

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT THURBER,

Plaintiff,

MEMORANDUM and ORDER  
05-C-750-S

v.

DUNN COUNTY and DENNIS SMITH,

Defendants.

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Plaintiff Robert Thurber commenced this civil action under 42 U.S.C. § 1983 against Dunn County and Dennis Smith. In his complaint plaintiff alleges that he was illegally strip searched in the Dunn County Jail.

On April 28, 2006 defendants moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavit and brief in support thereof. Pursuant to this Court's February 23, 2006 Preliminary Pretrial Conference Order plaintiff's response to this motion was to be filed not later than May 18, 2006 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if

not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

#### FACTS

For purposes of deciding defendants' motion for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Robert Thurber is an adult resident of the Western District of Wisconsin. Defendant Dunn County is a Wisconsin municipal corporation. Defendant Dennis Smith is the duly elected Sheriff of Dunn County.

Plaintiff was arrested on June 12, 2000 by City of Menomonie, Wisconsin police officer based on an outstanding warrant for a misdemeanor charge of issuing worthless checks. Following his arrest, plaintiff was booked into the Dunn County Jail at about 11:50 a.m. on June 12, 2000. He was released that same day at 1:45 p.m. He was not strip searched at the Dunn County Jail at any time on June 12, 2000.

Plaintiff was arrested on October 13, 2004 by City of Menomonie, Wisconsin police officers based on an outstanding warrant for failure to pay a civil forfeiture imposed for a municipal disorderly conduct violation. Plaintiff was booked into Dunn County Jail at approximately 10:20 p.m. on October 13, 2004. He was released from the jail at 2:50 p.m. on October 14, 2004.

During this incarceration plaintiff was housed in the general population of the jail. He changed from his street clothes into a jail uniform but was not strip searched.

The practice of the Dunn County Jail staff is to only strip search pre-trial detainees entering the jail when there is probable cause to believe that the detainee is concealing weapons, drugs or other evidence of a crime.

#### MEMORANDUM

Plaintiff claims that he was strip searched illegally in the Dunn County Jail on two occasions. In opposing defendants' motion

for summary judgment plaintiff cannot rest on the mere allegations of the pleadings but must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has submitted no affidavits or evidence that contradict the defendants' affidavits. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Defendants have submitted affidavits asserting that plaintiff was not strip searched in the Dunn County Jail on either June 12, 2000 or October 13, 2004. Plaintiff did not submit any evidence to contradict defendants affidavit. Accordingly, it is undisputed that plaintiff was not strip searched on either date. It is also undisputed that the Dunn County practice is to only strip search pre-trial detainees entering the jail when there is probable cause to believe that the detainee is concealing weapons, drugs or other evidence of a crime.

Since plaintiff was not strip searched, defendants are entitled to judgment as a matter of law on his claim that he was illegally strip searched. Defendants' motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

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ORDER

IT IS ORDERED that defendants' motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 24<sup>th</sup> day of May, 2006.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge