

his parole and was going to be arrested. When the APA officers arrived at the residence along with two local police officers, Mr. Washington was placed in handcuffs and arrested without incident. The officers then searched the premises and discovered drug paraphernalia, crack cocaine, a nightstick, two knives, ammunition for several different types of handguns, a ski mask, and pornographic materials.¹ Mr. Washington was charged with possession of drugs and drug paraphernalia, as well as the violations of his parole that had led to the officers' arrival at the residence. Plaintiff was not charged with any offense with regard to those items.

{¶ 4} After the ammunition, knives, and nightstick were discovered, Tibbetts, the only female officer present, asked plaintiff if a pat-down search could be performed. Plaintiff agreed, and the two stepped into a nearby bathroom. Tibbetts performed a quick pat-down, then requested that plaintiff untuck her T-shirt, and shake out her T-shirt and bra. Plaintiff complied with the request, exposing her bra and partially exposing her breasts; however, she testified that she was not sure whether Tibbetts actually observed her breasts during the process. No weapons or drugs were found on plaintiff's person. Afterward, plaintiff returned to the living room and one of the officers conducted a record check for outstanding warrants against her. Plaintiff was subsequently arrested on a charge of passing a bad check.

{¶ 5} The standard for conducting a protective pat-down for

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The conditions of Mr. Washington's parole prohibited him from having such materials because he had previously been convicted of a sex offense.

weapons was set forth by the United States Supreme Court in *Terry v. Ohio* (1968), 392 U.S. 1. In that case, the court held that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment ***." *Id.* at 30-31.

{¶ 6} After conducting a justified pat-down search, an officer may proceed to a more intrusive search only where probable cause exists. *Id.* at 10, 18, and 30. "Probable cause" has been defined as a reasonable ground for suspicion supported by facts and circumstances sufficiently strong in themselves to warrant a prudent person in believing an accused person had committed or was committing an offense. *Beck v. Ohio* (1964), 379 U.S. 89, 91; *State v. Rose* (1991), 75 Ohio App.3d 656, 659. Ohio courts have interpreted this definition to include the "totality" of facts and circumstances within a police officer's knowledge. See *State v. Finch* (1985), 24 Ohio App.3d 38; *Atwell v. State* (1973), 35 Ohio App.2d 221.

{¶ 7} However, reasonable grounds for suspicion to strip search a person requires an individualized suspicion, specifically directed to the person who is targeted for the strip search. See *Ybarra v. Illinois* (1979), 444 U.S. 85, 91. "[A] person's mere

propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." *Id.*, citing *Sibron v. New York* (1968), 392 U.S. 40, 62-63. "The Fourth and Fourteenth Amendments protect the 'legitimate expectations of privacy' of persons, not places." *Id.* citing *Rakas v. Illinois* (1978), 439 U.S. 128, 138-143, 148-149; *Katz v. United States* (1967), 389 U.S. 347, 351-352.

{¶ 8} In the present case, this court's finding of reasonable suspicion to conduct a pat-down search of plaintiff was based upon the officers' having discovered several types of ammunition at the residence but no weapons. The court was persuaded that, in light of her experience as a parole officer, and because no handguns that matched the ammunition had yet been found to dispel the officers' fears, Tibbetts was entitled, for the protection of herself and others at the residence, to conduct a carefully limited search of the outer clothing of plaintiff in an attempt to discover whether she had any concealed weapons on her person.

{¶ 9} This court also found that Tibbetts had probable cause to request that plaintiff untuck her T-shirt, and to shake out the shirt and her bra. Although Tibbetts had not found a handgun on plaintiff's person, the court was persuaded that the totality of the facts and circumstances within her knowledge at the time were sufficient to demonstrate that Tibbetts reasonably believed, or suspected, that the officers' safety was endangered by plaintiff. The officers had found several types of weapons, including knives, in their search of the residence. The weapons could have belonged to either plaintiff or her spouse.

{¶ 10} Moreover, any of the contraband found at the residence could have belonged to plaintiff. The court recognizes that a permissible strip search cannot become a "fishing expedition" for contraband; nor can such search be premised upon the illegal

conduct of another individual in close proximity. However, the court did not find that to be the case here. Plaintiff was aware of the conditions of her husband's parole; she knew that one of those conditions was that their residence could be searched without a warrant; she knew that violation of the conditions could result in revocation of her husband's parole at any time; and she knew that her husband was being sought by his parole officers. Nevertheless, plaintiff participated in, or at least allowed, illegal conduct to take place in the home. For example, plaintiff herself had posed for some of the pornographic photographs that were discovered during the officers' search. In addition, the crack cocaine that was found was located in plain sight in the couple's bedroom. In short, plaintiff was not adverse to illegal conduct and the officers were aware of that fact based upon facts and circumstances that existed at that time. In the court's view, it was reasonable for an officer in that situation to suspect that plaintiff herself would be willing to conceal a weapon that could pose a threat to the security of those present.

{¶ 11} In discussing the constitutionality of strip searches, the United States Supreme Court has stated 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." *Bell v. Wolfish* (1979), 441 U.S. 520, 559.

{¶ 12} Applying those principles to the instant case, this court is of the opinion that, considering the extremely limited scope of the strip search; the fact that it was conducted by a

female; in a private area; and that the initial justification was that ammunition and weapons had been found in the residence, the balance of interests clearly tipped in favor of the search for potentially deadly weapons, as compared to the personal rights of plaintiff that were invaded by the search.

{¶ 13} With this additional clarification, the court reiterates its previous conclusion that judgment be rendered in favor of defendant.

IN THE COURT OF CLAIMS OF OHIO
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BEATRICE WASHINGTON	:	
Plaintiff	:	CASE NO. 2001-11839
	:	Judge J. Warren Bettis
v.	:	
	:	<u>JUDGMENT ENTRY</u>
DEPARTMENT OF REHABILITATION AND CORRECTION	:	
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Defendant	:	
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This case was previously tried to the court on the issue of liability and judgment was rendered in favor of defendant. Upon appeal, the case was remanded back to this court for clarification of this court’s finding of probable cause. The court considered the evidence anew and, with the clarifications set forth in the decision filed concurrently herewith, judgment is again rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS

Judge

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