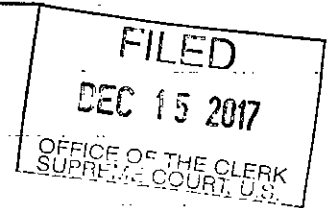


ORIGINAL

Case No. 18-8438



IN The
Supreme Court of The United States

Petitioner: Abdul Rahman Cole

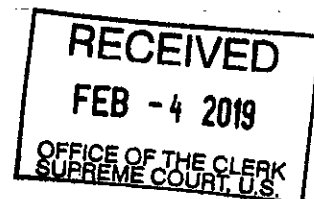
VS.

Respondent: Harold W. Clarke, Director
Virginia Department of Corrections

On Petit For a Writ of Certiorari to
Supreme Court of Virginia

Petition For Writ of Certiorari

Pro se Abdul Rahman Cole
Green Rock Correctional Center
P.O. Box 1000
Chatham, Virginia 24531



QUESTION(S) PRESENTED

- I'm asking the Court to overlook my case, and I'm hoping it can be dismissed.
 - Will the outcome of the writ of certiorari affect my current situation with the State of Virginia?
-

List of Parties

The Circuit Court of Alexandria City
(The honorable Judge Lisa B. Kemler)

The Court of appeal of Virginia

The Supreme Court of appeal of Virginia

I was Sentenced in the Circuit Court of Alexandria City by the honorable Judge Lisa B. Kemler to ten years on Possession with Intent to distribute Cocain, With all but three years Suspended. And twelve months on Misdemeanor Obstruction of Justice, on June 25th 2015.

My petition for appeal to the Court of appeals of Virginia was denied on July 1 2016

Following, I filed a petition for appeal to the Supreme Court of appeal of Virginia

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Appendix A

Opinions Below

Case from Federal Court

Bell Vs. Wolfish, 441 U.S. 520 (1979). Bell Imposes a balancing test Weighs "the needs for the Particular Search against the Invasion of Personal Rights that the Search entails. (Bell, 441 U.S. at 559) This balancing test Contains four factors which: (1) the Scope of the Particular Intrusion, (2) the Manner in which it was Conducted, (3) the Justification for Initiating it, and (4) the Place in which the Particular Intrusion is Conducted.

United States Vs. Ramsey, 431 U.S. 606 (1977)
Mr. Cole's Strip Search Could not have been Justified Under the Bell balancing test. A Strip Search is so Invasive that "the Fourth Amendment requires the Police to have an apparent basis before Subjecting an arrestee to the degrading and humiliating experience of a body Cavity Search.

Commonwealth Vs. Gilmore, 27 Va. App. 320, 333, 498 S.E. 2d 464, 471 (1998). Correctional officers Could not have developed Reasonable Suspicion that Mr. Cole was Carrying drugs hidden on or in his body. The deputy Supervisor authorized the Strip Search and Visual body Cavity Search based upon the Charge alone, Without analyzing the Circumstances of Mr. Cole's arrest. No drugs were found on Mr Cole's Person at the time of his arrest. Instead, Marijuana residue was found in a bag of trash on the floorboards of the backseat of

his car. The arresting officer and the Correctional Officer who dealt with Mr. Cole did not know him and had no historical information about him. The deputies at the Alexandria Detention Center did not have reasonable suspicion to conduct the strip search and visual body cavity search, so their actions in doing so violated the third prong of the Bell test. The deputies must have both reasonable suspicion and exigent need to conduct such an invasive search.

Commonwealth vs. Gilmore, 27 Va App 320, 330, 498 S.E. 2d 464 (1998). Strip searches are unreasonable when there is no evidence that the detainee would be admitted to a correctional facility and when there is no clear indication that the detainee was carrying drugs inside his person.

Jurisdiction

The date on which the highest State Court decided My Case was on November 16, 2017. A Copy of that decision appears at Appendix A

The Jurisdiction of this Court is Invoked under 28 U.S.C. § 1257(a)

Authorities Cited

Constitutional and Statutory Provisions Involved

Cases:

Bell VS. Wolfish, 441 U.S. 520 (1979)

Bell, 441 U.S. at 559

United States VS. Ramsey, 431 U.S. 606 (1977)

Commonwealth VS. Gilmore, 27 Va App 320, 333, 498 S.E. 2d 464, 471 (1998)

Commonwealth VS. Gilmore, 27 Va App 320, 330, 498 S.E. 2d 464 (1998)

Fourth Amendment of the United States Constitution...
4, 15, 16, 18

Article 1, Section 10 of the Virginia Constitution...

1, 11

Statutes:

Virginia Code § 17.1 - 410

Virginia Code § 19.2-398(A)(2) and Va Code
§ 19.2 - 409

Statement of Facts

From officer and deputy

On April 8, 2014, in the City of Alexandria, Alexandria Police Officer Moore stopped a vehicle for a minor traffic infraction. Moore learned that the driver, Mr. Cole, had an outstanding arrest warrant out of Arlington County, Virginia, for a misdemeanor failure to appear charge on an underlying DUI. Moore confirmed the outstanding warrant was active, then removed Mr. Cole from his car, told him he was under arrest, placed him in handcuffs, and put him in the back of Moore's police cruiser. During an inventory search of Mr. Cole's vehicle, Moore located a McDonald bag on the floor in the backseat and a cellphone in the front seat. The bag contained food wrappers and other trash, a nearly empty container of alcohol, the remains of a small cigar, and a baggie with a very small amount of a green leafy substance. Moore suspected the cigar and the baggie contained marijuana residue. Moore searched Mr. Cole incident to arrest and recovered approximately \$600. He did not find any suspected narcotics on Mr. Cole's person. Prior to the traffic stop, Moore did not see Mr. Cole engage in conduct consistent with drug distribution or possession. Moore had not previously interacted with Mr. Cole and had no information regarding his background. Mr. Cole

Said the McDonald's bag contained trash from his house that he was planning to throw away. Moore transported Mr. Cole to the Alexandria Jail and took him before deputy Robert Roland, a booking deputy. He told deputy Roland that Mr. Cole had an outstanding Misdemeanor Warrant from Arlington and that he was being charged with possession of an open container and possession of Marijuana (both Misdemeanors, one non-jailable). The deputy informed Moore that Mr. Cole would be strip-searched because of the Misdemeanor Marijuana Possession Charge. Mr. Cole was not taken before a Magistrate prior to the strip search. Deputy Roland does not remember Moore telling him that Mr. Cole had a Misdemeanor Warrant out of Arlington, but remembers being told that Mr. Cole was going to be charged with two Misdemeanors. Deputy Roland understood the open container charge to be a non-jailable offense. Deputy Roland had no background knowledge about Mr. Cole, and was not told where the Marijuana residue was found. He was not told whether the Marijuana was found in loose form or loaded in a device for use. Deputy Roland stated that the sole justification for the strip search was that Mr. Cole was being charged with possession of Marijuana. The deputy testified that strip searches, unlike regular searches, require the prior approval of a supervisor. He received permission from his

Supervisor to Strip Search Mr. Cole. The deputy Stated that anyone who Comes into the Jail with a drug Charge, a Weapons Charge, or a Violent-type Charge is going to be Strip Searched, Regardless of the Circumstances. Deputy Roland testified that an Individual who Cannot Make bond or is Not released to another Jurisdiction is Strip-Searched before being sent to general Population. Deputy Roland admitted that, at the time of the Strip Search and Visual body Cavity Search, he did not know whether Mr. Cole was going to be held in the Jail. Finally, he testified that not all Individuals are Strip-Searched if they do Not enter the Jail's general Population. The deputy testified that he and Moore Moved Mr. Cole to another room for the Strip Search and Visual body Cavity Search. The deputy ordered Mr. Cole to remove his clothes and hand them over one item at a time. Mr. Cole Complied. Deputy Roland asked Mr. Cole to turn around so that he could Visually Inspect Mr. Cole's Naked body. He asked Mr. Cole to open his Mouth and lift his genitals. Mr. Cole Complied. Finally, he asked Mr. Cole to bend and Squat so that he could Visually Inspect his buttocks and anal area. Mr. Cole turned around to Comply, the deputy saw him reach towards his buttocks and remove an Object. Both the deputy and Moore grabbed Mr. Cole's arms but Mr. Cole was able to put the item in his Mouth. A Struggle ensued and the officers Managed to Make Mr. Cole Spill Out the Item, and Moore recovered it. The entire

Struggle lasted no more than fifteen to twenty seconds. Mr. Cole never threatened the officers or tried to strike them. The recovered item was a plastic baggie containing Cocaine and Marijuana. Joseph Penkey is a lieutenant with the Alexandria Sheriff's department who works at the Alexandria Jail. Deputy Penkey stated that jail policy is to ask a supervisor to assess whether to strip search most individuals brought into the jail on drug or weapons charges. Deputy Penkey was not working on April 8, 2014. He did not know whether Mr. Cole was kept in an individual cell or whether he interacted with anyone other than deputies. He also did not know how many other individuals were in booking that day. Julie Crucioti is a forensic scientist who works for the Virginia department of forensic science. At trial, she was qualified by the Commonwealth as an expert in the field of forensic analysis, specifically the forensic analysis of controlled substances. She examined and tested five of the fourteen rocks of suspected cocaine recovered from Mr. Cole. She determined that those five rocks each contained cocaine and together weighed approximately five grams. The rocks appeared to be several different sizes. Crucioti did not test the other nine rocks and, consequently, did not know what they were.

Reason for granting the Petition

The Court of appeals erred in its refusal to reconsider the issue of the Motion to Suppress which was the subject of an interlocutory appeal pursuant to Virginia Code § 17.1-410, which does not preclude the Court of appeals from reconsidering an issue which was the subject of a pretrial appeal by the Commonwealth under Virginia Code § 19.2-398(A)(2) and Va Code § 19.2-409 and further erred when it held that the law of the case doctrine precluded its reconsideration of the issue of whether the Motion to Suppress should have been granted. (Court of appeals opinions dated April 8, 2016, and July 1, 2016).

The law of the case doctrine posits that a rule of law decided upon in one stage of a case should govern other stages of a case. The doctrine is a "simple principle of disciplined self-consistency based on principles of finality and comity as opposed to lack of authority."

The Court of appeals erred in reversing the trial court's granting of Mr. Cole's Motion to Suppress all evidence seized pursuant to a strip search and visual body cavity search of him at the Alexandria Adult Detention Center because the Court of appeals relied on an erroneous interpretation of the Supreme Court's holding in *Florence*, and where the holding of *Florence* is limited to cases in which a detainee cannot be housed separately from the general

Population, and where Mr. Cole was arrested for a Minor Crime, had not been taken before a Magistrate, and no determination had been made as to whether he would enter the general Population of the Jail.

On August 28, 2014, the trial Court heard a Motion to Suppress all evidence seized in this Matter pursuant to a Strip Search and Visual body Cavity Search of Mr. Cole in the Alexandria Adult Detention Center on April 8, 2014. The trial Court granted the Motion and Suppressed all of the Narcotics that were recovered from Mr. Cole during that Search. The Commonwealth filed an Interlocutory appeal to the Court of appeals on this issue.

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Conclusion

The petition for a writ of Certiorari should be granted.

Respectfully Submitted,
Abdul Rahman Cole

~~Abdul~~ Cole

Date 02-4-19

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