Circuit Court for Montgomery County
Case No. C-15-CR-22-001133

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1573

September Term, 2023

NIGEL COATES

v.

STATE OF MARYLAND

Beachley,
Kehoe, S.
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Kehoe, J.

Filed: January 14, 2025

Appellant, Nigel Coates ("Coates"), entered a conditional plea of guilty to one count of possession with intent to distribute a controlled dangerous substance ("CDS") in the Circuit Court for Montgomery County. The conditional plea included the preservation of appeal rights relating to the circuit court's denial of Coates's motion to suppress evidence, which argued for the suppression of drugs seized as a result of a sexually invasive search. Coates raises three questions on appeal:[1]

1. Did the trial court err in finding that the officers had reasonable articulable suspicion to stop the vehicle in which Coates was a passenger?

2. Did the trial court err in finding that the traffic stop and detention of Coates were not unlawfully prolonged?

3. Did the trial court err in denying Coates's Motion to Suppress Evidence recovered during a sexually invasive search?

[1] Appellant's questions are rephrased here for clarity. Appellant presented the questions as follows:

1. Did the Circuit Court err in denying Appellant's Motion to Suppress Evidence recovered from a warrantless stop where officers lacked probable cause and reasonable articulable suspicion to justify a seizure of Appellant and the vehicle Appellant was a passenger in?
2. Did the Circuit Court err in denying Appellant's Motion to Suppress Evidence where the stop and detention of Appellant was prolonged in violation of Article 26 of the Maryland Declaration of Rights and the Fourth Amendment to the United State Constitution?
3. Did the Circuit Court err in denying Appellant's Motion to Suppress Evidence recovered from two warrantless, sexually invasive, searches of him conducted on the side of a busy road, in broad daylight, while numerous vehicles passed by, in the presence of one civilian and multiple police officers, in which his pants were pulled out from his body fully exposing his public area and penis?

We address the third issue, as our finding on this question is dispositive of the case. Furthermore, we find that the trial court did err in denying Coates's Motion to Suppress Evidence recovered during a sexually invasive search.

FACTUAL BACKGROUND

On August 31, 2022, the Gaithersburg City Police, specifically officers of the Street Crimes Unit, was conducting surveillance on a known drug dealer at a parking lot outside of a Panera sandwich shop, where officers knew drug transactions to take place. Meanwhile, a U-Haul truck pulled in behind the Panera, and the passenger, Coates, got out. Coates was seen entering the Panera around the same time as the target of the investigation, the known drug dealer. About two to three minutes later, Coates exited the Panera, again around the same time as the known drug dealer. Coates was not carrying anything in his hands when he exited the Panera. For these reasons, officers believed that Coates had just purchased drugs inside the Panera and proceeded to follow the U-Haul truck as it left the parking lot.

Officers later observed the U-Haul truck cross over a double solid yellow line. Ofc. Eastman and his K-9 partner were called to the area to initiate the traffic stop, so that a scan could be performed on the vehicle without delay. The Street Crimes Unit, including Det. Engle, Sgt. Delgado, and about five other officers, assisted in the traffic stop. The occupants of the U-Haul truck were ordered out of the vehicle due to their furtive movements inside the vehicle prior to the traffic stop, which, from the officer's training, knowledge, and experience, tend to indicate an attempt to conceal weapons or contraband. Furthermore, officers indicated during the suppression hearing that the occupants appeared

to be nervous when approached. The occupants were identified as Johnny Moeum ("Moeum"), the driver, and Coates, the passenger. After Coates exited the vehicle, Det. Engle asked Coates if he could pat him down for weapons, to which Coates voluntarily disclosed a box cutter that was clipped to his pants. Det. Engle proceeded to pat down or frisk Coates for further weapons, however, no additional weapons or contraband were revealed. After the pat down, both Moeum and Coates were seated on the curb between their vehicle and the marked police vehicle. Coates was compliant with the officer throughout their interaction up to this point.

While officers checked the driver's license and warrant status of the occupants, a canine scan of the vehicle was conducted and a positive alert for CDS was indicated. The warrant status check on Coates revealed that he had an active arrest warrant for first degree burglary, and he was arrested. Sgt. Delgado began to search Coates incident to arrest, starting with his pockets, revealing lighters and aluminum foil, which, while legal to possess, could be considered as drug paraphernalia. Sgt. Delgado located a small bag of suspected synthetic marijuana in the waistband of Coates's pants. Coates was still relatively calm and compliant at this time.

Sgt. Delgado continued his search of Coates by pulling the waistband of Coates's pants away from his body, enough so that Sgt. Delgado could determine whether Coates was wearing any underwear. While Coates's pants were pulled away from his body, Sgt. Delgado and Ofc. Eastman were able to look in and see a cylindrical container located between Coates's groin and leg. Suspecting that there was CDS within the container, Sgt. Delgado reached into Coates's pants in an attempt to retrieve the container from Coates's

groin area. When Sgt. Delgado reached into Coates's pants, Coates tensed his body and tried pulling away from Sgt. Delgado. Approximately three other officers joined Sgt. Delgado and Ofc. Eastman in restraining Coates at this time. During this struggle, which lasted about thirty seconds, Coates's pants were pulled down and his pubic area exposed. Sgt. Delgado eventually recovered the container from Coates's groin area, which contained fentanyl pills.

Coates was charged with possession with intent to distribute a controlled dangerous substance for the fentanyl pills recovered on his person and later entered a conditional plea of guilty to that charge after the circuit court denied Coates's motion to suppress evidence. The appeal before us followed.

Additional facts will be included in the discussion as they become relevant.

STANDARD OF REVIEW

When reviewing a trial court's denial of a motion to suppress evidence, we are limited to the record from the suppression hearing. *Ferris v. State*, 355 Md. 356, 368 (1999). While deference is given to the trial court's findings of fact unless clearly erroneous, we review *de novo* the application of the law. *Wilkes v. State*, 364 Md. 554, 569 (2001). Evidence presented at the suppression hearing and inferences drawn therefrom shall be viewed in the light most favorable to the prevailing party, the State. *Scott v. State*, 366 Md. 211, 143 (2001).

DISCUSSION

Coates asks us to find that the traffic stop of the vehicle in which he was a passenger, and the further detention of Coates thereafter, violated the Fourth Amendment of the

United States Constitution. In addition, Coates asks us to find the search of his person, that revealed the CDS with which he was charged, in violation of the Fourth Amendment due to the sexually invasive and public nature of said search. The State concedes that the trial court erred in finding the search of Coates's person to be valid. However, the State asks that we address whether the stop was valid. Because our conclusion on the sexually invasive search issue is dispositive of the case, we need not discuss the legality of the traffic stop or the following detention of Coates.

The Fourth Amendment protects citizens from *unreasonable* searches and seizures. U.S. Const. Amend. IV (emphasis added). We are tasked with determining whether the sexually invasive and public search of Coates was reasonable under the circumstances. In determining the reasonableness of sexually invasive searches, for example strip searches, we use the four-factor test established by the United States Supreme Court in *Bell v. Wolfish*, 441 U.S. 520 (1979). The Supreme Court explained:

> The 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.

Id. at 559. The *Bell* test requires a flexible approach that balances the relative strength of each factor. *Williams v. State*, 231 Md. App. 156, 177 (2016). Furthermore, particularly when a sexually invasive search occurs in a public place, this Court requires that exigent circumstances exist for the search to be deemed reasonable. *Faith v. State*, 242 Md. App. 212, 235 (2019).

Scope of the Particular Intrusion

The first *Bell* factor is the scope, or level of intrusiveness, of the search. The Supreme Court of Maryland has recognized three categories of intrusive searches: a strip search, a visual body cavity search, and a manual body cavity search. *See Paulino v. State*, 399 Md. 341, 352 (2007). Our Supreme Court in *Paulino* defined the three categories as follows:

> A "strip search," though an umbrella term, generally refers to an inspection of a naked individual, without any scrutiny of the subject's body cavities. A "visual body cavity search" extends to a visual inspection of the anal and genital areas. A "manual body cavity search" includes some degree of touching or probing of body cavities.

Paulino, 399 Md. at 352 (quoting *Blackburn v. Snow*, 771 F.2d 556, 561 n.3 (1st Cir. 1985). On the intrusiveness continuum, a strip search falls to the lesser intrusive side while a manual body cavity search falls to the far end of the continuum. *State v. Harding*, 196 Md. App. 384, 412 (2010).

In *Faith*, this Court adopted "sexually invasive search," rather than "strip search," as the umbrella term for intrusive searches. *Faith*, 242 Md. App. at 256 (explaining that "sexually invasive search" is a broader umbrella that includes searches that "do not involve the removal of clothing or the internal inspection of body cavities," unlike the strip search umbrella previously used by the Court). In addition to the three categories of strip searches, sexually invasive searches include "look-in" and "reach-in" searches, which are less intrusive than a strip search but still go beyond what is typical of a search incident to arrest, and thus we apply the reasonableness *Bell* test to these searches. *Id.*; *Allen v. State*, 197 Md. App. 308, 322-25 (2011). As we explained in *Allen*, "[t]o the extent that [the search]

allows an officer to view a person's private areas... it still is intrusive and demeaning" and therefore "is not the type of search that automatically is allowed as a search incident to arrest." 197 Md. App. at 322-23.

A look-in search, or visual body search, involves the manipulation of clothing for the visual inspection of the *external* genital area, rather than the *internal* genital area or body cavities, without the removal of clothing or touching. *Faith*, 242 Md. App. at 256 (emphasis added). A reach-in search involves the manipulation of clothing for the purpose of retrieving contraband without the removal of clothing or exposing the suspect's genital areas to others. *Id*. Often, look-in and reach-in searches go hand in hand. *Id*. For example, the officer may manipulate clothing to look-in and view the external genital area for hidden contraband, if the officer sees contraband, then the officer may reach-in to retrieve said contraband, all without removing clothing or exposing the suspect's genital area to others except for the seizing officer.

This is how the search in the case *sub judice* began – a look-in search turned into a reach-in search. After the arrest of Coates and the search of his outer clothing, Sgt. Delgado continued the search by pulling the waistband of Coates's pants away from his body, enough so that Sgt. Delgado and Ofc. Eastman were able to look in and see a cylindrical container located between Coates's groin and leg. Then Sgt. Delgado reached into Coates's pants in an attempt to retrieve the container from Coates's groin area. At this point, Sgt. Delgado conducted a look-in and reach-in search.

However, the search was exacerbated to a strip search after Sgt. Delgado reached into Coates's pants. At this time, Coates tensed his body and tried pulling away from Sgt.

Delgado. Approximately three other officers joined Sgt. Delgado and Ofc. Eastman in restraining Coates. During the scuffle, which lasted about thirty seconds, Coates's pants were pulled down and his genital area exposed. Because Coates's clothing was partially removed from his body, exposing his genital area, which then could be viewed by other officers and, most likely, the public, this elevated the look-in reach-in search to a strip search. For those reasons, the weight the scope factor leans in Coates's favor and against the State for the purposes of our *Bell* analysis in this case.

Justification for the Intrusion

A search incident to arrest is a well-established exception to the warrant requirement in the Fourth Amendment, which protects citizens from unreasonable searches and seizures. *Arizona v. Gant*, 556 U.S. 332, 338 (2009); U.S. Const. Amend. IV. The United States Supreme Court rationalized the search incident to arrest exception in *Chimel v. California*:

> [I]t is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.

395 U.S. 752, 763 (1969). To summarize, the purpose of the search incident to arrest is to recover weapons that pose a safety risk to officers and to seize evidence for their preservation from disposal or destruction.

When Coates was arrested for an active warrant related to first degree burglary charges, officers were justified in conducting a search incident to arrest. This is not in

dispute. Sgt. Delgado was within his authority to search Coates's pockets and seize the lighters and aluminum foil found within them.[2] However, for the *Bell* test, additional and separate justification is required for a sexually invasive search to occur. *Harding*, 196 Md. App. at 426. As we explained in *Faith*, "[a] sexually invasive search may be conducted incident to arrest if police have a reasonable articulable suspicion that the arrestee is concealing drugs on [their] body." 242 Md. App. at 258. Therefore, the officers in the case *sub judice* must have had a reasonable articulable suspicion that Coates was concealing drugs on or in his genitals for the sexually invasive search to be justified.

Sometimes the reason for the arrest will help build reasonable articulable suspicion that the arrestee is concealing drugs on their body, but not always. *Harding*, 196 Md. App. at 426. For example, if someone is arrested for drug distribution, the nature of the offense itself increases the suspicion that the arrestee has drugs concealed on their body, because it is "well known in the law enforcement community, and probably to the public at large, that drug traffickers often secrete drugs in body cavities to avoid detection." *Allen*, 197 Md. App. at 324 (quoting *Moore v. State*, 195 Md. App. 695, 718 (2010). We must reiterate, however, that this fact alone does not provide the reasonable articulable suspicion needed to justify a sexually invasive search; still more is needed. *Harding*, 196 Md. App. at 429-30.

[2] The legality of the search within Coates's waistband, which revealed a small foil bag of suspected synthetic marijuana, as being part of the search incident to arrest is debatable but not dispositive in this case. Additionally, Coates was not charged with a crime in relation to the contents of that bag and thus the legality of that search is immaterial to our analysis.

Coates was arrested as a result of an active warrant for first degree burglary charges. The offense of burglary is not of a nature that would reasonably lead to a suspicion that the arrestee has drugs concealed on or in their body since possessing drugs is not an element of the crime of burglary.[3] Thus, we cannot rely on the reason for the arrest to build reasonable articulable suspicion for the sexually invasive search that was conducted on Coates. Rather, we could consider other factors in the case to build sufficient reasonable articulable suspicion, such as Coates's actions at the Panera sandwich shop, Coates's nervous behavior during the traffic stop, the positive K-9 alert for CDS on the U-Haul truck, and the recovery of lighters and aluminum foil in Coates's pockets. However, because the issue of justification is not dispositive of the case here, there is no need to make a finding on this question. *See Paulino*, 399 Md. at 357 (despite finding justification for the sexually invasive search, the Court held that the search was unreasonable due to the manner and location of the search, as well as the lack of exigent circumstances); *Faith*, 242 Md. App. at 258-59 (finding the search to be unreasonable without explicitly making a finding on the justification question).

Manner and Location of Intrusion

Because the last two factors of the *Bell* test are so intertwined, particular in the case *sub judice*, we discuss them together in this section. Even if the scope and justification of a sexually invasive search are deemed reasonable, there is still a question about the manner and location in which the search is conducted. When determining whether the manner of

[3] The elements of burglary include breaking and entering the dwelling of another with the intent to commit theft. Md. Code Ann., Crim. Law § 6-202 (a).

a search is reasonable, we consider factors such as "privacy or unnecessary embarrassment or hygienic conditions or, in the more extreme cases, medical risk to the health of the suspect." *Harding*, 196 Md. App. at 397. Similarly, in regard to location, sexually invasive searches "are to be conducted in places that are private and appropriately hygienic. This will necessarily involve securing the search area from public view and may often involve transporting the person by vehicle to a more private and secure facility, such as a police station." *Moore*, 195 Md. App. at 708. While not all sexually invasive searches need to be conducted at a police station to be deemed reasonable, we do consider whether the search was observed by others, or could have been observed by others, as part of our reasonableness analysis. *Faith*, 242 Md. App. at 262. Thus, an overly public location or the inappropriate modality of a search could render an otherwise justified search violative of the Fourth Amendment.

In *Faith v. State*, this Court found the sexually invasive search in violation of the Fourth Amendment due to the manner and location of the search. 242 Md. App. at 235. The traffic stop in *Faith* was conducted on Interstate 70 in Frederick County in broad daylight at approximately 7:00 p.m. on April 21, 2017. *Id*. at 217-18. The traffic flow at the time was described as "moderate to heavy." *Id*. at 218. Faith was the driver of the vehicle, which was also occupied by a female companion in the passenger seat and Faith's three-year-old son in the back seat. *Id*.

Upon contact, Deputy Storee made observations that led him to suspect Faith was under the influence of drugs. Deputy Yackovich and his K-9 were requested to the scene to complete a scan of the vehicle. All occupants were removed from the vehicle and pat

down for weapons, to which none were found. *Id*. After the K-9 alerted to the presence of CDS within the vehicle, Deputy Storee called for a female officer to search Faith and the female passenger. While Deputy Storee proceeded to search the vehicle, Deputy Yackovich stood with the vehicle's three occupants beside Deputy Storee's patrol vehicle. Meanwhile, Sgt. Ensor, a female officer, arrived on scene. *Id*. at 219. Now, three patrol vehicles with flashing lights accompany Faith's vehicle on the shoulder of Interstate 70. Ultimately, CDS and drug paraphernalia were located within the vehicle.

Sgt. Ensor took Faith to the back of Deputy Yackovich's patrol vehicle, while the two deputies and the two passengers remained at the front of Deputy Storee's patrol vehicle, approximately a car-length or two away. *Id*. Beginning the search, Sgt. Ensor asked Faith to unbutton her shorts and pull them and her underwear away from her body, without pulling her shorts down. Sgt. Ensor looked inside Faith's shorts and observed the front of Faith's vagina with a condom protruding out of it. *Id*. at 226-27, 231. Faith then admitted the condom contained CDS. Faith was offered to be taken to the police station to retrieve the CDS, however, Faith declined and instead advised she would retrieve the CDS herself. *Id*. at 228. Sgt. Ensor took Faith back to Faith's vehicle, where she sat on the edge of the passenger seat, reached into her underwear and pulled the condom out of the side of her shorts, while still fully clothed and observed by Sgt. Ensor. *Id*. Sgt. Ensor testified at the suppression hearing that Faith's vagina was not exposed and that the deputies and other passengers were not watching. *Id*.

In our *Bell* analysis of the manner and location in *Faith*, we found that "an interstate highway is a quintessentially public location." *Id*. at 264. Not only was the traffic at the

time "moderate to heavy," but motorists' attention would have been drawn to the four vehicles stopped on the shoulder of the highway, three of which were patrol vehicles with their lights flashing. Furthermore, we noted, regardless of Sgt. Ensor's efforts to shield Faith from exposing herself, "Faith's companion and child, as well as passing motorists, could observe that the search was occurring... [a]nd Faith was aware of those onlookers." *Id*. at 262. Again, the search occurred in broad daylight, with Faith's companion and three-year-old son approximately a car-length or two away from her during the search. The *Paulino* opinion was instructive in this regard, as our Supreme Court held that a search in the presence of the public and other passengers, whether viewed or not, "makes the search unnecessarily within the public view and therefore violative of the Fourth Amendment." *Paulino*, 399 Md. at 360; *Id*. at 261. For these reasons, and the lack of exigent circumstances, we found the search of Faith unconstitutional and reversed her conviction. *Faith*, 242 Md. App. at 271.

The manner and location of the search in the case *sub judice* reminds us of *Faith*. Here, the traffic stop occurred at approximately 6:00 p.m. on Watkins Mill Road near the intersection of Apple Ridge Road in Gaithersburg. While Watkins Mill Road is not an interstate like Interstate 70 in *Faith*, it is a relatively busy road. Officers conceded during the suppression hearing that cars were constantly going by during the traffic stop, similar to the "moderate to heavy" traffic flow of Interstate 70 in *Faith*. Additionally, the road, particularly where the traffic stop occurred, has a bike lane and allows for vehicles to park on the shoulder of either side of the road. In fact, there were vehicles parked on the side of the road where and when the traffic stop occurred, however, as officers testified, it is

unknown whether those vehicles were occupied at the time. The sexually invasive search in question occurred at this same location around 6:20 p.m., while in daylight and as Ofc. Eastman's patrol vehicle emergency lights were still flashing. The search in *Faith* also occurred during daylight hours, shortly after 7:22 p.m., as three patrol vehicles still had their lights flashing. *Faith*, 242 Md. App. at 218.

With regard to the modality of the search of Coates: it began as a routine search incident to arrest, with officers checking the outer garments and pockets of Coates's pants. After only locating lighters and aluminum foil, Sgt. Delgado proceeded to search in the waistline area of Coates's pants, locating a small bag of suspected synthetic marijuana. Next, Sgt. Delgado pulled the waistband of Coates's pants away from his body and looked inside, along with Ofc. Eastman, to discover Coates was not wearing any underwear and that there was a cylindrical container located between Coates's groin and leg. This "look-in" search is more invasive than that in *Faith*, in that Sgt. Ensor did not touch Faith or her clothing but asked her to pull her shorts and underwear away from her body herself. *Faith*, 242 Md. App. at 226-27. Additionally, Sgt. Ensor was the only officer to observe Faith's genitalia, whereas two officers observed Coates's genitalia during the look-in. *Id*. at 231-32.

The following "reach-in" search of Coates was also more invasive than that in *Faith*. In fact, a reach-in search by an officer never occurred in *Faith* because Faith retrieved the condom of CDS herself while sitting inside her own vehicle. *Id*. at 228. When Sgt. Delgado reached into Coates's pants to retrieve the container, Coates tried pulling away, resulting in three other officers joining to help restrain Coates. During this struggle,

Coates's pants are inadvertently pulled down, exposing his pubic area for approximately thirty seconds. In *Faith*, Faith's private area was never exposed to anyone other than Sgt. Ensor and she remained fully clothed during the interaction, yet we still found the search in *Faith* unconstitutional. *Faith*, 242 Md. App. at 228-29. Furthermore, the two deputies in *Faith* were a car-length or two away from Faith during her search and Sgt. Ensor testified that she confirmed they were not watching the search. *Id*. at 228. Whereas here, at least five officers were surrounding Coates and it is likely that all five officers observed Coates's genitalia when his pants were pulled down. However, the officers' observation of Coates's genitalia is not required for the search to be deemed unconstitutional. *See Faith*, 242 Md. App. at 258 (finding "...whether anyone other than Sergeant Ensor actually saw Faith's vaginal area during the search is not a determinative factor in our Bell analysis.").

Additionally, the driver of the U-Haul truck, Moeum, was still sitting on the curb only a couple feet away from Coates during the search. In fact, Coates was simply picked up from the curb and searched right there where he stood, next to Moeum. In *Faith*, Sgt. Ensor moved her away from her companion and child, at least a car-length or two away, to conduct the search. *Faith*, 242 Md. App. at 219. Sgt. Ensor testified that she made conscious efforts to keep the search out of view of Faith's three-year-old son. *Id*. at 228. While we do not know if Moeum saw Coates's pubic area when it was exposed, it would not be a surprise to find out that he did considering his close proximity and the height of his line of sight sitting on the curb.

Coates was not moved behind a vehicle, away from his companion or other officers, nor was he removed to a more private location, such as the police station, for the search.

While Faith was also not transported to a police station or more private location for her search, Sgt. Ensor did move Faith away from others and attempted to shield her from view of traffic with her patrol vehicle. *Faith*, 242 Md. App. at 224-25, 228. Sgt. Ensor's efforts to shield Faith from the public during the search shows that Sgt. Ensor was cognizant of Faith's privacy rights. *Id*. at 262. However, here, officers admitted during their testimony at the suppression hearing that they were not concerned with Coates's privacy.[4] Furthermore, Sgt. Delgado, the supervising officer on scene, did not direct officers to shield Coates from the public view during the search for privacy concerns. According to his testimony at the suppression hearing, Sgt. Delgado believed Coates's privacy was already being protected by the other officers when they surrounded him.

We believe that when the officers surrounded Coates during the search, this was not for the purpose of protecting his privacy or shielding him from the traffic going by the scene, but rather for the purpose of subduing him and collecting the suspected CDS. Regardless, like in *Faith*, "we are not persuaded that, by itself, shielding others from viewing an arrestee's private parts while a sexually invasive search is taking place in public view at a public location amounts to 'taking into consideration... privacy as much as was

[4] Defense attorney cross-examination of Ofc. Eastman:
Q: ...you didn't grab him to try to cover him from the road or from the search, right? Your mindset wasn't I need to protect the privacy, would you agree with that?
A: I don't think his privacy was really in question, just the way all the officers were around him and the way we were positioned between the cars. I don't think that was an issue.
Q: Were you thinking about that at the time?
A: No. This is hindsight, but.
Q: Officer, you've been, again, an officer for 27 years – 30 years now?
A: Yes.

possible.'" *Faith*, 242 Md. App. at 261 (disagreeing with the trial court, which found "[t]he manner of the search again was done on the side of the highway, but it was done in such a manner to take into consideration the defendant's privacy as much as was possible under the circumstances of the case.").

We find that the manner and location of the sexually invasive search of Coates was highly unreasonable. A search which inadvertently exposed one's pubic area, conducted in public on a busy street while motorists passed by, in broad daylight, with one's travel companion and approximately seven officers present, cannot possibly be deemed reasonable. "[N]o police officer in this day and time could reasonably believe that conducting a strip search in an area exposed to the general view of persons known to be in the vicinity whether or not any actually viewed the search is a constitutionally valid governmental 'invasion of (the) personal rights that (such a) search entails.'" *Faith*, 242 Md. App. at 261-62 (citing *Logan v. Shealy*, 660 F.2d 1007, 1014 (4th Cir. 1981).

Exigent Circumstances

When a sexually invasive search is conducted in such a public manner and location, as described *supra*, the State must show exigent circumstances existed for that search to be found constitutional. *Id*. at 264-65; *See also Allen*, 197 Md. App. at 326-27 (discussing *Paulino*, "[i]t was the highly invasive nature of the search in *Paulino*, as well as the lack of evidence that Paulino's privacy was protected in any way that led the Court [of Appeals] to hold that exigent circumstances were required before such a search in a public place was reasonable." 399 Md. at 359-60). This Court, as well as our Supreme Court, recognizes the presence of exigent circumstances when the suspect is attempting to destroy evidence

or when the suspect is in possession of a weapon, thus posing a safety risk. *Id*. at 266 (finding lack of exigent circumstances as there was no indication of weapons during Faith's pat down and officers did not express any concerns about her attempting to destroy or dispose contraband); *See also Paulino*, 399 Md. at 360 ("There was no testimony at the suppression hearing... that Paulino was attempting to destroy evidence, nor that he possessed a weapon such that an exigency was created that would have required the police officers to search Paulino at that precise moment and under the circumstances" in a public location). As in *Faith*, we continue to be concerned that without requiring exigent circumstances, "every search incident to a traffic stop arrest involving suspected CDS could trigger a [sexually invasive] search, even in the most public of circumstances." *Faith*, 242 Md. App. at 268.

In *Turkes*, we found a sexually invasive search reasonable due to exigent circumstances. 199 Md. App. at 128-30. In that case, officers conducted a traffic stop for a suspected window tint violation. When Turkes stopped the vehicle, he immediately turned the ignition off, got out of the vehicle, and began to walk away. The officer instructed Turkes back into the vehicle. When Turkes opened the driver's side door, he looked at a black bag that was located inside the pocket on the door, which drew the officer's attention to the bag as well. The bag was described as about the size of a tissue box, large enough to contain a weapon, with contents inside of it about the size of a soda can. *Id*. at 104.

While the officer was in his patrol vehicle preparing the repair order, he noticed Turkes making suspicious movements inside his vehicle. The officer asked Turkes to step

out of the vehicle to sign the repair order, at which point the officer noticed that the bag was no longer in the pocket of the driver's side door. *Id*. at 105. When the officer asked Turkes about the bag, Turkes first advised it was just trash and was located under the seat. After searching the vehicle, the officer could not locate the bag, to which Turkes then advised he did not know what bag the officer was referring to. Fearing that the bag contained a weapon and that it was now on Turkes, the officer asked Turkes to place his hands on the patrol vehicle for a pat-down. *Id*. at 106.

As the officer's hand approached Turkes's crotch area, he felt "a very hard object" between Turkes's legs. At this time, Turkes pushed off of the vehicle and began to run, but the officer grabbed him, and they both fell to ground. Another officer assisted in restraining Turkes, as he continued to resist. *Id*. at 106-07. Turkes was handcuffed and sat on a curb where officers would conduct the search. The officer unbuttoned the front of Turkes's pants and opened them up to observe a large bulge where the officer had felt the hard object. The officer then pulled up his underwear, saw the bag, and pulled it out. No clothing was removed, nor was any private parts exposed. The bag contained 40 grams of crack cocaine and drug paraphernalia. *Id*. at 107.

It is important to note that Turkes's traffic stop occurred at 11:45 a.m. on a sunny day, in front of four to five apartment buildings on one side of the street and on the other, five single-family homes. Additionally, the location of the traffic stop was only about seven to eight blocks, or about five-minute drive, away from the police station. *Id*. at 108. Despite the very public location of this search and the close proximity to the police station,

this Court found the search reasonable due to the exigent circumstances created by the officer's reasonable belief that Turkes had a weapon on his person. *Id*. at 108, 128-30.

In the case before us, officers never expressed any actual concern that Coates possessed a weapon.[5] In fact, when asked about weapons, as is routine before a pat-down, Coates willingly gave officers a box cutter knife that was on his person. Additionally, prior to the sexually invasive search, a pat-down and routine search incident to arrest of Coates's outer garments and pockets failed to reveal any weapons or indicate the possible presence of any weapons on his person. Sgt. Delgado, during his testimony, admitted that he was not concerned about weapons at the moment immediately preceding the sexually invasive search because Coates "already had been searched twice" by then.[6] Therefore, it is evident that there were no exigent circumstances created by weapons here.

With regard to the destruction of evidence argument, officers testified at the suppression hearing about their general concern with the destruction of drug evidence. Det.

[5] Defense attorney cross examination of Cpl. Doyle:
Q: If you were concerned, you would've told him to put his hands up, wouldn't you agree?
A: If I was looking for weapons at that point, yes. And the way that his hands were, I wasn't worried about weapons at that point.
Q: Okay. Well you were never worried about weapons, were you?
A: The way that he was holding his hands and the way that he was protecting and guarding himself, he wasn't going forward and grabbing his waistband like he was grabbing for a gun... It would be different characteristics of somebody reaching for a firearm than pressing down to conceal any other type of narcotics...

[6] Defense attorney cross examination of Sgt. Delgado:
Q: And at that point, you didn't feel any weapons, correct?
A: No.
Q: And you weren't concerned about weapons at that point right?
A: No, not at that point.
Q: He already had been searched twice, you never felt anything?
A: Right.

Engle explained "before we put them in our police vehicle in a confined space where they could destroy, alter, or ingest evidence... we search them to make sure they're free of weapons, contraband, drugs, anything they're not allowed to have." When asked why he searched Coates on the street, Sgt. Delgado responded, "to retrieve that and preserve that evidence." However, there is no testimony to suggest that Coates made any specific attempts to destroy or dispose of the contraband. Coates was compliant and cooperative with officers through the pat-down and initial search incident to arrest. Only when Sgt. Delgado reached into his pants did Coates begin to tense up and try to pull away from officers. Even the trial court noted "I don't think it's unreasonable for him to stiffen up. But if somebody was being subject to having the officer's hand where it was, it would probably result in a reaction from most people." Furthermore, by that time, Coates was already handcuffed and was being held by two officers, with another three officers on the way to restrain him. It is unlikely that he would have had the ability to destroy the contraband at that time.

Like in *Faith*, we again reject the "inherent exigency attributable" to the "easily disposable nature of the drugs." 242 Md. App. at 270. Officers have the ability to secure the arrestee during transportation to a police station in such a way to prevent the destruction or disposal of contraband. *Id*.; *Paulino*, 399 Md. App. at 361. "If there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search, there can be no justification to search in order to prevent concealment or destruction of evidence." *Faith*, 242 Md. App. At 244 (quoting *Stokeling*, 189 Md. App. at 671). It is true that drug evidence could fall out inside the patrol vehicle during transportation, as

pointed out by the State during the suppression hearing in the case *sub judice*. However, a search of the patrol vehicle after the arrestee is removed would reveal anything that might have come off of the arrestee. We reiterate "sexually invasive searches may not be conducted in public view solely for the convenience of law enforcement officers." *Id*. at 266.

Coates, like Faith, was already under arrest when the sexually invasive search occurred. *Id*. at 267. Officers did not need further evidence to arrest Coates and take him to the police station, he was already going there for processing due to the burglary arrest warrant. Officers did not provide any exigent reasons as to why they could not wait to transport him to the station, or a more private location, to conduct the sexually invasive search. In the absence of any threats to safety posed by weapons or any actual attempts or ability to destroy or dispose of evidence, we find no exigent circumstances existed that would make this otherwise unreasonable search constitutional.

CONCLUSION

For these reasons, we hold that the sexually invasive search in this case violated Coates's Fourth Amendment right to be free from unreasonable searches. The trial court erred in denying Coates's motion to suppress the drug evidence obtained during the unconstitutional search. Having found that the search was unreasonable, we do not address the other questions raised by this appeal. As such, we reverse Coates's conviction.

JUDGMENT REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY FOR FURTHER

PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MONTGOMERY COUNTY.