

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

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JAMERREL V. EVERETT,

Plaintiff,

v.

STEVE WATTERS, WENDY  
NORDBERG and STEVE  
SCHNEIDER,

Defendants.  
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OPINION and ORDER

06-C-497-C

Plaintiff Jamerrel Everett is detained civilly by the state of Wisconsin pursuant to Wis. Stat. Ch. 980, Wisconsin's Sexually Violent Persons Law. In this civil action under 42 U.S.C. § 1983, plaintiff is proceeding on a claim that defendants Steve Watters, Wendy Nordberg and Steve Schneider violated his right to free speech by prohibiting him from possessing pornography and books about psychology.

Now before the court is defendants' unopposed motion for summary judgment. Because it is undisputed that plaintiff never requested pornography or a copy of the Diagnosis and Statistical Manual IV, the motion will be granted.

From defendants' proposed findings of fact, I find the following facts to be material

and undisputed.

## UNDISPUTED FACTS

### A. Parties

Plaintiff Jamerrel Everett is a patient confined involuntarily under Wisconsin's sexual predator law. From October 28, 2004 to February 8, 2007, he was confined at the Sand Ridge Secure Treatment Center in Mauston, Wisconsin. Since that time, he has been confined at the Wisconsin Resource Center in Winnebago, Wisconsin.

Defendant Steve Watters is Director of the Sand Ridge Secure Treatment Center. Although defendant Watters has general supervisory authority over the center, he is not responsible for day to day security decisions, which are made by the security director.

Defendant Steve Schneider is Security Director of the Sand Ridge Secure Treatment Center. He is in charge of the center's day to day operations.

Defendant Wendy Nordberg is Deputy Director of the Sand Ridge Secure Treatment Center.

### B. Access to Printed Materials

The Sand Ridge Secure Treatment Center is a secure facility for persons confined civilly as sexually violent persons. To be committed as sexually violent under Wisconsin law,

a person must have a mental disorder defined as “an acquired or congenital condition affecting the emotional or vocational capacity that predisposes a person to engage in acts of sexual violence.” If a person confined civilly can convince mental health professionals that he no longer has a qualifying mental disorder, he can be released from civil custody and returned to the community.

#### A. DSM-IV

Patients at the center are given the opportunity to meet with mental health professionals to discuss their concerns and receive appropriate intervention and treatment targeted to their identified mental health needs. However, patients are prohibited from possessing copies of the Diagnosis and Statistical Manual IV, a professional text that contains descriptions of all mental illnesses recognized by the American Psychological Association. Although patients are allowed to read books about psychiatry and psychology written for a lay audience, they are not allowed to possess the official diagnostic manual. The center’s treatment director, Dr. Lloyd Sinclair, believes that allowing patients to have copies of the book is “counter-therapeutic” because learning the specific descriptions of diagnoses enables patients to (1) feign mental illnesses they do not have (a behavior known as malingering); (2) mask symptoms of illnesses they do have; and (3) become misled or confused about the nature of their psychological problems.

The center has no record of plaintiff's ever requesting a copy of the DSM-IV. None of the named defendants denied plaintiff a copy of the manual.

#### B. Sexually Explicit Materials

All patients confined at the Sand Ridge Secure Treatment Center have histories of having committed multiple sexual assaults. Most patients have deviant sexual arousal, such as erotic attraction to children or violent or forced sexual interactions. Most patients also have other sex-related problems, such as sexual preoccupation.

Disorders such as sexual deviation and problems such as sexual preoccupation are associated with heightened risk for sexual recidivism. Accordingly, the center works with patients to reduce or eliminate these disorders and problems.

No patient at the Sand Ridge Secure Treatment Center is permitted to possess materials that are considered contraband. Such materials include any media that are sexually explicit. The center's policy is to deny materials as "sexually explicit" when they display full frontal nudity of adults; full or partial nudity of children; pictures of sexual intercourse, penetration, exposure, physical contact with or manipulation of the body, or content which has sexual arousal or prurient interest as an inherent purpose. An exception to this policy is made for materials selected for specific treatment groups, such as texts or reference guides depicting healthy human sexuality. When approved, these materials are made available in

the Patient Library.

Although the effects of sexually explicit materials on adults are typically benign and transient, sexually violent persons often have difficulty modulating their interactions with these materials. They may use them for excessive masturbation to escape from social interactions with others.

Although plaintiff alleged in his complaint that he was denied adult films, reading material and other publications, defendants have no record of denying him delivery of any such materials.

## DISCUSSION

In an order dated October 4, 2006, I granted plaintiff leave to proceed in forma pauperis on his claim that defendants Watters, Nordberg and Schneider prevented him from receiving “adult entertainment material” and books about psychology for no legitimate reason. In that order, I noted that although courts have not defined the contours of civilly detained persons’ rights to free speech, the rights of civilly confined persons can be no more restrictive than those afforded prisoners. See, e.g., City of Revere v. Massachusetts Gen. Hospital, 463 U.S. 239 (1983) (“[T]he due process rights of a [pretrial detainee or other persons in state custody] are at least as great as the Eighth Amendment protections available to a convicted prisoner.”). In the prison context, regulations that restrict a prisoner’s ability

to receive publications are “valid if [they are] reasonably related to legitimate penological interests.” Thornburgh v. Abbott, 490 U.S. 401, 413 (1989) (citing Turner v. Safley, 482 U.S. 78, 89 (1987)). Assuming that plaintiff’s allegation of having been denied publications was true, I noted that defendants would be responsible for showing that they had a valid reason for their decision.

Now, however, the moment of truth has arrived, and plaintiff has come forward with no evidence to show that he was ever denied the materials about which he sued. That alone is enough to enter judgment in defendants’ favor. Johnson v. Cambridge Industries, Inc., 325 F.3d 892, 901 (7th Cir. 2003) (summary judgment is the “put up or shut up” moment in a lawsuit when he must come forward to show what evidence he has to convince a trier of fact to accept his version of the facts).

However, even if plaintiff had shown that he suffered some injury as a result of defendants’ policy, defendants have done more than enough to overcome the deferential standard of review mandated by Thornburgh and Turner. Defendants have adduced undisputed expert testimony that permitting plaintiff to receive sexually explicit materials and professional psychological manuals would undermine the center’s ability to carry out its mission because such materials exacerbate the mental disorders that lead to civil confinement under the sexual predator laws. Because defendants have shown that they have a valid reason for their policies and that plaintiff has not been injured by the application of those

policies, they are entitled to summary judgment on the merits of their claim.

ORDER

IT IS ORDERED that the motion for summary judgment of defendants Steve Watters, Wendy Nordberg and Steve Schneider is GRANTED. The clerk of court is directed to enter judgment for defendants and close the case.

Entered this 9th day of July, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge