Circuit Court for Baltimore County
Case No.: C-03-CR-21-002711

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1969

September Term, 2021

FRANCISCO CUFFEY

v.

STATE OF MARYLAND

Leahy,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: November 23, 2022

Appellant, Francisco Cuffey, was charged in the District Court of Maryland for Baltimore County with multiple counts of possession and possession with intent to distribute a controlled dangerous substance and one count each of driving on a suspended license, driving while under the influence of alcohol, driving while impaired by alcohol, and driving while impaired by drugs.

On Appellant's prayer for a jury trial, the case was moved to the circuit court. There, Appellant elected a bench trial. That court denied Appellant's motion to suppress and, based on the same evidence, found him guilty of two counts of possession of a controlled dangerous substance (cocaine and Oxycodone) and one count of driving while impaired by drugs. Appellant noted this timely appeal and asks this Court to address the following question:

> Did the circuit court err in denying Appellant's motion to suppress evidence seized during a sexually invasive search?

For the following reasons, we shall affirm.

BACKGROUND

On the morning of February 25, 2021, Baltimore County Police Officer Kent responded to a call of a Chevrolet Malibu blocking a public alleyway in a residential neighborhood near Eastern Avenue.[1] Upon approaching the driver's side of the vehicle, Officer Kent observed Appellant asleep in the driver's seat. He also noticed that Appellant had a "baggie of CDS in his lap" in "plain view." Officer Kent explained that it was a

[1] Video recordings from the body-worn cameras for both Officers Kent and Ernst were played for the court. These exhibits were admitted by stipulation and are included with the record on appeal.

"small, clear plastic baggie[,]" containing a "white rock substance" and that, based on his training, he knew it to be a controlled dangerous substance ("CDS"). He further testified, without objection, that his training indicated the substance was cocaine.

After speaking to Appellant and believing that he might be under the influence, Officer Kent stepped back from the Malibu and called for backup. He testified that at this point in the investigation he considered the case to either be a case of driving while under the influence or, due to his observation of a "decent amount of narcotics," a possible distribution case.

Once Officers Ernst and Cardano arrived, and after obtaining identifying information from Appellant, Officer Kent had Appellant exit the vehicle. The baggie of suspected narcotics was no longer in view. Moreover, after patting Appellant down, searching the vehicle, and looking into nearby fenced-in backyards, the police were unable to find the baggies. Believing at that point that Appellant may have ingested the suspected CDS, a medic was called to the scene to prevent Appellant from overdosing. Meanwhile, Appellant was asked to perform several field sobriety tests, a.k.a. "SFST." As even Appellant's trial counsel conceded, Appellant performed poorly on those tests. At that point, Appellant was placed under arrest.

Incident to that arrest, and as evident on the body-worn camera footage admitted at the suppression hearing (and included with the appellate record), Appellant was moved from his vehicle back to Officer Ernst's vehicle. At that point, Officer Ernst searched Appellant again, before placing him into his marked police vehicle. Appellant was wearing several layers of pants, including sweatpants, long "athletic like" thermals, and a pair of

underwear. During the ensuing search, Officer Ernst felt a plastic baggie in Appellant's groin area. As Officer Ernst testified:

> STATE: Okay. Court's indulgence. Did there come a time where the Defendant was ultimately placed under arrest?
>
> OFFICER: Yes, at the conclusion of the SFST's conducted by Officer Cardano.
>
> STATE: Okay and did you search the Defendant once he was placed under arrest?
>
> OFFICER: Yes, I searched him again, before placing anyone in my police vehicle, I search them again, just to ensure and then during that search, in his groin area, I felt, and I could hear the crumble of a plastic bag.
>
> STATE: Okay. Was the Defendant wearing multiple layers of clothing?
>
> OFFICER: Yes.
>
> STATE: How, how, once the Defendant was placed under arrest and you are searching him pursuant to putting him in your patrol vehicle.
>
> OFFICER: Um hm.
>
> STATE: How quickly do you hear or feel that crinkle that you just testified to?
>
> OFFICER: So, when I had him, I believe we were like catty-corner in my back car door, so I had him turn around and at that point, it was a little bit easier to search him thoroughly. Once I brought my hand up into his groin area, I could feel that crunch.

Looking to the videos included with the record on appeal, the pertinent search referenced in this testimony was recorded on Officer Ernst's body-worn camera.

Throughout the search, Appellant stood near Officer Ernst's vehicle, partly concealed behind the open rear door located on the driver's side of the police vehicle.[2]

During the search, Officer Ernst, wearing blue latex gloves, lowered Appellant's outer pants, revealing a pair of long thermal underwear underneath. After searching Appellant's outer pants and patting down the thermals, Officer Ernst lowered the thermals slightly, revealing a third layer of garments, namely, a pair of gray underwear underneath the thermals. After approximately a minute and a half, Officer Ernst appeared to have found the missing baggie of CDS, and announced to another officer standing nearby that he was "pretty sure it was under his balls" and that it "feels like plastic." Officer Ernst then asked Appellant "Do I really have to go in there to get it?" to which Appellant replied "What do you mean?" and maintained that he was not concealing anything in his underwear.

Officer Ernst then asked Officer Kent, the first responder to the stop, for assistance. Officer Kent, wearing leather gloves, approached Appellant, reached down and almost immediately said he felt something underneath Appellant's underwear. Officer Kent testified that "[t]here was a pocket in the brief, groin area where the CDS that I had saw originally was located." Although not entirely clear, Officer Ernst's video body-worn camera recording shows Officer Kent bend over in front of Appellant, patting him down again, and then reaching in to Appellant's underwear to retrieve the packaged drugs.

[2] According to the video, no one other than Appellant and the three police officers appear to be present in the nearby area during the stop and ensuing arrest and search incident thereto. Further, the public alleyway referenced in the testimony is akin to a long driveway between two adjacent houses located in a residential neighborhood.

Officer Kent maintained that Appellant's clothing was never "stripped" and that "[h]is genital region or anything was never exposed, no." Officer Kent further testified the drugs retrieved were indeed the same ones he saw in plain view on Appellant's lap at the beginning of the stop.

After the State rested, Appellant both moved for judgment of acquittal and argued his motion to suppress evidence. With respect to the motion to suppress, Appellant's counsel argued that he was detained for an unreasonable length of time during the stop and that the police did not have probable cause to perform a strip search. Specifically, defense counsel argued:

> They have him unbutton his pants on a number of occasions, go into his drawers and on the last occasion, when they eventually did find the CDS, … they actually pulled down his pants and went into the thermal underwear, which they described that he was wearing as a second layer to determine that he was secreting drugs in his groin area.

The court, after hearing argument from the State, denied Appellant's motion to suppress, finding in pertinent part:

> So, the, the question, I guess, going beyond that here, in, in this case, is, is how do we get to the drug, now obviously, the drugs themselves, per the test for counts one and two, exist. And, and Mr., excuse me, why did I forget his name, Mr. Cuffey was certainly in possession of the drugs at the time.
>
> So, the, the, the real question here is the, the length of the time that the, the, the police officers took to find those drugs here. I, what I, I, I don't think, given the nature of the situation we have here, that it, it was an inappropriate amount of time because we have, again, a factually confusing situation here.
>
> I mean, I think it might have been a much, quite frankly, it might have been a different question if they had found them in the car without a warrantless search. Then you'd have the question of whether they saw them

> or didn't see them. I do think because it's an incarcerable offense and he was arrested, that a search incident to arrest would have proved, would, actually this would have actually come, eventually, under the inevitable discovery rule, but that's, the second police officer, who is new to the scene, who frisks him, is the one who finds the drugs on him.
>
> I don't think the strip search aspects apply here and, again, that's kind of an inevitable thing that had he been back at the station, this was going to be found anyways. We don't, I don't, in many respects, I don't get to the issue of the plain view.
>
> Now, it would seem to me, it might have been more reasonable for the officer in the plain view to say, hold your hands up, let me pull, I'm going to pull this out of here, as opposed to turning and leaving. And he indicated that he did so because he wanted to get backup. He wasn't sure, perhaps, this individual had a gun, he didn't know what might happen.
>
> It might have been more prudent just to go ahead and grab the, the white bag while he had it in front of him. That's not what happened here. Police officers make difficult decisions every day in, in crisis situations and that's the decision he made.

DISCUSSION

Appellant contends the court erred because the search of his person incident to arrest was an excessive "sexually invasive search" in violation of his Fourth Amendment rights. The State disagrees, as do we.[3]

"In reviewing a trial court's ruling concerning the admissibility of evidence allegedly seized in violation of the Fourth Amendment, we accept the trial court's findings of fact unless they are clearly erroneous." *In re D.D.*, 479 Md. 206, 222 (2022) (citing

[3] Appellant also disagrees with the circuit court that the evidence would have been inevitably discovered. The State does not rely on that ground on appeal. Because we conclude the search was not illegal, it is unnecessary for us to address this alternative rationale. *See Garner v. Archers Glen Partners, Inc*., 405 Md. 43, 46 (2008) ("[A]n appellate court should use great caution in exercising its discretion to comment gratuitously on issues beyond those necessary to be decided.").

Grant v. State, 449 Md. 1, 31 (2016)). "We independently appraise the ultimate question of constitutionality by applying the relevant law to the facts *de novo*." *Id.* Further, "[w]here 'there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.'" *Id.* at 222-23 (quoting *Givens v. State*, 459 Md. 694, 705 (2018)). And, we review "'the trial court's findings of fact, the evidence, and the inferences that may be drawn therefrom in the light most favorable to the party who prevails on the issue that the defendant raises in the motion to suppress.'" *Id.* at 223 (quoting *Robinson v. State*, 451 Md. 94, 108 (2017)).

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

"The Supreme Court has often said that 'the ultimate touchstone of the Fourth Amendment is reasonableness.'" *Richardson v. State*, 481 Md. 423, 445 (2022) (further quotation marks omitted) (quoting *Riley v. California*, 573 U.S. 373, 381-82 (2014) (in turn quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006))). The general rule is that '"searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions."' *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)); *see also Grant v. State*, 449 Md. 1, 16 n.3 (2016) (listing the exceptions, including, but not limited to, search incident to arrest). As the Supreme Court has cautioned:

> Even if a warrant is not required, a search is not beyond Fourth Amendment scrutiny; for it must be reasonable in its scope and manner of execution. Urgent government interests are not a license for indiscriminate police behavior. To say that no warrant is required is merely to acknowledge that "rather than employing a *per se* rule of unreasonableness, we balance the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable." [*Illinois v. McArthur*, 531 U.S. 326, 331 (2001)]. This application of "traditional standards of reasonableness" requires a court to weigh "the promotion of legitimate governmental interests" against "the degree to which [the search] intrudes upon an individual's privacy." *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999).

Maryland v. King, 569 U.S. 435, 448 (2013). Further:

> "When an arrest is made, it 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.... There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

Riley, 573 U.S. at 383 (quoting *Chimel v. California*, 395 U.S. 752, 762-63 (1969), *overruled in part by Gant*, 556 U.S. 332). *Accord Pacheco v. State*, 465 Md. 311, 323 (2019).

There is no real dispute that Appellant was lawfully arrested. Instead, Appellant's argument is that the search incident to that arrest was unlawful because it was unreasonably excessive in scope and manner. In evaluating what historically has been called a "strip search" incident to arrest, Maryland Courts have applied the test set forth in *Bell v. Wolfish*, 441 U.S. 520 (1979). *See Paulino v. State*, 399 Md. 341, 355, *cert. denied*, 552 U.S. 1071 (2007); *Turkes v. State*, 199 Md. App. 96, 122 (2011); *Allen v. State*, 197 Md. App. 308,

320-21 (2011). The *Bell* Court explained that four factors are relevant to the determination of reasonableness:

> 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.

Bell, 441 U.S. at 559.

We must keep in mind, however, that "*Bell* requires a flexible approach, one that takes into account the relative strength of each factor. Further, *Bell* requires that a reviewing court, when assessing the reasonableness of a search under the Fourth Amendment, balance 'the need for a particular search against the invasion of personal rights that the search entails.'" *Paulino*, 399 Md. at 355 (quoting *Bell*, 441 U.S. at 559).

This Court has recognized that there are two distinct considerations under the *Bell* test which are relevant to the constitutionality of a strip search incident to arrest: the justification and modality of the search. *See State v. Harding*, 196 Md. App. 384, 397-98 (2010) (observing that *Bell* considers factors beyond traditional search incident to arrest doctrine), *cert. denied*, 418 Md. 298, *cert. denied*, 565 U.S. 826 (2011).

Specifically, in order to conduct a strip search, or other more intrusive search of an arrestee's person, the police must both (1) have a reasonable, articulable suspicion that drugs or other evidence are hidden on the arrestee's body, and (2) execute the search in a reasonable manner, considering the circumstances. *See Harding*, 196 Md. App. at 397-98 ("There is first the question of what is a reasonable justification for a more intensive search or examination of the body," and "there is also the distinct question of the modality of conducting such a search. The concern in such a case is not with justification at all, but

rather with the manner in which even a fully justified further search or examination is carried out."); *Allen*, 197 Md. App. at 323-24 ("[A] strip search incident to arrest may be conducted only if there is reasonable suspicion to believe that drugs are concealed on the suspect's body[,]" and the remaining factors are "the scope, manner, and location of the search.").

In his argument to this Court, Appellant relies substantially on *Faith v. State*, 242 Md. App. 212 (2019). The State likewise cites us to *Faith*, but argues that it is distinguishable and does not support Appellant's arguments.

In *Faith*, Frederick County Sheriff's Deputy Douglas Storee performed a lawful traffic stop on the vehicle Faith was driving near Exit 55 of Interstate 70. *Faith*, 242 Md. App. at 217-18. After noticing track marks on Faith's arms, consistent with intravenous drug use, as well as "squinting" by Faith and her female passenger, a sign the deputy opined indicated they might be under the influence of drugs, Deputy Storee called Deputy Miller Yackovich and his K-9 partner, Ike, to the scene. *Id*. at 218. The two females, as well as a three-year-old child seated in the back seat, were ordered from the car during the K-9 scan. *Id*. The individuals were patted down for suspected weapons and then, after that search yielded no results, all three individuals were escorted back to the deputy's vehicle. *Id.* Shortly thereafter, the K-9 alerted to the presence of narcotics near the driver's side door. *Id*. A subsequent search of the vehicle revealed drug paraphernalia, crack cocaine and suspected heroin near the driver's area. *Id*. at 218-19.

As the vehicle was being searched, Sergeant Amanda Ensor arrived on the scene and parked her marked vehicle, with lights flashing, in sequence behind Faith's vehicle and the two police cars. *Id.* at 219. Sergeant Ensor then searched Faith on the side of Interstate 70 during daylight hours while moderate to heavy traffic passed on the highway. *Id.*

Sergeant Ensor, who had performed thousands of female searches, testified that she performed as "systematic search" of Faith between Deputy Storee's and Deputy Yackovich's vehicles. *Id*. at 224. Although there was contradictory testimony about whether Faith was facing traffic during the ensuing search, Sergeant Ensor testified that she directed Faith to unbutton her shorts, but not to pull them down. After she was then told to pull her shorts and underwear away from her body, Sergeant Ensor saw a condom protruding from Faith's vagina. *Id*. at 226-27. Sergeant Ensor then indicated Faith would be transported to the police station for a further search, but Faith agreed to retrieve the condom from her vagina on her own. *Id*. at 228. Faith was escorted back to her own vehicle, where she sat down on the edge of the passenger seat and then, while still fully clothed, reached in and pulled the condom out of her shorts. *Id*. Sergeant Ensor maintained that neither the other deputies nor Faith's passengers were able to observe her search of Faith, nor Faith's retrieval of the contraband. *Id*. at 228-29.

More details were elicited during Sergeant Ensor's cross-examination:

> [DEFENSE COUNSEL]: So in this specific case, you told her to unbutton your shorts, and to pull your shorts out towards you so that you could see inside?
>
> [SGT. ENSOR]: Correct. Obviously, if she leaves them buttoned, she can't pull that and her underwear away for me to see in her underwear.
>
> [DEFENSE COUNSEL]: And so you also tell her to pull her underwear out?
>
> [SGT. ENSOR]: Away from her body, correct.
>
> [DEFENSE COUNSEL]: And that allows you to see her genitalia?
>
> [SGT. ENSOR]: I can see the front portion of her vagina, correct.
>
> [DEFENSE COUNSEL]: You saw enough of her vagina in this case where you were able to describe it as a condom protruding from her vagina?

> [SGT. ENSOR]: I saw enough of a condom coming out of her vagina in her underwear, correct.

Id. at 231-32 (emphasis omitted).[4]

After the motions court denied her motion to suppress, Faith maintained on appeal that the warrantless search in this case violated her rights under the Fourth Amendment. *Id.* at 235. We agreed. After discussing the law concerning warrantless searches and their exceptions, this Court acknowledged there were circumstances which allowed the police to go beyond a "routine custodial search," but that a certain framework applied when considering the legality of such searches. *Id*. at 236-37. Writing for this Court, Judge Berger explained:

> Under this "exigency rationale," police may search an arrestee's outer garments, including pockets. But the Fourth Amendment "protects an arrestee's privacy interests in his person and prohibits bodily intrusions that 'are not justified in the circumstances, or which are made in an improper manner.'" When a search proceeds beyond "a routine custodial search," to a strip search, body cavity search, or other sexually invasive search, "the necessity for such an invasive search must turn upon the exigency of the circumstances and reasonableness[,]" because "[w]ithout the constitutional safeguards of exigent circumstances and reasonableness, every search incident could result in a strip search."

Id. (internal citations omitted).[5]

[4] The condom contained "'18 individual bags[,]' each 'weighing the same amount,' and 'another bigger bag[,]' with all 19 bags containing what 'looked to be' crack cocaine." *Faith*, 242 Md. App. at 232.

[5] The *Faith* Court explained its nomenclature thusly:

> Rather than using the term "strip search" as our umbrella for all intrusive search modes, including those that do not involve the removal of clothing or the internal inspection of body cavities, we shall use the term

(continued…)

We continued by reiterating the *Bell* factors:

> "When ... a search involves 'movement of clothing to facilitate the visual inspection of a [person's] naked body,' the search qualifies as a type of 'sexually invasive search.' *United States v. Edwards*, 666 F.3d 877, 882-83 (4th Cir. 2011) (citations omitted). To determine whether a sexually invasive search is reasonable, we employ the test adopted in *Bell v. Wolfish*, 441 U.S. 520, 559 (1979).
>
> Under the *Bell* framework, we balance the invasion of personal rights caused by the search against the need for that particular search. 441 U.S. at 559. Pursuant to *Bell*, we examine the search in its complete context and consider the following factors: (1) the scope of the particular intrusion; (2) the manner in which the search was conducted; (3) the justification for initiating the search; and (4) the place in which the search was performed. *Id*.

> sexually invasive search. For the particular search mode in Faith's case – a visual inspection of her external genital area, with no removal of clothing, no touching, and no visual inspection of internal body cavities – we will use the terms visual body search or "look-in" search. Like a "reach-in" search in which clothing is manipulated to enable a police officer to reach in and retrieve the contraband without exposing the arrestee's private areas to others, a "look-in" search involves manipulating clothing so that a police officer can visually inspect external genitalia. Although look-in searches and reach-in searches often go together, this search illustrates that is not always the case.
>
> Look-in and reach-in searches typically are less invasive than strip searches requiring removal of clothing and body cavity searches involving inspection of internal genital and anal cavities. But such searches cannot be treated as reasonable *per se* because any sexually invasive search that allows a government agent to view a person's private areas is "still intrusive and demeaning." This reflects that "[w]e accept as axiomatic the principle that people harbor a reasonable expectation of privacy in their 'private parts'" and the corollary "belief that people have a reasonable expectation not to be unclothed involuntarily, to be observed unclothed or to have their 'private' parts observed or touched by others."

Faith, 242 Md. App. at 256-57 (internal citations omitted).

> .... [We] observe that a sexually invasive search 'constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual.' Courts have described such searches, including strip searches, as terrifying, demeaning, and humiliating. When the scope of a search exceeds a visual inspection of an individual's naked body, the magnitude of the intrusion is even greater."

Faith, 242 Md. App. at 237 (quoting *Sims v. Labowitz*, 885 F.3d 254, 260-61 (4th Cir. 2018)) (emphasis omitted; some citations omitted). Further:

> In reviewing a sexually invasive search, appellate courts are charged with "taking into account the relative strength of each factor and balancing the need to ferret out crime against the invasion of personal rights[.]" *Williams v. State*, 231 Md. App. 156, 185 (2016), *cert. dismissed*, 452 Md. 47 (2017). Accordingly, "*Bell* requires that a reviewing court, when assessing the reasonableness of a search under the Fourth Amendment, balance 'the need for a particular search against the invasion of personal rights that the search entails.'" *Paulino*, 399 Md. at 355 (quoting *Bell*, 441 U.S. at 559). Even when police have sufficient grounds for a sexually invasive search,
>
> > there is also the distinct question of the modality of conducting such a search. The concern in such a case is not with justification at all, but rather with the manner in which even a fully justified further search or examination is carried out. Those modality concerns focus on such things as privacy or unnecessary embarrassment or hygienic conditions or, in the more extreme cases, medical risk to the health of the suspect.
>
> *State v. Harding*, 196 Md. App. 384, 397 (2010), *cert. denied*, 418 Md. 398 (2011).

Faith, 242 Md. App. at 237-38.

Applying the *Bell* factors, we first concluded that the search of Faith was "undisputedly a visual body search because the sergeant required the rearrangement of clothing to enable her to view Faith's vaginal area." *Faith*, 242 Md. App. at 256. Moreover, we concluded the search was a "sexually invasive search" as a "search

involv[ing] movement of clothing to facilitate the visual inspection of a [person's] naked body." *Id*. (quotation marks and citation omitted).

We next turned to the justification for initiating the search. We concluded that the K-9 alert and the discovery of drug paraphernalia and cocaine in her vehicle justified both Faith's arrest and the search incident thereto. *Id.* at 258-59. Despite this, Faith argued that there were no exigent circumstances justifying the invasive search in such a "highly public manner and location[.]" *Id*. at 259. We agreed:

> Here, the suppression record establishes that Faith's search was both actually and potentially witnessed by onlookers. We acknowledge that Sergeant Ensor's efforts to shield Faith, so as to avoid exposing her private parts to onlookers, demonstrates cognizance of Faith's privacy rights. Although we agree with the suppression court that this was a reasonable and necessary measure, nevertheless, we are mindful that Faith's companion and child, as well as passing motorists, could observe that the search was occurring. She was wearing very brief shorts and a sleeveless shirt, which made it difficult for her to conceal contraband in her clothing but easy for onlookers to see that her private parts were being inspected by Sergeant Ensor. And Faith was aware of those onlookers. Even if we credit Sergeant Ensor's testimony that Faith was not facing directly into oncoming traffic during the search, rather than both deputies' testimony that she was, Faith was required to unzip and open the front of her shorts, then hold out her underwear for Sergeant Ensor to look in, while moderate to heavy traffic drove past and her companion and son waited within view.

Id. at 262.

This Court concluded that Faith's search was a "sexually invasive search" on the '"side of a well-traveled highway'" in daylight with no exigent circumstances explaining why the search could not be conducted in a more reasonable manner. *Id.* at 264. We continued that we were "not persuaded by the State's contention that establishing exigency is less important because a look-in search, like a reach-in search, is not as intrusive as a

strip search or body cavity search. This ignores the 'intrusive and demeaning' nature of submitting to an involuntary visual inspection of genitals by a government agent." *Id.*

In the final balancing, we held that the suppression court did not properly apply the *Bell* factors to Faith's case, stating that the search "required the rearrangement of clothing to allow 'inspection of the anal and/or genital areas[,]'" was '"extremely intrusive of one's personal privacy"' and "occurred in view of not only the other occupants of her vehicle, but also motorists." *Faith*, 242 Md. App. at 269 (citation omitted). Because the roadside search was unreasonable, we held that the court erred in denying the motion to suppress. *Id.* at 271.

Here, applying the *Bell* factors in the light most favorable to the prevailing party on the motion, *i.e.*, the State: (1) both Officers Ernst and Kent engaged in a "sexually invasive search" of Appellant's person, as that term is explained in *Faith*. Further, when Officer Kent moved Appellant's underwear to retrieve the drugs, that search was what is known as a "reach-in" search; (2) as for the manner - Officer Kent reached in to Appellant's innermost underwear after Officer Ernst patted down Appellant's outer garments, then pulled them down to reveal a layer of thermals, with a pair of underwear underneath all. Notably, Appellant's genitals were never exposed. Further, the reach-in by Officer Kent occurred after a brief, but unsuccessful search by Officer Ernst; (3) the search was justified as being incident to a lawful arrest, and notably, after reasonable, articulable suspicion that Appellant possessed CDS after Officer Kent initially saw a bag of drugs resting in plain view in Appellant's lap when he woke him from his slumber in the driver's seat of the Chevy Malibu early that morning; and, (4) the search was conducted next to Officer Ernst's

vehicle, behind the rear driver's side door, in a public alleyway off of a residential street. And, we recall that the search of Appellant's person did not commence until the officers searched his vehicle and the surrounding area outside the vehicle.

On balance, and distinguished from *Faith*, we are persuaded that the search of Appellant was a lawful reach-in search, that occurred following a lawful arrest based on not only reasonable, articulable suspicion but, indeed, probable cause to believe that Appellant possessed narcotics and was under the influence when he was found sleeping early in the morning with his car parked in a public alleyway. Furthermore, the search was conducted discretely and partially concealed by Officer Ernst's open door and was not highly visible to public view. Whereas the search was reasonable in both extent and modality, and, therefore, lawful under the Fourth Amendment, we hold that the circuit court properly denied the motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.
COSTS ASSESSED TO APPELLANT.