Priority ✓
Send ✓
Enter ____
Closed ____
JS-5/JS-6 ____
JS-2/JS-3 ____
Scan Only ____

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

NOELLE WAY,

Plaintiff,

vs.

COUNTY OF VENTURA, et al.,

Defendants.

No. CV 01-5401 CBM (Ex)

ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND GRANTING IN PART PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

The matters before the Court, the Honorable Consuelo B. Marshall, United States District Judge presiding, are Defendants County of Ventura, Robert Brooks, and Karen Hanson's Motion for Summary Judgment (docket #16) and Plaintiff's Motion for Partial Summary Judgment Against Defendants County of Ventura, Robert Brooks, and Karen Hanson (docket #18). Counsel appeared before the Court for oral argument. Upon consideration of the papers and arguments presented, the Court DENIES Defendants' Motion for Summary Judgment and GRANTS IN PART Plaintiff's Motion for Partial Summary Judgment.

JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1343.

///

PROCEDURAL HISTORY

The operative complaint in this action is the First Amended Complaint ("FAC"), filed on December 12, 2001. The FAC alleges violations of the Fourth and Fourteenth Amendments based on illegal search and seizure, illegal arrest and false imprisonment, and invasion of privacy, and a *Monell* claim based on failure to supervise and train. The FAC also alleges state claims of false imprisonment, false arrest, and invasion of privacy.

Defendants County of Ventura ("County"), Robert Brooks,[1] and Karen Hanson (collectively referred to as "Defendants") filed a Motion for Summary Judgment. Plaintiff filed an Opposition. No Reply has been filed to date. Plaintiff filed her Motion for Partial Summary Judgment. Defendants filed an Opposition. No Reply has been filed to date.

BACKGROUND

The parties submit that the legal issues that the Court needs to resolve are the following:

1. What constitutes the reasonable suspicion required to conduct a visual unclothed body cavity search of a pretrial detainee?
2. Can the arresting agency's charge that the pretrial detainee violated Health and Safety Code Section 11550, without more, equal the reasonable suspicion needed to justify a visual unclothed body cavity search?
3. Is a policy of performing visual unclothed body cavity searches of pretrial detainees arrested for being under the influence of an illegal controlled substance, in violation of Health and Safety Code Section 11550, constitutional?
4. Constitutionally, before conducting a visual unclothed body cavity search, should a pretrial detainee be given an opportunity to post bail?
5. Was the visual unclothed body cavity search of the plaintiff in accordance with California Penal Code Section 4030?

The Court finds that the issues that have been briefed and are before the Court are whether the policy of conducting visual unclothed body cavity searches of pretrial detainees not placed

---

[1] Robert Brooks is the Sheriff of the County of Ventura.

within the general jail population based solely on the fact that they have been charged with a violation of Health and Safety Code Section 11550[2] is constitutional and whether the visual unclothed body cavity search of the plaintiff was in accordance with California Penal Code Section 4030.

The parties have stipulated to the following facts for purposes of the present motions:

1. Plaintiff Noelle Way was arrested on September 6, 2000, at approximately 2:10 a.m. by non-movant defendant Robert Ortiz.
2. Robert Ortiz was acting in the capacity of a City of San Buenaventura police officer when he arrested the plaintiff.
3. Officer Ortiz's arrest of the plaintiff took place at her place of employment, the Red Cove bar, located at 1809 East Main Street in the City of San Buenaventura.
4. Officer Ortiz arrested the plaintiff for being, in his opinion, under the influence of a controlled substance in violation of California Health and Safety Code Section 11550(a) at the time of her arrest.
5. The offense for which Officer Ortiz arrested the plaintiff was a misdemeanor.

---

[2]Section 11550(a) provides as follows:

> No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days or more than one year in a county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and, except as provided in subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in a county jail for at least 90 days. Other than as provided by subdivision (c), in no event shall the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

6. After transporting the plaintiff to the Ventura County Medical Center to obtain a blood sample, Officer Ortiz took the plaintiff to the pretrial detention facility (county jail) to be booked on the stated charge.

7. Plaintiff was a pretrial detainee at all times relevant to her contact with the moving defendants.

8. Defendant Deputy Karen Hanson is a female custody deputy employed by the Ventura County Sheriff's Department who was the booking officer and deputy who performed all activities relating to the plaintiff's booking on September 6, 2000, including reception booking, master booking, and the visual unclothed body cavity search of the plaintiff at the Ventura County Jail; Deputy Hanson has worked for the Ventura County Sheriff's Department for 21 years.

9. Approximately an hour after her arrest, at about 3:10 a.m., the plaintiff arrived at the pretrial detention facility and her booking process began.

10. During the plaintiff's booking process, as part of routine procedure, Officer Ortiz prepared and submitted two documents to Karen Hanson, the custody deputy handling plaintiff's booking:

(a) One document was the booking information sheet in which Officer Ortiz stated that he had arrested the plaintiff for misdemeanor violation of Health and Safety Code Section 11550(a) at 2:10 a.m. on September 6, 2000, at the Red Cove bar in Ventura, among other information;

(b) The second document prepared by Officer Ortiz was a declaration for probable cause hearing, which he signed under penalty of perjury on September 6, 2000, in which Officer Ortiz stated that he was a peace officer employed by the Ventura Police Department; that at 2:10 a.m. on September 6, 2000, he developed probable cause to form the opinion that the plaintiff was violating Health and Safety Code Section 11550; that he observed the plaintiff exhibit certain symptoms on September 6, 2000, in Ventura indicative of being under the influence of a controlled substance stimulant; that he prepared a police report; and that the plaintiff had been given a

chemical test whose results were pending;

11. While defendant Karen Hanson does not recall any particulars about this case or the plaintiff, her custom and practice would be to read the two documents prepared by Officer Ortiz during the course of booking the plaintiff.

12. The Ventura County Sheriff's Department, in the operation of its pretrial detention facility, contends that a fresh misdemeanor charge of violating Health and Safety Code Section 11550 supplies the basis for a visual unclothed body cavity search.

13. Under the policy of the Ventura County Sheriff's Department, a visual unclothed body cavity search is performed by a custody deputy of the same sex as the pretrial detainee and does not involve any touching of the person of the pretrial detainee by the custody deputy.

14. The plaintiff was booked between 3:10 a.m. and 3:36 a.m. by Deputy Hanson.

15. Deputy Hanson obtained permission to perform the visual unclothed body cavity search upon the plaintiff from Senior Deputy Dave Brantley, who authorized Deputy Hanson to conduct the strip search of the plaintiff.

16. Approximately 20 minutes transpired between the time the plaintiff was informed of the amount of her bail and the time of the performance by Deputy Hanson of the visual unclothed body cavity search of the plaintiff.

17. Deputy Hanson performed a visual-only unclothed body cavity search of the plaintiff.

18. The visual unclothed body cavity search took place in a private room in the women's booking area of the pretrial detention facility with only Deputy Hanson and the plaintiff present.

19. During the search, defendant Hanson observed that the plaintiff had a tampon and required the plaintiff to remove, tear, and discard the tampon in the adjacent wastebasket.

20. If a pretrial detainee is having a menstrual period, she will be required to remove her tampon, pull it apart during the strip/visual body cavity search, and discard it in the wastebasket.

21. Deputy Hanson performed the visual unclothed body cavity search of the plaintiff solely because the plaintiff was charged by Officer Ortiz with violating Health and Safety Code

Section 11550; Deputy Hanson did not have any other information leading her to believe that the plaintiff was concealing contraband in her body cavities.

22. It is the policy of the Ventura County Sheriff's Department in the operation of its pretrial detention facility to perform visual unclothed body cavity searches of every pretrial detainee arrested for alleged violation of Health and Safety Code Section 11550, a misdemeanor.

23. Upon the plaintiff's arrival at the pretrial detention facility, in women's booking, Deputy Hanson performed a pat-down search of plaintiff, during which Deputy Hanson did not see or feel anything which would lead her to believe that the plaintiff was concealing drugs or weapons on her person or in her body cavities.

24. There is no waiting period to see if an inmate arrested on charges of Health and Safety Code Section 11550 will be able to post bail before performing the visual unclothed body cavity search of such pretrial detainee.

25. The strip search of the plaintiff did not yield any contraband, weapons, or drugs hidden on or in her person.[3]

26. No charges were ever filed against the plaintiff.

27. The blood sample obtained from the plaintiff at the Ventura County Medical Center and analyzed by the Ventura County Sheriff's Department Criminalistics Laboratory did not reveal the presence of any controlled substances or drugs in the plaintiff's blood – the test was negative for controlled substances.

28. The plaintiff contends that while naked, she was called derogatory and insulting names by defendant Deputy Hanson, such as "raunch" and "whore."

Defendants supplemented the Joint Statement with additional facts, to which Plaintiffs have not stipulated. Defendants provide declarations stating that the purpose of conducting visual unclothed body cavity searches is to provide facility security and ensure the health and safety of the individuals, that multiple female arrestees may be held in the same holding cell while they are being booked, and that the purpose of searching Plaintiff was to ascertain whether she had concealed

---

[3]Defendants dispute the relevance of Facts 26-29.

drugs or drug paraphernalia.

DISCUSSION

I. Cross Motions for Summary Judgment as to Defendants County, Brooks, and Hanson

A. Standard of Law

Summary judgment against a party is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving party is *entitled to a judgment as a matter of law*." FED. R. CIV. P. 56(c) (emphasis added). initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses which demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). Where the nonmoving party will have the burden of proof at trial, the movant can prevail merely by pointing out that there is an absence of evidence to support the nonmoving party's case. *See id.* If the moving party meets its initial burden, the nonmoving party must then set forth, by affidavit or as otherwise provided in Rule 56, "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986).

In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence and draws all inferences in the light most favorable to the nonmoving party. *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987). The evidence presented by the parties must be admissible. FED. R. CIV. P. 56(e). affidavits and moving papers is insufficient to raise genuine issues of fact and defeat summary judgment. *See Thornhill Pub. Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

B. Analysis

1. Constitutionality of Visual Unclothed Body Cavity Search

The Supreme Court addressed visual unclothed body cavity inspections of pretrial detainees in institutional settings in *Bell v. Wolfish*, 441 U.S. 520, 99 S. Ct. 1861 (1979), holding that such inspections could be conducted on less than probable cause without violating the reasonableness

standard of the Fourth Amendment. *See Bell*, 441 U.S. at 559-60. "In determining whether an institutional search policy is reasonable under the Fourth Amendment, a court must balance 'the need for the particular search against the invasion of personal rights that the search entails.'" *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1445 (9th Cir. 1991) (quoting *Bell*, 441 U.S. at 559). The Supreme Court set forth factors to be considered in determining reasonableness: the scope of the intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *See id.* at 559. The Ninth Circuit has held that such searches must be supported by reasonable suspicion that the arrestee "is carrying or concealing contraband." *See Kennedy v. Los Angeles Police Department*, 901 F.2d 702 (9th Cir. 1990) (citing *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984)). In determining whether there is reasonable suspicion, courts should consider the nature of the offense, the arrestee's appearance and conduct, and the prior arrest record. *See Giles*, 746 F.2d at 716. The rationale for allowing visual unclothed body cavity searches of pretrial detainees supported by less than probable cause "is to protect prisons and jails from smuggled weapons drugs or other contraband which pose a threat to the safety and security of penal institutions." *Fuller*, 950 F.2d at 1447.

To hold the County liable, the Plaintiff must show that the County maintained a custom, policy, or practice that caused a violation of her federal constitutional rights. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 691 (1978). The parties have stipulated that the visual unclothed body cavity search of Plaintiff was conducted pursuant to the County's policy.

The parties have stipulated that the *only* fact supporting the search of Plaintiff was that she had been charged with violating Health and Safety Code Section 11550. Defendants argue that their search policy is justified because it ensures that arrestees do not injure themselves by ingesting drugs or their containers and to make sure that they do not injure or pass drugs to other arrestees who are also being held at the pretrial detention facility. Defendants provide the declaration of Bonnie Gatling, facility administrative sergeant in charge of training custody deputies at the Ventura County Pretrial Detention Facility in support of this proposition. She states that "inmates have occasionally managed to evade our facility security protocols and ingested drugs or their containers, usually balloons." Gatling Decl. at ¶ 8. Defendants provide no evidence regarding whether these

inmates were charged with violating Health and Safety Code Section 11550, or whether visual unclothed body cavity searches of pretrial detainees charged with violating Health and Safety Code Section 11550 have resulted in the discovery of concealed drugs or contraband or prevented injury to the detainees. Therefore, Defendants have not established that the policy of conducting visual unclothed body cavity searches of pretrial detainees charged with violating Health and Safety Code Section 11550 effectively promotes the stated justification for the search.[4]

The present case is analogous a Tenth Circuit case, *Foote v. Spiegel*, 118 F.3d 1416 (10th Cir. 1997). In *Foote*, a highway patrol officer arrested Foote for being under the influence of marijuana. A search of Foote's vehicle and a thorough pat-down search of Foote's person disclosed no drugs. In addition, Foote did not engage in any behavior consistent with an attempt to hide something beneath her clothing. Foote was booked at the County Jail and strip searched, which revealed no drugs. Foote was never placed in the general jail population and was released on bond shortly after her confinement. The Tenth Circuit held as follows:

> [B]ecause Foote had no opportunity to hide anything beneath her clothing after [the highway patrol officer] had stopped her vehicle and a thorough pat-down search at the jail had revealed no drugs, the strip search could be justified only if it were

---

[4]The Court notes the concerns expressed by the Supreme Court and the Ninth Circuit that courts not [illegible] for those of the jails' administrators. *See Giles*, 746 F.2d at 617 (citing *Block v. Rutherford*, 468 U.S. 576, 584-85, 104 S.Ct. 3227, 3232 (1984)). The deference accorded jail administrators does not exempt Defendants from showing that the jail's interests warrant the level of intrusion caused by their policy. *See Giles*, 746 F.2d at 617 (holding that the policy of strip searching all persons booked into the jail was unconstitutional because the County had not demonstrated that its security interests warranted "serious invasion of privacy inflicted by its policy"). Although in *Giles* the Ninth Circuit required that the County make such a showing, in *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1447 (9th Cir. 1989), the Ninth Circuit did not. *See Thompson*, 885 F.2d at 1447 (holding, without considering the effectiveness of the search, that the offense of grand theft auto is "sufficiently associated with violence to justify a visual strip search"). The two cases are distinguishable, however, in that in *Giles*, the pretrial detainee was not placed within the general jail population whereas in *Thompson*, the pretrial detainee was placed within the general jail population. This suggests that jail administrators are afforded greater deference when a pretrial detainee is intermingled with the general jail population than when a pretrial detainee is not placed within the general jail population, however greater deference will not be afforded absent a showing that such intermingling was unavoidable. *See Giles*, 746 F.2d 618-19 (stating that heavy reliance on the intermingling of temporary detainees with the general jail population was misplaced because such intermingling was "limited and avoidable") (internal quotations omitted).

> reasonable to believe persons driving while under the influence of marijuana, who have no particular reason to expect they will be searched, routinely carry a personal stash in a body cavity. That belief is unreasonable.

Foote, 118 F.3d at 1426 (distinguishing cases in which possession of drugs or drug paraphernalia provided reasonable suspicion for strip search).

Similarly, the facts before the Court in the instant case indicate that Officer Ortiz arrested Plaintiff for being under the influence of a controlled substance. Deputy Hanson conducted a pat-down search of Plaintiff, during which Deputy Hanson did not see or feel anything that would lead her to believe that the Plaintiff was concealing drugs or weapons on her person or in her body cavities. There is no evidence that Plaintiff engaged in any behavior consistent with an attempt to hide something beneath her clothing, and Defendants do not contend that Plaintiff had any opportunity to hide drugs from the time she was stopped by Officer Ortiz until the time she underwent the visual unclothed body cavity search. As part of the booking process of Plaintiff at the pretrial detention facility, Deputy Hanson conducted a visual unclothed body cavity search of Plaintiff, which revealed no contraband, weapons, or drugs. There is no evidence that Plaintiff was ever placed in the general jail population. Plaintiff was released on bond approximately five to eight hours after her arrival at the pretrial detention center.[5] Thus, the Court finds that under these circumstances, it is unreasonable to believe that a person under the influence of a controlled substance in violation of Health and Safety Code Section 11550 "routinely carr[ies] a personal stash in a body cavity." The Court holds that the visual unclothed body cavity search of Plaintiff was unconstitutional.

In evaluating the necessity of a strip search, courts have consistently recognized a distinction between detainees awaiting bail and those entering the jail population. *Fuller*, 950 F.2d at 1448; *see also Cottrell v. Kaysville City*, 994 F.2d 730, 735 (10th Cir. 1993) ("We agree that the security concerns inherent in a bail situation are very different from those present when the detainee will enter the jail for a greater length of time."); *Logan v. Shealy*, 660 F.2d 1007, 1013 (4th Cir. 1981)

---

[5] Plaintiff's counsel represented to the Court at the hearing that Plaintiff was released five to six hours after her arrival. Defendants' counsel represented to the Court at the hearing that Plaintiff was released eight hours and ten minutes after her arrival.

(considering fact that detainee would not be intermingled with the jail population as one of many factors in determining that strip search was not justified). In this case, counsel for Plaintiff and Defendants represented to the Court at the hearing that Plaintiff posted bail, and there is no evidence that she was housed with the general jail population. Therefore, the Court expresses no opinion on the constitutionality of a visual unclothed body cavity search of an arrestee charged with violating Health and Safety Code Section 11550 who is searched prior to entering the general jail population.

The Court rejects Plaintiff's contention that the reasonable suspicion determination must *always* be made on a "case-by-case" basis. In *Kennedy*, the Ninth Circuit stated that in certain instances, "the charge itself may give rise to reasonable suspicion." *Kennedy*, 901 F.2d at 716 (citing *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1447 (9th Cir. 1989), which held that the offense of grand theft auto is sufficiently violent to authorize a blanket strip search policy applicable to arrestees charged with it who are to be intermingled with the general jail population).

2. California Penal Code Section 4030

Plaintiff argues that "the visual unclothed body cavity search of Plaintiff was not in accordance with California Penal Code Section 4030." Plaintiff argues that the California Penal Code Section 4030 requires that misdemeanor arrestees must be given a minimum of three hours to post bail before being placed in the general jail population. California Penal Code Section 4030(g) exempts from this requirement arrestees who have been charged with offenses involving controlled substances. Further, there is no evidence before the Court that Plaintiff was ever placed into the general jail population. Accordingly, there is no evidence before the Court from which it could conclude that California Penal Code Section 4030 was violated.

CONCLUSION

Based on the foregoing, Defendants' Motion for Summary Judgment is DENIED, and Plaintiff's Motion for Partial Summary Judgment is GRANTED IN PART. The Court finds that the search of Plaintiff was conducted pursuant to the County's strip search policy, that the search

///

///

///

constitutes a violation of Plaintiff's Fourth Amendment rights, and that the Defendants are liable for damages proximately caused by the search. Defendants may file motions addressing whether they are entitled to qualified immunity.

SO ORDERED.

DATE: July 22 2002

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE