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2  
3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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8 KARLOS L. FRYE,

9 Plaintiff,

10 v.

11 OFFICER OLESHEA, et al.,

12 Defendants.  
13 \_\_\_\_\_/

No. C 08-5288 CW

ORDER GRANTING  
DEFENDANTS' MOTION  
FOR SUMMARY  
JUDGMENT

14  
15 Plaintiff Karlos L. Frye, an inmate at Salinas Valley State  
16 Prison (SVSP), has filed a civil rights complaint alleging that  
17 SVSP correctional officers violated his constitutional rights  
18 under the Fourteenth, Eighth and Fourth Amendments by subjecting  
19 him to two unclothed body searches and then placing him on  
20 contraband watch for approximately forty-eight hours.<sup>1</sup>

21 Defendants Correctional Officers D. Oleachea,<sup>2</sup> A. Quitevis, J.  
22 Mora, Greeson, Newby, D. White, Nolta, Milenewicz and William  
23 Muniz, Sergeants M. Nilsson and L. Watson and Lieutenant W.  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Plaintiff's Equal Protection claim was dismissed without  
leave to amend in the Court's September 28, 2010 Order.

27 <sup>2</sup> Defendant Oleachea's name is misspelled as Oleshea in the  
28 complaint.

1 Showalter move for summary judgment on all of Plaintiff's claims.<sup>3</sup>  
2 Plaintiff has filed an opposition and Defendants have filed a  
3 reply. The motion was taken under submission and decided on the  
4 papers. Having considered all the papers filed by the parties,  
5 the Court grants the motion for summary judgment.

6 BACKGROUND

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8 For his version of events, Plaintiff cites his First Amended  
9 Complaint (1AC), which is signed under penalty of perjury, and the  
10 declaration, dated December 11, 2007, he submitted with his  
11 administrative 602 appeal, which is attached as Exhibit A to his  
12 1AC. In his 1AC, Plaintiff states as follows:

13 Six officers rushed in the visiting room led by Officer  
14 Oleachea and demanded that I along with my mother come with  
15 them and submit to a strip search. I asked Officer why were  
16 they doing this strip search and also why were they  
17 terminating my visit? Officer John Doe responded by saying  
18 that he observed my mother making suspicious movements. At  
19 that point my visit was terminated.

20 I was then taken back to the area where inmate visitors are  
21 received and made to submit to a strip search. After the  
22 strip search produced negative results I asked if I could go  
23 back and finish my visit, but I was then aggressively placed  
24 in handcuffs and told my visit was terminated. . . .

25 The officers became extremely aggressive and hostile, grabbed  
26 me forcefully by the arm and started to escort me from the  
27 area. I was escorted back to my housing unit and  
28 aggressively put in my cell. Immediately afterwards, the  
29 officers came back to my cell and aggressively demanded that  
30 I cuff up. I again complied, at which I was again  
31 aggressively and forcefully snatched from my cell and taken  
32 aggressively to a holding cage at the D facility patio area,  
33 where once again I was told to submit to another strip

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<sup>3</sup> Defendants' first names are not provided.

1 search. Approximately 30 to 45 minutes later I was placed in  
2 waist restraints with only a pair of underwear. . . .

3 1AC, Ex. A at 3-4.

4 Plaintiff further states the following. After he was taken  
5 from the holding cell, he was forced to kneel down on a chair and  
6 was placed in leg restraints. Then he was told to stand up. Two  
7 unknown officers taped Plaintiff's underwear to his bare skin at  
8 the waist and the legs. Plaintiff, wearing only his underwear,  
9 was then taken outside, where it was cold and windy, to the  
10 "feces-watch building."

11 In this building, the conditions were harsh and inhumane.  
12 Plaintiff could see the goose bumps on his arm and legs and he was  
13 shaking from the cold. Plaintiff was then taken to the C facility  
14 and placed in a cell with only a small wooden bench and a toilet  
15 that was covered with plastic bags and masking tape. The room had  
16 little flies and bugs in it and the stench was horrible.

17 On the first day, Plaintiff was not given a shirt or a  
18 mattress. Bright lights were kept on all of the time. Plaintiff  
19 tried not to fall asleep, but dozed off while he was sitting on  
20 the bench, fell off the bench and injured his shoulder.

21 Plaintiff was not provided with utensils with which to eat  
22 his food nor was he allowed to wash his hands. Plaintiff's waist  
23 and leg restraints were not taken off and, in order to eat, he had  
24 to place his food tray on the bench and get down on his knees and  
25 "eat like a savage animal." There was a foul-smelling bucket in  
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1 which Plaintiff relieved himself. Defendants Mora, Corona, White,  
2 Nolte and Milenewicz laughed when the tape was ripped off his skin  
3 so that he could relieve himself. Plaintiff was not provided with  
4 toilet paper and, as a result, his hands were smeared with feces.  
5 He was not given soap and water to wash his hands and was forced  
6 to eat his food with his dirty hands. Plaintiff was released from  
7 these conditions on Tuesday, December 4, 2007 at approximately  
8 1:00 pm. Plaintiff had been subjected to these inhumane  
9 conditions for almost two days.  
10

11 Plaintiff's fiancée is white and Plaintiff alleges that he  
12 was profiled or subjected to race discrimination because he and  
13 his fiancée are of different races. In his complaint, Plaintiff  
14 alleges that other inmates and visitors in the visiting room, who  
15 were not racially mixed, were eating with their families and were  
16 not subjected to being searched like he was. However, in the  
17 declaration he submitted with his 602 appeal, Plaintiff states  
18 that he and his family were the only visitors in the visiting  
19 room.  
20

21 Defendants' version of events is as follows. During  
22 Plaintiff's visit with his family, Defendant Officer Oleachea  
23 observed Plaintiff swallow an item Officer Oleachea believed to be  
24 contraband. Other officers noticed Ms. Frye, Plaintiff's mother,  
25 attempting to conceal unidentified items in her clothing.  
26 Officers advised Ms. Frye of their observations and told her to  
27 enter the women's restroom. At the same time, Plaintiff was  
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1 escorted to another room for an unclothed body search. Ms. Frye  
2 rushed ahead of the officers and into the restroom where she  
3 started to shake out her clothing. Several items fell to the  
4 floor from Ms. Frye's clothing. When Ms. Frye did not consent to  
5 a search, she was escorted to the visiting room and removed from  
6 the building.

7  
8 Plaintiff was immediately put on contraband watch. SVSP  
9 personnel conduct contraband watches in accordance with SVSP  
10 Operational Procedure 38, which provides for placing the inmate in  
11 a holding cell under continuous observation by an officer. The  
12 inmate is permitted to wear a t-shirt, boxer shorts and socks.  
13 The cell is to contain only a mattress and no other  
14 accommodations. The inmate is fed on a paper tray with one  
15 plastic utensil. Approximately every thirty minutes, officers  
16 record pertinent activities or observations.

17  
18 During the time Plaintiff was on contraband watch, a record  
19 of his daily activities was maintained by the on-duty officers.  
20 Plaintiff was given a t-shirt and a blanket his first night on  
21 contraband watch. On his second night, he was given a mattress.  
22 During the contraband watch, Plaintiff had two bowel movements and  
23 both were negative for contraband. Plaintiff was released into  
24 the general population approximately fourteen and one-half hours  
25 after his first bowel movement.  
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LEGAL STANDARD

Summary judgment is properly granted when no genuine and disputed issues of material fact remain, and when, viewing the evidence most favorably to the non-moving party, the movant is clearly entitled to prevail as a matter of law. Fed. R. Civ. P. 56. Celotex Corp v. Catrett, 477 U.S. 317, 322-23 (1986); Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1289 (9th Cir. 1987). The court must draw all reasonable inferences in favor of the party against whom summary judgment is sought. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d 1551, 1558 (9th Cir. 1991).

Material facts which would preclude entry of summary judgment are those which, under applicable substantive law, may affect the outcome of the case. The substantive law will identify which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

DISCUSSION

I. Fourteenth Amendment Procedural Due Process Claim

Plaintiff claims that his procedural due process rights were violated because he was placed on contraband watch without notice or a hearing.

Interests that are procedurally protected by the due process clause may arise from two sources--the due process clause itself and laws of the states. Meachum v. Fano, 427 U.S. 215, 223-27

1 (1976). In the prison context, these interests are generally ones  
2 pertaining to liberty. Changes in conditions so severe as to  
3 affect the sentence imposed in an unexpected manner implicate the  
4 due process clause itself, whether or not they are authorized by  
5 state law. Sandin v. Conner, 515 U.S. 472, 484 (1995).

6 Deprivations that are authorized by state law and are less severe  
7 or more closely related to the expected terms of confinement may  
8 also amount to deprivations of a procedurally protected liberty  
9 interest only if they impose "atypical and significant hardship on  
10 the inmate in relation to the ordinary incidents of prison life."

11 Id.

12  
13 Whether a restraint is "atypical and significant" under  
14 Sandin requires case-by-case consideration. Ramirez v. Galaza,  
15 334 F.3d 850, 860 (9th Cir. 2003). Typically, a court should  
16 consider the following factors: "1) whether the challenged  
17 condition 'mirrored those conditions imposed upon inmates in  
18 administrative segregation and protective custody,' and thus  
19 comported with the prison's discretionary authority; 2) the  
20 duration of the condition, and the degree of restraint imposed;  
21 and 3) whether the state's action will invariably affect the  
22 duration of the prisoner's sentence." Id. at 861.

23  
24 Defendants argue that, even if a liberty interest is  
25 implicated by placement in contraband-watch, Plaintiff's forty-  
26 eight hour placement was too short to trigger due process  
27 protection. Defendants cite Meraz v. Reppond, 2009 WL 723841, \*2  
28

1 (N.D. Cal.), in which the district court found that the  
2 plaintiff's seventy-two hour placement on contraband watch did not  
3 amount to atypical and significant hardship within the  
4 correctional system. The court stated, "Although the conditions  
5 in the contraband watch were more onerous than those plaintiff  
6 normally faced in prison, his placement was simply too brief to  
7 implicate the Due Process Clause." Id.

8  
9 Plaintiff cites Mendoza v. Blodgett, 960 F.2d 1425, 1429 (9th  
10 Cir. 1992), where the Ninth Circuit held that the prison's former  
11 dry cell watch<sup>4</sup> regulation created a liberty interest because it  
12 provided particularized standards and criteria for its  
13 implementation and duration. Id. The plaintiff was held in a  
14 contraband-watch cell for twenty-four hours. Id. The court held  
15 that a hearing five days after the watch ended was insufficient to  
16 accord the prisoner due process. Id. at 1431.<sup>5</sup>

17  
18 Mendoza is inapplicable here because it was decided before  
19 Sandin v. Conner, which changed the analysis for determining due  
20 process violations in a prison setting. In Mujahid v. Meyer, 59  
21 F.3d 931, 932 (9th Cir. 1995), the Ninth Circuit explained that  
22 Sandin overruled Ninth Circuit cases that looked at the language  
23 of a prison regulation to determine if it created a liberty  
24 interest. The Mujahid court stated:

25  
26 <sup>4</sup> This is another name for contraband watch.

27 <sup>5</sup> In a later section, the court held that the defendants were  
28 entitled to qualified immunity on this claim. Id.

1 In Sandin, the Court determined that prison regulations on  
2 confinement of an inmate did not create a liberty interest.  
3 In making its decision the Court did not rely on the language  
4 of the regulations . . . Rather the Court focused on the  
5 particular discipline imposed and held that "it did not  
6 present the type of atypical, significant deprivation in  
7 which a state might conceivably create a liberty interest."

8 Id. The Mujahid court held that there was no liberty interest  
9 implicated in being held in disciplinary segregation for fourteen  
10 days. Id.

11 Here, Plaintiff was on contraband watch for less than two  
12 days. This is less than the three-day contraband watch that the  
13 Meraz court found to be too short to implicate the due process  
14 clause. Furthermore, the contraband watch did not affect the  
15 duration of Plaintiff's prison sentence. Therefore, although the  
16 conditions Plaintiff had to endure on contraband watch were harsh,  
17 they did not impose the kind of atypical and significant hardship  
18 in relation to the ordinary incidents of prison life that would  
19 implicate due process protection. Because Plaintiff's due process  
20 rights were not violated, the Court need not address what process  
21 was due.

22 Furthermore, Defendants are entitled to qualified immunity on  
23 this claim. The defense of qualified immunity protects  
24 "government officials . . . from liability for civil damages  
25 insofar as their conduct does not violate clearly established  
26 statutory or constitutional rights of which a reasonable person  
27 would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818  
28 (1982). A defendant may have a reasonable, but mistaken, belief

1 about the facts or about what the law requires in any given  
2 situation. Saucier v. Katz, 533 U.S. 194, 205 (2001). The  
3 threshold question in qualified immunity analysis is: "Taken in  
4 the light most favorable to the party asserting the injury, do the  
5 facts alleged show the officer's conduct violated a constitutional  
6 right?" Id. at 201. A court considering a claim of qualified  
7 immunity must determine whether the plaintiff has alleged the  
8 deprivation of an actual constitutional right and whether such  
9 right was "clearly established." Pearson v. Callahan, 555 U.S.  
10 223, 231 (2009). Where there is no clearly established law that  
11 certain conduct constitutes a constitutional violation, the  
12 defendant cannot be on notice that such conduct is unlawful.  
13 Rodis v. City & County of San Francisco., 558 F.3d 964, 970-71  
14 (9th Cir. 2009). The relevant, dispositive inquiry in determining  
15 whether a right is clearly established is whether it would be  
16 clear to a reasonable defendant that his conduct was unlawful in  
17 the situation he confronted. Saucier, 533 U.S. at 202.

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20 On these facts, viewed in the light most favorable to  
21 Plaintiff, Defendants prevail as a matter of law on their  
22 qualified immunity defense because the Court has found no due  
23 process violation. However, even if a constitutional violation  
24 had occurred with respect to Plaintiff's due process claim, in  
25 light of clearly established principles at the time of the  
26 incident, Defendants could have reasonably believed their conduct  
27 was lawful. See Mujahid, 59 F.3d at 932 (fourteen days in  
28

1 disciplinary segregation did not implicate due process  
2 protection).

3 The Court grants Defendants' motion for summary judgment on  
4 Plaintiff's due process claim.

5 II. Eighth Amendment Claim

6 Plaintiff claims that, by placing him on contraband watch,  
7 Defendants violated his Eighth Amendment right to be free from  
8 cruel and unusual punishment.

9  
10 The treatment a prisoner receives in prison and the  
11 conditions under which he is confined are subject to scrutiny  
12 under the Eighth Amendment. Helling v. McKinney, 509 U.S. 25, 31  
13 (1993). In its prohibition of "cruel and unusual punishment," the  
14 Eighth Amendment places restraints on prison officials, who may  
15 not, for example, use excessive force against prisoners. Hudson  
16 v. McMillian, 503 U.S. 1, 6-7 (1992). The Eighth Amendment also  
17 imposes duties on these officials, who must provide all prisoners  
18 with the basic necessities of life, such as food, clothing,  
19 shelter, sanitation, medical care and personal safety. Farmer v.  
20 Brennan, 511 U.S. 825, 832 (1994); DeShaney v. Winnebago County  
21 Dep't of Social Servs., 489 U.S. 189, 199-200 (1989).

22  
23 A prison official violates the Eighth Amendment when two  
24 requirements are met: (1) the deprivation alleged must be,  
25 objectively, sufficiently serious, Farmer, 511 U.S. at 834 (citing  
26 Wilson v. Seiter, 501 U.S. 294, 298 (1991)), and (2) the prison  
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1 official must possess a sufficiently culpable state of mind, id.  
2 (citing Wilson, 501 U.S. at 297).

3 In determining whether a deprivation of a basic necessity is  
4 sufficiently serious to satisfy the objective component of an  
5 Eighth Amendment claim, a court must consider the circumstances,  
6 nature, and duration of the deprivation. The more basic the need,  
7 the shorter the time it can be withheld. Johnson v. Lewis, 217  
8 F.3d 726, 731 (9th Cir. 2000). Prison conditions that are  
9 restrictive and harsh are part of ordinary prison life and do not  
10 fall under Eighth Amendment protection. Rhodes v. Chapman, 452  
11 U.S. 337, 347 (1981). Only those deprivations denying the minimal  
12 civilized measure of life's necessities are sufficient to  
13 implicate the Eighth Amendment. Hudson, 503 U.S. at 9; see e.g.,  
14 Johnson, 217 F.3d at 732-733 (substantial deprivations of shelter,  
15 food, drinking water and sanitation for four days sufficiently  
16 serious to satisfy objective component of Eighth Amendment claim);  
17 Hearns v. Terhune, 413 F.3d 1036, 1041-42 (9th Cir. 2005)  
18 (allegations of serious health hazards in disciplinary segregation  
19 yard for period of nine months enough to state claim of  
20 unconstitutional prison conditions).  
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23 Plaintiff's placement on contraband watch for less than two  
24 days was not long enough to rise to the level of an Eighth  
25 Amendment violation; he was released and returned to the general  
26 population as soon as officers were satisfied that he had not  
27 hidden contraband in his body. See Meraz, 2009 WL 723841, at \*2  
28

1 (seventy-two hour contraband watch did not amount to Eighth  
2 Amendment violation). Furthermore, the types of deprivations that  
3 Plaintiff endured were not sufficiently serious to implicate the  
4 Eighth Amendment. See Hernandez v. Denton, 861 F.2d 1421, 4124  
5 (9th Cir. 1988), judgment vacated on other grounds, 493 U.S. 801  
6 (1989) (sleeping without a mattress for one night insufficient to  
7 state Eighth Amendment violation and no amendment can alter that  
8 insufficiency); Minifield v. Butikofer, 298 F. Supp. 2d 900, 904  
9 (N.D. Cal. 2004) (four-hour deprivation of ventilation and water  
10 not an Eighth Amendment violation); Evans v. Fogg, 466 F. Supp.  
11 949, 950-51 (S.D.N.Y. 1979) (housing in a refuse-strewn cell for  
12 twenty-four hours and in a flooded cell for two days did not  
13 amount to cruel and unusual punishment); Holloway v. Gunnell, 685  
14 F.2d 150, 156 (5th Cir. 1982) (two days in dirty, hot cell without  
15 water did not rise to Eighth Amendment violation).

16  
17  
18 Plaintiff cites out-of-circuit cases holding that confinement  
19 in a cell with unsanitary conditions constituted an Eighth  
20 Amendment violation. However, in these cases the inmate was  
21 confined for a longer period or the conditions were more egregious  
22 than in Plaintiff's case. See e.g., Young v. Quinlan, 960 F.2d  
23 351, 363 (3rd Cir. 1992) (unsanitary living conditions for four  
24 days constituted Eighth Amendment violation); Kimbrough v. O'Neil,  
25 523 F.2d 1057, 1058-59 (7th Cir. 1975) (pretrial detainee's three  
26 days in solitary confinement with no toilet, water or mattress and  
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1 where water was thrown on him at night was Eighth Amendment  
2 violation).

3 Plaintiff also argues that his placement on contraband watch  
4 violated the Eighth Amendment because he and his fiancée are of  
5 different races and, thus, Defendants' conduct was motivated by  
6 racial discrimination. He concludes that he and his family were  
7 targeted on the basis of race because all the other families in  
8 the visiting room were of the same race, and Plaintiff and his  
9 mother were the only people asked to submit to a strip search.  
10 However, in the December 11, 2007 declaration attached to his 602  
11 appeal, Plaintiff states contradictorily that he, his mother and  
12 fiancée were the only visitors in the visiting room when Officer  
13 Oleachea demanded that he and his mother submit to a strip search.  
14 Thus, Plaintiff presents no evidence to create a dispute of fact  
15 that Officer Oleachea, or any officer, was motivated by racial  
16 animus; Plaintiff cannot create a dispute of fact by contradicting  
17 himself.  
18

19  
20 Officer Oleachea explains his motivation by stating that, on  
21 December 2, 2007, he was assigned to patrol the SVSP visiting room  
22 and was responsible for observing the interactions between inmates  
23 and their visitors to ensure that no contraband was passed from  
24 the visitor to the inmate. Oleachea Dec. ¶ 5. Officer Oleachea  
25 observed Plaintiff, in his mother's presence, place an unknown  
26 item in his mouth. Oleachea Dec. ¶ 7. Suspecting that Plaintiff  
27 may have sought to conceal contraband by ingesting it, Officer  
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1 Oleachea conducted an unclothed body search of Plaintiff, but did  
2 not find any contraband. Id. Officer Oleachea and another  
3 officer escorted Plaintiff to his cell and, because he had lost  
4 visual contact with Plaintiff while Plaintiff was inside his cell,  
5 Officer Oleachea conducted another unclothed body search of  
6 Plaintiff, with negative results. Oleachea Dec. ¶ 8. After these  
7 two searches, Officer Oleachea was relieved by additional staff  
8 and had no further dealings with Plaintiff. Id. Thus, Officer  
9 Oleachea only conducted the strip searches; he was not responsible  
10 for the conditions in the contraband watch cell.  
11

12 Accordingly, Plaintiff's Eighth Amendment rights were not  
13 violated. Furthermore, viewing the facts in the light most  
14 favorable to Plaintiff, Defendants prevail as a matter of law on  
15 their qualified immunity defense because the record establishes no  
16 Eighth Amendment violation occurred. Even if a constitutional  
17 violation had occurred, in light of clearly established principles  
18 at the time of the incident, Defendants could have reasonably  
19 believed that placing Plaintiff on contraband-watch, under the  
20 conditions he describes, for a two-day period after an officer  
21 observed him ingesting what could have been contraband, was  
22 lawful.  
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24 Therefore, Defendants' motion for summary judgment on  
25 Plaintiff's Eighth Amendment claim is granted.  
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1 III. Fourth Amendment Claim Against Oleachea and Quitevis

2 Plaintiff claims that Officers Oleachea and Quitevis  
3 violated his Fourth Amendment right to be free from unreasonable  
4 searches when they performed two invasive strip searches without  
5 reasonable suspicion.

6 The Fourth Amendment proscribes "unreasonable searches and  
7 seizures." U.S. Const. amend. IV; Allen v. City of Portland, 73  
8 F.3d 232, 235 (9th Cir. 1995); Franklin v. Foxworth, 31 F.3d 873,  
9 875 (9th Cir. 1994). The Fourth Amendment applies to the invasion  
10 of bodily privacy in prisons and jails. Bull v. City and County  
11 of San Francisco, 595 F.3d 964, 974-75 (9th Cir. 2010) (en banc).  
12 To analyze a claim alleging a violation of this privacy right, the  
13 court must apply the test set forth in Turner v. Safley, 482 U.S.  
14 78, 89 (1987), and determine whether a particular invasion of  
15 bodily privacy was reasonably related to legitimate penological  
16 interests. Bull, 595 F.3d at 973. Prisoners and pretrial  
17 detainees in institutional settings may be subjected to strip  
18 searches and body cavity searches if they are conducted in a  
19 reasonable manner. Bell v. Wolfish, 441 U.S. 520, 561 (1979). In  
20 Bell, the court explained the test for reasonableness under the  
21 Fourth Amendment "requires a balancing of the need for the  
22 particular search against the invasion of personal rights that the  
23 search entails. Courts must consider the scope of the particular  
24 intrusion, the manner in which it is conducted, the justification  
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1 for initiating it, and the place in which it is conducted." Id.  
2 at 559.

3 In Bell, the Supreme Court evaluated the constitutionality of  
4 a blanket policy allowing strip searches with visual body cavity  
5 inspections, without regard to individualized suspicion, of all  
6 inmates at the county jail, including pretrial detainees, after  
7 every contact visit with a person from outside the institution.  
8 Id. at 559-60. The Supreme Court upheld the policy because the  
9 possibility of smuggling drugs, weapons, and other contraband into  
10 the institution presented significant and legitimate security  
11 interests. Id. Similarly, the Ninth Circuit has held that the  
12 rights of arrestees, placed in custodial housing with the general  
13 jail population, are not violated by a practice of strip searching  
14 each one of them as part of the booking process, provided that the  
15 searches are no more intrusive on privacy interests than those  
16 upheld in Bell, and the searches are not conducted in an abusive  
17 manner. Bull, 595 F.3d at 980-82. Furthermore, the officer's  
18 state of mind when conducting a search is not relevant to Fourth  
19 Amendment analysis; an action is reasonable, regardless of the  
20 individual officer's state of mind, as long as the circumstances,  
21 viewed objectively, justify the action. Nunez v. Duncan, 591 F.3d  
22 1217, 1228 (9th Cir. 2010) (citing Brigham City, Utah v. Stuart,  
23 547 U.S. 398, 404 (2006); see also Bull, 595 F.3d at 978  
24 (individualized suspicion is not a requirement for a strip search  
25 in a prison environment)).  
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1 Plaintiff's version of events, taken as true, is insufficient  
2 to establish that the two strip searches were unreasonable.  
3 First, as indicated by the Supreme Court in Bell, 441 U.S. at 559,  
4 controlling contraband within a prison is a legitimate penological  
5 interest and the balance between the need for strip searches and  
6 the invasion of personal rights that the search entails must be  
7 resolved in favor of the prison's security concerns. Second, even  
8 considering Plaintiff's conclusory statement that Officers  
9 Oleachea and Quitevis were "aggressive" when they searched him,  
10 his description of the actual searches establishes that they were  
11 not done in an excessive, vindictive or harassing manner.  
12 Plaintiff complains of being placed in waistchains and leg  
13 restraints. However, these restraints are required by SVSP  
14 Operation Procedure 38, which lists the procedures to be used  
15 during a contraband watch. See Respondent's Exhibit A, SVSP  
16 Operational Procedure 38 at ¶ 38.4. Plaintiff's Fourth Amendment  
17 rights were not violated.  
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19  
20 Furthermore, Officers Oleachea and Quitevis are entitled to  
21 qualified immunity on Plaintiff's Fourth Amendment claim because  
22 no constitutional violation occurred. Even if Plaintiff's Fourth  
23 Amendment rights had been violated, it would have been reasonable  
24 for the officers to have believed that conducting an unclothed  
25 body search of Plaintiff, after observing him ingest what Officer  
26 Oleachea thought was contraband, was lawful. See Bell, 441 U.S.  
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at 561 (prisoners may be subjected to strip search if conducted in reasonable manner).

Therefore, Defendants' motion for summary judgment on Plaintiff's Fourth Amendment claim is granted.

CONCLUSION

Based on the foregoing, Defendants' motion for summary judgment is granted. A judgment in favor of Defendants shall be entered separately. The parties shall bear their own costs of suit.

IT IS SO ORDERED.

Dated: 3/20/2012

  
\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge