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United States District Court, N.D. Illinois, Eastern Division.

James SIMENC and Richard Zaccagni, Plaintiffs,
v.
The SHERIFF OF DU PAGE COUNTY, Illinois, Richard Doria, individually and as Sheriff of DuPage County, Sergeant Louis Cook, Officer Sokol and Officer Willison, individually and as Deputy Sheriffs of the Department of Sheriff's Police of DuPage County, Illinois, Defendants.

No. 82 C 4778. | Dec. 9, 1985.

Opinion

MEMORANDUM AND ORDER

MORAN, District Judge.

***1** This case arises from the strip-searches of two plaintiffs at the DuPage County Jail who were arrested on misdemeanor charges. Before the court is defendants' motion for summary judgment pursuant to Rule 56(c) of the Federal Rules of Civil Procedure. Defendants' motion apparently encompasses both counts I and II of plaintiffs' first amended complaint. Count I alleges that the strip-searches of each of the plaintiffs at the jail violated their Fourth Amendment rights to be free from unreasonable searches and seizures and seeks a remedy under 42 U.S.C. § 1983. Count II alleges that the strip-searches violated plaintiffs' rights to privacy under the Illinois Constitution and common law. For the reasons noted below, defendants' motion for summary judgment is denied on both counts.

I. FACTUAL BACKGROUND

On January 1, 1980, police officers answered a call at the Holiday Inn in Oakbrook Terrace concerning a loud party in a room that was rented by plaintiff Richard Zaccagni. Present in the room when the police arrived were James Simenc and Richard Zaccagni. The record is not entirely clear as to what transpired in the room once the police arrived.[1] Subsequently, both plaintiffs were arrested by the officers. Zaccagni was charged with trespass to land and obstructing a police officer. Simenc was charged with trespass to land, obstructing a police officer and two counts of battery. Following the arrest the police officers transported the plaintiffs to DuPage County Jail.

Pursuant to directives of the DuPage County Sheriff, Richard Doria, the DuPage County Jail had a blanket policy of strip-searching all detainees, regardless of the type of offense. This policy was in accord with the Illinois Department of Corrections County Jail Standards and was instituted for the purpose of preventing the importation of "weapons, contraband and body pests" into the County Jail (Exh. A, at 8–9). These Standards further required that all visual strip-searches be conducted without touching, by a person of the same sex, and in an enclosed room, affording the arrestee privacy (Exh. A, at 8–9).

Upon arrival at the jail at approximately 4:00 a.m., plaintiffs were booked and processed. As part of the processing procedure both plaintiffs were strip-searched by deputy sheriffs prior to their incarceration with the general jail population. Each plaintiff was taken into a separate room and told to remove his clothes. A visual body cavity search was then conducted on each. Neither plaintiff alleges that he was touched during the search. No contraband or weapons were found during the searches. Defendants proffer no reason for conducting the searches other than compliance with the policy of the DuPage County Jail.

The parties disagree as to whether the plaintiffs had first been informed of their right to post cash bond, or whether they had the ability to do so. The following morning Zaccagni posted bond and was released at 7:15 a.m. Simenc, however, was taken to bond court. He was strip-searched in the hallway, both on his way to bond court and on his return to the general jail population. At approximately 10:15 a.m. he was released on a $4,000 personal recognizance bond.

II. THE FEDERAL CLAIM

***2** The Fourth Amendment requires that all strip-searches of detainees be reasonable. *Bell v. Wolfish,* 441 U.S. 520, 559 (1979); *Mary Beth G. v. City of Chicago,* 723 F.2d 1263, 1272 (7th Cir.1983). In *Wolfish,* the Supreme Court upheld strip-searches of pretrial detainees before and after outside contact visits, based on the security interests of the detention facility. The Court applied a balancing test to determine the reasonableness of strip-searches under the Fourth Amendment.

> 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.

441 U.S. at 559. Since plaintiffs here were detained awaiting bail, that test applies.

A. ***Initial Strip-Searches of Simenc and Zaccagni***

The court must balance the need to search the plaintiffs against the invasion of the plaintiffs' rights. Strip-searches of pretrial detainees have been justified when needed to prevent weapons and contraband from being brought into the jail. *Wolfish,* 441 U.S. at 559; *Roscom v. City of Chicago,* 570 F.Supp. 1259 (N.D.Ill.1983). The plaintiff in *Roscom,* detained at the Cook County Jail, had been placed in a holding cell with other detainees where the opportunity existed to obtain weapons or contraband. The plaintiff was subsequently transferred to the general jail population. The security interests of the jail made strip-searches of such detainees reasonable.

However, for a search to be reasonable detention must first be necessary. Simenc challenges the validity of his to post bond. Defendants did not provide the court with evidence to prove that plaintiffs were informed of this right. This issue may need to be decided at trial.

Also, if jail security is to justify the search the detainee must present some threat to jail security. The facts in the cases where searches have been upheld suggest some reasonable cause on the part of the authorities to suspect that the detainees might be trying to smuggle weapons or contraband into the jail. Such cause may be furnished by the nature of the offense or the nature of the offender. A person detained for a violent crime may presumptively be suspected of carrying a weapon. However, when an arrestee is being detained briefly awaiting the posting of bond on a traffic or misdemeanor offense, generally a strip-search can be made only on reasonable suspicion that the arrestee is carrying or concealing a weapon or contraband, unless authorities can demonstrate that misdemeanants regularly present a threat to jail security. *Mary Beth G.,* 723 F.2d at 1272; *Tinnetti v. Wittke,* 479 F.Supp. 486, 490 (E.D.Wisc.1979), *aff'd* 620 F.2d 160 (7th Cir.1980); *Jones v. Edwards,* 770 F.2d 739, 741–42 (8th Cir.1985). In *Mary Beth G.* four women who had been arrested for misdemeanor offenses and were strip-searched in city lockups while awaiting the arrival of bail money brought a consolidated action challenging the constitutionality of the City of Chicago's strip-search policy. The Seventh Circuit held the policy was unconstitutional when detention, alleging that he had the ability to post cash bond but was not informed that he could do so. There is a material issue of fact as to whether the plaintiffs were informed of their right to post bond. Defendants did not provide the court with evidence to prove that plaintiffs were informed of this right. This issue may need to be decided at trial.

***3** Also, if jail security is to justify the search the detainee must present some threat to jail security. The facts in the cases where searches have been upheld suggest some reasoable cause on the part of the authorities to suspect that the detainees might be trying to smuggle weapons or contraband into the jail. Such cause may be furnished by the nature of the offense or the nature of the offender. A person detained for a violent crime may presumptively be suspected of carrying a weapon. However, when an arrestee is being detained briefly awaiting the posting of bond on a traffic or misdemeanor offense, generally a strip-search can be made only on reasonable suspicion that the arrestee is carrying or concealing a weapon or contraband, unless authorities can demonstrate that misdemeanants regularly present a threat to jail security. *Mary Beth G.,* 723 F.2d at 1272; *Tinnetti v. Wittke,* 479 F.Supp. 486, 490 (E.D.Wisc.1979), *aff'd* 620 F.2d 160 (7th Cir.1980); *Jones v. Edwards,* 770 F.2d 739, 741–42 (8th Cir.1985). In *Mary Beth G.* four women who had been arrested for misdemeanor offenses and were strip-searched in city lockups while awaiting the arrival of bail money brought a consolidated action challenging the constitutionality of the City of Chicago's strip-search policy. The Seventh Circuit held the policy was unconstitutional when applied to traffic and misdemeanor offenders, specifically noting the lack of supportive evidence that such an indiscriminate policy was necessary for the security of the jail. Studies submitted by the City showed that during a one-month period no items were found in the body cavities of misdemeanor offenders. 723 F.2d at 1272–73. Further, the affidavits of lockup personnel suggested that few items were ever recovered from misdemeanor offenders. *Id. Cf. Wolfish,* 401 U.S. at 560 (importation of drugs proven to be a problem at the facility and outside contact visits provided opportunity to obtain such contraband). Here, plaintiffs Simenc and Zaccagni were charged with misdemeanor offenses. No facts have been presented in this case to support the conclusion that a strip-search policy that fails to take into account the nature of the offense is required at the DuPage County Jail for security reasons. Defendant offers no evidence to show either that the jail has had problems with weapons and contraband coming into the jail or the effectiveness of the policy at the jail in stopping the importation of contraband or weapons. The DuPage County Jail blanket strip-search policy seems unconstitutional on its face. In any event, such a policy cannot provide a basis for granting judgment for defendants as a matter of law.

Nor do the facts indicate grounds for individualized suspicion of the plaintiffs. Reasonable suspicion to believe that an individual arrestee may be concealing a weapon or contraband may be based on factors such as appearance and conduct of the arrestee, and any prior arrest record. *See e.g., Mary Beth G.,* 723 F.2d at 1273; *Logan v. Shealey,* 660 F.2d 1007, 1013 (4th Cir.1981), *cert. denied,* 455 U.S. 942 (1982); *Hunt v. Polk County, Iowa,* 551 F.Supp. 339, 342–45 (S.D.Ia.1982). Uncooperativeness at the time of arrest and a charge of resisting arrest or battery, however, are insufficient on their own to establish reasonable suspicion. *Jones,* 770 F.2d at 741 (8th Cir.1985); *Bovey v. City of Lafayette, Indiana,* 586 F.Supp. 1460, 1470 (N.D.Ind.1984). In *Jones,* the plaintiff was arrested for failing to sign a summons and complaint on an animal leash law violation. The plaintiff was verbally abusive and uncooperative with the arresting officers during the booking procedure, although he was not charged with resisting arrest. 770 F.2d at 740. Jones was visually strip-searched and then placed in a minimum security cell until a friend posted his bail. The Eighth Circuit held that the strip-search of Jones was unconstitutional because the officers had no reason to suspect he was harboring weapons or contraband. Similarly, in *Bovey,* the plaintiff was stopped for the minor offense of speeding. Bovey refused to cooperate with the police and he subsequently was charged with resisting arrest, assault and battery, and disorderly conduct. He was taken to the county jail and strip-searched pursuant to a blanket policy promulgated by the county sheriff. The district court held that under those circumstances the strip-search was unreasonable. 586 F.Supp. at 1470–71. Likewise, plaintiffs in the present action were charged with resisting arrest and battery. They were taken to the DuPage County Jail and pursuant to the blanket policy of the jail were visually strip-searched. This court may not infer on the basis of the charges alone that the defendants had individualized suspicion which gave reason to strip-search the plaintiffs. The defendants offer no additional evidence to support a reasonable suspicion that plaintiffs were concealing weapons or contraband.

***4** A search may sometimes be justified by particular problems in the physical movement of the prisoner. The plaintiff in *Roscom* was arrested on a warrant for deceptive practices. Unable to post bond, she was transferred to the County Jail and subjected to a visual strip-search pursuant to the County's policy. The policy allowed such searches either when there was a reasonable suspicion that the inmate might have a weapon or contraband concealed, or when inmates were moving into or out of "high risk areas," *e.g.,* from the holding cells to the general jail population. That policy was reasonable. *Roscom,* 570 F.Supp. at 1261. However, the record here presents no evidence of either a reasonable suspicion to believe that plaintiffs were concealing weapons or contraband or that plaintiffs were placed in a "high risk area" of the facility. For these reasons the initial searches conducted on Simenc and Zaccagni appear to be unreasonable and unconstitutional.

B. *Further Strip Searches of Simenc*

The policy considerations for conducting strip-searches when detainees have had outside contacts are more compelling than in the case of initial searches of traffic and misdemeanor detainees. When detainees are being transferred from detention facilities to make court appearances there is a legitimate interest in locating contraband that might threaten the safety of transferring police officers or the court. *Dougherty v. Harris,* 476 F.2d 292 (10th Cir.), *cert. denied,* 414 U.S. 872 (1972). Likewise, there is an important security interest in assuring that detainees do not bring contraband into the facility following outside contacts. *Wolfish,* 441 U.S. at 559.

In *Wolfish,* the Supreme Court upheld strip-searches of pretrial detainees who had outside contact visits, noting that such visits presented an opportunity for detainees to obtain weapons or contraband which might then be brought back into the jail. A blanket strip-search policy under these circumstances served as both a deterrent and a preventive measure in ensuring the jail's security. Plaintiff Simenc was strip-searched a second and third time as he was being taken to and from his bond hearing. Under the *Wolfish* balancing test the detention facility had a security interest in protecting the safety of officers and the court when Simenc was searched prior to his court appearance. The third search was conducted following an outside contact to prevent the flow of weapons or contraband into the facility.

However, the *Wolfish* balancing test also directs the court to examine the manner and place in which the search was conducted in analyzing the reasonableness of the search. 441 U.S. at 559. A strip-search, even when conducted professionally and courteously, is an intrusive, humiliating and embarrassing experience. *Mary Beth G.,* 723 F.2d at 1272; *Hunt,* 551 F.Supp. at 342. At a minimum, jail officials should ensure that this embarrassment is minimized by conducting the search in an area where it cannot be observed by anyone other than the person conducting the search. *See Iskander v. Village of Forest Park,* 690 F.2d 126, 129 (7th Cir.1982); *Jones,* 770 F.2d at 442. In *Iskander,* a woman suspected of shoplifting was strip-searched in a room with a window facing the corridor. The plaintiff testified that someone had looked at her through the window as she undressed. The Seventh Circuit held that the plaintiff established a jury question as to whether this action presented a constitutional violation. 690 F.2d at 129. In *Jones,* the plaintiff was searched in the alcove of a hallway. The

court noted that other jailers and passersby did not see the plaintiff in this instance, but suggested that

> ***5** where legitimate security concerns justify this kind of search, jail officials should take precautions to insure that the detainee's privacy is protected from exposure to others unconnected to the search.

770 F.2d at 442. Depositions of the deputy sheriffs who are defendants in this case reveal that searches before and after bond hearings were routinely conducted in a hallway. The record is unclear as to who else, if anyone, was able to see the searches of Simenc. Under the *Jones* analysis it appears that the jail officials should have taken some steps to ensure greater privacy in the manner in which the search was conducted. Additionally, such searches violate the County Jail Standards that the DuPage County Jail was following, which mandated that searches were to be conducted in an enclosed room. Defendants have failed to justify this more intrusive search.

III. THE ILLINOIS CLAIM

In count II plaintiffs allege that the strip-searches violated their right to privacy under the Illinois Constitution and common law. Both the Illinois and United States Constitutions protect individuals from unreasonable searches and seizures. *People v. Kelly,* 76 Ill.App.3d 80, 84, 394 N.E.2d 739, 743, 31 Ill.Dec. 537, 540 (5th Dist.1979). Illinois law recognizes the right to privacy as well as the right to a remedy for invasion of privacy. *Cantrell v. American Broadcasting Co., Inc.,* 529 F.Supp. 746, 756 (N.D.Ill.1981). The Illinois Constitution provides in part:

> The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy, or interceptions of communications by eavesdropping or other means.

Illinois Constitution 1970, Article I, Section 6. Plaintiffs contend that their right to privacy under the Illinois Constitution requires that all searches of their person be reasonable and that when such searches are unreasonable they have a state claim for invasion of privacy. The Illinois courts have not yet defined with certainty what privacy protections are afforded persons under Article I, Section 6 of the Constitution. *People v. McCarty,* 86 Ill.App.3d 130, 133, 407 N.E.2d 971, 975, 41 Ill.Dec. 473, 477 (1st Dist.1980); *see also Stein v. Howlett,* 52 Ill.2d 570, 574, 289 N.E.2d 409, 412 (1972), *appeal dismissed* 412 U.S. 925 (1973) ("No limiting definition of the type of privacy is stated in the constitution.") Commentary to the privacy provision of the Constitution lends support to the argument that plaintiffs have a cause of action for invasion of privacy.

> Section 6 expands upon the individual rights which were contained in Section 6, Article II of the 1870 Constitution and the guarantees of the Fourth and Fourteenth Amendments to the United States Constitution.

> The protection against "invasion of privacy" is new and is stated broadly.

Ill.Ann.Stat., Illinois Constitution 1970, Article I, Section 6, Constitutional Commentary, at 317 (Smith-Hurd 1977) (*quoted in McCarty,* 86 Ill.App.3d at 133, 407 N.E.2d at 975, 41 Ill.Dec. at 477.). On this basis this court concludes that plaintiffs may state a valid cause of action for violation of the Illinois Constitution if they establish that they were subjected to an unreasonable search. *See Melbourne Corp. v. City of Chicago,* 76 Ill.App.3d 595, 603, 394 N.E.2d 1291, 1297, 31 Ill.Dec. 914, 920 (1st Dist.1979).

***6** The protections provided by the Illinois Constitution concerning unreasonable searches and the right to privacy are at least as broad as, if not more expansive than, the protection afforded by the Fourth and Fourteenth Amendments to the United States Constitution. *McCarty,* 86 Ill.App.3d at 133, 407 N.E.2d at 975, 41 Ill.Dec. at 477. The conclusions reached in count I concerning the reasonableness of the DuPage County Jail strip-search policy, and the individual strip search of each plaintiff, are applicable to count II. Therefore, summary judgment is precluded on the issue of the reasonableness of both the policy and the searches.

IV. IMMUNITY OF THE DEFENDANTS

Defendants Richard Doria, the Sheriff of DuPage County and Deputy Sheriffs Sokol, Willison and Cook claim that they are entitled to summary judgment as to count I, based on the qualified immunity doctrine articulated by the Supreme Court in *Harlow v. Fitzgerald,* 457 U.S. 800 (1982). For the court to grant summary judgment on defendant's claim of qualified immunity, public officials

such as sheriffs must first demonstrate that their actions were undertaken as part of their duties and within the scope of their authority. *Coleman v. Frantz,* 754 F.2d 719, 728 (7th Cir.1985); *Doe v. Thomas,* 604 F.Supp. 1508, 1512 (N.D.Ill.1985). Defendants in the present case were acting within the scope of their duties in strip-searching the plaintiffs.

Secondly, to receive immunity the officials must show that their conduct did not "violate clearly established statutory or constitutional rights that a reasonable person would have known." *Harlow,* 457 U.S. at 818. On summary judgment the court may determine both the current applicable law and whether the law was clearly established at the time the incident occurred, since the test is the objective reasonableness of the conduct in light of clearly established law.

> If the law at that time was not clearly established an official could not reasonably be expected to anticipate subsequent legal developments, nor could he fairly be said to "know" that the law forbade conduct not previously identified as unlawful.... If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.

Harlow, 475 U.S. at 818.

Plaintiffs in the present case had a clearly established constitutional right to be free from unreasonable searches and seizures. In *Jones,* 770 F.2d at 742 n. 4, the Eighth Circuit held that defendants in a § 1983 action were not immune from suit when they strip-searched a misdemeanor offender who was awaiting the posting of bail. *Jones* may be distinguishable since the law specifically applicable to pretrial detainees was not quite as well developed at the beginning of 1980 as in April 1981, when the search in *Jones* took place. As the Eighth Circuit noted, however, "the wording of the fourth amendment itself and the many decisions of the Supreme Court limiting the authority of officials to search suspects," alerts officials against unreasonably intrusive searches. 770 F.2d at 742 n. 4. The search incident to arrest, for example, already needed a justification such as the reasonableness of discovery of weapons or contraband. In addition, a blanket strip-search policy at a county jail in Racine, Wisconsin, had been found unconstitutional in October 1979, *Tinetti,* 479 F.Supp. at 491, and even closer to home, a Cook County circuit court had suppressed evidence found through a strip-search of a misdemeanant detained at a Chicago police station, *People v. Seymour,* 80 Ill.App.3d 221, 398 N.E.2d 1191, 35 Ill.Dec. 241 (1st Dist.1979), *rev'd* 84 Ill.2d 24, 416 N.E.2d 1070, 48 Ill.Dec. 548 (1981). *See also Logan,* 660 F.2d at 1013–1014 (sheriff should have known that blanket strip-search policy at jail was unconstitutional in March 1979). Also, the Illinois legislature had passed a statute which went into effect shortly before plaintiffs were arrested. The statute specifically provided that

> ***7** No person arrested for a traffic, regulatory or misdemeanor offense, except in cases involving weapons or a controlled substance, shall be strip searched unless there is reasonable belief that the individual is concealing a weapon or controlled substance.

Ill.Rev.Stat. ch. 38, ¶ 193–1(c). Also, all strip-searches are to be performed in an area where the search cannot be seen by anyone other than the person conducting the search. Ill.Rev.Stat. ch. 38, § 103–1(e). While violation of a state statute does not of itself cause the loss of qualified immunity, *Davis v. Scherer,* 468 U.S. 183, 104 S.Ct. 3012 (1984), in this case the statute was intended to provide guidelines which would protect federal constitutional as well as statutory rights. Together with case law already developed by 1979, its existence indicates that the officers should have known that their blanket strip-search policy was unconstitutional. This court cannot grant summary judgment for defendants on the grounds of immunity.

Public employees in Illinois enjoy immunity from suit under the Local Governmental and Governmental Employees Tort Immunity Act, Ill.Rev.Stat. ch. 85, ¶ 1–101 *et seq.* Sheriff Doria and the defendant deputy sheriffs are public employees as defined under the Act, *see* Ill.Rev.Stat. ch. 85, §§ 1–206, –207, and thus are immune from liability so long as they acted in good faith.[2] Plaintiffs contend, however, that the defendants acted intentionally and maliciously, with knowledge that they were exceeding their authority as police offers, to deprive plaintiffs of their rights.

An initial determination of the state of the law concerning strip-searches in Illinois must be made before the court can determine whether the defendants acted with willful and wanton disregard for the rights of the plaintiffs. As already noted, plaintiffs' rights under the Illinois Constitution are basically coextensive with the guarantees against unreasonable search and seizure under the Fourth Amendment. *See e.g., Kelly,* 76 Ill.App.3d at 84, 394 N.E.2d at 743, 31 Ill.Dec. at 540. In count I this court found material issues of fact as to both the constitutionality of the strip-search policy and the individualized searches of the plaintiffs. These findings apply to the Illinois claim. In addition, the existence of the

Illinois statute on strip searches applies directly to an issue of Illinois immunity.

If the defendants were aware of the state of the law at the time of the incident, the question must still be answered as to whether or not their actions were willful and wanton. Both parties disagree on this issue. Generally, summary judgment is inappropriate in actions involving state of mind. *Foster v. Zeeko,* 540 F.2d 1310, 1319 (7th Cir.1976); *see also* 10 Wright and Miller, *Federal Practice and Procedure,* § 2730 at 582 *et seq*. As the Illinois Appellate Court noted, whether a person is guilty of "willful and wanton conduct" under the Immunity Act is really a question of fact for the jury and should "rarely be ruled on as a matter of law." *Glover v. City of Chicago,* 106 Ill.App.3d 1066, 1075, 436 N.E.2d 623, 630, 62 Ill.Dec. 597, 604 (1st Dist.1982). This court declines to usurp the role of the jury in determining whether defendants acted with the requisite intent and malice in conducting the searches.

***8** This court finds no basis on which it could find judgment as a matter of law for these defendants. The blanket strip-search policy at the jail regardless of offense, reasonable suspicion of the offenders, or proven security problems, certainly is not constitutional as a matter of law. The further searches of Zaccagni before and after the bond hearing were probably more justified, but also more intrusive given their location. Case law, plus an Illinois statute expressly dealing with the rights of detainees, precludes summary judgment on federal immunity. We cannot even rule out willful and wanton conduct for state immunity. Only a trial can resolve those issues.

CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment is denied.

[1] Plaintiffs claim that they were physically abused by the police without provocation and as a result required medical attention. Separate actions were brought concerning plaintiffs' arrests: Simenc v. Holiday Inn, 81 C 3589 and Zaccagni v. Holiday Inn, 81 C 3590 (N.D.Ill.)

[2] Section 2–201 applies to public officials with policymaking powers, such as Sheriff Doria, and provides:

> Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though abused.

Section 2–203 governs the actions of public employees acting under the authority of the law, and provides:

> If a public employee acts in good faith, without malice, and under the apparent authority of an enactment that is unconstitutional, invalid or inapplicable, he is not liable for any injury caused thereby except to the extent that he would have been liable had the enactment been constitutional, valid and applicable.

Immunity under the Act is conditioned, however, upon a showing of good faith. Larson v. Darnell, 113 Ill.App.3d 975, 448 N.E.2d 249, 69 Ill.Dec. 789 (3d Dist.1983).