

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Case No. 05-3619(JHR)

Albert W. Florence,

Plaintiff,

-against-

**STATEMENT OF UNDISPUTED
MATERIAL FACTS**

**Board of Chosen Freeholders of the County of
Burlington; et. al.**

Defendants.

Pursuant to Local Civil Rule 56.1, Plaintiff submits this Statement of Undisputed Material Facts in support of Plaintiff’s motion for summary judgment against Defendants Board of Chosen Freeholders of the County of Burlington, et. Al. and Essex (collectively, “Defendants”). With all due respect, the facts listed in paragraphs 1-54 below are deemed undisputed because they are quoted from this Court’s facts stated in its March 20, 2008 Opinion & Order, pages 1-12, certifying the class.

“A. Facts Relating to Plaintiff’ Arrest, Detention, and Alleged Strip Searches

1. On March 3, 2005, Plaintiff was a passenger in his sport utility vehicle, which was being driven by his wife on Interstate Highway 295 in Burlington County. (Am. Compl., ¶¶ 13-14.).

2. The vehicle was stopped by a New Jersey State Trooper, who directed Florence to exit the passenger compartment and arrested him based on an Essex County bench warrant that was issued on April 25, 2003. (Pl. Br., p. 1.).

3. Plaintiff contends that this warrant charged him with a form of civil contempt that is not an indictable offense. (Id., p. 2.) In fact, the warrant related to a fine which Plaintiff had already paid. (Id., p.2.) Although Florence protested the warrant’ validity, he was taken by the State Trooper to the Burlington Jail. (Am. Compl., ¶¶ 15, 17.)

3. Once at the Burlington Jail, Plaintiff was subjected to what he alleges was a full strip and body cavity search. (Id., ¶ 17.) According to Florence’ deposition testimony, an officer directed him to remove all his clothing and, while nude, he was told to open his mouth, lift his tongue, hold his arms out, turn fully around, and lift his genitals. (Pl. Exh.D, 70:23-71:9.).

4. Plaintiff complied with these requests while the officer sat about an arm’s length in front of him. (Id., 213:16-18.) The officer then instructed Florence to shower. (Id., 72:4.) Thereafter,

Plaintiff was held at the Burlington Jail for six days.(Am. Compl., ¶ 17.)

5. After the sixth day, the Essex County Sheriff's Department collected Plaintiff and transported him to the Essex Jail. (Id., ¶ 26.) Upon his arrival there, Florence was processed and again subjected to what he alleges was a full strip and body cavity search. (Id.).

6. According to Plaintiff's deposition testimony, Essex Jail officers told him and four other arrestees to enter separate shower stalls, strip off all their clothing, and shower. (Pl. Exh. D, 128:8-12.) Plaintiff and the other arrestees complied by removing their clothes while two officers watched. (Id., 215:22-216:11.) Plaintiff then showered, during which he was directed to open his mouth and lift his genitals. (Id., 128:23-129:9.)

7. He was then ordered to turn around so that he faced away from the officers, after which he was told to squat and cough, and then to turn back around to face front. (Id., 129:9-15.) Following this episode, Florence was placed with the general jail population until the next day when the charges against him were dismissed. (Am. Compl., ¶ 29.)

B. Evidence in the Record

- . Burlington Jail's Procedures

8. The Burlington Jail's inmate searching procedures are based on a document entitled "Policies and Procedures: Search of Inmates – No. Section 1186" (hereinafter "Section 1186" (See Pl. Exh. L.).

9. Section 1186 defines a strip search as "a physical search of an inmate . . . while unclothed consisting of routine and systematic visual observation of the inmate' physical body to look for distinguished identifying marks, scars or deformities, signs of illness, injury or disease and/or the concealment of contraband on the inmate' body." (Id., p. 1.).

10. The document also provides that "(a) person who has been detained or arrested for commission of an offense other than a crime . . . shall not be subject to a strip-search unless there is a reasonable suspicion that a weapon, controlled dangerous substance or contraband will be found." (Id., p. 2.)

11. Several Burlington Jail officers and its warden testified in depositions about these Procedures.

12. Lieutenant Douglas Chilton has worked for the Burlington Jail since 1997. He executed a document related to Plaintiff' alleged strip search entitled " Search Authorization Form." (See Pl. Exh. N.) This form indicates that Plaintiff was not strip searched. (Id.).

13. During Lieutenant Chilton's deposition, he explained that arrestees who are brought in for non-indictable offenses are subjected to a "visual observation," while those admitted for indictable offenses are strip searched. (Pl. Exh. J, 12:3-5.) He further explained that Florence's Strip Search Authorization Form was marked "not strip searched" because he was admitted for a "failure to appear," which is a non-indictable offense, and which mandates only a visual observation during intake. (Id., 24:15-25:2.)

14. Officer Haywood Reeder has worked at the Burlington Jail since 1990. He, too, confirmed that arrestees admitted for non-indictable offenses, such as civil contempt, should not be strip searched. (Pl. Exh. F, 13:8; 13:18-14:2.)

15. Relatedly, he defined a strip search as searching various parts of a nude inmate's body for contraband, scars, marks, or tattoos. (Id., 14:3-10, 19:6-9.)

16. By contrast, all inmates, irrespective of whether they are indictable or non-indictable, are subjected to a visual observation. (Id., 17:14-19, 27:1-7.)

17. According to Officer Reeder, a visual observation includes checking a nude arrestee for scars, marks, and tattoos while he strips for a mandatory shower, instructing the nude arrestee on the application of a delousing agent, then instructing the nude arrestee to change into jail clothing following his shower. (Id., 14:20-15:10, 16:10-18:22, 23:7-10, 26:16-20.)

18. Officer Charles Palmer has worked for the Burlington Jail since 2000. He also explained that arrestees admitted for non-indictable offenses are subjected to a visual observation. (Pl. Exh. G, 5:24-6:7.)

19. Officer Palmer further testified that a visual observation involves taking an inmate into the shower area, having them remove all their clothing, directing them to turn around while nude so the officer can look for bruises and distinguishing marks, and then having the inmate take a shower. (Id., 6:10-18, 8:8-14, 9:14-10:24, 12:24-13:12.)

20. According to Officer Palmer, the difference between a visual observation and a strip search is that, with the latter, officers direct arrestees to spread their buttocks and/or lift their genitals. (Id., 23:8-14.) However, he also acknowledged that he has found genital piercings and tattoos during visual observations, (id., 13:13-20,) which suggests there is at least some examination of the genitals during a visual observation.

21. Officer Sean Gallagher has worked for the Burlington Jail since 1996. He, like the other officers, testified that non-indictable arrestees, such as those arrested for civil contempt, are

subjected to a visual observation. (Pl. Exh. H, 19:22; 19:25-20:7.)

22. Moreover, he explained that a visual observation entails taking the arrestee to a shower room, having him remove his clothing and turn around while the officer looks at the arrestee's nude body to check for scars, marks, tattoos, and body vermin, before finally instructing the arrestee to shower with a delousing agent. (Id., 11:9-15, 12:3-18, 13:4-24, 19:22-24, 32:24-33:5, 54:4-12.)

23. During these visual observations, Officer Gallagher directs inmates with hanging genitalia to lift their genitals in order to look for contraband, scars, marks, and tattoos. (Id., 15:14-25.)

24. When asked how this differed from a strip search, Officer Gallagher explained that strip searches are "little more thorough," and involve having the inmate bend over and spread his buttocks so the officer can "get a view of their anus to see if there is anything that would be suspicious looking" (Id., 18:22-19:3.)

25. In any event, Officer Gallagher acknowledged that all arrestees, whether indictable or non-indictable, are required to take off their clothing while the officer visually observes them and has them turn around. (Id., 54:4-12.)

26. According to Officer Gallagher, this is required by the Burlington Jail' custom and practice, which every corrections officer follows. (Id., 54:13-25.)

27. Lieutenant Jerry Coleman has worked at the Burlington Jail since 1990. He explained that arrestees who are not indictable are subjected to a visual observation as part of the intake process. (Pl. Exh. I, 11:12-14.)

28. According to Lieutenant Coleman, a visual observation involves a corrections officer taking the arrestee to a shower room where he directs the arrestee to remove his clothing and turn around while the officer checks the arrestee' front and back for deformities, bruises, marks, tattoos, and puncture wounds. (Id., 11:9-21, 22:12-19, 24:1-21, 30:15-18.)

29. Lieutenant Coleman also drew a distinction between a visual observation and a strip search, claiming that the latter requires arrestees to bend down, squat, and lift their genitals. (Id., 30:23-24.)

30. Juel Cole has worked at the Burlington Jail since 1976 and has been its warden since 1997.

31. Like the officers, Warden Cole confirmed that an arrestee admitted for a non

indictable offense is subjected to a visual observation, which involves an officer “ making a quick check” on a nude inmate while he changes clothing or during his shower for bruises, tattoos, or “ item like that of any importance.” (Pl. Exh K, 25:10-26:2.)

32. Sometimes, though apparently not always, the officer conducting the visual observation will direct the nude arrestee to turn around to facilitate a full check of the arrestee’s entire body. (Id., 26:3-13.)

33. Interestingly, Warden Cole acknowledged that if he directed an inmate to remove his clothing, he would be telling the inmate to strip. (Id.,31:7-10.)

-. Essex Jail’s Procedures

34. The Essex Jail’ inmate searching procedures during the proposed class period are based on two documents: (1) a document entitled “ Department of Public Safety: General Order No. 89-17” (hereinafter “ Order No. 89-17” and (2) one called “ Department of Corrections: Administrative Directive No. 04-06” (hereinafter “ Directive No. 04-06”).

35. Order No. 89-17 went into effect in September 2002 and provides that, upon arrival at the Essex Jail, all arrestees shall be strip searched and then required to shower. (See Calabro Cert., 8/2/07, Exh. D(1), p. 3, § V.A.2. & 3.).

36. It further states that a strip search is to consist of having an arrestee undress completely. (Id., p. 4, § V.B.) Officers are supposed to “ observe carefully while the inmate undresses.” (Id.)

37. Moreover, officers are to examine the interior of the arrestee’ mouth; his or her ears, nose, hair and scalp; his or her fingers, hands, arms, and armpits; and all body openings and the inner thighs. (See id.)

38. Order No. 89-17 was superceded in April 2005 by Directive No. 04-06. The latter document provides that officers are required to “ conduct a thorough search of individual inmates[.]” (Calabro Cert., 8/2/07, Exh. D(2), p. 4, § VII.c.5.)

39. It further directs officers to have all arrestees shower during intake. (Id.,p. 4, § VII.c.6.)

40. Moreover, officers are required to “ observe and document” any evidence of notable body markings; body vermin or disease; and sores, wounds, or other injuries. (Id., p. 4, § VII.c.7.)

41. In contrast with Order No. 89-17, Directive No. 04-06 facially prohibits strip searching non indictable arrestees in the absence of reasonable suspicion that the search will produce a weapon, drugs, or contraband. (See id., p. 4, § VII.c.8 (referring to the strip search

procedures outlined in subchapter 10A:31-8 of the New Jersey Administrative Code.)

42. Sergeant Thomas Logue has worked for the Essex Jail since 2005 and was on intake duty on March 9, 2005, the night Plaintiff was booked. (Pl. Exh.O, 10:10-14.) .

43. He testified that, for intake processing purposes, all arrestees are treated the same as one another, without any distinction based on whether the arrestee is accused of an indictable or a non-indictable offense. (Id., 13:23-14:11.) According to Sergeant Logue, during processing, officers call up to three arrestees at a time to enter the shower area. (Id., 19:21-23, 20:1, 21:16-18.)

44. Once there, corrections officers direct the arrestees to remove their articles of clothing and place them into gray bins. (Id., 22:2-9, 22:23-23:1, 23:7-10.) The arrestees then simultaneously undress completely while the officers view their nude bodies. (Id., 23:2-6, 25:21-24,33:22-34:5.)

45. Toward the end of his testimony, Sergeant Logue repeated that the same intake procedures are conducted for all arrestees irrespective of the nature of the charged offense. (Id., 34:6-16.)

46. Officer Richard Monroig has worked at the Essex Jail since 1995. Like Sergeant Logue, Officer Monroig testified that arrestees are never segregated based on the nature of their offense– indictable versus non-indictable– the intake process. (Pl. Exh.P, 9:21-10:1.)

47. Indeed, Officer Monroig explained that processing officers are not even trained as to which charges are indictable and which are not indictable. (Id., 37:16-25.)

48. According to Officer Monroig, as part of the intake process, arrestees are lead, three at a time, to a shower area where officers direct them to remove their clothing and shower. (Id., 12:12-15, 13:12-15, 13:21-24, 13:25-14:2, 14:22, 15:10-14, 17:7-9.) The arrestees then take their clothes off and stand nude while an officer watches. (Id., 16:3-5, 17:13-15, 21:15-18.)

49. Lieutenant Michael Salzano has worked for the Essex Jail since 1987. He works in the shower room daily and is very familiar with the Essex Jail' intake procedures. (Pl. Exh. Q, 6:13-16, 13:2-4.) These procedures include a mandatory shower. (Id., 12:11-23.)

50. To this end, officers bring up to three arrestees into the shower room at a time, and direct them to remove their clothing and take a shower. (Id., 18:1-5, 20:19-25.)

51. Like Sergeant Logue, Lieutenant Salzano testified that this procedure is the same no matter whether the arrestee is admitted for an indictable or non-indictable offense. (Id., 22:11-20, 32:13-19.)

52. Larry Glover has been the warden at the Essex Jail since 2004. He testified that arrestees are searched to ensure they have no contraband. (Pl. Exh. R, 24:8-10.)

53. This process includes having as many as three arrestees enter the shower area and remove their clothing, which officers then search. (Id., 24:15-17, 25:5-6.)

54. The arrestees then shower and are directed to put on jail-issued clothing. (Id., 24:20-22.)”

55. On March 20, 2008 this Court granted Plaintiff’s motion to certify the class, defined by this Court as:

“All arrestees charged with non-indictable offenses who were processed, housed or held over at Defendant Burlington County Jail and/or Defendant Essex County Correctional Facility from March 3, 2003 to the present date who were directed by Defendants’ officers to strip naked before those officers, no matter if the officers term that procedure a “ visual observation” or otherwise, without the officers first articulating a reasonable belief that those arrestees were concealing contraband, drugs or weapons”

56. The Order found “all non-indictable arrestees are subjected to the same intake processes at each facility” (Order,p15); “the record indicates that all arrestees at the Essex Jail are subjected to the same intake procedures without regard to the nature of their charged offense.(See Pl. Exh. O, 13:23-14:11, 34:6-16; Pl. Exh. P, 9:21-10:1; Pl. Exh. Q, 22:11-20, 32:13-19.)” (Order,p27) and “... the Court notes that there is similarly testimony in the record indicating that all arrestees at the Burlington Jail– indictable or non-indictable– subjected to the so-called “visual observation.” (See Pl. Exh. F, 17:14-19, 27:1-7; Pl. Exh. H, 54:4-12.)” (Order, p27,fn10)

57. Plaintiff maintains that Defendants’ intake procedures violate the Fourth Amendment of the United States Constitution, (Am. Compl., ¶ 57,) which is made applicable to the States through the Fourteenth Amendment.

Respectfully submitted;

/s Michael Calabro

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