UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

LINDA ROSE, JENNIFER CRADIT, SYLVIA DENISE BRADDOCK, LISA RENEE BRANDIMORE, DWAYNE BUTTERFIELD, BOBBIE WAYNE CARTER, DANIEL WRAY CLAYTON, HOPE MICHELLE DAVIS, JOSHUA FULLER, NICHOLAS ANTHONY GILES, WILLIE LOUIS HENDRICKS, TANISHA RAMON JOHNSON, ROBERT ALLEN KELSEY, SUE ANN LETTERMAN, DONNA LYNN QUARLES, DAVID TODD REINER, GREGORY LOUIS SCHULTZ, AMANDA RAE SHINAVER, DWAYNE ALANN SIMMONS, ROBIN RENEE THOMAS, JOSHUA ALLEN WEIGANT, RAYMOND PRAAY, JUSTIN ANDERSON CRAIG MASON, MATTHEW STARKWEATHER, RICHARD PLAMONDON, and ROBERT JAMES STEPHENS,

Plaintiffs,

vs

Case No. 01-CV-10337-BC
Hon. David M. Lawson

SAGINAW COUNTY, SAGINAW COUNTY SHERIFF'S DEPARTMENT, MUNICIPAL GOVERNMENT ENTITIES, CHARLES BROWN, AND OFFICERS JOHN DOE, AND JANE DOE (IN THEIR INDIVIDUAL CAPACITY), JOINTLY AND SEVERALLY,

Defendants

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DEFENDANTS' RESPONSE BRIEF TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ESTABLISHING LIABILITY

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INTRODUCTION

On April 14, 2003, prior to the deposition of several individual Plaintiffs and prior to the deposition of experts on jail practices, Plaintiffs' filed their Motion for Summary Judgment Establishing Liability.

Plaintiffs' Motion must be denied because the facts asserted in their Motion and Brief in Support are belied by the deposition testimony in the instant matter and by the documentary evidence produced by Defendants. Additionally, the law applicable to the facts established do not show that a constitutional violation occurred. Applicable precedent provides that it is not a violation of a Plaintiffs' rights to require them to disrobe prior to being placed in administrative segregation for their own safety, for the safety other detainees, for the safety of jail employees, and for the internal security and the orderly operation of the jail.

FACTS

A. Background

Saginaw County Jail is a detention facility operated by Saginaw County to detain arrestees and sentenced offenders. The facility holds five hundred twenty-five (525) people maximum. The jail processes between forty (40) and sixty (60) individuals per day that are delivered to the facility by County, City, Township and State Police personnel. The Saginaw County Jail books between twelve thousand (12,000) and fourteen thousand (14,000) people per year. In the present case, Plaintiffs were processed through the Saginaw County Jail between the period of May 22, 1999 through December 29, 2001. During this time, over thirty thousand (30,000) persons were processed through the jail. The twenty-seven (27)

Plaintiffs represent less than 1/100th of one percent of the total processed through the Saginaw County Jail during that time period.

B. The Policy

In their brief in support of their Motion for Summary Judgment, Plaintiffs' miscategorized the deposition testimony and other evidence to date which describes the policy of the Saginaw County Jail. The current administrator of the Saginaw County Jail, Lt. William Gutzwiller testified as follows:

> Q: And that policy was what?
> A: That if an individual, not just because they're disruptive or disorderly, if they violate the security measures of that jail, or pose harm to themselves or others, the correction officer could request from the Sergeant permission to escort the person to segregation administration.
> Q: And once that -
> A: It has to be approved by the administrator.
> **(Exhibit A, p. 33)**

Plaintiffs attempt to characterize the policy by stating "the Defendants have a formal policy and/or custom that requires mostly shift sergeants, to strip naked pretrial detainees for insubordination or other alleged acts of deviance." **(Plaintiffs' brief, p. 1)**. This allegation is at odds with the very testimony referenced in Plaintiffs' brief. It is especially important to note that a detainees' clothes are forcefully removed only if they do not voluntarily comply with jail personnel orders to remove the clothes prior to entering administrative segregation. Sgt. Gary Van Riper testified:

> Clothes would be removed from a person if they did not want them taken off because that's what - the ruling from the command or the policy, however you want to look at it, I guess, stated, that they would go in there with no clothes on, yes.
> **(Exhibit B, p. 21)**

The policy of the Saginaw County Jail is to place disruptive, disorderly persons, persons who violate the security measures of the jail, or those who pose harm to themselves or others in administrative segregation. If the detainee refuses to comply with jail personnel's request to remove his clothes prior to entering administrative segregation, the amount of force necessary to remove his clothes would be used to accomplish the objective.

Lt. Gutzwiller further clarified the criteria for placing a detainee into administrative segregation.

> The description, basically, and it is in policy, if anyone that disrupts the security of the jail, anyone that is assaultive, not only towards themselves or towards another or towards staff, that would disrupt the orderly operation of the jail.
> **(Exhibit A, p. 69).**

The record indicates that only a detainee who disrupts the security of the jail, disrupts the orderly operation of the jail, or is assaultive towards themselves, towards another detainee, or towards staff, is placed in administrative segregation.

If a detainee fails to comply with orders to remove his or her clothing prior to placement in the administrative segregation cell, limited force is administered to remove the clothes. Sgt. Van Riper testified that he would use "only the force necessary to do it." **(Exhibit B, p. 21)**. Additionally, Sgt. Van Riper testified that the only time a male officer

would assist in the removal of female detainee's clothes is if the female detainee threatens the female officer's safety. Sgt. Van Riper testified:

> The only time a male would be present when a female was taking off her clothes is if she became violent to the point where the female officer's safety was in danger.
> **(Exhibit B, p. 22)**

A male officer only participates in the forceful disrobing of a female detainee when the female officer's safety is in danger.

A detainee remains in administrative segregation until such time that he no longer poses a threat to himself, others, jail staff, or the security operations of the jail. Sheriff Charles Brown stated:

> It's taking away the chance that that person may hurt themselves or somebody else, and once they sober up or once they become cognizant of what they're doing, you may have saved that person from tremendous injury.
> **(Exhibit C, p. 49).**

The amount of time in the segregation cell is limited to such time when the detainee shows that he or she is no longer a security threat to the jail, its personnel, other detainees or themselves.

C. Basis of Policy

In 1996, the Saginaw County Jail suffered a tragic incident in which an inmate, Laurence Riha, was placed into administrative segregation with his orange jail uniform. Mr. Riha was able to wedge his jail uniform into the very small space between the cell door and the door frame and to hang himself utilizing this method. After the suicide, the policy was

issued that required any inmate who was placed into the administrative segregation would be without clothing. **(Exhibit D, No. 16).**

Sheriff Brown further testified about the justification for maintaining the policy of placing detainees into administrative segregation without their clothes:

> Q: How does taking a person's clothing and leaving them nude in an administrative cell prevent, you use the wording hanging or prevent them from hurting themselves?
> A: You serious with this question?
> Q: I'm serious.
> A: That's how most hangings occur in the jail with the inmates clothing.
> Q: Okay. What other harm can they do to themselves in the jail if they still have their clothes on?
> A: They could do a lot of things. They can obviously stuff it down their throat, they can obviously hang themselves, they urinate on their clothing and throw it at the deputies, defecate on it and throw it at the deputies, which has been done many times, they could actually use the clothing to, if the guard got close enough, to wrap it around his neck. A lot of things you could do with clothing. You've got to remember, these are the most disruptive of all the prisoners that come in here.
> **(Exhibit C, pp. 61-62)**

The answers to interrogatories and the deposition testimony make clear that the Saginaw County Sheriff's Department has justification for requiring detainees to remove their clothing prior to their placement into administrative segregation.

The opinions of the jail practice experts support Defendants' policy. Jail expert, Darrell Ross, Ph.D. wrote in his 26(a)(2) report:

> That the procedure of placing detainees in the administrative segregation who demonstrated disruptive, combativeness, agitation, intoxication, and/or violent behavior, and/or who threaten the security of the facility, including harming themselves, detention personnel, and/or other prisoners of the Saginaw Detention Facility, comports with a legitimate and reasonable detention objective . . .
>
> * * *
>
> That placing a detainee for a limited duration under close supervision, in the nude, in an administrative segregation cell, is a reasonable alternative legitimately related to detention of objectives. **(Exhibit E, p. 3).**

Dr. Darrell Ross supports the Saginaw County Jail practice. **(Dr. Ross' CV, Exhibit E).**

Another expert, Peter R. Wilson, stated in his 26(a)(2) report:

> By removing their clothing a greater degree of protection was provided to the inmates. It is clear that the officers intention was only to provide a safe environment for the plaintiffs. . . . The removal of the clothing prevents the pre-trial detainees from disrupting the operation of the jail.
> **(Exhibit F, p. 1).**

Further, Mr. Wilson stated:

> Based upon my experience in the Wayne County Jail, inmates that are assigned to a segregation cell are at a higher risk of injuring themselves. . . .
>
> * * *
>
> A review of the jail incident reports point out clearly that many inmates are very manipulative, abusive toward staff, irrational and disruptive. Inmate behavior is very difficult to deal with and very unpredictable. Removing an inmate's clothing is an extraordinary measure, however necessary, to order to keep the inmates safe.
> **(Exhibit F, p. 2 and Wilson's CV attached to Exhibit F.).**

The testimony and documentary evidence in the present case indicates that there was justification for the policies concerning the administrative segregation.

D. Video and observation

The administrative segregation cell is constructed in a such a way as to preclude the viewing of detainees unless the officer was in the cell with the detainee. There are two (2) doors to the segregation cell. The inner door is covered with wired mesh. This wired mesh precludes viewing of the detainee by the correction officer. **(Exhibit B, p. 25)**.

The only way to obtain an unobstructed view of the detainee is to look through the food slot which is approximately waist high. **(Exhibit B, p. 29.)**. However, officers do not usually willingly stick their face near the feeding slot because of the fear of getting something thrown at them. **(Exhibit B, p. 25)**. Officers monitor the administrative segregation cell every fifteen (15) minutes in order to check on the detainee's well being. An officer conducting the fifteen (15) minute watch does so verbally and does not look into the feeding slot unless no verbal acknowledgment is made. **(Exhibit A, p. 89)**.

A video monitoring device was installed in the administrative segregation in December of 2000. **(Exhibit A, p.)**. Therefore, a majority of Plaintiffs were not video taped during their detention. No officer is assigned to monitor the video, **(Exhibit A, pp. 86-87)**. Trustees are not permitted to monitor the cameras. **(Exhibit A, p. 98)**. The quality of the tape is such that one cannot see bodily detail. They are used only to ensure that the inmates are not in distress. Video tapes are destroyed within thirty (30) days after they are made.

E. Plaintiffs

Plaintiffs were all processed through the Saginaw County Jail between the period of May 22, 1999 and December 29, 2001. Because Plaintiffs move for summary judgment of liability as to all Plaintiffs and did not provide how the application of the policy differs to each Plaintiff, Defendants will not give details as to each incident which gives rise to Plaintiffs' claim. Plaintiffs stated: "The only issue present is whether Defendants' strip seizure policies/customs is unconstitutional and thereby entitling Plaintiffs to Summary Judgment." **(Plaintiffs' Brief, p. 10)**.

However, one incident report may be useful to provide background information to the Court in evaluating Plaintiffs' claims.

Jennifer Cradit was brought to the Saginaw County Jail intake department by the Saginaw City Police Department. The incident report concerning Ms. Cradit's admission states:

> On July 17, 1999, at 02:30 hours this s/c was in intake when the City P.D. brought in a disorderly female, named Cradit, Jennifer, #115834. Cradit was placed in observation cell, #2 after stating "fuck you" to all of the staff present in intake. While in this observation cell #2 inmate Cradit pounded and kicked the glass window and door. This r/o and other staff tried to calm inmate Cradit to no avail. Cradit would only state that she wanted to use the phone and then would tell the whole staff to "fuck you".
>
> Cradit then proceeded to stuff toilet paper in the toilet and flush it until it flooded over. This s/c and Deputies Brown, Kolb and Thom entered the cell to remove the paper. This was done without incident.

> Two minutes later inmate Cradit was placing her jean shorts in the toilet and flooding the cell again. Again, these officers entered the cell to remove the shorts and to place Cradit in an administrative segregation cell as she was taking off her clothing and disrupting the jail procedures. Cradit was given every opportunity to calm down. **(Exhibit F, p. 1).**

The jail incident report indicates that Plaintiff Cradit was not only verbally abusive to staff but disruptive to the jail operations and threatened other inmates by flooding the toilet in the holding cell twice, one time by removing her own shorts and placing them in the toilet. When Plaintiff Cradit was removed to administrative segregation, she "threatened to kill all the officers 'when she sees us in the streets.'" **(Exhibit F, p. 1).** Numerous correction officers and medical personnel were required to subdue Inmate Cradit in order to place her in administrative segregation without her clothing. During this time, Plaintiff Cradit attempted to bite several of officers. **(Exhibit F, pp. 1-2).** .

STANDARD OF REVIEW

Plaintiffs have moved for summary judgment pursuant to Fed. R. of Civil Proc. 56(c). This rule provides that judgment may be entered if a party opposing the motion will not be able to produce sufficient evidence at trial to withstand a motion for directed verdict. ***Street v J.C. Bradford & Co., 886 F.2d. 1472 (6th Cir. 1989).*** The Sixth Circuit utilizes several factors to guide courts in determining whether summary judgment is appropriate in a given case. Some of these factors, include:

> 3. The movant must meet the initial burden of showing 'the absence of a genuine issue of material fact' as to essential element of the non-movant's case.

> 4. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case.
>
> * * *
>
> 7. The substantive law governing the case will determine what issues of fact are material, . . . **Id. at 1479.**

Therefore, in moving for summary judgment, a party must show that the respondent will not be able produce any evidence sufficient to withstand a motion for directed verdict at trial. The movant must meet the initial burden of showing that there is no genuine issue of material fact in the record. These issues of material fact are governed by the substantive law governing the case.

In the present case, summary judgment is inappropriate because Plaintiffs have failed to meet their initial burden of showing that there is an absence of a genuine issue of material fact. Defendants have also met their burden by showing that there is sufficient evidence to submit to a trier of fact in their case. Moreover, opportunities for further discovery, including the expert discovery, will likely yield evidence favorable to Defendants on the material facts of the instant matter.

LAW AND ARGUMENT

I. MUNICIPAL LIABILITY

As is made clear by the United States Supreme Court, the failure to train theory is only relevant to the second element of a §1983 action, and not the threshold element of a constitutional deprivation. The failure to train theory is utilized by Plaintiffs who wish to

show that a municipal corporation is responsible for a constitutional deprivation caused by one of its employees. Municipal liability in a 1983 action is unique because "*[r]espondeat superior* or vicarious liability will not attach under §1983." ***Canton v Harris*, 489 US 378, 385; 109 S Ct 197; 103 L Ed 2d 412 (1989).** Therefore, because Defendants base this response on their showing that Plaintiffs have not stated a claim for, nor can they show by any of the undisputed facts, that they suffered a constitutional deprivation, this failure to train element of municipal liability is not material to the present motion.

In ***Collins v Harker Heights*, 503 US 115; 112 S Ct 1061; 117 L Ed 2d 261 (1992),** the United States Supreme Court made clear that the constitutional deprivation element of a § 1983 action is separate and distinct from the issue of whether or not a municipal corporation may be held responsible for such underlying constitutional deprivation. The ***Collins*** Court stated held that a section 1983 action against a municipality requires analysis of two distinct issues: "(1) whether Plaintiff's harm was caused by constitutional violation, and (2) if so, whether the City is responsible for that violation." ***Id.* at 120.** Thus, in ***Collins***, the Court emphasized the importance of distinguishing between the element of a constitutional violation and the element of whether or not the City is responsible for that violation.

In ***Collins, supra***, Plaintiff's decedent was an employee in the sanitation department of the City of Harker Heights, Texas. Mr. Collins died of asphyxia after entering a manhole to unstop a sewer line. ***Id.* at 117.** Plaintiff claimed that the City had violated Mr. Collins' constitutional right by "following a custom and policy of not training its employees about the

dangers of working in sewer lines and manholes . . ." ***Id.*** In reviewing its prior decisions on the issue of municipal liability the court noted:

> In each of those cases the Court assumed that a constitutional violation had been adequately alleged or proved and focused its attention on the separate issue of municipal liability. ***Id.*** **at 121.**

The ***Collins*** Court cited ***Monell v New York City Department of Social Services*****, 436 U.S. 658; 98 S Ct. 2018; 56 L. Ed. 2d 611 (1978),** ***Oklahoma City v Tuttle*****, 471 U.S. 808; 105 S. Ct. 2427; 85 L. Ed. 2d 791 (1985)** and ***Canton v Harris, supra*** for the purposes of illustrating that each of those cases addressed only the issue of municipal liability and assumed that in fact a constitutional violation had been committed by one of the governmental employees. The ***Collins*** Court noted:

> . . . We concluded that *if a City employee violates another's constitutional rights*, the City may be liable if it had a policy or custom of failing to train its employees and that failure to train caused the constitutional violation. ***Id.*** **at 123. (emphasis provided).**

Therefore, a plaintiff's allegations that a municipality failed to train its employees is only actionable if a governmental employee in fact caused a constitutional violation. If there is no such underlying constitutional violation committed by an employee, whether or not a City policy caused that conduct is simply irrelevant. As the Supreme Court succinctly stated in an earlier decision:

> Neither ***Monell, supra*** nor any other of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm. ***Los Angeles v Heller*****, 475 US 796, 799; 106 S Ct 1571; 89 L Ed 2d 806 (1986).**

If an officer does not deprive a person of his constitutional rights, the issue of whether or not a municipality can be said to have caused the actions of the officer is irrelevant to a determination of a claim under §1983. In other words, the cases under ***Monell*** and ***Harris, supra*** answer the question "who is liable for a constitutional deprivation" committed by a government officer, not the question, "did Plaintiff suffer a constitutional deprivation."

In ***Collins***, the United States Supreme Court found that dismissal of Plaintiff's claims was proper where Plaintiff did not allege that a violation of the due process clause of the constitution.

In the present case, a finding of municipal liability on Plaintiffs' motion is not appropriate because they have failed to show that they suffered a constitutional deprivation. As shown infra, there is at least a genuine issue of material fact that Saginaw County, jail regulations are reasonably related to legitimate penological objectives.

II. CONSTITUTIONAL VIOLATION

Plaintiffs alternately argue that Defendants' practice relating to the administrative segregation cell violates their Fourth Amendment protection to be free from unreasonable seizures, their Fourth Amendment right to privacy, their Fourteenth Amendment right to be free from punishment prior to adjudication of guilt in violation of the Due Process Clause, and their Fourteenth Amendment right to substantive due process. Each allegation will be discussed in turn.

A. Unreasonable seizure

Plaintiffs first argue that their placement into administrative segregation violates their right to be free from unreasonable seizures pursuant to the Fourth Amendment of the United States Constitution. While they cite no authority for their argument (and Defendants have found none), they urge this Court to rule that Plaintiffs' placement into administrative segregation in a state of nudity violates the Fourth Amendment.

Plaintiffs concede that "Defendants have probable cause to seize Plaintiffs and detain them in their jail." **(Plaintiff's brief p. 10)** Plaintiffs argue that when Plaintiffs' clothes were removed, the seizure became unreasonable. **Id.** This novel argument is necessitated by the fact that no precedent, binding or advisory, has found that facts similar to those in the instant case amounts to unreasonable search. Therefore, Plaintiffs look to the seizure provision in the Fourth Amendment for their argument.

Plaintiffs' properly cite ***Turner v Safely, 482 U.S. 78; 107 S.Ct. 2254; 96 L.Ed.2d 64 (1987)*** to provide the analytical structure for their claims. In ***Turner***, United States Supreme Court considered the constitutionality of regulations issued by the Missouri Division of Corrections relating to inmate marriages and inmate-to-inmate correspondence. The United States Supreme Court rejected the strict scrutiny analysis utilized by the Court of Appeals, holding "that a lesser standard of scrutiny is appropriate in determining the constitutionality of the prison rules." **Id. at 81.**

The ***Turner*** Court, noted several principles "that necessarily frame our analysis of prisoners' constitutional claims." **Id. at 84.** The Supreme Court noted:

> . . . [C]ourts are ill equipped to deal with increasingly urgent problems of present administration and reform . . . [T]he problems of prisons in America are complex and intractable and, more to the point, they are not readily susceptible of resolution by decree. Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the providence of the legislative and executive branches of government. Prison administration is, moreover, a task that has been committed to the responsibility of those branches, and separation of powers concerns counsel a policy of judicial restraint. Where a state penal system is involved, federal courts have . . . additional reason to accord deference to appropriate prison authorities. **Id. at 84-85.** (internal quotations and citations omitted).

One principle underlying federal jurisprudence or prison and jail practices is to defer to the proper branches of government the task of jail and prison administration. The ***Turner*** Court then enunciated the proper standard for analyzing that a prison regulation violates an inmate's constitutional rights.

> . . . [W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests . . . Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innotative solutions to the intractable problems of prison administration. The rule would also distort the decisionmaking process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration. **Id. at 89** (internal quotations and citations omitted).

Therefore, the proper analysis for Plaintiffs' claims of constitutional violations is to determine if the regulation at issue, the placement of Plaintiffs who are a threat to themselves, other inmates, and jail staff and who threaten the internal security and operations of the jail, without clothing is reasonably related to legitimate penological interests. As will be discussed infra, the record in the instant matter demonstrates that the only testimony regarding this issue is by Defendants and their expert reports which indicate that Saginaw County's policies satisfy this standard.

Plaintiffs properly cite the factors relevant in determining the reasonableness of a regulation. These factors are: (1) whether there is a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it, (2) whether there are alternatives means of exercising the right that remains open to prison inmates, (3) the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally, and (4) the absence of ready alternatives is evidence of reasonableness of a prison regulation. **Id. at 89-91.**

It is noteworthy that the ***Turner*** court relied on ***Bell v Wolfish, 441 U.S.520; 99 S.Ct. 1861; 60 L.Ed. 2d 447 (1979)*****(attached as EXHIBIT H)**, in support of their holding in ***Turner. Bell, supra,*** involves numerous conditions of confinement and practices in a federally operated short-term custodial facility which was used to house pretrial detainees. One of those practices involved the requirement of detainees to expose their body cavities for visual inspection as part of a strip search conducted after every contact visit with a person from outside the institution. **Id. at 558.**

The Supreme Court held:

> 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 a place in which it is conducted. **Id. at 559.**

The Supreme Court found:

> . . . we deal here with the question whether visual body-cavity inspections as contemplated by the MCC rules can *ever* be conducted on less than probable cause. Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can.
> **Id. at 560** (emphasis and original).

In the ***Bell*** case, the United States Supreme Court concluded that a visual body-cavity inspection of all inmates after visitations did not violate their Fourth Amendment rights. The courts considered that the detention facility's interest in maintaining the security of the facility was properly balanced against the invasion of the privacy interest under the Fourth Amendment of the inmates.

The only Court of Appeals decision considered the propriety of placing a detainee in segregation without clothing has found that the practice did not violate the constitutional rights of the detainee. In ***Hill v McKinley, 311 F.3d. 599 (8th Cir. 2002)*****(attached as EXHIBIT I)**, plaintiff was arrested for public intoxication in Nevada, Iowa. **Id. at 901.** Plaintiff Hill was uncooperative during the booking process, "yelling and cursing at [the correction officers]. The officers placed Hill in a holding cell, where she pounded and kicked at the door of the

cell." **Id.** These facts are strikingly similar to many of the facts presented by Plaintiffs' claims. Noting this behavior, the correction officers in Hill decided to place plaintiff in the jail's padded cell. **Id.** The jail policy provided that prisoners are not allowed to wear normal clothing but instead must wear a paper gown or nothing at all. **Id.** Plaintiff was placed naked into the padded cell. **Id.** Hill argued, among other allegations, that her constitutional rights were violated when she was required to disrobe in the presence of a male correction officer. However, the Eighth Circuit Court of Appeal rejected her argument. The Circuit Court stated:

> Even if it was a male guard, however, we cannot say in light of precedent that it is a violation of a prisoner's Fourth Amendment privacy rights for a male guard to require a loud and violent female prisoner to disrobe in his presence before placing her in a padded cell for her own safety. **Id. at 903.**

The Eighth Circuit Court of Appeals found that no constitutional violation occurred when a loud, violent and abusive pre-trial detainee was placed in a padded cell without any clothing in the presence of male correction officers.

In the present case, the policy used to place Plaintiffs into administrative segregation without their clothing satisfies the standard of ***Turner, supra, Bell, supra***, and ***Hill, supra***. The facts and the record show that the regulation utilized by Defendants' in the instant matter is reasonably related to legitimate penological interests. The record illustrates that the policy was implemented following an inmate suicide who utilized his clothing in the administrative segregation cell. **(EXHIBIT D, No. 16).**

The policy was implemented to prevent harm that disruptive inmates may cause to themselves, other inmates, and jail staff. The policy furthers security interests of the jail and furthers the orderly operations of the jail. Clothing is removed so that prisoners cannot stuff it down their throat, hang themselves, urinate on their clothing, defecate on their clothing, and throw it at the deputies, or to attack a corrections officer. The expert reports submitted by Defendants' two jail practices experts, show that the inmates placed into the segregation cell are at a high risk of injuring themselves. **(EXHIBIT F, p. 2)** Further, expert Dr. Ross indicated that the placement of the detainee for limited duration in the nude in the segregation cell is a reasonable alternative that is reasonably related to the detention objective of the jail. **(EXHIBIT E, p. 3)**.

Plaintiffs do not put forth any proof that the regulation of the Saginaw County Detention Facility is not rationally related to a legitimate detention objective. Plaintiffs rely on Defendants' subsequent remedial measure of issuing a paper gown to inmates. This practice cannot be used as evidence in the instant action. F.R.E. 407. Defendants intend to offer evidence of jail practice experts and of Defendants that the paper gown does not further the objectives of the Saginaw County Jail Detention Facility as well as placing an inmate with no clothes in administrative segregation. A paper gown can be used to fashion a rope, flood the toilet, project feces or urine at a corrections officer, or attack jail staff.

Additionally, the language of ***Turner, supra***, counsels that the test of reasonableness is not a "least restrictive alternative" test. ***Turner, supra, at 91***. A Court may consider a claimant's alternative which accommodates a prisoner's rights only if there is a "de minimus

cost to valid penological interests." **Id.** As indicated, supra, the issuance of a paper gown to a prisoner in the administrative segregation is done at a great cost to the valid interests of the Saginaw County Detention Facility for safeguarding inmates from harming themselves, other detainees and the jail staff. Additionally, the issuance of a paper gown does not fully accommodate Plaintiffs' rights claimed in the instant case. In order to change into a paper gown, Plaintiffs would be required to disrobe. If they refused, Defendants' staff would have to use the force necessary to change the detainee into the paper gown. Plaintiffs would likely claim that this then would violate their privacy or would convert the seizure into a "unreasonable seizure."

Because the record provides at least a genuine issue of fact on the material question of whether the policy is reasonably related to legitimate penological objectives, Plaintiffs' motion for judgment on the issue of liability must be denied.

B. Right to privacy

Plaintiffs allege that their Fourth Amendment rights to privacy under the Fourth Amendment were violated by Saginaw County. **(Plaintiffs' Brief, pp. 13-15).** These allegations are unsupported by the case law.

In the case cited by Plaintiffs, ***Cornwell v Dahlberg, 963 F.2d. 912 (6th Cir. 1992)***, the Court found that the ***Turner, supra*** test was applicable to the claim. ***Cornwell, supra, at 916-917.*** Thus, the Sixth Circuit found that the jury should be instructed "to find some valid, rational connection between the prison policy and a legitimate penological interest. . . ." **Id. at 917.** Utilizing this standard, the Sixth Circuit found that ***Cornwell*** raised a valid privacy

claim under the Fourth Amendment. **Id. at 916.** The ***Cornwell*** panel did not find that a constitutional deprivation occurred. The Sixth Circuit determined, given the facts of the case, that the issue should be submitted to the jury.

The facts in ***Cornwell*** differ significantly from the instant matter. After participating in a sit-in, Plaintiff was detained outside and forced to lie in a cold, muddy area in temperatures that were between 40 and 44 degrees. **Id. at 914.** The strip searches were conducted before the corrections officers, before other participating inmates, and before any corrections officer who happen to pass through the designated area. Notably, prisoners were taken inside the prison facility gymnasium prior to being forced to return to the outdoor area for strip search. **Id. at 914.** The ***Cornwell*** Court did not impose liability, but rather reversed the judgment on the Fourth Amendment privacy claim and ordered for a new trial where the jury may be instructed properly on the reasonably related standard. **Id. at 918.**

Moreover, since ***Cornwell***, at least one court has held that a pretrial detainees' rights are not violated when monitored by a female guard. In ***Johnson v Phelan, 69 F.3d 144 (7th Cir. 1995)***, Judge Easterbrook held that it is not a violation of a prisoner's Fourth Amendment rights to be viewed and monitored by correction officers of the opposite sex. Judge Easterbrook held that pursuant to ***Hudson v Palmer, 468 U.S. 517; 104 S.Ct. 3194; L.Ed.2d 393 (1984)***, "privacy is the thing most surely extinguished by a judgment committing someone to prison." ***Johnson, supra, at 146.*** Since ***Cornwell***, decisions in Michigan and other states have provided that gender is not a bona fide occupational qualification for correction officers. ***Everson v Michigan Department of Corrections, 222 F.Supp.2d 864 (E.D. Mich. 2002).***

Moreover, as indicated, supra, the ***Turner, supra*** and ***Bell, supra***, cases mandate that this Court employ a "reasonableness" standard in evaluating the allegations of right to privacy invasions in the instant case. It is important to note that nothing in the policy provides that the inmates be disrobed in front of other inmates. Inmates are given an opportunity to disrobe voluntarily in the segregation cell. **(EXHIBIT B)**. The justification recited above is equally applicable to the invasion of Plaintiffs' privacy rights. The regulations are reasonably related to the interests in preventing harm of the prisoners to themselves, to other prisoners, to inmates and the disruption of jail security and internal operations. These justifications are supported in the record by expert reports and by deposition testimony. These facts preclude a summary judgment in Plaintiffs favor in the instant matter.

C. Policy as punishment.

Plaintiffs next allege that Defendants' policy constitutes unconstitutional punishment prior to adjudication of guilt. **(Plaintiffs' Brief, pp. 15-18)**. This argument must also fail because it is not supported by the cases. ***Bell v Wolfish, supra***, provides the standards by which a claim of Eighth Amendment violations must be judged. The Court stated:

> A court must decide whether the disability is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose. Absent a showing of an expressed intent to punish on the part of detention facility officials, that determination generally will turn on "whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it]. Thus, if a particular condition or restriction of

> pretrial detention is reasonably related to a legitimate governmental objective, it does not, without more, amount to "punishment." Conversely, if a restriction or condition is not reasonably related to a legitimate goal--if it is arbitrary or purposeless--a court permissively may infer that the purpose of the governmental action is punishment that may not constitutionally be inflicted upon detainees *qua* detainees. Courts must be mindful that these inquiries spring from constitutional requirements and that judicial answers to them must reflect that fact rather than a court's idea of how best to operate a detention facility. **Id. 441 U.S. at 538-539.**

The ***Bell*** Court utilizes a reasonable relationship test to determine if a restriction is imposed for punishment in violation of the Eighth Amendment. As indicated above, the testimony in the instant case shows that the placement of the claimants in administrative segregation without clothing did reasonably relate to the legitimate governmental objective of maintaining safety of the detainees themselves, the safety of other detainees and staff and the orderly operation of the jail.

Plaintiffs attempt to argue that Defendants' concern of keeping the inmates from harming themselves is a mere pretext. **(Plaintiffs' Brief, p. 17)**. However, it must be noted that prisoners who are disruptive to staff in and of itself, presents a risk of later harming themselves by attempted suicide. **(EXHIBIT F, pp. 1-2)**. Although, Defendants did not verbalize any suicidal ideations at intake, their combativeness, intoxication, and other factors demonstrate that they risked harm to themselves. Notably, the inmate who committed suicide in 1996 which gave rise to the instant policy did not express suicidal ideations prior to his

successful suicide attempt. Defendants justification for their policy is not that they were suicidal, but that they were a threat to themselves as well as others, and to the internal security of the facility.

Liability is imposed upon government employees and governmental units when a pretrial detainees' mental health needs are shown deliberate indifference by jail staff. ***Molton v Cleveland, 839 F.2d. 240 (6th Cir. 1988); Comstock v McCrary, 273 F.3d. 693 (6th Cir. 2001).*** The United States Supreme Court has made clear that once a person is incarcerated by governmental entity, stripping them of virtually every means of self-protection and forecloses access to outside aid, they are responsible for the well being of their detainees. ***Farmer v Brennan, 511 U.S. 825; 114 S.Ct. 1970; 128 L.Ed.2d 811 (1994).*** Therefore, while not expressing suicidal intent, Plaintiffs by their disruptive behavior showed that they were at a risk of harming themselves, other prisoners and staff. They also showed that they were capable of disruption of the orderly operation and security of the jail detention facility. Therefore, removing their clothing and placing the inmates in administrative segregation furthered the legitimate governmental objectives of protecting these inmates, other inmates, and the jail detention facility itself.

D. Substantive due process.

Lastly, Plaintiffs claim that Defendants' actions violates substantive due process in that it shocks the consciousness of the Court pursuant to ***Rochin v California, 342 U.S. 165; 72 S.Ct. 205; 96 L.Ed. 183 (1952).*** This argument must also be denied because the undisputed testimony of Defendants and the experts' opinions indicate that Defendants' actions were not

arbitrary. Moreover, Plaintiffs have cited no cases which would support their claim that Defendants' conduct was "conscious shocking." As demonstrated supra, the only Circuit Court case addressing a situation similar to the instant matter has found that the practice of placing a disruptive and violent inmate in a segregated cell in a state of nudity does not violate the constitution. ***Hill v McKinley, 311 F.3d 899 (8th Cir. 2002).*** Moreover, the record indicates that Defendants' actions were not arbitrary but rationally related to their legitimate interests in maintaining the safety of inmates and staff and in maintaining the internal security and orderly operations of the jail facility. For these reasons, Plaintiffs' motion for judgment on the basis of substantive due process must be denied.

III. QUALIFIED IMMUNITY

In civil suits for money damages, governmental officials acting in their official capacity are entitled to qualified immunity for discretionary acts which do not violate clearly established law of which a reasonable person would have known. ***Anderson v Creighton, 43 U.S. 635; 107 S.Ct. 3034; 97 L.Ed.2d 523 (1987).*** The Supreme Court has recently stated that assessment of whether an official is entitled to immunity involves a two part analysis: (1) whether the Plaintiff has alleged facts which, taken in light most favorable to him or her, show that the official's conduct violated a constitutionally protected right; (2) if the first part has been answered in the affirmative, courts must then determine whether the right was clearly established such that a reasonable official, at the time the act was committed, would have understood that his behavior violated that right. ***Saucier v Katz, 533 U.S. 194; 121 S.Ct. 2151; 150 L.Ed.2d (2001).***

Further, it is important to note that the second part in the analysis must be undertaken in light of this specific context of the case, not as a broad, general proposition." **Id. at 121 S.Ct. at 2156.**

In the instant case, as demonstrated above, Plaintiffs cannot meet the threshold inquiry of whether a constitutional violation occurred at all. Therefore, Sheriff Brown is entitled to summary judgment on the basis of qualified immunity. Further, it must be noted that Plaintiffs have failed to cite any case which holds that a reasonable official on May 22, 1999, would have been aware that it was violation of a clearly established right to place Plaintiffs in administrative segregation without clothing. As demonstrated in ***Hill, supra***, the only Circuit Court opinion to date addressing the very issue in the instant case has held that it is not a violation of constitutional rights to place a pretrial detainee who is violent in the nude in a secured cell. ***Hill, supra, 311 F.3d. 899 (8th Cir. 2002).***

The closest case in the Sixth Circuit, ***Cornwell v Dahlberg, supra***, is not specific enough to the facts in the instant case. Further, ***Cornwell*** only established that Plaintiff stated a claim given this specific facts of that case to a Fourth Amendment violation. The panel did not determine it was a violation of rights as such. The court merely remanded for trial the question whether the practice was reasonably related to a legitimate penological objective.

Given these facts, Defendant, Sheriff Charles Brown respectfully requests Summary Judgment in his favor on the issue of qualified immunity.

IV. ADMISSION OF LIABILITY

Plaintiffs lastly argue that Defendants are estopped from denying liability. (**Plaintiffs' Brief, p. 32**). However, this argument ignores the fact that, that issue was presented to the Court and denied in an Order dated October 10, 2002.

The very case cited by Plaintiffs in support of their argument on liability, ***Dana Corp. v Appeal Board of Michigan Employment Security, 371 Mich 107; 123 NW2d 277 (1963)*** provides that an admission is only binding once they have been received and approved by the Court. **Id. at 110.** Additionally, Michigan courts have held that a stipulation is binding until abandoned or disaffirmed. ***Nuriel v Young Women's Christian Association of Metropolitan Detroit, 186 Mich App 141 (1990).*** In the present case, there is no written stipulation submitted and approved by the Court. Any possible stipulation has disaffirmed shortly after it was made.

Under the Federal Rules of Civil Procedure, admissions are made in writing in response to Request for Admissions. Fed. R. Civ. Proc. 36. Even under this rule, Courts have the discretion to permit the withdrawal of an admission. Fed. R. Civ. Proc. 36(b). The Court's discretion must be exercised in light of two (2) factors: (1) Whether the withdrawal will aid in the resolution of the case, and (2) whether the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. ***Kerry Steel, Inc. v Paragon Industries, Inc., 106 F.3d. 147 (6th Cir. 1997).*** In the present case, no admission has been made pursuant to their request for admissions pursuant to Rule 26. Even if it had been submitted pursuant to this rule, the court still has discretion to allow a withdrawal of admissions. It will aid in the resolution of the case and Plaintiffs have failed to show the court that it withdrawal the admission, will prejudice the party. Plaintiffs have submitted no facts to show their

prejudice. Additionally, allowing Defendants to contest liability will permit a just and equitable resolution of the claims filed by Plaintiffs.

V. INJUNCTIVE RELIEF

When considering a motion for preliminary injunction, the Court must balance four (4) factors: (1) the movants' likelihood of success in merits; (2) whether the movant will suffer irreparable injury in the absence of a injunction; (3) whether an injunction will cause substantial harm to others; (4) whether the injunction will serve the public interest. ***G&V Lounge v Michigan Liquor Control Commission, 23 F.3d. 1071 (6th Cir. 1994)***. In the instant case, regardless of the other factors, there is no showing that the Plaintiffs will suffer irreparable injury in the absence of an injunction.

It is undisputed that the Saginaw County Detention Facility does not place detainees in the administrative segregation cell without clothing. They are now issued paper gowns. **(EXHIBIT A, p. 34)**. Therefore, Plaintiffs have not shown they are entitled to injunctive relief.

WHEREFORE, for the reasons stated above, Plaintiffs have not shown that they have strong likelihood of success on the merits.

CONCLUSION

Plaintiffs have failed to show that they are entitled to summary judgment on the issue of liability. First, Plaintiffs have mischaracterized the record on the contents of the very policy they dispute. The deposition testimony of Defendants' employees indicates that there is a standard for placement into administrative segregation and that the justification for placement lies in the threats of harm caused by Plaintiffs and the threats to the internal security and orderly operation of the jail.

While Plaintiffs were required to disrobe before entering the segregated facility, force was only applied if Plaintiffs refused to comply with the orders.

Further, the only facts in the record demonstrate that Defendants have shown that the practice of Saginaw County is reasonably related to legitimate penological objectives. Defendants should at least be able to develop this issue in further discovery of experts.

For all the reasons stated herein, Defendants respectfully request that Plaintiffs' Motion for Summary Judgment be denied.

Respectfully submitted,

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DATE: May 27, 2003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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