Embarrassing the Present: *Florence v. County of Burlington* Conferring Unbridled Authority to Strip Search Citizens

by Deidre Baumann

In most cases, if you are stopped by a police officer for a minor offense, such as not wearing your seatbelt, the officer would be permitted to temporarily detain you for producing identification and insurance. Usually, the officer would write a ticket and you would be on your way.[1] However, according to our Supreme Court, the officer may, and is constitutionally permitted to, arrest you for that violation.[2] As an arrestee, you are subject to a full search of your person and confiscation of your possessions.[3] The entire passenger compartment of your car, including packages therein, is subject to search as well.[4] Depending upon the state in which you were arrested, you may be taken to the station, held for fingerprinting and the issuance of a personal recognizance or other bond or you may be held for up to forty-eight hours before you are required to be brought before a judge.[5] While you are detained for up to forty-eight hours or even more, you may be held in a facility with a general prison population and if so, you may be subjected to humiliating personal searches whereby you are made to strip naked, shower with a delousing agent, and lift or spread your genitalia and/or anus for a visual inspection.[6] Thus, even though you are presumed innocent of whatever minor infraction you are ultimately charged with, if the detaining locality wishes to do so, they may essentially eliminate your right to privacy in the interest of "legitimate penological interests."[7] Moreover, courts are to defer to the judgments of prison officials without any meaningful review because you have become a "detainee." If this is beyond any reasonable expectation you would have as an alleged traffic offender[8] or it sounds Orwellian to you, let me introduce you to the United States Supreme Court decision in *Florence v. Board of Chosen Freeholders of County of Burlington et al*.[9]

Florence v. Board of Chosen Freeholders of County of Burlington

Albert W. Florence was a passenger with his wife and 4-year-old child in a BMW sports-utility vehicle when a New Jersey state trooper stopped his wife for a traffic offense. When the trooper checked the computer system, the computer erroneously listed an outstanding warrant for petitioner.[10] Although not fully reported in the opinion, the officer handcuffed Florence and placed him under arrest, allegedly ignoring an official document Florence presented to show that he had paid the fine. Florence said he carried the letter because of a tendency of officers to pull over black men driving nice cars.[11] Florence was driven to the Burlington County Jail, where he said he was taken into a stall with a partially opened curtain, ordered to disrobe and made to lift his tongue, arms and genitals in front of an officer. He said he was transferred to an Essex County facility six days later and strip-searched again, this time along with four other men.[12] For reasons which are not explained, Florence was not brought before a magistrate for six days, but once brought before a court he was immediately released.

The question addressed was whether, pursuant to the Fourth and Fourteenth Amendments, prison officials were permitted to subject persons arrested for minor offenses, yet imprisoned in the general population of a detention facility, to "a close visual inspection while undressed" without reasonable suspicion that such persons are concealing weapons, drugs, or other contraband.[13] The majority of the Court answered this question in the affirmative, concluding that the search procedures at the county jails struck a reasonable balance between inmate privacy and the needs of the institutions.[14] The Court noted that in addressing this type of constitutional claim, courts must defer to the judgment of correctional officials unless the record contains substantial evidence showing their policies are an unnecessary or unjustified response to problems of jail security and "such a showing was not made" in the case.[15]

The Court discussed the significant interest in conducting a thorough search as a standard part of the intake process, "[t]he admission of inmates creates numerous risks for facility staff, for the existing detainee population, and for a new detainee himself or herself."[16] There is a danger of introducing lice or contagious infections and persons arrested may have wounds or other injuries requiring immediate medical attention which are difficult to identify and treat until detainees remove their clothes for a visual

inspection.[17] Moreover, jails and prisons face grave threats posed by the increasing number of gang members who go through the intake process.[18] Potential gang violence provides a reasonable basis to justify a visual inspection for certain tattoos and other signs of gang affiliation as part of the intake process, posited the Court.[19] Finally, the Court explained, the ability to detect contraband concealed by new detainees was extremely important.[20]

Florence maintained that there was little benefit to conducting more invasive searches on a new detainee who has not been arrested for a serious crime or for any offense involving a weapon or drugs.[21] The Court concluded that requiring officers to have a reasonable suspicion that a detainee is hiding contraband is "unworkable," as "[t]he record provides evidence that the seriousness of an offense is a poor predictor of who has contraband and that it would be difficult in practice to determine whether individual detainees fall within the proposed exemption."[22]

However, four of the five justices joining in the majority opinion agreed that the case did not require the Court to rule on the types of searches that would be reasonable in instances where, for example, a detainee will be held without assignment to the general jail population and without substantial contact with other detainees, as was the case in *Atwater v. Lago Vista*.[23] Justices Roberts and Alito opined in their concurrences that, while they joined the opinion of the Court, it was important that the Court not foreclose the possibility of an exception to the announced rule.[24] Justice Roberts noted, in his concurring opinion, that Florence was detained not for a minor traffic offense but instead pursuant to an arrest warrant; moreover, if Florence were to be detained, there was no alternative but to hold him in the general jail population.[25] He stated that while the Court made a persuasive argument for the general applicability of the rules it announces, "[t]he Court is nonetheless wise to leave open the possibility of exceptions, to ensure that we 'not embarrass the future.'"[26]

In his concurring opinion, Justice Alito stated it was important to note that *Florence* does not hold that it is always reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population.[27] He notes, "[m]ost of those arrested for minor offenses are not dangerous, and most are released from custody prior to or at the time of their initial appearance before a magistrate. In some cases, the charges are dropped. In others, arrestees are released either on their own recognizance or on minimal bail. In the end, few are sentenced to incarceration. For these persons, admission to the general jail population, with the concomitant

embarrassing the present continued on page 10

embarrassing the present continued from page 9

humiliation of a strip search, may not be reasonable, particularly if an alternative procedure is available."[28]

The cases upon which the majority relied include *Atwater,*[29] *Turner v. Safley,*[30] *Bell v. Wolfish,*[31] *Block v. Rutherford,*[32] and *Hudson v. Palmer.*[33]

Arrest For Minor Offenses: *Atwater v. Lago Vista*

The *Florence* Court made it clear persons arrested for minor offenses were subject to strip search, in part, as "a consequence of *Atwater*."[34] That case held that the Fourth Amendment did not forbid a warrantless arrest for a minor criminal offense, such as a seatbelt violation punishable only by a fine.

In *Atwater*, Gail Atwater was driving her pick-up truck in Lago Vista, Texas, with her 3-year-old son and 5-year-old daughter in the front seat. None of them was wearing a seatbelt. A Lago Vista police officer observed the seat belt violations and pulled over Atwater, who also did not have with her her driver's license and insurance documentation, explaining that her purse had been stolen the day earlier. The officer handcuffed Atwater, placed her in a squad car, and drove her to a local police station where booking officers had her remove her shoes, jewelry, and eyeglasses, and empty her pockets. Officers took Atwater's "mug shot" and placed her, alone, in a jail cell for about one hour, after which she was taken before a magistrate and released on $310 bond.[35]

In upholding the constitutionality of this treatment, the Court explained,"[i]f we were to derive a rule exclusively to address the uncontested facts of this case, Atwater might well prevail. She was a known and established resident of Lago Vista with no place to hide and no incentive to flee, and common sense says she would almost certainly have buckled up as a condition of driving off with a citation. In her case, the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment. Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case."[36] The Court felt, however, that "a responsible Fourth Amendment balance" was not well served by standards requiring "sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review."[37] The Court explained: "significantly, under current doctrine the preference for categorical treatment of Fourth Amendment claims gives way to individualized review when a defendant makes a colorable argument that an arrest, with or without a warrant, was 'conducted in an extraordinary manner, usually harmful to his privacy or even physical interests.'"[38] The Court concluded that the arresting officer was authorized to make a custodial arrest without balancing costs and benefits or determining whether or not the arrest was in some sense necessary. The Court was careful to add that the arrest was not made in an "extraordinary manner, unusually harmful to her privacy or . . physical interests."[39] While the arrest and booking were inconvenient and embarrassing to Atwater, explained the Court, they were not so extraordinary as to violate the Fourth Amendment.

Justices O'Connor, Stevens, Ginsberg and Breyer dissented in *Atwater*, concluding that the majority's position was inconsistent with the Fourth Amendment. When a full custodial arrest is affected without a warrant, the Fourth Amendment requires that the arrest be reasonable.[40] The touchstone of the Fourth Amendment analysis is always "the reasonableness in all circumstances of the particular governmental invasion of a citizen's personal security."[41] When historical precedence is inconclusive, the Court evaluates search or seizure "under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests."[42] In determining reasonableness, "each case is to be decided on its own facts and circumstances."[43]

Judicial Review of Prisoners' Constitutional Rights: *Turner v. Safley*

The second case upon which the *Florence* majority relied was *Turner v. Safley*.[44] There, the Court considered a claim by Missouri prisoners that regulations restricting inmate marriages and inmate-to-inmate correspondence were unconstitutional. The Court rejected the prisoners' argument that the regulations should be subject to strict scrutiny, asking instead whether the regulations that burdened the prisoners' fundamental rights were "reasonably related" to "legitimate penological interests."[45] As noted in *Johnson v. California,*[46] however, a case recognized by the majority in *Florence*, the courts apply a reasonable relationship test *only* to rights that are inconsistent with proper incarceration, the reason being that certain privileges and rights must necessarily be limited in the prison context.[47]

Further Judicial Justification: *Bell*, *Block*, and *Hudson*

The *Florence* Court also relied on *Bell v. Wolfish,*[48] *Block v. Rutherford,*[49] and *Hudson v. Palmer*[50] for its justification. In *Bell*, the Court addressed a rule requiring pretrial detainees in any correctional facility run by the Federal Bureau of Prisons

embarrassing the present continued on page 12

embarrassing the present continued from page 10

"to expose their body cavities for visual inspections as a part of a strip search conducted after every contact visit with a person from outside the institution."[51] The Court upheld the search policy, deferring to the judgment of correctional officials that the inspections served not only to discover but also to deter the smuggling of contraband into the facility. The Court noted that the need for a particular search must be balanced against the resulting invasion of personal rights. The Court carefully noted, however, that it was not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails.[52] The Court necessarily assumed that the person was lawfully committed to pretrial detention, meaning he had "a judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest."[53]

In *Block v. Rutherford*, the Court decided whether pretrial detainees have a constitutional right to contact visits and to observe shakedown searches of their cells by prison officials. The Court concluded that the Los Angeles County Jail could ban all contact visits because of the threat they posed. According to the Court, there were "many justifications" for imposing a general ban rather than trying to carve out exceptions for certain detainees.[54] Moreover, the Court felt that the issues surrounding the "shakedown" searches had already been addressed in *Wolfish* and that all of the restrictions were reasonable responses by prison officials to legitimate security concerns.[55]

Interestingly, the Court in *Block* made it clear that the prisoners in that case were "persons awaiting trial and confined because they are unable to meet the requirements for release on bail."[56] The Court explained, "no one familiar with even the barest outline of the problems of the administration of a prison or jail, or with the administration of criminal justice, could fail to be aware of the ease with which one can obtain release on bail or personal recognizance. The very fact of nonrelease pending trial thus is a significant factor bearing on the security measures that are imperative to proper administration of a detention facility."[57]

Finally, in *Hudson v. Palmer*, the Court upheld the constitutionality of the practice of prison officials randomly searching inmates lockers and cells without reason to suspect a particular individual of concealing a prohibited item.[58] The Court noted that while prisoners enjoy many protections of the Constitution that are not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration, "imprisonment carries with it the circumscription or loss of many rights as being necessary to accommodate the institutional needs and objectives of prison facilities, particularly internal security and safety."[59]

In *Hudson*, the respondent was an inmate at the Bland Correctional Center in Bland, Virginia, serving sentences for forgery, uttering, grand larceny, and bank robbery convictions. The Court reasoned: "[p]risons, by definition, are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial, criminal, and often violent, conduct. Inmates have necessarily shown a lapse in ability to control and conform their behavior to the legitimate standards of society by the normal impulses of self-restraint; they have shown an inability to regulate their conduct in a way that reflects either a respect for law or an appreciation of the rights of others."[60] The Court continued by holding that a right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order.[61] The loss of freedom of choice and privacy are inherent incidents of confinement.[62] In the words of the *Florence* Court: "[t]hese cases establish that correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities."[63]

So What's the Problem?

While four majority justices in *Florence* expressed concern about circumstances that might tip the balance in favor of unreasonableness and thus unconstitutionality (*i.e.*, where the detention has not been reviewed by a judicial officer, where alternative facilities are available apart from the general population as in *Atwater*, and when officers engage in intentional humiliation and other abusive practices), the Court nevertheless upheld the constitutionality of the strip search of Florence on the ground that the search procedures at the Burlington County Detention Center and the Essex County Correctional facility struck a balance between inmate privacy and the needs of the institution.[64] There are legitimate concerns with the Court's decision, however: (1) the Court appeared to give very little consideration to the impact on the detainee of the search procedures and thus, the Court deferred to each of the justifications posited by law enforcement without any real analysis; (2) the cases upon which the majority relied do not support elimination of the reasonable suspicion requirement where there has been no judicial review; and (3) despite cautionary comments of four of the majority justices, the Court has upheld what appears to be an unreasonable search policy and violation of the Fourth

Amendment. Indeed, it is difficult to harmonize Justice Alito's concurrence with the majority result.

Fourth Amendment Test of Reasonableness

As explained in *Bell v. Wolfish*, the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.[65] In each case, the test requires a balancing of the need for the particular search against the invasion of personal rights that the search entails.[66] Courts must consider the scope of the particular intrusion, the manner in which it was conducted, the justification for initiating it, and the place in which it is conducted.[67] In *Bell*, the Court ultimately concluded, "we deal here with the question whether visual body-cavity inspections as contemplated by the MCC rules can *ever* be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can."[68]

There are several general principles that have guided the Court in reviewing security restrictions in the prison setting. The first is that convicted prisoners do not forfeit all constitutional protections by reason of their conviction and confinement in prison.[69] *A fortiori*, pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights held by convicted prisoners.[70] However, simply because prison inmates retain certain constitutional rights does not mean these rights are not subject to restrictions and limitations. The fact of confinement as well as the legitimate policies of the penal institution limits these retained constitutional rights.[71] As stated in *Bell*, "[t]his principle applies equally to pretrial detainees and convicted prisoners. A detainee simply does not possess the full range of freedoms of an unincarcerated individual."[72] Moreover, maintaining institutional security and reserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both convicted prisoners and pretrial detainees.[73]

Impact on the Detainee

Justice Kennedy begins the majority opinion in *Florence* by explaining that while the specific measures being challenged will be later described in the opinion, "the controversy concerns whether every detainee who will be admitted to the general population may be required to undergo a close visual inspection while undressed."[74] The Court does not disagree as to what this "close visual inspection while undressed" entails and the dissent describes it in detail.[75] The strip search in question involves not merely undressing and taking a shower in the presence of guards,

embarrassing the present continued on page 14

embarrassing the present continued from page 13

but close observation of the private areas of a person's body. The visually invasive kind of strip search at issue was described in *Dodge v. County of Orange*, in which the "strip search" involved: "a visual inspection of the inmate's naked body. This should include the inmate opening his mouth and moving his tongue up and down and from side to side, removing any dentures, running his hand through his hair, allowing his ears to be visually examined, lifting his arms to expose his arm pits, lifting the feet to examine the sole, spreading and/or lifting his testicles to expose the area behind them and bending over and/or spreading the cheeks of his buttocks to expose his anus. For females, the procedures are similar except females must in addition, squat to expose the vagina."[76]

Other than the description of the searches in question, the Court does not discuss the impact of the searches upon the "prisoner," although Justice Alito concedes in his concurrence that "[u]ndergoing such an inspection is undoubtedly humiliating and deeply offensive to many."[77] As the dissenting justices recognize, "[a] strip search that involves a stranger peering without consent at a naked individual, and in particular at the most private portions of that person's body, is a serious invasion of privacy."[78] The dissent pointed out that in *Safford v. United School Dist. #1 v. Redding*, in respect to a school child and a less intrusive search, the Court said that the "meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions."[79]

The Courts of Appeals have more directly described the privacy interests at stake and practices similar to those at issue as "demeaning, dehumanizing, undignified, humiliating, terrifying, unpleasant, embarrassing, [and] repulsive, signifying degradation and submission."[80] The *Florence* dissent points out that the harm to privacy interests would seem all the more acute where the person being searched may well have no expectation of being subject to a search because she had simply failed to buckle a seatbelt, pay a civil fine, or because she had been arrested for a minor trespass.[81] Moreover, the dissent considers the humiliations of a visual strip search, such as those experienced by an elderly nun who was arrested for trespassing during an anti-war demonstration, women who were strip-searched during periods of lactation or menstruation, and victims of sexual violence. All of this was ignored by the majority resulting in a complete absence of "balancing" as would be required even under the least stringent constitutional review.

Moreover, as the dissent noted, the "particular" invasion of interests, must be "reasonably related" to the justifying "penological interest" and the need must not be "exaggerated."[82] There is no convincing reason why, in the absence of reasonable suspicion, involuntary strip searches of those arrested for minor offenses are necessary in order to further the penal interests mentioned and "there are strong reasons to believe they are not justified."[83] According to the dissent, the majority did not offer any reason, example, or empirical evidence suggesting the inadequacy of these procedures for detecting injuries, diseases, or tattoos. Moreover, there could be no connection between the genital lift and the "squat and cough" that Florence was subjected to and health or gang concerns.[84] In terms of the interest in detecting contraband, "[t]he information demonstrating the lack of justification is of three kinds." Empirically based conclusions reached in specific cases,[85] the plethora of recommendations of professional bodies, such as correctional associations, that have studied and thoughtfully considered the matter,[86] and the general experience in areas where the law has forbidden suspicionless strip searches all command the conclusion that some suspicion must be required before conducting a strip search of a detainee.[87]

Strip Search Not Constitutionally Justified Absent Judicial Review

The cases upon which the majority relied do not compel elimination of the reasonable suspicion requirement for a strip search where there has been no judicial review of the detention prior to incarceration in the general prison population. While the majority in *Florence* glosses over this fact, the record before the Court indicated that Florence was held for six days in jail, during which time he was subjected to two strip searches, before being taken to a magistrate.[88]

Although *Atwater* supports the initial arrest, it did not address the permissible scope of search in the "prisoner" context. While in *Turner* the prisoners had been convicted of crimes and were serving time in the Missouri Division of Corrections, the litigation focused on the practices of the Renz Correctional Institute. As the Court explained, the Renz prison population included both male and female prisoners of varying security levels. Most of the female prisoners at Renz were classified as medium or maximum security inmates, while most of the male prisoners were classified as minimum security offenders"[89] The Court in *Turner* did not address the constitutionality of regulations governing persons detained pending trial.

While the *Bell* Court's decision did reach pretrial detainees, the Court carefully noted that it was not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails.[90]

The Court necessarily assumed that the person was lawfully committed to pretrial detention, that is he has had a "judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest."[91] Thus, even under the virtually non-existent standards set forth in *Bell*, some sort of judicial review was required prior to the intrusive searches. Importantly, the Court was careful to explain that it was using a "less than probable cause" standard in the context of the strip searches of detainees; the Court did not hold that no cause was required to justify a particular search. In *Block* as well, the Court explained that the prisoners about which they were speaking were "persons awaiting trial and confined because they are unable to meet the requirements for release on bail."[92] Legitimate or not, the Court reasoned, "no one familiar with even the barest outline of the problems of the administration of a prison or jail, or with the administration of criminal justice, could fail to be aware of the ease with which one can obtain release on bail or personal recognizance. The very fact of nonrelease pending trial thus is a significant factor bearing on the security measures that are imperative to proper administration of a detention facility."[93]

Finally, in *Hudson*, the respondent was an inmate at the Bland Correctional Center serving sentences for multiple felonies, including bank robbery. The Court premised its ruling upon the fact that persons already convicted of crimes have shown a lapse in ability to conform their behavior to the legitimate standards of society.[94] This reasoning would be inapplicable to a person, who is presumed to be innocent and who has merely been accused of a minor offense.

The majority decision in *Florence* can only be consistent with the Court's prior rulings, if *Florence* is limited as suggested by Justice Alito in his concurrence. Justice Alito noted that it was important that *Florence* does not hold it is always reasonable to conduct a full strip search of an arrestee whose detention has not been reviewed by a judicial officer and who could be held in available facilities apart from the general population. As noted by Justice Alito, persons arrested for minor offenses are not dangerous and few are sentenced to incarceration. For these persons the humiliation of a strip search may not be reasonable, particularly if an alternative procedure is available.[95] It is difficult to reconcile Justice Alito's concurrence with the majority decision, which he joined, where the Court stated, "[p]eople detained for minor offenses can turn out to be the most devious and dangerous criminals," noting that, just hours after the Oklahoma City bombing, Timothy McVeigh was stopped by a state trooper who noticed he was driving without a license plate.[96] The Court also claims,

embarrassing the present continued on page 16

embarrassing the present continued from page 15

"[i]n the absence of reliable information it would be illogical to require officers to assume the arrestees in front of them do not pose a risk of smuggling something into the facility."[97]

Conclusion

The Court's decision in *Florence* is really no surprise given the development of the Court's reasoning as it relates to the abdication of the rights of prisoners including pretrial detainees, in furtherance of "legitimate penological interests." However, the Court did not even recognize, let alone balance, the interests of such detainees in remaining free of unreasonable searches of their person. Moreover, it appears that the judgment of the Court of Appeals for the Third Circuit should have been reversed, rather than affirmed, given Justice Alito's concurrence. Whether one's Fourth Amendment rights have been violated can only be determined on a fact specific basis, yet the Court was clearly uncomfortable with the nuances of the particular facts in *Florence*. In particular, it is troubling that the Court ignored the fact that Florence had not been taken before a magistrate for six days, meanwhile being subjected to multiple indignities. Finally, the cases upon which the Court relied did not compel the result reached even given the important penological interests at stake.

Endnotes

[1] *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984)("A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may be given a citation, but that in the end he most likely will be allowed to continue on his way.")

[2] *Atwater v. City of Lago Vista et al.*, 532 U.S. 318 (2001).

[3] *United States v. Robinson*, 414 U.S. 218 (1973)(in the case of a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a reasonable search under that Amendment).

[4] *New York v. Belton*, 453 U.S. 454 (1981).

[5] *County v. Riverside v. McLaughlin*, 500 U.S. 44 (1991).

[6] *Florence v. Board of Chosen Freeholders of County of Burlington et al.*, 566 U.S. ___ (2012).

[7] *Id.* at 8 (Persons arrested for minor offenses may be among the detainees at facilities permitting strip search procedures).

[8] *Berkemer,* 468 U.S. at 437.

[9] *Florence*, 566 U.S. at 1-19.

[10] *Florence*, 566 U.S. at 2 (in 1998, seven years before the incident in question, Florence had been arrested in Essex County, New Jersey. He was charged with obstruction of justice and use of a deadly weapon. Florence entered a plea of guilty to two lesser offenses and was sentenced to pay a fine in monthly installments. In 2003, Florence fell behind in payments and missed an enforcement hearing and, as a result, a bench warrant was issued for his arrest. Florence paid the remaining balance less than a week later but, for some unexplained reason, the warrant remained in the statewide computer database.

[11] Greg Stohr, *Jailhouse Strip Searches Backed by U.S. Supreme Court Ruling*, Bloomberg.com (April 2, 2012, 1:19 p.m.), http://www.bloomberg.com/news/2012-04-02/jailhouse-strip-searches-backed-by-u-s-supreme-court.html.

[12] *Id.*

[13] *Id.* at 3-4.

[14] *Id.* at 19.

[15] *Id.* at 10.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 10-11.

[19] *Id.* at 11.

[20] *Id.* at 11-13.

[21] *Id.* at 13-14.

[22] *Id.*

[23] *Id.* at 18-19.

[24] *Id.* at 1 (Robert, J., concurring); *id.* at 1-3 (Alito, J., concurring).

[25] *Id.* at 1 (Robert, J., concurring).

[26] *Id.*, *citing Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 300 (1944).

[27] *Id.* at 2 (Alito, J., concurring).

[28] *Id.*

[29] *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).

[30] *Turner v. Safely*, 482 U.S. 78 (1987).

[31] *Bell v. Wolfish*, 441 U.S. 520 (1979).

[32] *Block v. Rutherford*, 468 U.S. 576 (1984).

[33] *Hudson v. Palmer*, 468 U.S. 517 (1984).

[34] *Florence*, 566 U.S. at 8.

[35] *Atwater*, 532 U.S. at 323-24.

[36] *Id.* at 346-47.

[37] *Id.* at 347.

[38] *Id.* at 353-54, *citing Whren v. United States*, 517 U.S.806, 818 (1996); *Winston v. Lee*, 470 U.S. 753 (1985)(addressing physical penetration of the body).

[39] *Id.*

[40] *Payton v. New York*, 445 U.S. 573, 585 (1980).

[41] *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

[42] *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)(Breyer, J., concurring).

[43] *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

[44] *Turner*, 482 U.S. 78.

[45] *Id.* at 89.

[46] *Johnson v. California*, 543 U.S. 499 (2005)(strict scrutiny is the proper standard for review for an equal protection challenge to the California Department of Corrections' unwritten policy of racially segregating prisoners).

[47] *Id.* at 510, *citing Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (constitutional challenge to the Michigan Department of Corrections regulations limiting prison visitation; applying *Turner*

analysis); *Pell v. Procunier*, 417 U.S. 817, 822 (1974)("[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system."); *Johnson ref. O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987), *quoting Price v. Johnston*, 334 U.S. 266, 285 (1948) ("'[L]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.'").

[48] *Bell,* 441 U.S. 520.
[49] *Block*, 468 U.S. 576.
[50] *Hudson*, 468 U.S. 517.
[51] *Bell*, 441 U.S. at 558.
[52] *Id.* at 534.
[53] *Id.* at 536, *citing Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).
[54] *Block*, 468 U.S. at 587.
[55] *Id.* at 587-88.
[56] *Id.* at 583.
[57] *Id*.
[58] *Hudson*, 468 U.S. 517.
[59] *Id.* at 523.
[60] *Id.* at 526.
[61] *Id.* at 528.
[62] *Id.*, *citing Bell*, 441 U.S. at 537.
[63] *Florence*, 566 U.S. at 7.
[64] *Id.* at 19.
[65] *Bell*, 441 U.S. at 559.
[66] *Id.*
[67] *Id.*
[68] *Id.* at 560.
[69] *Id.* at 545.
[70] *Id.*
[71] *Id.* at 546.
[72] *Id.*
[73] *Id.*
[74] *Florence*, 566 U.S. at 1.
[75] *Id.* at 1-2 (Breyer, J., Ginsburg, J., Sotomayor, J., Kagan, J., dissenting), *citing Dodge v. County of Orange*, 282 F. Supp. 2d 41 (SDNY 2003).
[76] *Id.*
[77] *Id.* at 1 (Alito, J., concurring).
[78] *Id.* at 3 (dissent).
[79] *Id., citing*, *Safford v. United School Dist. #1 v. Redding*, 557 U.S. __ (2009)(slip op., at 11).
[80] *Id.* at 3-4 (dissent), *citing Mary Beth G. v. Chicago*, 723 F.2d 1263, 1272 (7th Cir. 1984); *Blackburn v. Snow*, 771 F.2d 556, 564 (1st Cir. 1985).
[81] *Id.* at 4 (dissent).
[82] *Id.* at 6 (dissent).
[83] *Id.* at 7 (dissent).
[84] *Id.*
[85] *Id.* at 7-8 (dissent), *citing Dodge*, 282 F. Supp. 2d at 69 (of the 23,000 persons who underwent a strip search of the kind experienced by Florence, contraband was recovered in only five instances and in four of these five, there may have been reasonable suspicion to search, leaving only one in 23,000 in which the strip search policy arguably detected additional contraband).
[86] *Id.* at 8-10 (dissent); *see e.g.*, the American Correctional Association has promulgated a standard that forbids suspicionless strip searches after consultation with the American Jail Association, National Sheriff's Association, National Institute of Corrections of the Department of Justice, and Federal Bureau of Prisons and a standard desk reference for general information about sound correctional practices advises against suspicionless strip searches.
[87] *Id.* at 10 (dissent).
[88] *Id.* at 5 (dissent), *citing* App. To Pet. For Cert. 3a.
[89] *Turner*, 482 U.S. at 81.
[90] *Bell*, 441 U.S. at 534.
[91] *Id.* at 536, *citing Gerstein*, 420 U.S. at 114.
[92] *Block*, 468 U.S. at 583.
[93] *Id.*
[94] *Hudson*, 468 U.S. at 526.
[95] *Florence*, 566 U.S. at 2 (Alito, J., concurring).
[96] *Id.*, 566 U.S. at 14.
[97] *Id.* at 16.

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