UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 99-517-CIV-UNGARO-BENAGES

LILIANA CUESTA,
Plaintiff,

vs.

THE MIAMI-DADE COUNTY SCHOOL BOARD, et al.,
Defendants.
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OMNIBUS ORDER

THIS CAUSE is before the Court upon Miami Dade County's Motion to Dismiss and for Final Summary Judgment, filed April 6, 2000, Plaintiff's Cross Motion for Summary Judgment, filed April 19, 1999, Plaintiff's Motion for Leave to File Plaintiff's Supplemental Affidavit *Nunc Pro Tunc* to May 25, 1999, or, in the Alternative, to Rule that the Supplemental Affidavit was Authorized to be Filed, filed June 16, 1999 and Defendant's Motion to Accept Supplemental Affidavit, filed July 2, 1999.

THE COURT has considered the Motions, the pertinent portions of the record and is otherwise fully advised in the premises. On February 19, 1999, Plaintiff filed the three count Complaint alleging that Defendants Michael Alexander ("Alexander"), Miami Dade County (the "County") and the Miami Dade County School Board violated her First and Fourth Amendment rights pursuant to 42 U.S.C. §§ 1983 and 1988 in arresting and strip searching her and seeking a declaration that the Florida statute under which she was arrested is unconstitutional. Plaintiff and the County have filed cross Motions for Summary Judgment as to the constitutionality of the County's policy concerning strip searches and thus the constitutionality of the strip search conducted upon Plaintiff pursuant to said policy.

FACTS

The undisputed, material facts are as follows:

On February 23, 1998, Plaintiff, an adult female student at Killian High School in Miami, Florida, was arrested for violation of Fla. Stat. §§ 836.11 and 775.085 [1] for her participation in the creation and distribution of an anonymous pamphlet entitled "First Amendment" (the "Pamphlet"). County's Concise Statement of Undisputed Material Facts in Support of Motion for Final Summary Judgment ("Statement") at ¶ 1; Complaint/Arrest Affidavit. The Pamphlet contains sketches, including a picture of Killian's principal, Mr. Dawson, with a dart drawn through his head and essays, including one in which the author wonders what would happen if he shot certain fellow students, as well as Mr. Dawson. *See* Pamphlet; Deposition of John Galardi at p. 8, 10.

Upon her arrest, Plaintiff was transported to the Turner Guilford Knight Correctional Facility ("TGK") where she was booked and strip searched pursuant to the County's Departmental Standard Operating Procedure ("DSOP") 11-022. In pertinent part, DSOP 11-022 provides that "newly arrested felons . . . will be completely strip searched by a correctional officer as part of the intake procedures prior to being assigned to any general population

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[1]Section 836.11 provides, in pertinent part, that it shall be a misdemeanor of the first degree "to print, publish, distribute or cause to be printed, published or distributed by any means, or in any manner whatsoever, any publication, . . .pamphlet, . . .or other printed material which tends to expose any individual . . . to hatred, contempt, ridicule or obloquy unless clearly printed thereon [is]. . . the true name and post office address of the person, . . . or organization causing the same to be printed, published or distributed." Fla. Stat. § 836.11(1)(a), (2). Section 775.085 reclassifies a misdemeanor of the first degree to a felony if the commission of the misdemeanor evidences prejudice based on, *inter alia*, race, color, ancestry or ethnicity. Fla. Stat. § 775.085(1)(a)(2).

unit/cell. . . ." DSOP 11-022(D)(5)(a). Consistent with DSOP 11-022's procedures for conducting the strip search of female arrestees, Plaintiff was required to completely disrobe; to open her mouth exposing her tongue; to lift her breasts exposing the area underneath; to squat and cough; and to bend over exposing her buttocks. Affidavit of Liliana Cuesta ("Cuesta Aff.") at ¶ 7. *See also* DSOP 11-022 (III)(D)(2)(a)-(h). After the conclusion of the strip search, Plaintiff was placed in a holding cell with five to seven other women, some of whom had also been arrested for felony offenses. Supplemental Affidavit of Liliana Cuesta ("Cuesta Supp. Aff.") at ¶3; Deposition of Liliana Cuesta ("Cuesta Depo.") at p. 104-105.

Joseph Zappia ("Zappia"), Captain of the Reception and Diagnostic Bureau of the County's Department of Corrections and Rehabilitation, explains that arrestees are not housed at TGK but instead are only temporarily detained there for transportation to either the Pretrial Detention Center or the Women's Detention Center. Consequently, while at TGK, arrestees are not assigned to a general population unit or cell. Affidavit of Joseph Zappia ("Zappia Aff.") at ¶ 4. Contrary to this procedure, Plaintiff was never placed in a general population cell because her bond was posted before she could be transported to the Pretrial Detention Center or the Women's Detention Center. Cuesta Supp. Aff. at ¶ 5; Cuesta Depo. at 106.[2]

LEGAL STANDARD

Summary judgment is authorized only when the moving party meets its burden of demonstrating that "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

[2] Zappia further explained that felony arrestees are strip searched at the commencement of the intake process at TGK to provide maximum security to the staff and other arrestees as well as to address the significant security concerns relating to transporting arrestees who may be in possession of contraband. Id. at ¶¶ 5,6.

that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). The *Adickes* Court explained that when assessing whether the movant has met this burden, the court should view the evidence and all factual inferences therefrom in the light most favorable to the party opposing the motion. *See Adickes*, 398 U.S. at 157; *Poole v. Country Club of Columbus, Inc.*, 129 F.3d 551, 553 (11th Cir. 1997)(citing *Adickes*).

The party opposing the motion may not simply rest upon mere allegations or denials of the pleadings; after the moving party has met its burden of coming forward with proof of the absence of any genuine issue of material fact, the nonmoving party must make a sufficient showing to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial. *See Celotex Corp. v. Catrell*, 477 U.S. 317 (1986); ***Barfield v. Brierton*, 883 F.2d 923, 933 (11th Cir. 1989).**

If the record presents factual issues, the Court must not decide them; it must deny the motion and proceed to trial. *See Environmental Defense Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. 1981). Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be draw from these facts. *See Lighting Fixture & Elec. Supply Co. v. Continental Ins. Co.*, 420 F.2d 1211, 1213 (5th Cir. 1969). If reasonable minds might differ on the inferences arising from undisputed facts, the n the Court should deny summary judgment. *See Impossible Electronics Techniques, Inc. v. Wackenhut Protective Sys. Inc.*, 669 F.2d 1026, 1031 (5th Cir. 1982). *See also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)("[T]he dispute about a material fact is 'genuine,' . . . if the evidence is such that a reasonable jury could return a verdict for the non-moving party.").

Moreover, the party opposing a motion for summary judgment need not respond to it with evidence unless and until the movant has properly supported the motion with sufficient evidence. *See Adickes*, 398 U.S. at 160. The moving party must demonstrate that the facts underlying all the relevant legal questions raised by the pleadings or otherwise are not in dispute, or else summary judgment will be denied notwithstanding that the nonmoving party has introduced no evidence whatsoever. *See Brunswick Corp. v. Vineberg*, 370 F.2d 605, 611-12 (5th Cir. 1967). The Court must resolve all ambiguities and draw all justifiable inferences in favor of the nonmoving party. *See Anderson*, 477 U.S. at 255.

In resolving multiple motions for summary judgment, the Court will construe the facts in the light most favorable to the nonmovant when the parties' factual statements conflict or inferences are required. *See Barnes v. Southwest Forest Indus.*, 814 F.2d 607, 609 (11th Cir. 1987).

LEGAL ANALYSIS

As an initial matter, the Court notes the parties' agreement that the issue before the Court is whether a correctional facility may constitutionally require that all newly arrested felons be subjected to a strip search prior to being assigned to general population, and thus whether DSOP 11-022 is constitutional. In the Complaint, as well as in her Motion for Summary Judgment, Plaintiff contends that the strip search to which she was subjected and the policy pursuant to which it was conducted, is unconstitutional as it violates her Fourth Amendment right to be free from unreasonable search. The County presses several arguments in opposition. First, the County argues that the strip search of Plaintiff does not implicate the Fourth Amendment. Second, the County argues that even if the Fourth Amendment applies, Plaintiff's Fourth

Amendment rights have not been violated as Plaintiff's arrest and custody was lawful and the subsequent search was reasonable.

Applicability of the Fourth Amendment

The County first argues that strip searches do not implicate and therefore should not be analyzed under the Fourth Amendment but rather under the Due Process Clause. In support, the County points to *Tennessee v. Garner*, 471 U.S. 1 (1985); *Hudson v. Palmer*, 468 U.S. 517 (1984) and *Jones v. Diamond*, 636 F.2d 1364 (5th Cir. 1981).

The County cites to *Garner* for the proposition that the Fourth Amendment addresses only seizures incident to an arrest. The County contends, therefore, that no logical reason exists to extend the Fourth Amendment to searches, strip or otherwise, which are not conducted incident to an arrest. However, a careful reading of *Garner* reveals that it neither articulates nor fairly implies the claimed proposition. The *Garner* Court merely stated that "there can be no question that apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." *Garner*, 471 U.S. at 6. Thus, the Court is unpersuaded that the Supreme Court's certain application of the Fourth Amendment to seizures through the use of deadly force necessarily implies that the Supreme Court views the Fourth Amendment as applying only to seizures, or searches, incident to arrest.

Additionally, the County points to the *Hudson* Court's pronouncement that the "Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell." The County's reliance on *Hudson* is misplaced. Plaintiff is not asserting a reasonable expectation of privacy or a Fourth Amendment violation with respect to a search of her cell and its contents, as did the plaintiff in *Hudson*. *See Hudson*, 468 U.S. at 526 (finding it

difficult to reconcile a privacy right of inmates in their cells with the concept of incarceration and the objectives of penal institutions). Rather, Plaintiff is asserting such an expectation as to her body. As the Eleventh Circuit made clear in *Justice v. City of Peachtree City*, 961 F.2d 188 (11th Cir. 1992), a case involving a Fourth Amendment challenge to a strip search, it is axiomatic that people harbor a reasonable expectation of privacy in their "private parts." *See Justice*, 961 F.2d at 191. Consequently, *Hudson* is not dispositive of the Plaintiff's claim that the Fourth Amendment applies to insure that she is free from an unreasonable intrusion upon her body. *See id.* (noting the Supreme Court's interpretation of the Fourth Amendment as entitling one to be free from unreasonable intrusion wherever there is a reasonable expectation of privacy)(citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

Finally, the County cites to *Diamond* arguing that the Fifth Circuit has interpreted *Bell v. Wolfish*, 441 U.S. 520 (1979), a Supreme Court case involving, *inter alia*, the constitutionality of visual body cavity searches, as holding that "'pretrial detainees' rights are to be determined by the Due Process Clause." Although the undersigned agrees that *Diamond* so interpreted *Bell*, the undersigned disagrees that such interpretation should inform the analysis in this case. *Diamond*, like that portion of *Bell* on which it relied, involved a constitutional challenge to correctional facility conditions and restrictions that implicated punishment and therefore due process. *See Diamond*, 636 F.2d at 1376-77 (analyzing claims concerning denial of visitation rights). *See also Bell*, 441 U.S. at 535-36.[3] Moreover, a careful reading of *Bell* reveals that the Supreme

[3] The record is devoid of any evidence that the purpose of Plaintiff's strip search was punishment or was conducted in such a way as to constitute punishment. Plaintiff's own description of the search reveals that it was consistent with DSOP 11-022. *Cf.* Cuesta Aff. at ¶ 7 and DSOP 11-022(IV)(D)(2). Moreover, DSOP 11-022 expressly provides that the "purpose of [a] search is prevention, not punishment; therefore the officer's demeanor should be professional and not personal." DSOP 11-022(IV)(B). DSOP 11-022 further provides that a "search will be

Court subjected the plaintiffs' constitutional challenge to visual body cavity searches, the relevant claim for purposes of determining the merit of the County's argument, to Fourth Amendment analysis. *See Bell*, 441 U.S. at 559-60. Consequently, the Court is unpersuaded *Diamond* disposes of Plaintiff's Fourth Amendment claim. *See, e.g., Justice*, 961 F.2d at 191, 194; *Magill v. Lee County*, 990 F.Supp. 1382, 1387 (M.D. Ala. 1998), *aff'd* 161 F.3d 22 (11th Cir. 1998).

Fourth Amendment Analysis

Lawfulness of Plaintiff's Custody

In arguing the unconstitutionality of DSOP 11-022 and the strip search at issue, Plaintiff argues that her arrest and resultant custody were pursuant to an unconstitutional statute and therefore the subsequent strip search was unconstitutional. Although Plaintiff was arrested pursuant to two statutes, § 836.11 (anonymous pamphleteering subjecting persons to ridicule) and § 775.085 (hate crime statute), Plaintiff does not identify which statute she contends is unconstitutional. Moreover, Plaintiff fails to point to any case law or to provide more than her conclusory assertion of "the statute['s]" unconstitutionality in support of this argument. Plaintiff's mere assertion is insufficient to establish that her arrest and custody were unlawful.

As a related matter, the Court notes the County's argument that Plaintiff's claim seeking a declaration that § 836.11 is unconstitutional should be dismissed. However, the Court is unpersuaded that the County's argument, particularly as it is contained in a footnote, is sufficient to establish that, as a matter of law, Plaintiff is not entitled to the requested declaratory relief. If the County wishes to press its argument for dismissal, the Court will consider a sufficiently

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conducted in a professional and dignified manner." DSOP 11-022(III).

briefed motion on the matter.

Reasonableness of the Search

Thus, the sole issue before the Court is the reasonableness of DSOP 11-022 procedures and the strip search conducted upon Plaintiff. In determining the constitutionality of the County's policy and the strip search at issue, the Court finds that the balancing test set out by the Supreme Court in *Bell* governs its decision. *See Bell*, 441 U.S. at 558.

In *Bell*, the Supreme Court held that constitutional analysis of such searches entails a balancing of the need for the particular search against the invasion of the personal rights that the particular search entailed. *See id.* at 559. In this regard, the Supreme Court instructed that courts should consider the following factors: a) the scope of the particular intrusion; b) the manner in which it was conducted; c) the place in which it was conducted; and d) the justification for initiating it. *See id.*

Scope, Manner and Place of the Search

Plaintiff does not address and therefore appears to concede that the first three factors articulated in *Bell* weigh in favor of finding DSOP 11-022 and the strip search conducted upon Plaintiff constitutional. Plaintiff focuses her argument on the allegedly insufficient justification for strip searching under DSOP 11-022. Nevertheless, an analysis of the facts of this case under the first three factors confirms that the scope, manner and place in which the strip search at issue was conducted does not offend the Fourth Amendment.

Specifically, with respect to the scope of searches conducted pursuant to DSOP 11-022 and thus Plaintiff's search, the Court finds such scope reasonable. DSOP 11-022 limits the scope of the search of a newly arrested felon to a visual inspection of the arrestee's body, albeit

requiring the arrestee to assume various positions, and does not involve an actual body cavity search. *See id.* at 559-60 (finding visual body cavity search of pretrial detainees reasonable).

In making this finding, the Court does not trivialize the humiliation Plaintiff felt upon the experience of disrobing and exposing her body to a stranger for visual inspection. However, the undersigned is unpersuaded that, in this case, the scope of the intrusion is so unreasonable as to call into question the constitutionality of DSOP 11-022. Further, to find unconstitutionality solely upon the admittedly demeaning nature of strip searching would be to suggest the unconstitutionality of all strip searches, a result inconsistent with binding precedent. *See Bell*, 441 U.S. at 558-560 (recognizing the degree of invasion a strip search exacts yet finding visual body cavity searches of pretrial detainees constitutional); *Justice*, 961 F.2d at 192 (noting the humiliating nature of a strip search yet finding strip search of juvenile arrested for loitering and truancy constitutional).[4]

With respect to the manner and place in which DSOP 11-022 requires officers to conduct strip searches, the Court finds such to be similarly reasonable. *See Justice*, 961 F.2d 188 (finding a strip search performed by a same sex officer, using a room where only the officer and arrestee were present was reasonable as to place and manner). DSOP 11-022 requires that a strip search of an arrestee be conducted in a professional and dignified manner, individually and in an area designed to provide maximum privacy. *See* DSOP 11-022(IV)(D). Moreover, only a female officer may conduct a strip search of a female arrestee. *See* DSOP 11-022(III). The record is

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[4]To the extent Plaintiff argues that DSOP 11-022's requirement of having an arrestee remove all of their clothing rather than just remove the outer clothing is unreasonable, the Court is unpersuaded that such a difference is of constitutional significance. *See Magill v. Lee County*, 990 F.Supp. 1382, 1390 (M.D. Ala. 1998)("The constitutional balancing of the inmate's rights and jail's concerns does not necessarily turn on the issue of whether the inmates are allowed to wear a bra and panties."), *aff'd* 161 F.3d 22 (11th Cir. 1998).

devoid of any evidence that the strip search conducted upon Plaintiff was not conducted consistent with these requirements.

Justification for the Search

As noted above, Plaintiff's attack on the constitutionality of the strip search to which she was subjected, and thus DSOP 11-022, centers on whether the search was justified. Specifically, Plaintiff argues that because the officers conducting the search lacked a particularized basis for the search and because DSOP fails to require such a basis but rather authorizes routine strip searching, DSOP 11-022 and the search conducted upon Plaintiff are unconstitutional. In support, Plaintiff points to a number of cases from other jurisdictions purportedly holding that routine or blanket policies requiring strip searching are unconstitutional. A careful analysis of the authorities cited by Plaintiff reveal that they fail to compel a finding of unconstitutionality in the instant case.

All of the cases cited by Plaintiff in which the court found the policy and strip search unreasonable involved minor, misdemeanor offenses, a fact which clearly drove the respective courts' holdings.[5] *See, e.g., Masters v. Crouch*, 872 F.2d 1248, 1257 (6th Cir. 1989)(finding the law clearly established that a person charged only with a minor traffic offense or nonviolent offense may not be strip searched unless there are reasonable grounds); *Watt v. City of Richardson Police Dep't*, 849 F.2d 195 (5th Cir. 1988)(finding strip search of female arrested for failure to license dog unreasonable); *Walsh v. Franco*, 849 F.2d 66 (2nd Cir. 1988)(finding strip and body cavity search of person arrested for failure to pay parking tickets unconstitutional);

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[5]In the interests of brevity, the Court will not list all of the cases cited by Plaintiff but notes the chart of said cases provided at the conclusion of Plaintiff's Cross Motion for Summary Judgment and Incorporated Memorandum of Law.

Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1273)(7th Cir. 1983)(finding insubstantial the need for a strip search of female arrestees charged only with misdemeanor offenses).[6] Such is not the case here.

It is undisputed that DSOP 11-022 requires the strip searching of all newly arrested *felons* at the commencement of the booking process, and it is this policy that Plaintiff attacks. It is equally undisputed that Plaintiff was arrested for a felony offense. Plaintiff attempts to minimize this fact by characterizing her offense as nothing more than the distribution of an anonymous pamphlet evincing no more than ordinary adolescent protest.[7] Nevertheless, the fact remains that Plaintiff was delivered to TGK as a felony arrestee.

In addition to pointing to the cases striking down blanket policies that authorized the strip searching of misdemeanor arrestees, Plaintiff points to the Eleventh Circuit's decision in *Justice* to argue that regardless of whether there is a blanket policy regarding strip searches, some particularized determination must be made before a strip search of a felon arrestee may be constitutionally undertaken. In *Justice*, the Eleventh Circuit considered the constitutionality of a strip search of a thirteen year-old female arrested for loitering and truancy and who was not going to be placed in contact with other arrestees but was to be released to her mother. *See*

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[6]In any event, the authority cited by Plaintiff is insufficient to compel this Court to find that DSOP 11-022 policy of strip searching *felons* upon entry into correctional facilities is unconstitutional as the cases cited deal almost exclusively with true "blanket" policies that authorized the strip searching of persons charged with misdemeanor offenses.

[7]A careful review of the Pamphlet reveals that it was not just a satirical pamphlet containing ordinary adolescent protest, as Plaintiff would suggest. Rather, the Pamphlet contained depictions of the contributors' principal with a dart through his head and musings about the consequences of shooting the principal and fellow students. The Court is not inclined to find that Plaintiff's participation in the creation and distribution of such material undercuts the County's justification for conducting Plaintiff's strip search as the Pamphlet's content reveals a certain indicia of violence.

Justice, 961 F.2d at 190. The Eleventh Circuit held only that law enforcement may conduct a strip search of a juvenile, even for a minor offense, but they must have reasonable suspicion. In so holding, the court explained that the strip search of a *juvenile* based on less than probable cause 'instinctively gives us the most pause.' *See id.*, 961 F.2d at 193 (quoting *Bell*)(emphais added). The undersigned thus is unpersuaded that *Justice*'s holding extends to prohibit a strip search of an adult felony arrestee before placement in the general population absent a particularized determination that security in the correctional facility will be compromised. *See Magill*, 990 F.Supp at 1390 (rejecting the argument that *Justice* mandated any particularized determination with respect to adult arrestees who will be placed in contact with other detainees).

At this juncture, the Court notes Plaintiff's emphasis on the fact that she was never placed in general population but rather was released directly from her holding cell.[8] However, the record is devoid of any evidence that TGK personnel knew at the time Plaintiff was booked that Plaintiff would not be transported thereafter to a general population cell at the Pretrial Detention Center or the Women's Detention Center. As it happened, Plaintiff was bonded out before she was transported. The constitutionality of DSOP 11-022 simply cannot turn on the possibility that an arrestee will be bonded out before she is transported and placed in a general population cell. To do so would mandate powers of clairvoyance that the Constitution clearly does not require.

Moreover, even assuming that TGK personnel knew Plaintiff would never be placed in general population, the undisputed record evidence establishes Plaintiff was not placed in a private cell but was placed in a holding cell with five to seven other arrestees, some of whom had

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[8]In fact, in her reply memorandum, Plaintiff recharacterizes the issue before the Court as whether the County can constitutionally strip search arrestees without regard to whether they are in fact assigned to general population. See Plaintiff's Reply to County's Response in Opposition to Plaintiff's Motion for Partial Summary Judgment at p. 2.

also been arrested for felony offenses. Thus, Plaintiff was placed in contact with other arrestees and there is no evidence that the other arrestees with whom she came in contact were not then placed in general population. Consequently, the security dangers and concerns inherent in the management of correctional facilities were still present and no less serious. *See Magill*, 990 F.Supp. at 1390 (noting that "even those who are only placed in a holding cell could pose a danger to themselves, other inmates and the guards.").

The Court also notes Plaintiff's contention that she represented little if any threat of introducing contraband into the correctional facility because she entered the facility after being arrested at school (not a drug den) and, like all arrestees, in the custody of police officers. However, these facts do not undercut the possible security dangers that newly arrested felons present for correctional personnel. In reaching this conclusion, the Court finds *Bell* instructive.

In upholding the constitutionality of visual body cavity searches of pretrial detainees after contact visits with individuals from outside the institution, the Supreme Court reasoned that such searches were justified to address the serious security dangers inherent in detention facilities. *See Bell*, 441 U.S. at 559, 560. Certainly, if visual body cavity searches of pretrial detainees after contact visits are justified despite the highly regulated nature of such contact, strip searches of newly arrested felons after unregulated contact in the community at large are justified. After all, newly arrested felons, no less than detained inmates, pose a potential danger to themselves, other inmates and correctional personnel, particularly, where as here, the arrestee's detention may involve transportation from one facility to another. *See Bell*, 441 U.S. at 559 ("A detention facility is a unique place fraught with serious security dangers. Smuggling of money drugs, weapons and other contraband is all too common an occurrence."); *Justice*, 961 F.2d at 193

(recognizing that strip searches are a valuable tool in maintaining security and locating contraband). Thus, as *Bell* requires, the scope, place, manner and justification for strip searches under DSOP 11-022 support the constitutionality of the policy.

Reduced to its essence, Plaintiff's argument is that in addition to conducting strip searches that comport with the *Bell* factors, correctional personnel must make individualized determinations as to whether the nature of the felony with which each arrestee is charged implicates a security concern for the institution. The Court is unpersuaded that the Constitution mandates this additional requirement. As other courts have reasoned, allowing correctional personnel to strip search based on the *class* of offense, specifically felonies, obviates the hundreds of individualized determinations that would be necessary absent such a bright line rule. *See Davis v. City of Camden*, 657 F.Supp. 396 (D. N.J. 1987)(finding that a "blanket policy" covering only persons charged with felonies or misdemeanors involving weapons or contraband is justified because it is based on a reasonable generalization that such persons are likely to be concealing weapons or contraband); *Smith v. Montgomery County, Maryland*, 643 F.Supp. 435, 437 (D. Md. 1986)(noting that the absence of a bright line rule based on the offense requires jail personnel to "ponder the niceties of Fourth Amendment law every time they admit a potentially dangerous inmate into their facility"). In fact, to the extent the Constitution requires any particularized determination with respect to strip searching an adult felony arrestee who may be placed into a general population unit or cell, a determination of reasonable suspicion is supplied by the felony status of the offense. *See Smith*, 643 F.Supp. at 438 (approving the determination of reasonable suspicion based on the category of the criminal charge).

In conclusion, in this case, the Court is convinced that the admittedly significant personal

privacy intrusion sustained by Plaintiff pursuant to the County's policy of strip searching adult, felony arrestees, when balanced against the reasonableness of the scope, manner and place of the search as well as the County's legitimate institutional security concerns, was reasonable and thus constitutional. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant Miami Dade County's Motion to Dismiss and for Final Summary Judgment is GRANTED as stated herein. It is further

ORDERED AND ADJUDGED that Plaintiff's Cross Motion for Summary Judgment is DENIED. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion for Leave to File Plaintiff's Supplement Affidavit *Nunc Pro Tunc* to May 25, 1999, or in the Alternative, to Rule that the Supplement Affidavit was Authorized to be filed is GRANTED. It is further

ORDERED AND ADJUDGED that the County's Motion to Accept Supplemental Affidavit, contained in its Response to Plaintiff's Motion for Leave to File Supplemental Affidavit, is GRANTED. In granting this Motion, the Court notes Plaintiff's concession as to the propriety of the requested relief.

DONE AND ORDERED in Chambers at Miami, Florida, this 14 day of April, 2000.

URSULA UNGARO-BENAGES
UNITED STATES DISTRICT JUDGE

copies provided:
counsel of record