UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ADRIENNE GILANIAN,	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. 01-11580-NG**
	)	
CITY OF BOSTON, SUFFOLK COUNTY, RICHARD ROUSE, Sheriff and two presently unknown Suffolk County corrections officers: MARY POE and JANE DOE,	)	
Defendants.	)	

GERTNER, D.J.

MEMORANDUM AND ORDER
June 3, 2004

I. INTRODUCTION

This case addresses the constitutionality of two strip searches of a pre-trial detainee held at the Suffolk County House of Corrections ("SCHC"). This Court addressed similar issues in Ford v. City of Boston, 154 F.Supp.2d 131 (D. Mass. 2001). Plaintiff Adrienne Gilanian ("Gilanian") was not part of the class certified in Ford because her searches occurred on March 15 and 16, 2000, outside of the Ford class certification period (December 10, 1995 to September 20, 1999).

Plaintiff's remaining claims for relief are brought pursuant to 42 U.S.C. § 1983 against Suffolk County, Richard Rouse ("Rouse"), Mary Poe, and Jane Doe[1] (Counts I, III, and IV).[2] The

[1] There are additional pending claims against the unnamed officers for MCRA violations (Count IV) that are not addressed in the current motions. However, as addressed below, this decision disposes of these claims as well.

[2] In her Complaint, plaintiff sought damages under 42 U.S.C. § 1983 and the Massachusetts Civil Rights Act ("MCRA") M.G.L. ch. 12 § 11(I) against the City of Boston ("City"), Suffolk County ("County"), Sheriff Richard Rouse ("Rouse") and two unknown County corrections officers, Mary Poe and Jane Doe. On April 30, 2002, I dismissed all claims against the City because the City

parties have cross-moved for summary judgment [docket ## 17 and 22]. Defendants argue that: (1) the two searches at issue did not violate the plaintiff's constitutional rights; (2) Rouse has qualified immunity that prevents personal liability from attaching; (3) the two unidentified county corrections officers are entitled to a judgment as a matter of law because they have not been identified or served with process; and (4) there is no municipal liability because plaintiff has failed to identify the corrections officers involved. Plaintiff moves for summary judgment on the basis that both searches of her were unconstitutional.

On the one hand, plaintiff's case is distinguishable from those addressed in Ford -- Gilanian was held overnight at a local jail where she was not searched, spent a day in court before arriving at the SCHC, and was ordered detained overnight by a judge on an outstanding warrant for assault with a dangerous weapon. On the other hand, several questions and issues of disputed fact remain that warrant additional discovery. Therefore, defendants' motion for summary judgment is **GRANTED in**

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had not played any role in the promulgation or implementation of customs or policies at the Nashua Street jail and because a city cannot be sued under the MCRA. In my May 20, 2002, order, I dismissed the MCRA claim against Suffolk County because a municipality cannot be sued under the MCRA and against Rouse because a claim against Rouse in his official capacity was clearly a claim against the County. In addition, because plaintiff had not alleged that defendant Rouse personally engaged in any acts against her that constituted threats, intimidation, or coercion, a claim against him in his individual capacity was likewise barred. I denied motions to dismiss by the County and Rouse on the § 1983 claims.

part and DENIED in part and plaintiff's cross-motion for summary judgment is **DENIED**.

II. FACTS

A. Plaintiff's Arrest and Subsequent Strip Searches

On March 14, 2000, plaintiff's mother, Christina Jourdon, went to the Brookline courthouse and complained that she was in fear of her daughter and that her daughter had threatened to kill her and her husband. Plaintiff was arrested in her home that day. The police took her to the Brookline Police Station, where, according to the plaintiff, she spent the night in a cell alone. She was not strip searched.

The following morning, Gilanian was transported to the Brookline District Court to answer to an outstanding warrant from July 1994. In 1994, plaintiff had been charged with assault and battery in an incident also involving her mother.[3] According to plaintiff, she was held in the courthouse holding area with one other detainee until noon when she was called into the courtroom. Her case was heard at approximately 4:00 p.m.

Gilanian was then arraigned in Brookline on the 1994 warrant. The judge ordered that she be held in jail overnight to be turned over to the West Roxbury District Court the following

[3] Plaintiff alleges this incident arose out of an argument that she had with her mother in their apartment; their downstairs neighbors called the police.

day to answer to yet a second warrant. This second outstanding warrant was issued by the West Roxbury court because plaintiff failed to appear on May 21, 1992, to answer to a charge of assault with a dangerous weapon.[4] According to plaintiff, she had appeared in court on this charge in 1992, but was unaware that she owed $40 to the court. The charge was placed on file on March 11, 1992, at the request of all parties, effectively disposing of it. Despite the fact that the charges were disposed of, a summons issued on April 11, 1992, with no return of service issued for the plaintiff, and a warrant issued on May 21, 1992.

Gilanian alleges that she was transported by police officers from the Brookline court to the SCHC[5] in handcuffs. Upon her arrival at the jail around midnight, she was detained, alone in a cell, until she was processed. After plaintiff was processed, she was taken to a small room by defendant corrections officer Mary Poe, who ordered plaintiff to strip. She then ordered plaintiff to bend over, spread her legs, and raise her arms while defendant Poe visually searched the plaintiff's body and her body cavities. Plaintiff was then given a jumper to put on, and a male officer escorted her to her own cell.

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[4] Plaintiff alleges that this incident arose out of a disagreement with her landlord. Her landlord "went to [her] apartment late one evening with liquor on his breath demanding the rent money. The plaintiff opened the door to him, then regretted it, and he called the police, alleging that the plaintiff had tried to hurt him."

[5] The SCHC is classified as a maximum-security facility, as it houses detainees awaiting trial for all crimes, including capital offenses.

Defendants contend that Gilanian was booked into a general population housing unit with other female detainees. Plaintiff disagrees, alleging that she was not booked into the general population and at no time commingled with the general prison population. In her deposition, however, Gilanian describes arriving at her unit in the jail, where other women were watching television, suggesting that she was placed in a unit where she potentially could have had contact with other inmates.

Gilanian spent that night, the evening of March 15, 2000, in the jail. According to plaintiff, she wore a jumper provided by the jail, was held in her own cell, showered alone on the morning of March 16, 2000, had breakfast with one female detainee, and took an elevator to a holding cell with that same detainee on her way to exit the jail in the morning. She stayed in that holding cell for four to five hours.

Subsequently, plaintiff returned to the small room where she had been strip searched the night before. Plaintiff was again ordered to strip and was visually searched by corrections officer Jane Doe. Plaintiff alleges that there were more than four women present, including another female detainee and other corrections officers. Defendants dispute that there were more than four women present.

B. Search Policy at the Nashua Street Jail

At the time of plaintiff's searches in 2000, Suffolk County Sheriff's Department policy stated:

> It is the policy of the Suffolk County Sheriff's Department that strip searches shall be conducted of all inmates committed to the custody of the Department and at any other time when there exists a reasonable suspicion[6] that contraband may be present. The only exception to this policy are as follows: Pre-arraignment detainees will be subject to strip/visual body cavity searches only upon a determination that probable cause[7] exists that the detainee is concealing weapons or contraband (SCSD Policy S414J); those held in Protective Custody will be subject to strip searches/visual body cavity searches pursuant to SCSD Policy S415J.

The Policy defined a strip search/visual body cavity search as "[t]he examination of a person to identify the presence of contraband by requiring removal of all clothing, by visual inspection of the person's body, and searching by hand of all articles of clothing."

The policy highlighted that situations that require strip searches of inmates include but are not limited to: "return to the facility from court, hospital trips, outside work details; return to housing after a contact visit; after involvement in a

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[6] The Policy defines "reasonable suspicion" as "[i]ndividualized suspicion that the particular person in custody has contraband and/or weapons in his or her possession."

[7] The Policy defines probable cause as a "reasonably cautious person would believe, based on all of the circumstances involved, that this particular arrestee is probably concealing contraband. Probable cause to search is more than a mere suspicion."

serious infraction which suggests the presence of contraband; at the time of transfer to segregation housing or to medical housing for suicide risk; or when shakedown search of an area is administratively ordered."

Defendants have also submitted a copy of the Code of Massachusetts Regulations governing searches effective at the time of plaintiff's search, 103 C.M.R. 924.06. The Code states:

> Strip searches and pat searches of inmates must be conducted in relative privacy with as much dignity as possible and by two security personnel of the same sex as the inmate, except in an emergency. Said searches may be employed in, but not limited to, the following situations: . . . (b) transportation to and from court/medical trips/visits.

Gerard Horgan ("Horgan"), the current Superintendent at the Suffolk County Jail, generally describes the Sheriff's Department policies. He states that at the time of plaintiff's commitment, male and female inmates sent to the jail by a judge pursuant to Mass. Gen. Laws c. 276 § 29 were processed as regular detainees and transferred to the general population. M.G.L. c. 276 § 29 permits the judge to release from court, or set bail for individuals charged with minor offenses. The statute also permits the judge to release individuals that have defaulted on court issued fines. M.G.L. c. 276 § 32. Defendants appear to highlight this legislation to indicate that plaintiff was held over because of the judge's concern regarding this particular

individual -- implying a concern based on the underlying offenses -- and not because the judge was required to detain her.

As to those individuals held over, according to Horgan, "[t]o ensure the safety of inmates and staff, and to prevent the introduction of contraband, all persons transferred to and commingled with the general population at the Jail are strip-searched upon commitment." Female detainees are processed in a separate area of the booking room. The area is closed off from the male booking area and includes a small, enclosed room where the women change out of their street clothes, are issued uniforms, and are searched.

Horgan also attests that "[s]trip searches are conducted on detainees prior to transportation to Court. The searches are conducted to locate contraband that could aid in escape and threaten security of the transferring officers and other detainees." Detainees are transported to court in groups via vans. There could be as many as 14 detainees in one van for appearance in the same district court. If a detainee is known as an "escape risk," additional precautions are taken during transportation.

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). When reviewing the parties' submissions, the Court must draw all reasonable inferences in favor of the non-moving party. See Suarez v. Pueblo Int'l, Inc., 229 F.3d 49, 53 (1st Cir. 2000). When the moving party is able to point to an insufficiency of evidence on an element for which the nonmoving party bears the burden of proof, summary judgment should be granted. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

Where, as here, there are dueling motions for summary judgment, the Rule 56 standard remains intact. The motions "simply demand that all factual disputes and any competing rational inferences be resolved in the light most favorable to the party opposing summary judgment." Santana v. Deluxe Corp., 12 F.Supp.2d 162, 167 (D. Mass. 1998)(citing Den Norske Bank v. First Nat'l Bank of Boston, 75 F.3d 49, 53 (1st Cir. 1996)).

B. Constitutionality of the Searches

The history of the County's search policy and my constitutional analysis of it is fully detailed in Ford, 154 F.Supp.2d 131. Ford established that the County's policy of strip searching all detainees, no matter what crime or

circumstances, without reasonable suspicion was unconstitutional, but left open the question of whether individuals arrested (initially or on default warrants) for crimes involving violence or drugs would be entitled to damages. Id. at 146. Significantly, I denied summary judgment on liability to the class of plaintiffs charged with crimes involving drugs or violence and sought more facts regarding the crimes with which these women were charged. Id. I created two sub-classes to address these issues: (1) those class members arrested (initially or on default warrants) for crimes involving neither drugs nor violence ("Sub-Class I"); and (2) those class members arrested (initially or on default warrants) for offenses involving drugs or "violence" ("Sub-Class II"). I granted summary judgment with respect to the members of Sub-Class I. I did not have to address the issue further with respect to Sub-Class II since this class of plaintiffs subsequently settled their claims.

Similar to those in Ford Sub-Class II, Gilanian was held on a warrant for a violent offence -- assault with a dangerous weapon. While the First Circuit has suggested -- albeit vaguely -- that the "reasonable suspicion standard may be met simply by the fact that the inmate was charged with a violent felony," Roberts v. Rhode Island, 239 F.3d 107 (1st Cir. 2001)(holding blanket strip search policy at prison unconstitutional as applied to plaintiffs held for minor, nonviolent offenses)(emphasis

added), I need not reach this issue here. The facts of the first search, on the evening of March 15, 2000, independently support a finding of reasonable suspicion. As to the second search, the analysis is complicated by the fact that plaintiff was already searched less than 24 hours before and the institutional security concerns present at that point are unclear. Therefore, I assess the constitutionality of each search individually.

It is clear that "both convicted prisoners and pretrial detainees retain constitutional rights despite their incarceration, including basic Fourth Amendment rights against unreasonable searches and seizures." Roberts, 239 F.3d at 109. The Supreme Court has held that in assessing searches of prisoners, the courts should use the reasonableness test, "balancing [] the need for the particular search against the invasion of personal rights that the search entails." Bell v. Wolfish, 441 U.S. 520, 559 (1979)(holding that the practice of strip searching all inmates after largely private, full contact visits with outsiders did not violate the Fourth Amendment). In balancing these interests, the court should "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." Id. The First Circuit expanded on this analysis in Swain v. Spinney, requiring that strip and visual body cavity searches be supported at least by reasonable suspicion that the

arrestee is concealing contraband. See 117 F.3d 1, 7 (1st Cir. 1997).

Both the Supreme Court and the First Circuit recognize the striking level of intrusion at issue in a strip search -- "an 'extreme intrusion' on personal privacy and 'an offense to the dignity of the individual.'" Id. at 110 (citing Wood v. Clemons, 89 F.3d 922, 928 (1st Cir. 1996)). This intrusion must be balanced against the defendants' need to maintain institutional security by preventing the introduction of contraband into the SCHC and ensuring the safety of other detainees and corrections officers. I proceed with these interests in mind.

Neither of the searches endured by Gilanian fall within the category of blanket searches upheld by the Supreme Court and the First Circuit. See Bell, 441 U.S. 520 (upholding blanket search policy for inmates after contact visits); Arruda v. Fair, 710 F.2d 886 (1st Cir. 1983)(upholding blanket strip search policy for inmates moving in and out of a particularly sensitive area of a maximum security prison). Thus, a specific inquiry is required as to each.

1. The First Search of Plaintiff was Supported by Reasonable Suspicion

When Gilanian first arrived at the jail, she was in a class of detainees that could have had access to contraband. She was arrested in her home after her mother complained that she (Gilanian) had threatened her parent's lives. She spent 24 hours

in the local jail (where she was not strip searched) and she was held for a full day in the Brookline courthouse lock-up and courtroom. While Gilanian may in fact have had limited contact with other detainees and the public while in the courthouse, the location is still conducive to acquiring contraband. See, e.g. Richerson v. Lexington Fayette Urban County Gov't, 958 F.Supp. 299, 307 (E.D. Ky. 1996)(finding search of pre-trial detainee held for minor, nonviolent traffic offense after his return from court before introduction into general population reasonable because exposure to public in courtroom presented access to contraband).

Under the Bell factors, this search was conducted in a reasonable fashion. The strip search entailed only a visual inspection. It was conducted by a female corrections officer, in a private room separate from the general admitting area. 441 U.S. at 559. The SCHC's interest in preventing the introduction of contraband to the jail in this situation outweighs Gilanian's privacy interest. Therefore, defendants' motion for summary judgment on Counts I, III, and IV is **GRANTED** as to the first search of plaintiff.

2. Facts in Question Regarding the Second Search

Defendants rely on two cases that upheld prison strip searches prior to detainees being transported to court to justify the second search of Gilanian. Both of these cases are more than

fifteen years old and from other circuits. Neither uses the reasonable suspicion analysis and both are distinguishable on their facts. In Daughtery v. Harris, 476 F.2d 292 (10th Cir. 1973), the court upheld routine strip searches of inmates being transported from a maximum security prison to court because the prison had a specific history of problems with contraband. The Court emphasized that prison officials must have sound discretion over their security policies, and analyzed the policy under the principle that "[j]udicial relief will only be granted upon a showing that prison officials have exercised their discretionary powers in such a manner as to constitute clear abuse or caprice." Id. at 294.

The courts have clearly extended arrestees more significant protection since 1973. In addition, defendants in this case have not identified any specific history of contraband problems at the Suffolk County jail.

Defendants also rely on Goff v. Nix, 803 F.2d 358 (8th Cir. 1987), for the same proposition as Daughtery. The plaintiffs in Goff were convicted felons who resided in segregation units described as "a prison within a prison" and were searched upon leaving their unit or the prison (i.e. for court appearances). The Eighth Circuit held that the individual searches did not violate the Fourth Amendment without deciding whether inmates even had a Fourth Amendment interest in bodily privacy. The Court focused on the high level of security needed for these

prisoners and the minimal intrusion of the searches on prisoners, in addition to the problem with contraband at the institution and the fact that one of the named plaintiffs had attempted an escape while being transported from the prison to the hospital. Again, the law has developed since 1987. More importantly, defendants have not asserted any specific facts regarding the history of security or general contraband problems at the SCHC.

Several questions remain unanswered. If a detainee is strip searched late at night before being admitted to the SCHC and then transported from the SCHC to court less than 24 hours later, what is the likelihood that she has acquired contraband in that time period, especially considering that the other detainees she may come into contact with have also been strip searched prior to entry? Have there been instances where pretrial detainees like Gilanian have harmed a corrections officer or attempted escape during transport from the jail? Was there a history of contraband, attempted escapes, or other particular security concerns at the SCHC during the time in question? If there was, what portion of these problems have been attributed to pre-trial detainees? Was it possible to have segregated plaintiff from the general population? Who was in the room when plaintiff was searched for the second time?

I will give the parties additional time to conduct discovery on these issues and file summary judgment motions if appropriate.

Both parties' motions for summary judgment on Counts I, III, and IV as related to the second search are **DENIED**.

C. Qualified Immunity

Until the above questions are resolved, it is premature for this Court to make a determination as to Rouse's qualified immunity for the second search on March 16, 2000.

D. Unnamed Officers Are Entitled to Judgment as a Matter of Law

Plaintiff is unable to establish the identity of the two female officers who searched her and has not sought an extension of time to do so. Plaintiff has not indicated that she intends to substitute a named party at a later date. See Carmona v. Toledo, 215 F.3d 124 (1st Cir. 2000)(reversing district court for refusing to permit amendment once named party was discovered because no showing of prejudice to defendants or undue delay by plaintiff.)

Defendants argue that the unknown officers are entitled to a judgment as a matter of law because they have not, and apparently will not, be served with a complaint in this case. Fed. R. Civ. P. 4(m) states:

> If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time.

The First Circuit has held that "a district court otherwise prepared to act on dispositive motions is not obligated to 'wait indefinitely for [the plaintiff] to take steps to identify and serve . . . unknown defendants.'" Figueroa v. Rivera, 147 F.3d 77, 83 (1st Cir. 1998)(finding seventeen months was more than ample to discover the identity of unnamed defendants and failure to do so warranted dismissal of the action against the unnamed defendants)(quoting Glaros v. Perse, 628 F.2d 679, 685 (1st Cir. 1980)). This action has been pending since September of 2001. Plaintiff has had long enough to identify the officers and there is no indication that she has sought discovery to ascertain their identities.

Plaintiff argues against dismissal of her claims against the unidentified officers in a footnote (# 13) in her memorandum. She cites the case of Combs v. Wilinson, 315 F.3d 548 (6th Cir. 2002), in which the Sixth Circuit affirmed the lower court's dismissal of claims against unidentified corrections officers. The Court held that, even assuming the facts in the complaint to be true, there was no way for a jury to make factual findings regarding whether the officers acted in good faith without hearing facts from the actual officers. Plaintiff argues that because it is established that both officers searched Gilanian, there would be no unfairness here, as there was in Combs.

Combs is not persuasive. It may be important to discover the facts supporting the officers' assessment of reasonable suspicion. More importantly, plaintiff has made little or no effort to identify these officers. Therefore, the motion to dismiss claims against them is **GRANTED**.

E. Claims Against the County

Defendants argue that Gilanian cannot pursue her claim against the County because she failed to identify the officers who committed the constitutional violation. To hold a local government entity liable under § 1983 for civil rights violations committed by its employees, a plaintiff must establish that the violations resulted from implementation or execution of a policy or custom of the entity. See Monell v. New York City Dept. of Social Services, 436 U.S. 658 (1978). A municipality cannot be held liable under § 1983 without a finding of a constitutional violation by a municipal employee. See City of Los Angeles v. Heller, 475 U.S. 796, 798-99 (1986). "There is, however, nothing to prevent a plaintiff from forgoing the naming of an individual officer as a defendant and proceeding directly to trial against the municipality." Wilson v. Town of Mendon, 294 F.3d 1, 7 (1st Cir. 2002). While the First Circuit has highlighted the disadvantages of this trial strategy, particularly that the predicate burden of proving a constitutional harm by the employee remains an element of the case in addition to showing the

municipalities' custom and policy caused the injury, it is still a viable option. Id. The County's motion for summary judgment is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment [document #17] is **GRANTED in part and DENIED in part.** Plaintiff's motion for summary judgment [document #22] is **DENIED**. **SO ORDERED.**

Dated: June 3, 2004 **s/NANCY GERTNER, U.S.D.J.**