



IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH SWANSON,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 364, 2024
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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## **NATURE AND STAGE OF THE PROCEEDINGS**

On September 11, 2023, Kenneth Swanson was indicted for drug dealing 25 grams or more of cocaine, possessing 25 grams or more of cocaine and driving while his license was suspended or revoked.<sup>1</sup> He later had a non-jury trial at which the State proceeded only on the felony charge of drug possession.<sup>2</sup> At the end of trial, the judge found Swanson guilty of that offense. The judge later granted the State's motion to declare Swanson a Habitual Offender and sentenced him to 10 years in prison suspended after 6 years followed by probation.<sup>3</sup> This Swanson's Opening Brief in support of a timely-filed appeal.

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<sup>1</sup> A1,5.

<sup>2</sup> A54.

<sup>3</sup> August 16, 2024 Sentence Order, Ex. A.

## **SUMMARY OF THE ARGUMENT**

1. The Fourth Amendment to the United States Constitution forbids searches that are “unreasonable under the circumstances.” Here, while police were permitted to conduct a search of Swanson incident to an arrest, they conducted the search in an unreasonable manner when they pulled back his shorts and underwear and reached down into his genital area. The reasonableness of an “invasive” search is determined by an assessment of “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.” While police had a legitimate basis to search Swanson incident to arrest, there were no exigent circumstances warranting the scope of intrusion. Further, there was no need for police to conduct the intrusive search in the public and in broad daylight. Therefore, the invasive search was unreasonable and the evidence obtained therefrom should have been suppressed. Accordingly, his conviction should now be reversed.

## STATEMENT OF FACTS

On June 7, 2023, Detective Anthony Randazzo of the New Castle County Police Department and Probation Officer William Walker were both working as part of a detail with Operation Safe Streets.<sup>4</sup> Around 11:00 a.m., both the officers, in separate vehicles, but working together, “stopped” the vehicle operated by Kenneth Swanson who was wanted for a violation of probation.<sup>5</sup> Swanson had pulled up to a pump at the Sunoco gas station on Maryland Avenue, a very busy highway.<sup>6</sup>

Randazzo, approached the driver and immediately confirmed that it was Swanson. The detective asked the driver to get out of the car. After Swanson got out of the car, Randazzo immediately cuffed his hands behind his back.<sup>7</sup> Rather than searching Swanson at that location, Randazzo moved him to the middle of a very large bay of gas pumps. There were several people getting gas and going in and out of the convenience store.<sup>8</sup> Swanson was compliant with the arrest and search.<sup>9</sup>

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<sup>4</sup> A13, 41.

<sup>5</sup> A15, 27, 42.

<sup>6</sup> A14, 31-32,47

<sup>7</sup> A16, 29.

<sup>8</sup> A31, 47

<sup>9</sup>A26, 34-35.

Swanson was wearing a t-shirt and loose fitting gym or basketball shorts.<sup>10</sup> While conducting the search, Randazzo found in Swanson's pockets a lighter and currency along with other miscellaneous items.<sup>11</sup> At that point, there was no indication that Swanson possessed any drugs or weapons in his pockets or groin area.<sup>12</sup> Nor did any of the officers have information before the stop that Swanson may have had any weapon on him.<sup>13</sup>

The detective went on to "pat down" Swanson's groin area on the outside of the loose-fitting shorts. According to the detective, he felt what he believed to be a hard object in a ball that he did not think was part of the human anatomy.<sup>14</sup> Randazzo announced that he believed Swanson had drugs in his groin area.<sup>15</sup> Probation Officer Walker put on gloves and Randazzo directed him to retrieve what he believed to be the illicit drugs.<sup>16</sup>

Walker pulled Swanson's shirt up, then pulled his shorts and underwear forward from the waist, looked down into genital area, saw a plastic bag, reached in and grabbed it.<sup>17</sup> Swanson remained cuffed with his hands behind

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<sup>10</sup> A48.

<sup>11</sup> A16.

<sup>12</sup> A28.

<sup>13</sup> A29.

<sup>14</sup> A17.

<sup>15</sup> A30.

<sup>16</sup> A17, 19, 30, 42. See State's Exhibit #1, Randazzo's Body Worn Camera Video. The passenger was arrested, and drugs were also seized from him.

<sup>17</sup> A44-45, 48.

his back the entire time.<sup>18</sup> Walker never received permission from any probation supervisor to conduct the search.<sup>19</sup> At no time was any effort taken to conceal Swanson from anyone's view.

The suspected drugs grabbed from inside Swanson's underwear were handed to Randazzo who then placed it in his vehicle.<sup>20</sup> Swanson, whose hands were still cuffed behind his back, was placed in the back of Randazzo's vehicle.<sup>21</sup> The detective explained that there is a partition between the front seat and backseat in his vehicle.<sup>22</sup>

Randazzo drove both the drugs and Swanson to New Castle County Police Department headquarters.<sup>23</sup> He placed the suspected drugs into evidence.<sup>24</sup> According to testing by the lab, the substance taken from Swanson was 27.1458 grams of cocaine.<sup>25</sup>

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<sup>18</sup> A49.

<sup>19</sup> A49.

<sup>20</sup> A20, 45.

<sup>21</sup> A22, 33.

<sup>22</sup> A20-22.

<sup>23</sup> A22.

<sup>24</sup> A22.

<sup>25</sup> A23-25.



**I. OFFICERS CONDUCTED AN UNREAONABLE SEARCH OF SWANSON WHEN, WITHOUT JUSTIFICATION, AND IN PUBLIC, THEY REACHED INTO HIS UNDERWEAR AND GRABBED WHAT THEY BELIEVED TO BE UNLAWFUL DRUGS.**

***Question Presented***

Whether police, who were authorized to search Swanson incident to a lawful arrest, conducted an unreasonable search when, without justification, and in public, they reached into his underwear and grabbed what they believed to be unlawful drugs.<sup>26</sup>

***Standard And Scope Of Review***

This Court reviews issues not raised below for errors which affects substantial rights as to jeopardize the fairness and integrity of the trial process.”<sup>27</sup> It is “limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right , or which clearly show manifest injustice.”<sup>28</sup>

***Argument***

The Fourth Amendment to the United States Constitution forbids searches that are “unreasonable under the circumstances.” Generally, a full

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<sup>26</sup> Del. Sup. Ct. Rule 7.

<sup>27</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

<sup>28</sup> *Id.*

search incident to a lawful arrest is reasonable “so long as the search does not involve a bodily intrusion.”<sup>29</sup> Searches that do involve bodily intrusions must be “justified in the circumstances” and conducted in a “proper manner” in order to conform with the defendant’s privacy interests.<sup>30</sup>

This Court, in addressing a strip search, clarified that:

[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of 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.<sup>31</sup>

This test is not only applied to strip searches, however. It is also applied by courts in assessing the reasonableness of other “invasive” searches that are public in nature.<sup>32</sup>

In this case, a review of the *Bell* factors reveals that the officers, while having a legitimate basis to arrest Swanson, were unreasonable in the manner in which they searched him. A compliant Swanson had his hands cuffed

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<sup>29</sup> *Paulino v. Sate*, 924 A.2d 308, 314 (Md. 2007).

<sup>30</sup> *Id* (citing *Schmerber v. California*, 384 U.S. 757, 769 (1966)).

<sup>31</sup> *Johnson v. State*, 1992 WL 151362\*1 (Del.) (quoting *Bell v. Wolfish*, 441 U.S. 520, 559 (1979)).

<sup>32</sup> *See Coates v. State*, 2025 WL 87957\*2 (Md.App.Ct. 2025).

behind his back.<sup>33</sup> When Randazzo initially conducted a pat down, he grabbed Swanson's groin two or three times.<sup>34</sup> Randazzo announced that he felt what he believed to be drugs. Walker, a probation officer, put on gloves, pulled Swanson's shirt up, then pulled his shorts and underwear forward from the waist far enough that Walker could see a plastic bag in the genital area. The probation officer then reached into Swanson's underwear into the bare genitals and grabbed what he suspected to be unlawful drugs.<sup>35</sup> Given the degree of Swanson's confinement and in balance with the other factors, this search was highly intrusive, demeaning and embarrassing.

The officers were not justified in initiating the invasive search in the middle of the Sunoco gas pump bay area. The rationale for a search incident to an arrest is "to remove any weapons" for the officer's safety and "to search for and seize any evidence" to "prevent its concealment or destruction."<sup>36</sup>

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<sup>33</sup> A49.

<sup>34</sup> A28.

<sup>35</sup> A44-45, 48.

<sup>36</sup> *Chimel v. California*, 395 U.S. 752, 763 (1969).

Here, the officers were justified in conducting a search incident to arrest, however, no “exigency existed such that an invasive search, conducted at the scene of the arrest, was reasonable.”<sup>37</sup> There was no information prior to the stop that Swanson had weapons on him.<sup>38</sup> Swanson had been compliant during the entire interaction. There was no indication that he would try to conceal or dispose of the evidence or was in any position to do so. Nor was there any information that Swanson had any weapons on him.<sup>39</sup>

The invasive search occurred right after Swanson pulled up to a gas pump at the Sunoco gas station and convenience store on Maryland Avenue. It was 11:00 a.m. There were people going in and out of the store. There were also several people present pumping gas. Rather than taking Swanson’s privacy into consideration, the officers took the handcuffed Swanson from between his car and the gas pump out to the middle of the wide-open gas pump bay area in view of the public. Finally, as the officers acknowledged,

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<sup>37</sup> *Paulino*, 924 A.2d at 317–18. See *State v. Haith*, 1999 WL 167824 (Del.Super.) (granting motion to suppress evidence seized as result of strip search without a warrant due, in part, to police failure to establish exigent circumstances that defendant may attempt to destroy or dispose of evidence).

<sup>38</sup> A28.

<sup>39</sup> *Turkes v. State*, 20 A.3d 173 (Md.App. 2011) (court concerned with privacy interests involved with reach-in search conducted in public, affirmed only after finding exigency for search outweighed intrusion into privacy due to, among other concerns, officer’s reasonable concern that the defendant had not only drugs, but also a weapon on his person, the officer also had information of drug dealing).

Maryland Avenue is a very busy highway.<sup>40</sup> There were no exigent circumstances demonstrating the need to conduct the invasive search in this public location. No facts revealed any possibility that Swanson had the intent or the potential to dispose of contraband before or while he was in the patrol car. He was cuffed with his hands behind his back, there is little room in the patrol vehicle, someone could easily have sat with him in the back of the vehicle.

Accordingly, due to the invasive search of Swanson's groin, the lack of justification for such an invasive search on the scene and the failure of police to make any effort to maintain or respect Swanson's privacy, the search was unreasonable. Thus, the admission of the drugs obtained as a result of that search clearly deprived him of a substantial right and was a manifest injustice. His conviction must now be reversed.

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<sup>40</sup>A14, 31-32, 47.

## **CONCLUSION**

For the reasons and upon the authorities cited herein, Swanson's conviction must be reversed.

Respectfully submitted,

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DATED: April 14, 2025