Anti-terrorism Strategies at Sport Venues: A Legal Analysis of Personal Rights

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Crowd management is an organizational strategy designed to assist facility and event administrators in providing a safe and enjoyable environment for their guests by implementing the facility or event's policies and procedures (Ammon, 1997). Crowd management has constantly evolved over the last 40 years. Initially, a huge emphasis was placed on hospitality and guest relations. However, since 9/11, the concentration has been on additional instruction relative to terrorist threats. This focus on safety has created a greater demand for a more professional crowd management industry employing a multitude of security measures, including various types of searches.

Terrorism has been defined as the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives (Hall, 2008). Fortunately, there have been no terrorist incidents at sporting events in the United States; however, other incidents around the world have prompted sports venues to adopt greater security measures. In July 2003 two female suicide bombers killed 17 at a concert outside Moscow. The terrorists had been stopped for a search at the gates of the venue. In 2007, two suicide bombers killed 50 people celebrating the Iraqi national team victory in the Asian Cup finals (Associated Press, 2007). In 2008, a female suicide bomber in Northern Iraq targeted soccer fans who had just watched the national team play China. At least 29 people were injured when the bomber detonated her suicide vest in the town marketplace (CNN.com, 2008). More recently, the FBI and the Department of Homeland Defense (DHS) have issued intelligence “notes” warning of possible terrorist attacks against stadiums and arenas holding sporting events. A captured Al-Qaeda training manual specifically mentions “….blasting and destroying the places of amusement, immorality and sin….and attacking vital economic centers” as a desired goal (Office of Intelligence, 2009, pg.2).

Counter terrorist experts in several Western countries (including the United States) have been aware of creative terrorist bomb concealment methods for more than a year. In 2008, the DHS issued a warning that terrorists may use females with explosives hidden inside “pregnancy prosthetics ... that mimic the look of a pregnant woman” (Kimery, 2009, para 14). In August 2009, while trying to assassinate a Saudi security official, a 23-year-old Al Qaeda terrorist exploded a bomb reputedly hidden inside his rectum. These new threats call for innovative search techniques to be developed. Current “body imagers” used at some airports detect objects hidden under an individual’s clothing, but they aren’t designed to identify explosives hidden inside a human body. Currently only an x-ray scanner could potentially discover explosives hidden in a body cavity (Kimery, 2009).

After the terrorist attacks on 9/11/01 most fans willingly accepted the increased security at sport facilities including more rigorous search procedures. However, as years have passed with no further incidents, a sense of complacency has imbued sport and entertainment attendees with a lack of tolerance regarding increased security measures, especially those pertaining to searches. The most common search measures at sport and entertainment events consist of bag searches, magnetometers (hand held metal detectors) and airport style walk through metal detectors. However, in 2005 NFL officials mandated pat-down searches at all NFL venues to provide additional security due to concerns that stadiums could be targets of potential terrorist attacks.

Terrorists’ innovations for concealing weapons and explosives are prompting increased use of sophisticated technology in conducting searches at sports facilities. By law, stadium management has a duty to provide a safe environment for spectators attending a sporting event, prompting more invasive pat down searches, use of body imagers, or other technological body inspections. On the other hand, spectators at sporting events also have a reasonable expectation of privacy (Nakamoto v. Fasi, 1981) and a constitutional right to be free from unreasonable searches and seizures (U.S. Const. amend. IV). In order to invoke Fourth Amendment protection, there must be state action and a search which is reasonable in scope and inception. Whereas government compliance under the Fourth Amendment generally requires a warrant and probable cause, a person who consents to a search negates the
requirement (Schneckloth v. Bustamonti, 1973). Whether a spectator voluntarily submits to a search when it is required for admission to an event requires analysis of the totality of the circumstances (see United States v. Blake, 1989).

Pat down searches of spectators attending an NFL game have been found to be reasonable (Johnston v. Tampa Sports Authority, 2007). However, the use of body imagers to identify false prosthetics, or implementing the utilization of x-rays to detect explosives hidden in body cavities have not yet been challenged in the courts. This research presentation will examine the possible legal issues arising from the increasing need to use more invasive searches at sport/entertainment facilities to counteract the sophisticated terrorist attempts to conceal weapons and explosives. An analysis of common law precedent regarding personal searches will be employed to theoretically identify the proper and legal security measures utilized to ensure banned items do not enter these venues. Legal parameters will be weighed to determine whether these invasive searches are reasonable, or whether the threat of terrorist attacks falls within the narrow special needs exception (See MacWade v. Kelly, 2006).

References


Johnston v. Tampa Sports Authority, 490 F.3d 820 (11th Cir. 2007)


MacWade v. Kelly, 460 F.3d 260 (2nd Cir. 2006)


Schneckloth v. Bustamonti, 412 U.S. 218 (1973)

United States v. Blake, 888 F.2d 795 (11th Cir. 1989)