

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

FILED
CLERK, U.S. DISTRICT COURT
FEB 18 2004
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

NOELLE WAY,) No. CV 01-5401 CBM (Ex)
Plaintiff,) ORDER DENYING MOTION FOR
v.) SUMMARY JUDGMENT
COUNTY OF VENTURA, et al.,
Defendants.

The matter before the Court, the Honorable Consuelo B. Marshall, Chief Judge, presiding, is Defendants Karen Hanson and Sheriff Robert Brooks' Motion for Summary Judgment based on qualified immunity. The parties appeared before this Court for oral argument on January 29, 2004. Upon consideration of the papers submitted and the arguments presented, the Court DENIES Defendants' Motion for Summary Judgment.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1983.

DOCKETED ON CM
FEB 20 2004
BY *[Signature]* 006

90

FACTUAL AND PROCEDURAL BACKGROUND

1
2 Plaintiff Noelle Way ("Plaintiff") was arrested on September 6, 2000 by
3 City of San Buenaventura Police Officer Robert Ortiz for being under the
4 influence of a controlled substance in violation of California Health and Safety
5 Code § 11550(a), a misdemeanor. Plaintiff was taken to the Ventura County
6 Medical Center so that she could provide a blood sample, and then to the pretrial
7 detention facility ("county jail") to be booked on the charge. Pursuant to
8 Ventura County Sheriff's Department's policy of performing visual body cavity
9 searches of every pretrial detainee arrested for an alleged § 11550 violation,
10 Deputy Sheriff Karen Hanson performed a visual unclothed body cavity search
11 of Plaintiff. After being in jail for approximately 12 hours, Plaintiff was released
12 after her ex-husband produced the \$10,000 bail for her. On November 6, 2000,
13 plaintiff's blood tests were returned and the district attorney declined to file
14 charges.

15 In her First Amended Complaint, filed December 12, 2001, Plaintiff
16 alleges Fourth and Fourteenth Amendment violations arising out of the search
17 against the County of Ventura; the Sheriff of Ventura County, Robert Brooks;
18 and the deputy sheriff who performed the search, Karen Hanson. Plaintiff also
19 sues Ortiz for false arrest under 42 U.S.C. § 1983 and other state law claims.

20 On July 22, 2002, this Court ruled on summary judgment that Ventura
21 County's strip search policy allowing the visual unclothed body cavity search of
22 Plaintiff without her ever being released into the general prison population and
23 without a determination of reasonable suspicion, violated Plaintiff's
24 constitutional rights. The Court did not reach the issue of whether a strip search
25 of a plaintiff who was released into the general prison population would also
26 constitute a constitutional violation. At the conclusion of this Court's Order
27 denying Defendants' Motion for Summary Judgment in the *Way* case, the Court
28 invited the Defendants to file briefs as to whether they were entitled to qualified

1 immunity. Prior to filing any briefs on this issue, Defendants appealed this
2 Court's decision regarding the constitutionality of the search to the Ninth
3 Circuit. On November 26, 2003, the Ninth Circuit dismissed the appeal holding
4 that the District Court had only reached the first issue under *Saucier v. Katz*, 533
5 U.S. 194 (2001) – whether a constitutional right had been violated – and had not
6 reached the second issue as to whether the right was clearly established. The
7 Ninth Circuit held that this Court's decision was not a final, appealable order and
8 that the County must wait to appeal until the Court rules upon the second prong
9 of *Saucier*.

10 As a result of the Ninth Circuit's dismissal of the appeal, Defendants
11 Deputy Karen Hansen and Sheriff Bob Brooks now move this Court for
12 Summary Judgment Based on Qualified Immunity. Plaintiff filed a timely
13 opposition.

14 LEGAL STANDARD

15 Federal Rule of Civil Procedure 56(c) provides for summary judgment
16 against a party when “the pleadings, depositions, answers to interrogatories, and
17 admissions on file, together with the affidavits, if any, show that there is no
18 genuine issue as to any material fact and that the moving party is entitled to a
19 judgment as a matter of law.” Fed. R. Civ. P. 56(c). A party seeking summary
20 judgment bears the initial burden of informing the court of the basis for its
21 motion and of identifying those portions of the pleadings and discovery
22 responses which demonstrate the absence of a genuine issue of material fact. *See*
23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In judging evidence at the
24 summary judgment stage, the Court does not make credibility determinations or
25 weigh conflicting evidence and draws all inferences in the light most favorable
26 to the nonmoving party. *See T.W. Elec. Svc., Inc. v. Pacific Elec. Contractors*
27 *Ass'n*, 809 F.2d 626, 630-31 (9th Cir. 1987). The evidence presented by the
28 parties must be admissible. *See* Fed. R. Civ. P. 56(e). Conclusory, speculative

1 testimony in affidavits and moving papers is insufficient to raise genuine issues
2 of fact and defeat summary judgment. *See Thornhill Pub. Co., Inc. v. GTE*
3 *Corp.*, 594 F.2d 730, 738 (9th Cir. 1979).

4 DISCUSSION

5 I. Defendants' Motion for Qualified Immunity

6 A. Test for Qualified Immunity

7 Qualified immunity provides public officials sued in their individual
8 capacities with "immunity from suit rather than a mere defense to liability."
9 *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis in original). In
10 determining whether a defendant is entitled to qualified immunity, the court must
11 first consider whether, taken in the light most favorable to the plaintiff, do the
12 facts as alleged show the officers' conduct violated a constitutional right.
13 *Saucier v. Katz*, 533 U.S. 194, 201 (2001). If a constitutional violation exists
14 "on a favorable view of the parties' submissions, the next, sequential step is to
15 ask whether the right was clearly established." *Id.*; *see Martinez v. Stanford*, 323
16 F.3d 1178, 1183 (9th Cir. 2003) (stating the two-part test for qualified immunity
17 as: "(1) whether the facts alleged 'show [that] the officer[s]' conduct violated a
18 constitutional right;' and (2) whether the constitutional right in question was
19 'clearly established' such that 'it would be clear to a reasonable officer that his
20 conduct was unlawful in the situation he confronted.'").

21 Whether the law was clearly established is a pure question of law for the
22 Court to decide. *See Mendoza v. Block*, 27 F.3d 1357, 1360 (9th Cir. 1994).
23 This inquiry "must be undertaken in light of the specific context of the case, not
24 as a broad general proposition." *Id.* at 201. The Ninth Circuit has noted that, in
25 order to find a clearly established right, "we need not find a prior case with
26 identical, or even 'materially similar,' facts. Our task is to determine whether the
27 preexisting law provided the defendants with 'fair warning' that their conduct
28 was unlawful." *Flores v. Morgan Hill Unified School District*, 324 F.3d 1130,

1 1137 (9th Cir. 2003) citing *Hope v. Pelzer*, 536 U.S. 730 (2002). "Precedent
2 directly on point is not necessary to demonstrate that a right is clearly
3 established. Rather, if the unlawfulness is apparent in light of preexisting law,
4 then the standard is met. In addition, even if there is no closely analogous case
5 law, a right can be clearly established on the basis of 'common sense.'" *Giebel v.*
6 *Sylvester*, 244 F.3d 1182, 1189 (9th Cir. 2001) (citations omitted).

7 **B. Whether the Acts Committed By Defendant Constitute a**
8 **Violation of Plaintiff's Constitutional Rights**

9 In this Court's July 22, 2002 Order Granting in Part Plaintiff's Motion for
10 Summary Judgment, the Court held that "the visual unclothed body cavity search
11 of Plaintiff was unconstitutional." Under the circumstances of this case, where
12 the undisputed facts show that the only basis for her body cavity search was that
13 she had been charged with violating Health and Safety Code Section 11550 and
14 she was released on bail prior to ever having been placed in the general jail
15 population, the search was unreasonable and violated Plaintiff's constitutional
16 rights.

17 Therefore, the Court has already ruled upon the first prong of the qualified
18 immunity inquiry, finding that Defendants' acts were unconstitutional.

19 **C. Whether the Constitutional Right At Issue Was Clearly**
20 **Established At the Time of the Violation**

21 In the present motion, Defendants Karen Hansen and Bob Brooks seek
22 qualified immunity on the grounds that the constitutional right in question was
23 not clearly established at the time of Plaintiff's search. Defendants contend that
24 the law was not clearly established that prohibited the blanket search policy to
25 which Plaintiff was subjected primarily because the acts of Defendants were
26 permissible under the law.

27
28

1 **1. Established Law Regarding Body Cavity Searches**
2 **a. Justification for Body Cavity Searches on Less Than**
3 **Probable Cause**

4 It is important to first note that the intrusiveness of a body cavity search,
5 no matter what the circumstances, cannot be overstated. "Strip searches
6 involving the visual exploration of body cavities is dehumanizing and
7 humiliating." *Kennedy v. Los Angeles Police Dept.*, 901 F.2d 702, 711 (9th Cir.
8 1990). In *Bell v. Wolfish*, 441 U.S. 520, 561 (1979), after balancing the
9 significant security interests of the institution against the privacy interests of the
10 inmates, the Supreme Court held that visual body-cavity inspections could be
11 conducted on less than probable cause. In evaluating whether or not a search
12 was permissible, "Courts must consider the scope of the particular intrusion, the
13 manner in which it is conducted, the justification for initiating it, and the place in
14 which it is conducted." *Id.* at 559. The "clearly-stated rationale underlying" the
15 decisions in which body-cavity searches of prisoners and detainees are allowed
16 on less than probable cause, "is to protect prisons and jails from smuggled
17 weapons, drugs or other contraband which pose a threat to the safety and security
18 of penal institutions." *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1447 (9th Cir.
19 1991); *see also Kennedy*, 901 F.2d at 713 ("The critical inquiry is whether the
20 LAPD has sufficient justification for imposing its blanket search policy.")
21 Because of this underlying rationale, "courts have distinguished between
22 searches of detainees who were simply awaiting bail, and searches conducted on
23 inmates admitted or about to be admitted to the general jail population." *Id.* at
24 1448.

25 **b. Circumstances Allowing Body Cavity Search On**
26 **Less Than Probable Cause**

27 In *Giles v. Ackerman*, 746 F.2d 614 (9th Cir. 1984), the Ninth Circuit
28 applied the rule in *Bell* to hold that "arrestees for minor offenses may be

1 subjected to a strip search only if jail officials have a reasonable suspicion that
2 the particular arrestee is carrying or concealing contraband. . .” *Giles*, 746 F.2d
3 at 614 (holding that strip searching every arrestee booked into County Jail is not
4 necessary to protect the institution’s security interest). “Reasonable suspicion
5 must be based on such factors as the nature of the offense, the arrestee’s
6 appearance and conduct, *and* the prior arrest record. *Id.* at 617 (emphasis
7 added). The Ninth Circuit applied this reasonable suspicion test in holding the
8 Los Angeles Police Department’s policy of requiring a perfunctory body-cavity
9 search of all felony arrestees unconstitutional. *Kennedy*, 901 F.2d at 716 (strip
10 search of grand theft arrestee was unconstitutional where circumstances of arrest
11 provided no reasonable suspicion to believe that arrestee concealed contraband);
12 *see also Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1446 (9th Cir. 1991) (“Applying
13 *Kennedy*, it is clear that the visual body cavity inspection cannot be justified
14 based on the blanket strip-search policy”). The Ninth Circuit summarized its
15 jurisprudence in this area by pointing out that prior cases had held “such
16 searches were lawful only if an officer had an individualized suspicion that a
17 person was carrying or concealing contraband.” *Fuller*, 950 F.2d at 1451.

18 **c. Relevant California Law Regarding Body Cavity**
19 **Searches**

20 California Penal Code Section 4030 was passed in 1984 by the California
21 Legislature with the intention of protecting the constitutional rights of California
22 citizens. *See* Cal. Pen. Code § 4030. This section provides that

23 No person arrested and held in custody on a misdemeanor or
24 infraction offense, except those involving weapons, controlled
25 substances or violence . . . shall be subjected to a strip search or
26 visual body cavity search prior to placement in the general jail
27 population, unless a peace officer has determined there is reasonable
28 suspicion based on specific and articulable facts to believe such
person is concealing a weapon or contraband, and a strip search will
result in the discovery of the weapon or contraband.

Cal. Pen. Code § 4030(f).

1 In *People v. Wade*, 208 Cal. App. 3d 304, 307-08 (1989), the California
2 Court of Appeals upheld the warrantless body cavity search of an arrestee even
3 though it did not entirely comply with Section 4030. The court noted that
4 Section 4030 was passed in an attempt to codify existing federal constitutional
5 law regarding searches. The court found the fruits of the search need not be
6 suppressed because the search was constitutional under federal law based on the
7 circumstances of the arrest in this case, where the arrestee was visibly under the
8 influence of an opiate and the police who stopped the vehicle in which he was a
9 passenger noticed him rise in his seat several times and his right shoulder dipped,
10 as though he were trying to adjust something in his waist. *See id.* at 307-08. In
11 *People v. Pifer*, 216 Cal. App. 3d 956, 962 (1990), the court evaluated the
12 constitutionality of an X-ray search of a state prison inmate and held that the
13 search “under all the ambient circumstances of this case was reasonable within
14 the meaning of the Fourth Amendment.” *Id.* The court in *Pifer* also included,
15 “[w]e hasten to add, however, that we do not suggest prison authorities could
16 conduct a body cavity search on prisoners merely because they are prison
17 inmates without more. There must be some circumstance or information in
18 addition to the mere fact of imprisonment to justify such an invasive procedure.”
19 *Id.*

20 **2. Relevant Facts in the Body Cavity Search Declared** 21 **Unconstitutional In This Case**

22 Defendants contend that, based on federal constitutional and state law, a
23 reasonable officer would believe the search in this case was not violating
24 Plaintiff’s constitutional rights and was, in fact, in accordance with the law.
25 Defendants cite to California Penal Code Section 4030 and the decision in
26 *People v. Wade*, in which body cavity searches are allowed under certain
27 circumstances. Defendants contend that Plaintiff’s arrest on a drug-related
28 charge, alone, was sufficient to provide reasonable suspicion to perform this

1 search. Plaintiff responds and argues that the law was clear at the time of the
2 search in question in September 2000 that a strip search could not be performed
3 without reasonable suspicion based on specific articulable facts. The parties
4 stipulate that the only basis for the search in this case was Plaintiff's arrest for
5 the misdemeanor charge of violation of Health and Safety Code Section 11550
6 and Defendant County of Ventura Sheriff's Department policy of searching all
7 arrestees for Section 11550 violations.

8 **a. Purpose of Search**

9 Defendants contend that this search was justified under current law
10 because the purpose of the policy is to ascertain the presence or absence of
11 concealed narcotics or narcotics paraphernalia. According to Defendants, the
12 policy is exclusively designed and necessary to maintain jail security by ensuring
13 the safety of such individuals who might otherwise ingest the drugs or destroy
14 evidence of the commission of a crime, attempt suicide, or get high. *See Defts'*
15 *Mot. for Summ. Judg. at 7.* Defendants argue that searching all Section 11550
16 arrestees serves this policy.

17 In considering the asserted justification for the search in question, it is
18 important to note that this search was performed on an arrestee who was never
19 actually released into the general jail population. Plaintiff Way posted bail
20 before being released into the jail population, but the search was performed on
21 her regardless of this fact. The clearly established rationale for body cavity
22 searches on less than probable cause has been the protection of jail security by
23 preventing the smuggling of weapons, narcotics, and other contraband into the
24 jail facility. *See Fuller, 950 F.2d at 1447.* If an arrestee is not released into the
25 general jail population, then the security justification for this search is not
26 present and such a harsh and humiliating search should not be performed absent
27 probable cause, consistent with clearly established Fourth Amendment
28 jurisprudence of the Supreme Court and this Circuit. Defendants also do not

1 provide any evidence of seizure of contraband during searches performed
2 pursuant to this policy to provide justification for this blanket policy.

3 Additionally, in examining the actual policy that was implemented by the
4 Sheriff's Department and followed by the deputy here, the purported justification
5 is also absent. The policy allows body cavity searches of misdemeanor arrestees
6 involving weapons, controlled substances or violence without any articulable
7 reasonable suspicion that is based on specific facts to believe such person is
8 concealing a weapon or contraband. However, with respect to all *felony* arrests,
9 a strip search "should not be done unless a reasonable suspicion exists that the
10 person is concealing a weapon or contraband. (1.) Reasonable suspicion may be
11 based upon the nature of the offense, the arrestees appearance and conduct, and
12 the prior arrest record." Jt. Stmt. of Uncontroverted Facts, Exh. C at 14. A
13 cursory examination of this written policy demonstrates that the Ventura County
14 Sheriff's Department allows the body cavity strip search to be performed absent
15 an articulable reasonable suspicion on misdemeanor drug or weapon arrestees,
16 but requires a showing of reasonable suspicion on *all* felony arrestees. If the
17 Defendants' justification for the blanket search of certain misdemeanor arrestees
18 were jail security, then the felony arrest policy should mirror the misdemeanor
19 arrest policy. This incongruence between the policy for certain misdemeanor
20 arrests and the policy for felony arrests casts severe doubt upon the need for this
21 blanket search policy and Defendants' justification for this policy.

22 The policy in this case both (a) failed to recognize a difference between
23 detainees who were released on bail and those who entered the general
24 population and (b) unexplainably provided a higher standard to perform this
25 same search on felony drug or weapons arrestees who, under Defendants' theory,
26 should provide the same (if not greater) risk of contraband as misdemeanor
27 arrestees. A reasonable officer reviewing the policy and knowing the established
28 law in this area would have recognized that the policy of the Sheriff's

1 Department was unconstitutional because the policy did not serve to further any
2 legitimate penalogical interests.

3 **b. Basis for Search In This Case**

4 Defendants contend that, based on California law, a fresh misdemeanor
5 charge of violating Health and Safety Code Section 11550 supplies the basis for
6 a visual unclothed body cavity search. Plaintiff asserts that established law
7 requires that more than a misdemeanor charge of being under the influence of a
8 controlled substance to provide reasonable suspicion that the arrestee has
9 concealed contraband.

10 The parties have stipulated that the *sole* basis for the visual body cavity
11 search of the plaintiff was that she was charged with violating Health and Safety
12 Code Section 11550. The parties have also stipulated that there is no waiting
13 period to see if an inmate arrested on charges of violating Section 11550 will be
14 released on bail or will enter the general jail population. Since 1991 and the
15 Ninth Circuit decision of *Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1446 (9th Cir.
16 1991), it has been clearly established that a body cavity search cannot be
17 justified on the basis of a blanket strip search policy *alone*. This Circuit has
18 repeated that an officer conducting a body cavity search without probable cause
19 must have reasonable suspicion based on such factors as the nature of the
20 offense, the arrestee's appearance and conduct, *and* the prior arrest record.
21 Ventura's blanket search policy does not allow for individualized suspicion, but
22 instead subjects all arrestees, merely because of their status as arrestees, to this
23 highly invasive search. This is inconsistent with both California and Ninth
24 Circuit law. *See, e.g., People v. Pifer*, 216 Cal. App. 3d 956, 962 (1990); *Fuller*
25 *v. M.G. Jewelry*, 950 F.2d 1437 (9th Cir. 1991); *Kennedy v. Los Angeles Police*
26 *Dept.*, 901 F.2d 702, 712 (9th Cir. 1990). A reasonable officer searching
27 Plaintiff in this case should have known that this invasive search violated Ms.
28 Way's constitutional rights if there was no particular belief that Ms. Way was

1 carrying or concealing contraband and no knowledge that she would be admitted
2 to the general jail population (rather than being released on bail, as she was).

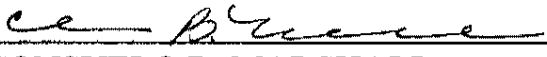
3 There are sufficient cases in this area regarding policies allowing body
4 cavity searches for a reasonable officer to know that the body cavity search of
5 Plaintiff, without ever being admitted to the general jail population and based
6 solely on her misdemeanor arrest, was unconstitutional. Therefore, both the
7 justification for the blanket search policy and the decision to search Plaintiff in
8 this case are contrary to clearly established law.

9 **CONCLUSION**

10 The Court DENIES Defendants Deputy Sheriff Karen Hanson and Sheriff
11 Bob Brooks' Motion for Summary Judgment based upon qualified immunity and
12 finds that the law prohibiting the visual unclothed body cavity search of Plaintiff
13 under the circumstances of this case was clearly established at the time of the
14 search.

15
16 IT IS SO ORDERED.

17
18 DATED: February 18, 2003



19 CONSUELO B. MARSHALL
20 Chief, United States District Judge
21
22
23
24
25
26
27
28