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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

BRANDON D. JACKSON, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 2:16-cv-02050-TSH**
	)	
TIMOTHY F. BUKOWSKI, *et al.*,	)	
	)	
Defendant.	)	

SUMMARY JUDGMENT ORDER

Plaintiff, a pretrial detainee proceeding *pro se*, filed suit, challenging the strip-search[1] policy of the Jerome Combs Detention Center (jail) and seeking a refund for returned medication. This case concerns Defendants' motion for summary judgment [21], to which Plaintiff has responded [25]. Based on the parties' pleadings, depositions, affidavits, and supporting documents, Defendants' motion for summary judgment is granted.

LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A dispute is 'genuine' 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Zaya v. Sood*, 836 F.3d 800, 804 (7th Cir. 2016) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). The moving party has the burden of providing proper documentary evidence to show the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Once a properly supported

[1] In this case, the term "strip search" is defined as a visual inspection of a detainee's naked body without any physical touching or intrusion.

motion for summary judgment is filed, the burden shifts to the non-moving party to demonstrate with specific evidence that a triable issue of fact remains for trial. *Gracia v. Volvo Europa Truck, N.V.*, 112 F.3d 291, 294 (7th Cir. 1997). All facts must be construed in the light most favorable to the non-moving party, and all reasonable inferences must be drawn in his favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson*, 477 U.S. at 248. A scintilla of evidence in support of the non-movant's position is insufficient to defeat a motion for summary judgment; "there must be evidence on which the jury could reasonably find for the [non-movant]." *Id*. at 252.

BACKGROUND

Defendants are Kankakee County and jail officials employed in the following capacities: Timothy F. Bukowski, Kankakee County Sheriff; Chad Kolitwenzew, Chief of Corrections; Robert Schultz, Deputy Chief of Corrections; Angie Kimps, registered Nurse; Misty Bright, Corrections Sergeant; and Correctional Officers Antonio Emory, Kenneth Gresham, Todd Schloendorf, Steven Swale, and Robert Bartucci. Plaintiff alleges that Defendants Bukowski, Kolitwenzew, Schultz, Bright, Emory, Gresham, Schloendorf, Swale, and Bartucci violated his constitutional rights by conducting and recording several strip searches. Plaintiff also alleges that Defendants Kolitwenzew and Kimps deprived him of a refund for returned medication.

MATERIAL FACTS

Plaintiff is currently awaiting trial for a 2013 murder and is considered a "high-risk-movement" detainee by Cook County. [22, p. 24, 6-9]. When Plaintiff requires transportation for pretrial proceedings, two Cook County officers, equipped with body cameras, arrive at the jail, conduct a "pat down" search, and cuff and shackle Plaintiff. [21, p. 5, 15]. Plaintiff asserts

that after leaving the jail, he is under strict supervision and has a recording device "trained on him at all times" except during his pretrial proceedings. [25-1, p. 4]. Upon Plaintiff's return to the jail, the Cook County officers remove Plaintiff's restraints, and release him to the custody of the jail's correctional officers. Thereafter, Plaintiff undergoes a strip search in a room equipped with a "closed circuit video" camera. [21-5, p. 3, 12].

The jail's strip-search policy, which is documented in the jail's handbook that is provided to all inmates, states, in pertinent part, the following:

> "All inmates are subject to a pat down search of their person or property at any time without prior notice by staff. All inmates housed in housing units are subject to a strip search of their person or property at any time without prior notice by staff." [21-5, p. 5].

Defendant Kolitwenzew provided the following explanation regarding the respective purpose underlying the Jail's strip-search policy and the recording of strip searches:

> "The purpose of this policy is to ensure that no contraband, including, but not limited to, weapons, drugs, money, is brought into the facility. The introduction of contraband into the facility poses a great risk of danger to inmates and correctional staff members at risk. Further, the purpose of videotaping strip searches is the ability to review the videotapes in the event an inmate complains of wrongdoing on the part of a correctional officer during the strip search." [21-5, pp. 2-3, 11].

Plaintiff's complaint concerned five strip searches that occurred from November 3, 2014, to February 1, 2016. During each occasion, two correctional officers required Plaintiff to (1) remove all his clothing; (2) open his mouth and move his tongue; and (3) bend over and spread the cheeks of his buttocks, squat and cough. The officers then searched each piece of removed clothing before allowing Plaintiff to get dressed. Following three of the five strip searches, Plaintiff timely filed a grievance, complaining about the legality of the strip searches. In his final

two grievances, Plaintiff noted that the strip searches were being recorded. Each response to Plaintiff's grievances referred him to the aforementioned policy in the jail's inmate handbook.

Defendants Kolitwenzew and Schultz had exclusive access to the strip search recordings, which were retained for 30 days and were not viewed by anyone else. Plaintiff contends that no legitimate interest in conducting the strip search exists because the nature of the supervision he experienced while away from the jail would not afford the opportunity to acquire contraband. Plaintiff also contends that the recording of his strip searches caused him stress and humiliation, which resulted in his diagnosis of depression.

From May 27, 2015, to March 27, 2016, Plaintiff filed ten grievances, complaining that he was charged $25.53 and $25.45 for non-prescription medication that he had previously obtained from the jail without cost and had later returned. In his prayer for relief, Plaintiff requested a full reimbursement of the charges. Defendant Kimps responded to the majority of Plaintiff's grievances, informing him that refunds were not permitted. On May 20, 2016, the jail reimbursed Plaintiff for the total amount charged.

ANALYSIS

The Court notes that in support of their motion for summary judgment, Defendants raise several arguments as to why they are entitled to summary judgment. For example, Defendants contends that Defendant Bukowski and specific correctional officers are entitled to summary judgment because they did not strip search Plaintiff. Defendants also contend that because Plaintiff did not file a grievance after specific strip searches, the correctional officers that conducted those searches were entitled to summary judgment. However, the Court declines to address Defendant' technical claims and instead, considers the merits of Plaintiff's constitutional challenge to the jail's strip-search policy.

In the context of pretrial detention, the applicable standard is the Due Process Clause of the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979). However, a strip search conducted in either a jail or prison can constitute cruel and unusual punishment proscribed by the Eighth Amendment. *King v. McCarty*, 781 F.3d 889, 897 (7th Cir. 2015). A claim arises under the Eight Amendment when a Plaintiff "plausibly alleges that the strip-search in question was motivated by a desire to harass or humiliate rather than by a legitimate justification, such as the need for order and security in prisons." *Id*. "[O]nly those searches that are maliciously motivated, unrelated to institutional security, and hence totally without penological justification are considered unconstitutional." *Whitman v. Nesic*, 368 F.3d 931, 934 (7th Cir. 2004) (internal quotation marks omitted). Although a legitimate justification may exist, a strip search may violate the Eight Amendment if it is conducted in a manner that shows the intent to humiliate and cause psychological harm. *King*, 781 F.3d at 897.

In his response in opposition to Defendants' motion for summary judgment, Plaintiff neither challenges the stated purpose underlying the jail's strip-search policy nor the manner in which the strip searches at issue were conducted. Instead, Plaintiff claims impossibility—that is, because of his designation as a high-risk-movement detainee, the circumstances surrounding his monitored movement and strict supervision made it impossible for him to acquire any contraband while being transported to and from pretrial proceedings. However, in *Peckham v. Wisconsin Department of Corrections*, 141 F.3d 694 (7th Cir. 2009), the Seventh Circuit considered and rejected the same argument Plaintiff raises.

In *Peckham*, the Plaintiff raised a generalized claim that the strip searches she endured were unconstitutional. *Id*. at 696. In particular, the Plaintiff claimed that she was subjected to strip searches though "she never left the sight of her guard escorts" and "often continuously wore

handcuffs and leg irons." *Id*. at 695. The Plaintiff also produced " 'expert' affidavits" attesting to the harmful effect of strip searches and their ineffectiveness at detecting contraband. *Id*. According to the Plaintiff, the strip searches caused her "psychological injury." *Id*. In affirming the District Court's grant of summary judgment in the Defendant's favor, the Seventh Circuit concluded that the jail's strip-search policy was enacted for "legitimate, identifiable purposes" and the Plaintiff failed to allege sufficient facts from which a jury could conclude that the strip searches were performed for harassment purposes. *Id*. at 697.

In this case, the stated purpose underlying the jail's strip-search policy was to eliminate the risk posed to prisoners and staff by the introduction of contraband such as weapons and drugs into a highly controlled environment, which is reasonably related to a legitimate penological interest. See *Bell*, 441 U.S. at 558-60 (concluding that strip searches of pretrial detainees are "reasonable" because they are prudent measures against the smuggling of contraband into the facility). See *Florence v. Board of Chosen Freeholders of County of Burlington*, 566 U.S. 318, 328 (2012) (collecting cases for the proposition that "correctional officials must be permitted to devise reasonable search policies to detect and deter the possession of contraband in their facilities."). "[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of retained constitutional rights of both convicted prisoners and pretrial detainees." *Bell*, 441 U.S. at 546.

Given the Seventh Circuit's decision in *Peckham*, which the Court finds dispositive, and viewing the evidence presented in the light most favorable to Plaintiff, the Court concludes no jury could reasonably find Plaintiff has alleged sufficient facts that demonstrate the strip searches performed were undertaken to harass, humiliate, or punish Plaintiff within the meaning of the

Eight Amendment. Accordingly, summary judgment is granted in Defendants' favor. However, the Court's analysis on this issue does not end here.

In the merit review order, the Court gleaned that Plaintiff's complaint also presented an alternative argument that regardless of the constitutionality of the jails strip search policy, the recording of his strip searches was unjustified. Plaintiff bases his claim on his admittedly unsubstantiated belief that female correctional officers may have been viewing the strip-search recordings. To state a viable claim under the Eighth Amendment, however, Plaintiff must show that the recordings of his strip searches were conducted in a harassing manner intended to humiliate and inflict psychological pain. *Calhoun v. DeLuca*, 319 F.3d 936, 939 (2003). Aside from this supposition in his complaint, Plaintiff does not describe any harassing, humiliating, or demeaning comments or behavior on the part of any Defendant that suggests the recording of his strip search was conducted in an unconstitutional manner. Moreover, the record shows that Defendants Kolitwenzew and Schultz, the Jail's administrators, were the only officials who had access to the recordings, which were only kept for a reasonable period consistent with the jail's stated purpose. Accordingly, the Court grants Defendants' motion for summary judgment on this issue.

The Court also notes that Plaintiff did not respond the Defendants' argument that his reimbursement claim is moot because Plaintiff received the relief he sought when the jail credited Plaintiff for the charges at issue. "Upon deciding a motion for summary judgment, the Court will conclude that there is no genuine issue of material fact as to any proposed findings of fact to which no proper response is set out." *Burdick v. Koerner*, 179 F.R.D. 573, 574 (E.D. Wis. 1998). Because Plaintiff, by his failure to respond, does not dispute that he received the relief

requested with regard to his reimbursement claim, we grant summary judgment in Defendants' favor.

V. QUALIFIED IMMUNITY

Because the Court has granted summary judgment in Defendants' favor, the Court need not address defendant's claims that he is entitled to qualified immunity. *Van den Bosch v. Raemisch*, 658 F.3d 778, 787, n. 9 (7th Cir. 2011).

IT IS THEREFORE ORDERED:

1) Defendants' motion for Summary Judgment [21] is GRANTED pursuant to Fed. R. Civ. P. 56. The Clerk of the Court is directed to enter judgment in favor of Defendant and against Plaintiff. The case is terminated, with the parties to bear their own costs. All deadlines and internal settings are vacated. All pending motions not addressed in this Order are denied as moot. Plaintiff remains responsible for the $350 filing fee.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal *in forma pauperis* MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *See also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999) (an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000) (providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 4th day of August, 2017.

s/ Tom Schanzle-Haskins

TOM SCHANZLE-HASKINS
UNITED STATES DISTRICT JUDGE