UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Antonia DeToledo, and Liana Williams, Plaintiffs, v. County of Suffolk, Lt. Angelo Rao, Sgt. Janet Sinclair, Sgt.Owen Julius Dpty. Sylvia Thomas, Defendants.	Civil Action No. 03-CV-10834-RGS

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiffs Liana Williams and Antonia DeToledo filed suit against the County of Suffolk and John Doe in Suffolk Superior Court, Docket No.SUCV2001-01297 on or about June 13, 2001. After a period of discovery, the Superior Court allowed the Plaintiffs' Motion to Amend their complaint. The Amended Complaint added four Sheriff's Department employees and included counts under 42 U.S.C. §1983. Defendants removed the case to Federal Court. The Plaintiffs' claims arise from incidents that occurred when they visited the Suffolk County House of Correction on July 26, 1998. The parties agreed to voluntarily dismiss Counts XIII through XVI against Defendant Owen Julius and Counts IX, XXI, XVII, and XIX claims of Plaintiff Antonia DeToledo against Defendants Sinclair and Thomas, pursuant to Fed. R. Civ. P. 41 (a)(1).

The remaining individual Defendants now state that there are no issues of material fact with regard to the remaining claims against them and that they are entitled to judgment as a

matter of law. The Counts addressed in the instant Motion include the State and Federal Claims of both Plaintiffs against Defendant Rao, and the State and Federal Claims of Williams against Defendants Sinclair and Thomas.

II. FACTS

Defendants rely on the Statement of Undisputed Material Facts submitted in conjunction with the instant motion pursuant to Local Rule 56.1.

III. STANDARD OF REVIEW

In order to prevail on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact. See FED. R. CIV. P. 56(c); Celotex v. Catrett, 477 U.S. 317 (1986). For purposes of Summary Judgment, an issue is genuine if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986). A fact is material if it is one that has "the potential to affect the outcome of the suit under applicable law. Nerieda-Gonzalez v. Tirado-Delgardo, 990 F.2d 701, 703 (1st Cir. 1993).

As the moving party on this motion for summary judgment, it is the Defendants' burden to show the absence of evidence to support the non-moving party's case. Garside v. Osco Drug, Inc., 895 F.2d 46 (1st Cir. 1990). Thereafter, "[a] party opposing summary judgment must present definite, competent evidence to rebut the motion." Maldonado-Denis v. Castillo-Rodriguez, 23 F.3d 576, 581 (1st Cir. 1994), quoting Mesnick v. General Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991), *cert. denied*, 504 U.S. 985 (1992). "Brash conjecture, coupled with earnest hope that something concrete will eventually materialize, is insufficient to block summary judgment." Maldonado-Denis, 23 F.3d at 581, *quoting* Dow v. United Brotherhood of Carpenters, 1 F.3d 56, 58 (1st Cir. 1993). Moreover, merely discrediting the moving party's

testimony is not normally sufficient to defeat the mover's motion for summary judgment; instead, the non-mover must submit affirmative evidence. First National Bank of Arizona v. Cities Service Co., 391 U.S. 253 (1968).

IV. ARGUMENT

1. THE PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM AGAINST THE INDIVIDUAL DEFENDANTS, AS THERE WAS NO VIOLATION OF THEIR CONSTITUTIONAL RIGHTS.

The Plaintiffs assert that their liberty interests were violated by the actions of the Defendants in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Defendant Rao made the determination to detain DeToledo and to arrest Williams. Rao was the shift commander on duty and the other officers involved in the detention and arrest were acting pursuant to his commands. The Due Process Clause of the Fourteenth Amendment provides: "[N]or shall any State deprive any person of life, liberty or property without due process of law." U.S. Const. Amend. XVI, §1. Plaintiffs allege the actions of the correction officers in escorting them to another section of the House of Correction violated their constitutional rights under 42 U.S.C. §1983. The Plaintiffs aver:

> On or about July 26, 1998, the defendant interfered with the plaintiff's right to be free from excessive and/or unreasonable force and the plaintiff's right to be free from deprivation of liberty without due process of law by physically removing plaintiff from the waiting area of the South Bay House of Corrections to a holding cell within the facility. (Complaint ¶ ¶ 46, 50, 63, 67, 97, 101)

The Supreme Court has made abundantly clear that §1983 is not in itself a source of substantive right, but merely provides a method of vindicating federal rights elsewhere conferred. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

Title 42 U.S.C. §1983 provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless declaratory decree was violated or declaratory relief was unavailable.

At the time of the incidents giving rise to the Complaint, the Defendants were acting under color of law. Defendants acknowledge that Plaintiff DeToledo was detained for about four minutes, and that Plaintiff Williams was placed under arrest. Both were subjected to a loss of liberty. However, the loss of liberty did not violate the Due Process Clause of the Fourteenth Amendment. The Supreme Court addressed a situation comparable to the instant case in Baker v. McCollan, 443 U.S. 137 (1979). The Plaintiff in Baker was arrested in error after his brother used his identity when arrested. Baker was held in custody for eight days despite his protestations that he was not the person identified in the warrant. The Court found no Constitutional deprivation stating:

> "Section 1983 imposes liability for violation of rights protected by the Constitution, not for violations of duties of care arising out of tort law. Remedy for the latter type of injury must be sought in the state court under traditional tort-law principals. Just as medical "malpractice does not become a constitutional violation merely because the victim is a prisoner, Estelle v. Gamble, 429 U.S. 97, 106, 97 S. Ct 285, 292, 50 L. Ed 2d 251 (1976), false imprisonment does not become a violation of the Fourteenth Amendment merely because the defendant is a state official." Id at 145.

The Court recognized that the Constitution does not guarantee that only the guilty will be arrested. Baker, 433 U.S. at 145. The law is clearly established that an individual arrested by mistake based on a facially valid warrant has no claim under the Due Process Clause. Brady v. Dill, 187 F.3d 104 (1st Cir. 1999).(No Due Process violation where the plaintiff was arrested on

warrant issued to another individual that used his name.); Hill v. California, 401 U.S. 797, 1971 (When police have probable cause to arrest the first party but reasonably mistake the second party for the first party, arrest of the second party is valid.)

The situation in the instant case differs in that it was discovered subsequent to the arrest that the warrant was not a valid warrant. At the time the arrests were made, however, Rao believed the warrant to be an active warrant. There is nothing to suggest Rao was acting with any malice or intent to cause harm to either Plaintiff. In addressing a Due Process claim of a prisoner, the Supreme Court stated:

> The Due Process Clause was intended to secure an individual from an abuse of power by government officials. Far from an abuse of power, lack of due care, such as respondents alleged negligence here, suggests no more than failure to measure up to the conduct of a reasonable person. To hold that injury caused by such conduct a deprivation within the meaning of the Due Process Clause would trivialize the centuries-old principals of due process of law. Daniels v. Williams, 474 U.S. 327, 328 (1986).

Rao's actions, although arguably negligent were not an "abuse of power" under the Fourteenth Amendment.

Evaluating Plaintiffs' claims under cases that address warrant-less arrests, there still is no basis for a deprivation of a constitutional right. Probable cause is required to make an arrest. Wong Sun v. United States. 371 U.S. 471, 479 (1963). Probable cause to arrest exists if at the moment of the arrest, the facts and circumstances within the relevant actors' knowledge and of which they had reasonably reliable information were adequate to warrant a prudent person in believing that the subject had perpetrated or was poised to perpetrate an offense. Roche v. John Hancock, 81 F. 3d 249, 354 (1st Cir. 1996), *citing* Beck v. Ohio, 379 U.S. 89, 91 (1964). Further, the inquiry into the existence of probable cause is not to be taken from the prospective of hindsight, but from the prospective of the reasonable man standing in the shoes of the individual

when he made the decision to arrest. Id. Courts must ask whether a reasonable person would rely on a particular piece of information, not whether the information was unquestionably accurate in making the probable cause determination. Roche, 81 F.3d at 255.

In Thompson v. Olson, 798 F.2d 552, (1st Cir. 1986) a diabetic blind man was arrested because the arresting officers believed the man to be under the influence of alcohol or drugs and he would not exit a bus upon request. His medical condition was not made known to the arresting officers. The Appeals Court reversed the District Court's finding of a violation of §1983, opining that the conduct of the arresting officers did not "shock" the conscience, the standard adopted by the Court in ruling on Due Process claims. Thompson, 798 F.2d at 554. The Court found at most, the arresting officers conduct may rise to the level of negligence. Id. Mere negligence does not trigger the protection of the Due Process Clause. Daniels v. Williams, 474 U.S. 327, 328 (1986). Where a government official's causing injury to life, liberty or property is merely negligence, "no procedure for compensation is *constitutionally* required" Daniels, 474 U.S. at 333 *citing* Parratt v. Taylor, 451 U.S. 527, 584 (1981).

Government officials may be liable for conduct that reflects a reckless or callous indifference to an individual's rights. Germany v. Vance, 868 F. 2d 9, 18 (1st Cir. 1989). The crux of the inquiry is the intention of the actor. If a person acts with the desire to cause harm or with the belief that harm is certain to result, the action is "intentional". Conversely, if the actor has no such desire or belief, but acts unreasonable in light of the risks, his behavior is labeled "negligent" *see* Germany, 868 F.2d at 18, n. 10. Rao was neither callous nor indifferent with regard to his actions on July 26, 1998. His lack of callousness is evidenced by his acquiesces in Williams' request not to be handcuffed in front of her children. Also, he was genuinely apologetic to Williams when she returned to the House of Correction. The facts of Torres

Ramirez v. Bermudez Garcia, 898 F. 2d 224 (1st Cir. 1990) are strikingly similar to what transpired at the House of Correction on July 26, 1998. The Plaintiff in Torres Ramirez was arrested on a vacated warrant and brought suit against the Puerto Rico officials allegedly responsible for the arrest, Luna and Bermudez. The Defendants appealed the jury verdict against them. One basis of the appeal was that the actions of the marshals in failing to withdraw the warrant, or noting that it was previously served, was merely negligence and did not give rise to a Due Process claim. The Court agreed with respect to Defendant Bermudez, but found the jury could have believed that Defendant Luna knowingly processed an invalid warrant or that he recklessly acted with disregard for the probability a ultimate illegal arrest. Id at 227. The record reflects that another officer, not Rao, was aware that the warrant had been recalled. Rao's conduct, like that of Defendant Bermudez did not rise to the level of recklessness necessary to convert a negligent act to a constitutional violation. Finding a due process violation under these facts would trivialize the protection of the Due Process clause, an action the Supreme Court warned against in Daniels.

More recently the Appeals Court addressed another similar situation in Pena-Borrero v. Estremeda, 365 F. 3d 7 (1st Cir. 2004). The Court reversed the District Court's dismissal of a civil rights complaint brought by an individual who was arrested at his home at 3:30 a.m. on a vacated warrant. In that case the plaintiff presented to the arresting officers a copy of the executed arrest warrant and a copy of the receipt for bond. The Court determined that Plaintiff plead sufficient facts to survive a Motion to Dismiss. The Court recognized that the arresting officers may have been simply negligent. Id at 13. The existence of facially authentic documentary evidence that the warrant was no longer effective, and the failure of the officers to follow precautionary procedures to assure its vitality provided a sufficient basis for a claim under

the Fourth Amendment. Id. The case is not controlling with regard to Rao's actions because of the factual distinctions, including the conduct of the arresting officers, and the standard of review applied by the Court. Plaintiffs' Complaint alleges a violation of Due Process. Therefore, the standard of review is "reckless or callous" as opposed to the reasonable standard applied under the Fourth Amendment. The summary judgment record does not support a finding that Rao acted in a reckless or callous manner with regard to the short detention of DeToledo or the arrest of Williams. Rao's reliance on the Department's computer system and his misreading of the warrant provided him a good faith basis to believe he was executing a valid arrest warrant.

Additionally, under Due Process claims, the intent of the actor controls. See Germany v. Vance, 868 F.2d 9, 18 n. 10. Rao's intent was to comply with his obligations as Shift Commander. The officers in Pena-Borrero arrived at Plaintiff house in the middle of the night; used force against him resulting in injury; and caused his children to be driven away. It was the affirmative acts of the officers that precipitated the civil rights claim. Conversely, Rao did not affirmatively seek to arrest anyone. Williams appeared at the House of Correction. Rao believed he had no option but to arrest her. (Rao Dep. p. 56) Again, Rao's actions under the circumstances were not an abuse of the power he is afforded as a law enforcement official. He was merely trying to do his job.

1. The Detention of Antonia DeToledo Was Not in Violation of Her Due Process Rights.

Plaintiff Antonia DeToledo was mistaken for Liana Williams when she exited the restroom at the House of Correction. She was held a matter of minutes and was released immediately when the mistake was discovered. Her continued presence in the booking area was due to her medical condition and attempts to calm her down by medical personnel. She was in handcuffs approximately 4 minutes. Any restraint on her liberty ended when it was determined

that she was not the proper person and the handcuffs were removed. She was free to go at that point, but remained in the area until EMS arrived for her own protection. Rao reasonably believed DeToledo was Williams. He mistakenly believed DeToledo was the subject of a valid arrest warrant and effectuated her detention for approximately five minutes. Given the circumstances, Rao's actions with regard to Plaintiff DeToledo were reasonable. He had been advised that the subject of the warrant had taken the key for the ladies room. DeToledo exited the ladies room. Rao had no reason to believe anyone else was present in the ladies room since only one person would be in the ladies room at a time. Rao compared the photo ID to the women exiting the ladies room and believed them to be the same person, albeit with a different hair cut, and possibly an old picture. When asked if she was Liana Williams, she responded affirmatively. When asked a second time, she again responded affirmatively. It was only after her confirmation that she was Williams that she indicated she did not understand English. A Spanish-speaking officer tried to explain to her what was happening. Rao made an identification error. It was immediately corrected when discovered.

In determining whether a plaintiff has suffered a Due Process violation the Court looks to the length of detention, the behavior of police, and source and quality of information before them. Brady v. Dill, 187 F.3d 104, 115 (1st Cir. 1999). Applying those factors to the short detention of DeToledo, she cannot establish a cognizable due process claim against Rao. Additionally, law enforcement officials do not necessarily violate the Fourth Amendment by approaching suspects, questioning them, or detaining them. Terry v. Ohio, 392 U.S. 1, 19-20 (1968). There is evidence in the record that DeToledo was under the influence of alcohol. (See Ex.10). She was informed she was being detained for identification purposes. Given her stated

inability to remember any conversation with Sheriff's Department staff or medical personnel, an investigatory stop, including a brief detention to determine her identity was not unreasonable.

2. The Detention of Liana Williams Was Not in Violation of Her Due Process Rights.

Plaintiff Williams was the subject of the recalled warrant. She was detained, searched and transported to the Nashua Street Jail where it was determined that the warrant had been recalled. She alleges violation of her Due Process Rights. As indicated with Plaintiff DeToledo, Rao's actions with respect to Williams were reasonable in light of the information known to him at the time. When advised that the Department's tracking system computer indicated a warrant for Liana Williams, Rao inquired of the visiting supervisor if there was any information on Williams in the office. The incident took place on a Sunday evening. On the previous Friday, the recall was printed and forwarded to Sergeant Ruplis. (Lewis report). She failed to take the restriction off the computer screen. (Ruplis report). Had Ruplis removed the restriction, as she should have, the events of July 26, 1998 would not have occurred. Rao was aware of a restriction on the computer screen and that there was paperwork with Williams' name on it in the visitor supervisors' office. It was reasonable for him to assume that warrant was good, since if it was recalled, the restriction should have been removed. As noted above, the inquiry is, was it reasonable for him to rely on the information contained in the Department's computer system that indicated Williams had an outstanding warrant. See Roche 81 F. 3d at 255. His actions with respect to Williams may have been negligent, however his conduct did not rise to the level of recklessness or callousness necessary to find a violation of Due Process.

3. The Plaintiff's Cannot State A Claim For Excessive Force.

In addition to the deprivation of liberty claim, the Plaintiffs also claim the Defendants interfered with their right to be free from excessive and/or unreasonable force. Where an excessive use of force claim arises in the context of an arrest it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens "to be secure in their persons... against unreasonable... seizures of the person." Jarrett v. Yarmouth, 331 F. 3d 140, 148 (1st Cir. 2003) There is no allegation in the Complaint, and the summary judgment record does not establish that any force was used other than that necessary to effect an arrest on either plaintiff. Fourth Amendment jurisprudence has long recognized the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion. Graham v. Connor, 490 U.S. 386, 386 (1989). The "reasonableness" of the force used must be judged by an objective standard. In the instant case, there was no excessive force used. The only force used was the application of restraints. In light of the facts and circumstances surrounding the incidents, the use of restraints was objectively reasonable. Additionally, Rao agreed to withhold placing restraints on Williams until she was out of sight of her children.

To the extend Williams claims her strip-search was a use of excessive force, the Defendants are immune from suit as outlined below.

2. SUMMARY JUDGMENT SHOULD BE GRANTED TO THE INDIVIDUAL DEFENDANTS, AS THEY ARE IMMUNE FROM SUIT.

Defendants Angelo Rao, Janet Sinclair, and Sylvia Thomas are immune from suit as governmental employees entitled to qualified immunity from claims against them in their individual capacity. See, Malley v. Briggs, 475 U.S. 335, 341 (1986). Qualified immunity is an entitlement not to stand trial or face the other burdens of litigation. Mitchell v. Forsyth 472 U.S. 511, 526 (1985). The privilege is an immunity from suit, not merely a defense to liability. Id.

The immunity may only be overcome by a showing that they participated personally in depriving the plaintiff of a clearly established constitutional right. See, Febus-Rodriguez v. Betancourt-Lebron, 14 F.3d 87, 91 (1st Cir.1994). The U.S. Supreme Court has determined that at two-part test should be employed where Defendants' seek qualified immunity. *See* Saucier v. Katz, 533 U.S. 194, 201 (2001). The initial inquiry must be: taking in the light most favorable to the party asserting the injury, do the facts show the officers' conduct violated a constitutional right? Id. Second, if such a violation is established, the next question is whether the right was clearly established, analyzed "in light of the specific context of the case, not as a broad proposition." Id. The inquiry undertaken is that of reasonableness in light of the surrounding circumstances of the particular case. Jarrett v. Yarmouth, 331 F. 3d 140, 148 (1st Cir. 2003). As discussed above, Defendants contend in the instant case that there was no constitutional violation. However, if the Court were to find a violation of the Plaintiffs' Due Process rights, the individually named Defendants are entitled to qualified immunity and thus entitled to Judgment as a matter of Law.

1. Captain Rao's Actions With Regard To Plaintiff DeToledo Were Reasonable And Therefore Protected By Qualified Immunity.

Qualified immunity "provides ample protection to all but the plainly incompetent or those who knowingly violate the law." See, Joyce v. Town of Tewksbury 112 F.3d 19, 22 (1st Cir. 1997), *citing* Malley v. Briggs, 475 U.S. 335, 341 (1986). The Defendants do not dispute that the Plaintiffs have a right not to be deprived of liberty without the due process of law. Whether the right was clearly established depends upon whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. Saucier v. Katz, 533 U.S. 194, 202 (2001). All actions taken by Defendant Rao with regard to Plaintiff DeToledo were reasonable. If the warrant had been an active warrant, Rao would clearly be entitled to qualified

immunity. See Hill v. California, 401 U.S. 797 (1971). However, the absence of a valid warrant does not strip Rao of the protection of qualified immunity if he acted in an objectively reasonable manner with regard to DeToledo's brief detention for identification purposes. Saucier at 202. The constitutionality of conduct is not the determining factor in whether a public official is entitled to qualified immunity. Anderson v. Creighton, 483 U.S.635, 641 (1987). As indicated above, Captain Rao acted reasonably in detaining DeToledo for a very short period of time. He cannot be stripped of protection when the actions were reasonable, even if mistaken. *"[L]aw enforcement officials will in some cases reasonably but mistakenly conclude* that [their conduct] is [constitutional] and ... that ... *those officials* –like other officials who act in ways they reasonably believe to be lawful – *should not be held personally liable."* Hegarty v. Somerset County, 53 F.3d 1367, 1373 (1st Cir. 1995), citing, Anderson v. Creighton, 483 U.S.635, 641 (1987).

2. Captain Rao, Deputy Thomas And Sergeant Sinclair's Actions With Regard To Plaintiff Williams Were Reasonable And Therefore Protected By Qualified Immunity.

Plaintiff Williams was arrested on a warrant that had been recalled. Captain Rao acknowledged that he made an error in reading the warrant paperwork. The Defendants are entitled to qualified immunity for both the detention of Williams and the resulting strip search.

A. Defendants Are Entitled To Qualified Immunity For The Arrest Of Williams.

In her Complaint, Plaintiff does not allege any violation of the Fourth Amendment. (Exhibit 1) She alleges her right to liberty without due process was violated. As such, the determination of the lawfulness of her detention lies in the analysis as listed above. Rao's decision to place her in custody may have been negligent, however, it did not rise to the level of

a due process violation. The actions of all Defendants were reasonable with regard to the decision to place Williams under arrest. Thomas and Sinclair were standing by and obeying the orders of their supervisor. There is nothing in the record to show Thomas or Sinclair contributed in anyway to the decision to arrest Williams. Rao made a mistake in reading the warrant. The Defendants are entitled to qualified immunity.

A fundamental justification for the qualified immunity defense is that public employees are free to perform discretionary functions without fear of punitive litigation except when they fairly can anticipate that their conduct will give rise to liability for damages. Savard v. Rhode Island, 338 F. 3d 23, 28 (1st Cir. 2003). Captain Rao was simply performing his duties as shift commander on July 26, 1998. Sinclair and Thomas were following orders. A string of unconnected unfortunate events lead to the detention of DeToledo and the arrest of Williams. There was no way for the Defendant Sinclair or Thomas to anticipate that performing their duties in the course of their employment on July 26, 1998 would result in the instant litigation. Arguably, Captain Rao, as the commanding officer assumes some risk with in conjunction with the responsibility of his position. The same risk is not borne by Sinclair and Thomas.

Additionally, qualified immunity exists not only to protect public officials from money damages, but also to also prevent the distraction from their official duties, prevent the cost of litigation and the deterrence of able-bodied people from public service. Guzman-Rivera v. Rivera Cruz, 98 F. 3d 664, 665 (1st Cir. 1996) *citing* Harlow v. Fitzgerald ,457 U.S. 800, 816 (1982). Denying the Defendants qualified immunity in this case, where an accumulation of missteps snowballed to cause any injuries alleged would have a chilling effect on maintaining able bodied individuals from seeking employment with the Sheriff's Department. Such is true especially with regard to Thomas and Sinclair. Neither made the decision to arrest Williams, nor did they have

the authority to make such a decision. Neither actually saw the warrant. And finally, neither acted outside the scope of their employment or what they had been trained to do. The Summary Judgment record is void of any indication that either Sinclair or Thomas were plainly incompetent or knowingly violated the law thus they should be afforded qualified immunity. Malley v. Briggs, 475 U.S. 335, 341 (1986). If the law did not put Sinclair or Thomas on notice that their conduct would clearly be unlawful, summary judgment based on qualified immunity is appropriate. Saucier v. Katz, 533 U.S. 194, 202 (2001).

B. The Defendants Are Entitled To Qualified Immunity For The Search Of Williams.

Williams was strip-searched incident to her arrest. There is an issue of fact pertaining to who conducted the strip search of Plaintiff Williams, Sinclair or Thomas. At this stage, the fact is not material, however, as regardless of which officer conducted the search, she is entitled to qualified immunity. The search of Williams was conducted according to Sheriff's Department Policy in effect at the time. The Officer that conducted the search believed that Williams was in the lawful custody of the Department. Strip-searches of pretrial detainees, such as the Plaintiff are not per se unconstitutional Bell v. Wolfish, 441 U.S. 520 (1979).

"Qualified immunity specially protects public officials from the specter of damages liability for judgment calls made in a legally uncertain environment." Ryder v. United Sates, 515 U.S. 177, 185 (1995), *citing* Harlow v. Fitzgerald, 457 U.S 800, 806 (1982). At the time of Plaintiff's search, July 26, 1998[1] the law was unclear with regard to searches on arrestees such as the Plaintiff. The Courts' decision in Swain v. Spinney, 117 F.3d 1, 7 (1st Cir. 1997) dealt with

[1] The class action strip- search case against the County for searches conducted at the jail was filed after the search at issue here. Consequently, the officer that conducted the search would have no reason to doubt the lawfulness of the search.

an arrestee at a police station held on a very minor offense. Williams' charges while not violent, cannot be said to be minor.

Actions are to be measured by a standard of objective legal reasonableness in light of the legal rules that were established at the time [they] were taken. St. Hilaire v. City of Laconia, 71 F.3d 20, 24 (1st. Cir. 1995) *citing*, Anderson v. Creighton, 483 U.S. 635, 639 (1987). The First Circuit Court does not "require public officials to foretell the course of constitutional law with absolute accuracy in order to obtain the balm of qualified immunity. Savard v. Rhode Island, 338 F. 3d 23, 33-34 (1st Cir. 2003). See also, Wilson v. Layne, 526 U.S. 603, 618 (1999), ("[i]f judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy.")

The Court's discussion in Roberts v. Rhode Island 239 F.3d 107, (1st Cir. 2001) and the aftermath of that case demonstrates the uncertainty of the law in the area of custodial strip-searches. The Roberts case prompted additional litigation against Rhode Island prison officials by subsequent Plaintiffs held on minor offenses that were searched pursuant to the policy struck down in Roberts. See, Savard v. Rhode Island, 338 F. 3d 23, (1st Cir. 2003). Recently, the First Circuit Court of Appeals granted qualified immunity to prison officials in Rhode Island for the strip-searches of Plaintiffs arrested for "non-violent, non-drug related minor offenses". Id. The Court found that it was not clearly established that blanket strip-searches of misdemeanant arrestees conducted without particularized suspicion at a maximum-security prison were unconstitutional. Id. at 33-34.

The relevant dispositive inquiry in determining if a right has been clearly established for purposes of qualified immunity is whether it would be clear to a reasonable officer that her conduct was unlawful in the situation confronted. Saucier v. Katz, 533 U.S. 194, 202 (2001). At

the time Williams was searched, whether Sinclair of Thomas conducted the search, the officer would not consider the search unlawful. Therefore, the officer that conducted the search is entitled to qualified immunity.

3. DEFENDANTS ARE IMMUNE FROM SUIT FOR THE STATE CIVIL RIGHTS CLAIMS.

The Counts against the individual defendants aver identical causes of action. Claims against the individuals under the Mass Civil Rights Statute state:

> On or about July 26, 1998, the defendant[2], while in the course of his employment with the County of Suffolk created a threatening, intimidating and coercive environment at the South Bay House of Correction. (Complaint¶¶ 36; 40; 53; 57; 87; and 91)

To establish a claim under the Massachusetts Civil Rights Act (MCRA), a plaintiff must allege that "(1) her exercise or enjoyment of rights secured by the Constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or attempted to be interfered with and (2) that the interference or attempted interference was by threat, intimidation or coercion." M.G.L. c. 12 sec 11H, 11I. See also, Sarvis v. Boston Safe Deposit and Trust Co., 47 Mass. App. Ct. 86, 711 N.E.2d 911, 917 (1999). "Conclusory allegations, amounting to a summarization of M.G. L. c. 12 §11I fail to state a claim." Hobson v. McLean Hosp. Corp., 402 Mass. 413,417, 522 N.E.2d 975, (1988); Flesner v. Technical Communications Corp., 410 Mass. 805, 818, 575 N.E.2d 1107, 1115 (1991).

The Plaintiffs do not allege specific conduct against the individual defendants other than the acts used to support their claim under §1983 in support the state law claim. The Court should therefore exercise supplemental jurisdiction over the state law claims as they arise from the same nucleus of operative facts. 28 U.S.C §1367(a). For the reasons listed above with regard to the

[2] The defendant named in the caption of the specific count is inserted in some of the averments.

claims under § 1983, there are not genuine issues of material fact as to what transpired on July 26, 1998 and the individual defendants are entitled to qualified immunity on the state law claims.

V. CONCLUSION

For the reasons set forth above, Defendants Rao, Sinclair and Thomas are entitled to judgment as a matter of law on the claims against them predicated on 42 U.S.C § 1983 and the State Civil Rights Statute as follow:

Defendant Rao:	Counts V & VII brought by Plaintiff DeToledo, Counts VI & VIII brought by Plaintiff Williams
Defendant Sinclair:	Counts X & XII brought by Plaintiff Williams
Defendant Thomas:	Counts XVIII & XX brought by Plaintiff Williams

VI. REQUEST FOR ORAL ARGUMENT

Defendants request oral argument on the above motion.

Respectfully submitted for,
Defendants Rao, Sinclair and Thomas,
By their attorney

Date: 9/17/04

Kathleen M. Cawley
BBO#551202
Assistant General Counsel
200 Nashua Street
Boston, MA 02114
(617) 989-6680