, however, the Third Circuit Court of Appeals reversed, finding that the jail procedures “struck a reasonable balance between inmate privacy and the security needs of the two jails.” Florence requested certiorari and the U.S. Supreme Court granted review.

ISSUE: May jails do a thorough search, including requiring inmates to disrobe, during initial intake?

HOLDING: Yes

DISCUSSION: The Court began by noting that the term “strip search” is imprecise.

It may refer simply to the instruction to remove clothing while an officer observes from a distance of, say, five feet or more; it may mean a visual inspection from a closer, more uncomfortable distance; it may include directing detainees to shake their heads or to run their hands through their hair to dislodge what might be hidden there; or it may involve instructions to raise arms, to display foot insteps, to expose the back of the ears, to move or spread the buttocks or genital areas, or to cough in a squatting position. In the instant case, the term does not include any touching of unclothed areas by the inspecting officer. There are no allegations that the detainees here were touched in any way as part of the searches.

The Court continued, stated that “the difficulties of operating a detention center must not be underestimated by the courts.”¹ The Court had maintained the “importance of deference to correctional officers” in such matters. In *Bell v. Wolfish*², the Court had held that searching inmates after “contact visits” was appropriate since that served to deter the smuggling of contraband inside the facility. Subsequent cases had consistently upheld the right of detention facilities, and the Court noted that “these cases establish that correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities.” The Court agreed that “some type of strip search of everyone who is to be detained” is common practice in facilities across the country.

With respect to individuals arrested for minor offenses, the Court noted that some of the lower courts “have held that corrections officials may not conduct a strip search of these detainees, even if no touching is involved, absent reasonable suspicion of concealed contraband.” The Court agreed, however, that jails “have a significant interest in conducting a thorough search as a standard part of the intake process.” Such reasons include the need to detect lice or contagious diseases, wounds and injuries. The Court also noted the need to determine gang affiliations because such “rivalries spawn a climate of tension, violence, and coercion.” Finally, “detecting contraband concealed by new detainees ... is a most serious responsibility.” Such contraband, including weapons, drugs and alcohol, as well as more common items, such as cigarettes and lighters, “disrupt the safe operation of a jail.” Scarce and desirable items “have value in a jail’s culture and underground economy.”

¹ *Turner v. Safley*, 482 U.S. 78 (1987).

² 441 U. S. 520 (1979).

Despite Florence's assertion that it was unreasonable to search individuals arrested for minor offenses, the Court noted that the "record provides evidence that the seriousness of an offense is a poor predictor of who has contraband" Further, "it would be difficult in practice to determine whether individual detainees fall within the proposed exemption." In fact, the Court noted that "people detained for minor offenses can turn out to be the most devious and dangerous criminals," and provided a list of such incidents over recent years. Further, someone being arrested for a minor offense has reason to hide contraband, fearing a more serious charge should the contraband be found and further could be coerced by other inmates to hide such items upon intake.

Finally, the Court noted the difficulties of classifying inmates by their "current and prior offenses before the intake search." In addition, "jails can be even more dangerous than prisons because officials there know so little about the people they admit at the outset," they often do not even have access to the inmate's criminal history at the beginning and what they do have might be inaccurate. Trying to determine, in a few minutes, whether an inmate should or should not be searched presents practical problems for jail officials, and "to avoid liability, officers might be inclined not to conduct a thorough search in any close case, thus creating unnecessary risk for the entire jail population."

The Court upheld the decision of the Third Circuit Court of Appeals.

Full Text of Opinion: <http://www.supremecourt.gov/opinions/11pdf/10-945.pdf>