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United States District Court,
S.D. Indiana,
Terre Haute Division.
Lolita STANLEY and Larry Stanley, Plaintiffs,
v.
Rory A. GENTRY, individually and in his official capacity as police officer for the City of Terre Haute; Michael Keller, individually and in his official capacity as police officer for the City of Terre Haute; Robert L. Deal, individually and in his official capacity as a police officer for the City of Terre Haute; City of Terre Haute, Indiana; Anita Henson,[1] female employee of Vigo County Sheriff's Department; William R. Harris, in his official capacity as Vigo County Sheriff; and Lt. Jeffery Ennen, in his official capacity as Vigo County Jail Commander, Defendants.

[1] Anita Henson, originally joined as Anita Doe, signed a waiver of service on April 4, 2000, and she filed an answer on January 9, 2001.

No. TH 00-0053-C-T/H. | June 5, 2002.

Attorneys and Law Firms

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Opinion

ENTRY DENYING PLAINTIFFS' OBJECTION TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

JOHN DANIEL TINDER, District Judge.

***1** Plaintiffs and Defendants filed cross-motions for summary judgment. The Magistrate Judge issued a report and recommendation granting, in part, and denying, in part, Plaintiffs' and Defendants' motions. Plaintiffs filed an objection to the report and recommendation. This court now ADOPTS the Magistrate Judge's report and recommendation as modified herein, and OVERRULES Plaintiffs' objection to the Magistrate Judge's report and recommendation. This court reaches the same ultimate conclusion as the Magistrate Judge-Defendants Henson, Harris and Ennen are entitled to summary judgment-though this court gets to this end destination by a different route.

I. Standard of Review

When reviewing a magistrate judge's report and recommendation on a summary judgment motion, a district judge has the discretion to conduct a *de novo* review of any and all aspects of the magistrate's findings and recommendations and must conduct a *de novo* review with respect to any objections. *See* 28 U.S.C. § 636(b)(1)(B), (C); Fed.R.Civ.P. 72(b); *Govas v. Chalmers,* 965 F.2d 298, 301 (7th Cir.1992); *Delgado v. Bowen,* 782 F.2d 79, 82 (7th Cir.1986). Thus, a district judge "may accept, reject, or modify the recommended decision...." Fed.R.Civ.P. 72(b); *see also* 28 U.S.C. § 636(b)(1).

The court does not repeat the well-known standards applicable to a ruling on summary judgment motions because they are set forth in the report and recommendation.

II. Factual and Procedural Background[2]

[2] The Plaintiffs do not object to the Magistrate Judge's finding of facts, as the parties stipulated to all of the facts prior to the Magistrate's report. The court only repeats the facts pertinent to the central issues in the case.

On January 30, 1998, Plaintiff, Lolita Stanley, an adult, was charged with the misdemeanor offenses of battery on a police officer and resisting arrest. She was arrested at her home by Terre Haute police officers and taken to the Vigo County Jail (the "Jail"). Defendant, Anita Henson, administered the pre-admissions and admissions procedures on Ms. Stanley[3] at the Jail. As part of the normal procedure, Henson conducted a pat down search of Ms. Stanley and did not find any weapons or contraband. Based upon this search, Henson had no suspicions that Ms. Stanley was concealing weapons or contraband on her person. The Jail was not provided an arrest report or probable cause affidavit so that no particular information was available to the Jail staff to give rise to a suspicion that Ms. Stanley was concealing a weapon or contraband.

[3] Lolita Stanley's husband, Laurence Stanley, is also a plaintiff in this case, apparently seeking a recovery for some form of loss of consortium. His claim, if viable at

all, is completely dependent on the success of his wife's claim.

Ms. Stanley had no prior arrest record at the time she was admitted to the Jail, and Henson has no specific recollection whether Ms. Stanley did or said anything that provided a reasonable suspicion to believe that she was concealing weapons, drugs, or contraband. Henson escorted Ms. Stanley to a small, doorless, room off to the side of the booking area where Henson told Ms. Stanley, who was not wearing a brassiere or undershirt, to remove all of her exterior clothing except her underpants. Henson gave Ms. Stanley Jail clothing to wear, and did not touch her while she was removing her clothes and putting on the Jail clothes. Henson, however, did observe Ms. Stanley while she was changing. This process lasted approximately two minutes.

***2** The parties stipulate that the county's employees, agents, and officers observe substantially all inmates admitted into the Jail who are not going to be released on their own recognizance, while the inmate disrobes to whatever undergarments he or she is or is not wearing, and changes into the Jail uniform, under substantially the same circumstances as Ms. Stanley.[4]

[4] The court notes that a fair reading of the Jail's policy, submitted with the stipulation of facts (Ex. C, p. 115 of the Vigo County Sheriff's Department's written policies) could lead to the conclusion that inmates are required to remove their undergarments as well as their outer clothes. The policy states that hygiene is the reason for the practice, and that there is to be a "complete" exchange of clothing. The policy does not indicate whether an officer should watch the inmate while he or she is changing clothes. However, the practice of the sheriff's department, as reflected in stipulations 23-26 and 32 indicates that inmates are only required to remove and exchange their outer garments, and can continue wearing whatever undergarments they entered the Jail wearing. Since the parties have stipulated to all of the facts used in this Entry, the court bases its conclusions on a practice of allowing inmates to leave their undergarments on under surveillance by a Jail official.

Ms. Stanley was never taken to a cell block, but remained in a holding cell in the Jail's reception area, just a few steps away from where she had changed her clothes. Later that morning, the Terre Haute Police Department informed Jail personnel that no charges were being filed against Ms. Stanley and she was to be released on her own recognizance. Under the same procedures as before, Ms. Stanley changed back into her personal clothing. This time she was watched by a different officer, known in the record only as "Joanie."

On January 31, 2000, the Plaintiffs filed suit pursuant to 42 U.S .C. § 1983, alleging that the Defendants strip searched Ms. Stanley in violation of her Fourth Amendment rights. The parties agreed to resolve their disputes through cross-motions for summary judgment, which were filed on July 30, 2001. On March 22, 2002, the Magistrate Judge issued a report and recommendation granting, in part, and denying, in part, the cross-motions for summary judgment. The Magistrate Judge determined that Ms. Stanley was subjected to a strip search and that the strip search violated her Fourth Amendment rights. However, he also concluded that the Defendants' practice requiring arrestees to change into jail clothing was not unconstitutional and that Defendant Henson was entitled to qualified immunity. The Magistrate Judge thus recommended that Plaintiffs' claims against Defendants William R. Harris and Jeffrey Ennen be dismissed because the policy of the Vigo County Jail does not violate the Constitution and the claims against Defendant Anita Henson be dismissed on the basis of qualified immunity.

On April 4, 2002, Plaintiffs filed objections to the Magistrate Judge's report and recommendation. They do not object to the determinations that Ms. Stanley was subjected to a strip search and that this strip search violated her rights under the Fourth Amendment. Plaintiffs do, however, object to the Magistrate Judge's determinations that the Jail's policy is not unconstitutional and that Defendant Henson is entitled to qualified immunity. These objections and the report and recommendation are now before this court.

III. Discussion

The main issue to be resolved in this case is whether Ms. Stanley was subjected to a "strip search." The term is often used to describe a broad category of searches that include everything from body cavity searches to the more mundane visual inspections of naked individuals. The Seventh Circuit has stated that "we use the term strip search to refer to a visual inspection of a naked inmate without intrusion into the person's body cavities." *Peckham v. Wisconsin Dep't of Corrections,* 141 F.3d 694, 695 (7th Cir.1998). That definition leaves open the question of what it means to be "naked." Does being naked require that a person have no clothing on, or can one be naked and retain some articles of clothing, like a sock, a garter belt, or underpants? The question is perhaps unanswerable with any sort of bright-line legal rule; it depends on the circumstances and on what articles of clothing are still being worn. In most circumstances, a woman who is wearing nothing but her underpants will not be "naked," she will be partially naked. This is so because the term "naked" implies having *all* of one's private areas exposed to view. *See, e.g.,* Webster's II New

College Dictionary 726 (1999) (defining "naked" as "[w]ithout clothing on the body" and identifying "nude" as a synonym).

***3** The relevant question for this case thus becomes: is a same sex visual inspection of a *partially* naked adult inmate without intrusion into the inmate's body cavities a strip search? The most appropriate answer is that it is not. The real issues involved in the strip search cases were not what amount of clothing an individual had on, but how intrusive were the searches and how reprehensible were the actions of the government officials? This is made clear by even a cursory glance at the cases Ms. Stanley cites in reliance on the position that she was subjected to an unconstitutional strip search. In *Justice v. City of Peachtree City,* 961 F.2d 188 (11th Cir.1992), a fourteen year-old girl was required to strip down to her underpants so that two police officers could search her for contraband, all of which was done while her mother was kept from her in another part of the police station. *Id* . at 189-90. The real problem in the case was not that a detainee was forced down to her underwear, but that she was a young girl and not one, but two, officers were inspecting her. The search was more intrusive than the present case, and certainly more disturbing. *Thomas ex rel. Thomas v. Roberts,* 261 F.3d 1160 (11th Cir.2001), is also a case involving schoolchildren, who were searched by school officials. The children were required to drop their pants or lift their skirts to reveal their underwear; some of the boys lowered both their pants and underwear; most of the girls had to lift their bras and expose their breasts; some of the children were touched by a school official during the searches. The searches were conducted in the presence not only of school officials but also other children. *Id.* at 1163-64.

Ms. Stanley relies on many cases where the actions of prison guards or police officers were clearly more intrusive than the present situation. *Blackburn v. Snow,* 771 F.2d 556 (1st Cir.1985), *Tikalsky v. City of Chicago,* 687 F.2d 175 (7th Cir.1982), *Tinetti v. Wittke,* 620 F.2d 160 (7th Cir.1980), *Doan v.. Watson,* 168 F.Supp.2d 932 (S.D.Ind.2001), *Doe v. Calumet City, Ill.,* 754 F.Supp. 1211 (N.D.Ill.1990), *Jones v. Bowman,* 694 F.Supp. 538 (N.D.Ind.1988), and *State v. Hayes,* 743 A.2d 378 (N.J. Super Ct.App. Div.2000), all involve situations where, at a minimum, the persons searched were completely naked and often times were subject to exacting searches of their genital and anal regions. *Blackburn,* 771 F.2d at 560 (jail visitor had to remove all her clothing and lift her breasts and had her anus viewed); *Tikalsky,* 687 F.2d at 177 (arrestee had to remove her clothing from the waist up and then lower her pants and underwear, squat and bend from the waist several times, and alternately face toward and away from the jail matron); *Tinetti,* 620 F.2d at 160 (individual arrested for speeding was required to remove all clothing, bend over and spread her buttocks while genital and anal areas were visually inspected); *Doan,* 168 F.Supp.2d at 933 (arrestees had to remove all their clothing and their bodies were examined with particular attention given to the genital and anal areas); *Doe,* 754 F.Supp. at 1214 (arrestees required to remove their clothes, some had to raise their bras and lower their underpants, some had their breasts lifted by an officer, others had to squat, and still others were subjected to more offensive touching); *Jones,* 694 F.Supp. at 542 (arrestee had to remove all her clothes, lift each breast and then squat); *Hayes,* 743 A.2d at 380 (arrestee removed his clothing and bent over, revealing his anus to the searching officer).

***4** In other cases the courts did not reach the question of whether visual observation of a woman's breasts constitutes a strip search. *Collier v. Lociero,* 820 F.Supp. 673 (D.Conn.1993), opined on what constitutes a strip search in dicta and relied on a Connecticut statute that is not authoritative in the present case. *Id.* at 680-81. The court in *United States v. Dourlois,* 107 F.3d 248 (4th Cir.1997), never actually said that pulling down a suspect's trousers, thereby exposing his boxers, was a strip search. Instead, the court merely said that it was a search and not an unconstitutional strip search. *Id.* at 256. Another case concerned two police officers who were accused by a suspect of stealing his money. *Kirkpatrick v. City of Los Angeles,* 803 F.2d 485 (9th Cir.1986). One officer removed all his clothing, including his undershorts, bent over and spread his buttocks for inspection. *Id.* at 486.

Finally, some cases actually have held that requiring a woman to expose her breasts was a strip search. But these cases are not similar to the case before this court. In *Masters v. Crouch,* 872 F.2d 1248 (6th Cir.1989), and *Leinen v. City of Elgin,* No. 98 C 8225, 2000 WL 1154641 (N.D.Ill. Aug. 14, 2000), women were forced to expose their breasts or genital areas in places where others, besides the officer conducting the search, could see. *Masters,* 872 F.2d at 1249 (arrestee ordered to open her blouse in plain view of others and later required to remove all her clothing except her underpants, drop those and bend over, exposing her rectal area); *Leinen,* 2000 WL 1154641, at *2 (female arrestee required to lift her shirt so as to expose her breasts through window to people in jail's booking area). Obviously, forcing a woman to expose her breasts to public view is more intrusive than forcing her to expose them in front of one prison employee while changing clothes.

Ms. Stanley was ordered to take off her personal clothing and put on jail clothing in the presence of an officer, but out of the public view. Ms. Stanley was not wearing a brassiere and, as a result, her breasts were exposed. That in and of itself cannot make the procedure a strip search. Otherwise, a clothing exchange procedure is converted to a strip search by the randomness of whether an arrestee chooses to wear undergarments prior to an arrest-Iall of

which is highly unpredictable. Certainly, Ms. Stanley has a privacy interest at stake in not having her breasts exposed to anyone without her consent, but she was under arrest and being processed in a jail. Her expectation of privacy in that situation was diminished to a significant degree. Under the circumstances, the search was far less intrusive than the search in any case Ms. Stanley has cited to this court. Thus, it could be concluded that Ms. Stanley was searched, but not that she was strip searched.[5]

[5] In claiming that she was strip searched, Ms. Stanley argues that twelve states have statutes defining "strip search" in part to include inspection of undergarments. None of these statutory definitions is dispositive. Federal constitutional protections cannot be expanded or limited by state statutory law.

The next inquiry is whether this search was reasonable under the circumstances, as the Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const. amend. IV; *Bell v. Wolfish,* 441 U.S. 520, 558 (1979). In making this determination, the court must balance the need for the search against the invasion of personal rights that the search entails; and, the court "must consider the scope of the particular intrusion, the manner in which the search is conducted, the justification for initiating it, and the place in which it is conducted." *Id.*

***5** Consideration of these factors strongly suggests that the search of Ms. Stanley was reasonable under the circumstances. The court finds that the scope of the intrusion in this case was narrow. The search took place in a small room off to the side of the booking area. Though Ms. Stanley was required to expose her breasts, she remained partially clothed as she kept on her underpants at all times. There is nothing to suggest that anyone other than one jail officer, of the same sex as Ms. Stanley, viewed her as she changed her clothes. So, the search was conducted in private. The time of exposure was brief, and nothing about the observation suggests that its purpose extended beyond monitoring the clothing exchange. Ms. Stanley was not required to turn around or bend for a visual inspection; nor was she required to lift her breasts to allow inspection. She was not touched during the search. Thus, the scope, manner, time and place of the search establish that the intrusiveness of the search was minimal.

That leaves the justification for the search. Though, based upon the facts in this case, it cannot be said with any certainty why the Jail conducts these searches, there are many reasonable, perhaps even necessary reasons for the procedures. First, a jail has the right to do an inventory of the clothing and personal effects that an inmate brings into the jail. *See Illinois v. Lafayette,* 462 U.S. 640, 645-47 (1983). Obvious security reasons exist for these inventories, but they are also useful for precluding lawsuits by inmates over allegedly stolen property. Security reasons also exist for having an inmate change into jail clothes. The most obvious is the risk of escape. It is much more difficult for a person wearing an easily identifiable outfit, such as an orange jumpsuit, to walk out of a jail than for a person wearing normal street clothes. It is certainly easier for the jailors to distinguish inmates from visitors, workers and others who are free to leave the jail. Finally, since for security reasons it is generally a poor idea to allow inmates very much time when they cannot be subject to observation, it is entirely reasonable under the circumstances to have a guard watch an inmate changing into and out of jail clothes. Balancing the *Bell* factors, the court concludes that the search of Ms. Stanley was reasonable under the circumstances and, therefore, did not violate her rights under the Fourth Amendment.

It should also be noted that even if the search to which Ms. Stanley was subjected were considered to be a strip search, the procedure still would have been reasonable under the circumstances. The leading case in the Seventh Circuit on the issue of strip searches and pre-trial detainees is *Mary Beth G. v. City of Chicago,* 723 F.2d 1263 (7th Cir.1983). That case held that strip searches could only be conducted on arrestees if there is a reasonable suspicion that the arrestee is concealing weapons or contraband. *Id.* at 1273. However, as discussed above, what constitutes a strip search is hardly clear.[6] All different types of searches exist that have inmates taking off one article of clothing or another. Even if the procedure in the instant case might be labeled a "strip search," the fact that it involved a lesser level of intrusiveness than the procedures at issue in *Mary Beth G.* dictates that a different standard be used to determine if it was reasonable under the circumstances. Because of the conclusions reached above, this court does not need to propose a precise standard, but it seems that a jail officer should be allowed to watch an inmate change into jail clothes, regardless of what underwear an inmate is or is not wearing, so long as there is a reasonable belief that, at some near point, the inmate will be introduced into, or has been in, the jail population.

[6] This ultimately would have resulted in qualified immunity for Anita Henson, as discussed by the Magistrate Judge, had her conduct resulted in a constitutional violation.

***6** Thus, the observations of Ms. Stanley during the clothing exchanges did not violate her constitutional right to be free from unreasonable searches. The Jail employees who conducted the clothing exchanges did not violate Ms. Stanley's constitutional rights in that regard, so the Magistrate Judge did not need to reach the question of whether such conduct was the result of a custom, practice

or policy of the Vigo County Sheriff's Department.[7] Nor did he need to reach the question of qualified immunity. Therefore, Plaintiffs' motion for summary judgment should be denied and Defendant's motion for summary judgment should be granted.

[7] This was an action for damages, not a suit seeking a declaratory judgment or injunctive relief with respect to whether the custom, practice or policy of the Sheriff's Department regarding the subjects addressed herein violated the Constitution. As such, the language of this ruling should not be construed to be an imprimatur; this ruling is no broader than an adjudication of Ms. Stanley's claim for damages. Because she was not deprived of constitutional rights in these encounters, the court need not address whether a custom, practice or policy is constitutionally defective. *See Monell v. Dep't of Soc. Servs. of City of New York,* 436 U.S. 658, 690-91 (1978).

IV. Conclusion

For the foregoing reasons, the Magistrate Judge's Report And Recommendation On Cross-Motions For Summary Judgment, dated March 22, 2002, is adopted, as modified herein; and Plaintiff's Objections To The Magistrate's Report On Cross-Motions For Summary Judgment, filed April 4, 2002, are OVERRULED. Defendants' motion for summary judgment will be GRANTED and Plaintiffs' motion for summary judgment will be DENIED.[8]

[8] As this court does not rely on *Morreale v. City of Cripple Creek,* No. 96-1220, 1997 WL 290976 (10th Cir. May 27, 1997), in any way, Plaintiffs' motion to strike Defendants' reference to that case is DENIED AS MOOT.

Since this entry disposes of all claims remaining in this case, the Clerk shall enter final judgment.