

1 HONORABLE RICHARD A. JONES
2
3
4
5
6

7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON

9 TESSA J. COE,

10 Plaintiff,

11 v.

12 SNOHOMISH COUNTY, et al.,

13 Defendants.

CASE NO. C10-1713RAJ

ORDER

14
15 **I. INTRODUCTION**

16 This matter comes before the court on the motion of Defendants Snohomish
17 County, the Snohomish County Sheriff's Office, and Snohomish County Sheriff's Deputy
18 Bryson McGee for summary judgment against the claims of Plaintiff Tessa Coe. Dkt.
19 # 44. No one requested oral argument, and the court finds oral argument unnecessary.
20 For the reasons stated herein, the court GRANTS the motion, DISMISSES this case, and
21 directs the clerk to enter judgment for Defendants.

22 **II. BACKGROUND**

23 At about 3:00 a.m. on an August 2008 morning, Deputy McGee responded to the
24 scene of a one-car accident in unincorporated Snohomish County. He discovered that a
25 car had struck a metal utility box near the side of the road, and that the car had suffered
26 substantial front-end damage. He found Ms. Coe walking near the accident scene.
27

28 ORDER – 1

1 Deputy McGee approached Ms. Coe, who appeared to be drunk. She admitted
2 that she was the car's driver. She also consented to take a portable breath test, which
3 revealed her blood alcohol content to be .101, above Washington's legal limit. Deputy
4 McGee arrested Ms. Coe for driving under the influence.

5 Deputy McGee took Ms. Coe to the emergency department of Providence Everett
6 Medical Center ("Providence") for a medical evaluation before booking her into the
7 Snohomish County Jail. The County's written policies require a medical evaluation
8 "[w]henver any person is arrested and is to be booked and professes or appears to be ill
9 or injured" McGee Decl. (Dkt. # 48), Ex. D (¶ 11.02/040.05).

10 The court now recounts what happened at Providence, emphasizing that it does so
11 in the light most favorable to Ms. Coe. Except where noted, Ms. Coe's testimony is the
12 sole evidence supporting her version of events. Deputy McGee and numerous
13 eyewitnesses who were on duty at Providence sharply contradict her version of events.

14 Ms. Coe states that Deputy McGee escorted her to a private examination room at
15 Providence. She went willingly, and did not object to a nurse taking her blood pressure
16 and measuring her heart rate. The nurse then left, to be replaced by a woman who Ms.
17 Coe believes was a physician, based on her white coat. She still does not know the name
18 of the physician. When the physician approached her, Ms. Coe stated that she did not
19 need medical treatment, and that she had only a small cut on her hand. Before the
20 physician could respond, Deputy McGee became "loud" and told her to "shut up" or she
21 would "get a thermometer in [her] ass." Moerk Decl. (Dkt. # 55), Ex. B (Coe Depo. at
22 82); *see also id.* (Coe Depo. at 99) ("He told me to shut up and he – he told me to 'shut
23 up or she's going to have to stick the thermometer in your ass.>"). Ms. Coe got up from
24 the examining table. Deputy McGee approached her and she "tried to push him away."
25 *Id.* (Coe Depo. at 99). He then "grabbed [her] hair and slammed [her] into the cement."
26 *Id.* (Coe Depo. at 100). As he held her on the floor, he "yell[ed]" at the physician "Do it
27 now. Do it now." *Id.* (Coe Depo. at 82). The physician then approached her, "pulled

1 [her] pants down” and quickly inserted a rectal thermometer in her anus, after which
2 Deputy McGee pulled her upright, pulled her pants back up, and handcuffed her to the
3 examination table. *Id.* The temperature reading took no more than 30 seconds. *Id.* (Coe
4 Depo. at 119).

5 After the forcible temperature reading, staff at Providence discharged Ms. Coe.
6 She was taken to the Snohomish County jail, booked, and locked up. The record does not
7 reveal whether she was charged with or convicted of driving under the influence. She
8 did, however, plead guilty to assault in the third degree for striking Deputy McGee during
9 the examination at Providence.

10 Ms. Coe sued both the Snohomish County Defendants, Providence, and several
11 persons and entities associated with Providence. She later dropped her claims against the
12 Providence Defendants; they are no longer parties to this suit. What remains are her
13 claims that Deputy McGee is liable under 42 U.S.C. § 1983 for violating her Fourth
14 Amendment right to be free from excessive force as well as her Fourteenth Amendment
15 right to be free from bodily intrusion, as well as her Washington law claims for assault,
16 battery, and outrage. She also contends that Snohomish County itself is liable under
17 § 1983 for promoting a policy of “allow[ing] the participation of male deputies in the
18 intimate medical treatment of female detainees.” Pltf.’s Opp’n (Dkt. # 54) at 10.

19 The court now turns to the Snohomish County Defendants’ motion for summary
20 judgment against each of these claims.

21 **III. ANALYSIS**

22 On a motion for summary judgment, the court must draw all inferences from the
23 admissible evidence in the light most favorable to the non-moving party. *Addisu v. Fred*
24 *Meyer, Inc.*, 198 F.3d 1130, 1134 (9th Cir. 2000). Summary judgment is appropriate
25 where there is no genuine issue of material fact and the moving party is entitled to
26 judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party must initially show
27 the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,

1 323 (1986). The opposing party must then show a genuine issue of fact for trial.
2 *Matsushita Elect. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The
3 opposing party must present probative evidence to support its claim or defense. *Intel*
4 *Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The
5 court defers to neither party in resolving purely legal questions. *See Bendixen v.*
6 *Standard Ins. Co.*, 185 F.3d 939, 942 (9th Cir. 1999).

7 **A. Section 1983 Claims**

8 Section 1983 provides a remedy for a plaintiff when a defendant acting under
9 color of state law violates her constitutional rights. 42 U.S.C. § 1983. In this case, Ms.
10 Coe claims that Deputy McGee violated not only her Fourth Amendment right to be free
11 from the use of excessive force, but her right under the Fourteenth Amendment’s Due
12 Process Clause to be free from bodily intrusion.

13 Deputy McGee raises the defense of qualified immunity, which protects § 1983
14 defendants “from liability for civil damages insofar as their conduct does not violate
15 clearly established statutory or constitutional rights of which a reasonable person would
16 have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A court considering a
17 qualified immunity claim considers whether the plaintiff has alleged (or provided some
18 evidence for, depending on the stage of litigation) facts establishing the violation of a
19 constitutional right and whether that right was “clearly established” at the time of the
20 defendant’s wrongful acts. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). A court has
21 discretion to consider either portion of the qualified immunity test first. *Id.* at 236
22 (overruling *Saucier v. Katz*, 533 U.S. 194 (2001), which had mandated that courts
23 determine, for every assertion of qualified immunity, whether plaintiff had alleged a
24 violation of a constitutional right).

25 The court begins with Ms. Coe’s Fourteenth Amendment claim. She occasionally
26 phrases that claim in terms of her right to be free from “bodily intrusion,” but she also
27 casts it in terms of her right to be free from medical treatment to which she did not

1 consent. The court focuses on the latter formulation, although the court finds no
2 difference between the rights that Ms. Coe articulates, or at least no difference that would
3 impact the outcome of this case. To be sure, the Fourteenth Amendment protects a
4 person's liberty interest in refusing medical treatment. *Cruzan v. Director, Mo. Dep't of*
5 *Health*, 497 U.S. 261, 278 (1990). But the extent of that protection depends on the nature
6 of the liberty interest balanced against the government's justification for intruding upon
7 it. *Id.* at 279. In *Cruzan*, for example, the Court balanced an incompetent patient's
8 liberty interest in refusing lifesaving medical treatment against the State of Missouri's
9 interest in preserving human life and in accurately determining the incompetent patient's
10 wishes. *Id.* at 280-81. The Court held that Missouri's law requiring clear and convincing
11 evidence of the patient's desire to withhold treatment was not an unconstitutional
12 infringement on the patient's liberty interest. *Id.* at 282.

13 In this case, determining whether Ms. Coe has alleged a Fourteenth Amendment
14 violation would require the court to balance Ms. Coe's liberty interest in avoiding an
15 intrusive but brief temperature reading against the County's interests. The County's
16 interest in having arrestees who have been in an accident medically cleared before jailing
17 them is obvious – failing to do so might result in harm to the arrestee, to say nothing of
18 the County's potential legal liability. The County takes no stance on what treatment or
19 evaluation procedures are necessary for medical clearance; it instead defers to the
20 judgment of medical personnel. In this case, every medical expert to provide evidence
21 declares that a temperature reading is an essential component of a medical exam of a
22 patient in Ms. Coe's shoes. Dobson Decl. (Dkt. # 41), Finn Decl. (Dkt. # 42); Pilcher
23 Decl. (Dkt. # 47). Moreover, each of them declares that a rectal temperature reading is
24 not only superior to other options as a diagnostic tool, it is the only option that is safe
25 when taking the temperature of a patient resisting treatment. *Id.* Ms. Coe's testimony
26 does not explain why the physician who took her temperature chose to do so rectally.
27 Providence staff who witnessed her behavior contend that she resisted treatment

1 throughout her stay in the emergency department. Regardless of these evidentiary
2 inconsistencies,¹ there is no evidence at all that Deputy McGee was responsible for the
3 choice to take her temperature rectally. At most, he assisted in restraining Ms. Coe while
4 medical staff took the temperature reading.

5 In this case, the court need not decide whether Deputy McGee violated Ms. Coe's
6 Fourteenth Amendment rights, because even if he did, her right to be free from a forcible
7 rectal temperature reading in the context of a pre-jailing medical clearance was not
8 clearly established. Ms. Coe cites no case, and the court is aware of none, that clearly
9 defines her liberty interest in these circumstances or clearly delineates the scope of
10 permissible intrusions upon it. Deputy McGee had no clear legal guidance as to Ms.
11 Coe's Fourteenth Amendment rights in the circumstances he confronted in the exam
12 room, and thus he has qualified immunity from her claims.

13 Ms. Coe fares no better on her Fourth Amendment excessive force claim. She
14 claims that Deputy McGee used excessive force in taking her to the floor after she arose
15 from the exam table, and that he used excessive force in holding her down while the
16 physician took her temperature. The force he used to take her to the ground was not
17 excessive, as a matter of law. Ms. Coe admits that she used force against Deputy McGee
18 as she tried to move away from the exam table. Indeed, she later pleaded guilty to
19 assaulting him. In these circumstances, even the most charitable view of her testimony
20 about the force Deputy McGee used to take her to the ground does not make out an

21 ¹ Again, the court emphasizes that it is constrained to construe the evidence in the light most
22 favorable to Ms. Coe. That is a particularly difficult task here, because Ms. Coe's testimony
23 leads to many implausible conclusions. According to her, she was compliant with medical staff
24 at all times until Deputy McGee told her to "shut up" or the physician would insert a
25 thermometer in her rectum. This is difficult to accept, because medical staff have testified that
26 the only reason a rectal temperature was necessary is that it was the safest option for taking a
27 temperature from a patient who refused to comply with their requests. Had she been compliant,
28 they would have taken her temperature orally. Ms. Coe's testimony demands that the court infer
that medical staff decided, for no reason, to take a rectal temperature reading. The only evidence
from a member of the medical staff directly involved with Ms. Coe's examination is a witness
statement from Lacey Tilton, a nurse who stated that Ms. Coe refused to permit staff to take any
of her vital signs, and that she was escorted to a private exam room only after it was apparent
that a rectal temperature reading would be necessary. McGee Decl., Ex. A.

1 excessive force claim. *Deorle v. Rutherford*, 272 F.3d 1272, 1279 (9th Cir. 2001)
2 (describing analytical framework for excessive force claims). As to the force he used to
3 hold her down, there is no evidence that the force he used was more than necessary to
4 restrain her while the physician took her temperature. Just as Ms. Coe had no clearly
5 established right to be free from the forcible temperature reading, she had no clearly
6 established right to be free from the force necessary to accomplish that reading.

7 Unlike Deputy McGee, qualified immunity is not available to the County or its
8 Sheriff's Office. *Owen v. City of Independence*, 445 U.S. 622, 638 (1980) (holding that
9 local government units cannot invoke qualified immunity). Nonetheless, they can be held
10 liable only if one of their policies or customs was a moving force behind the
11 constitutional violation that Ms. Coe suffered. *Monell v. Dep't of Soc. Servs.*, 436 U.S.
12 658, 694 (1978).

13 No County policy or custom led to a constitutional violation in this case.
14 Snohomish County's official policy is to permit arrestees to decline medical treatment:

15 If, on arrival at the hospital, the arrestee refuses to submit to examination
16 and/or treatment, that refusal should be noted in writing on the appropriate
17 hospital form. This document should be signed by the physician on duty
18 and witnessed by the deputy with the deputy's signature. Then the arrestee,
19 accompanied by a copy of the refusal, may be transported to the jail for
20 booking.

21 McGee Decl., Ex. D (¶ 11.02/040.05). According to Ms. Coe's version of events, Deputy
22 McGee either did not follow this policy or he was unable to follow the policy because
23 Providence staff insisted on evaluating Ms. Coe despite her refusal to consent. Whatever
24 the case, the official policy was plainly not the moving force behind the constitutional
25 violations she claims. Ms. Coe claims that her rights were violated as a result of
26 Snohomish County's policy of having male Sheriff's deputies participate in the "intimate
27 medical treatment" of female arrestees. Pltf.'s Opp'n (Dkt. # 54) at 10. She has no
28 evidence of such a policy. It is apparent that Snohomish County has a policy that
arrestees are to be supervised by a law enforcement officer. That policy, however, did

1 not lead to a constitutional violation in this case. The violations that Ms. Coe claims
2 resulted from her attempt to leave custody, her assault on Deputy McGee, and the choice
3 of Providence staff to take her temperature rectally. There is no basis to hold the County
4 or the Sheriff's Department liable.

5 **B. State Law Claims**

6 Ms. Coe contends that Deputy McGee committed the torts of assault, battery, and
7 outrage. A battery is an intentional act that causes a "harmful or offensive contact" with
8 another. *Garratt v. Dailey*, 279 P.2d 1091, 1093 (Wash. 1955). An assault is an
9 intentional act that puts another in reasonable apprehension of an imminent battery.
10 *McKinney v. City of Tukwila*, 13 P.3d 631, 641 (Wash. Ct. App. 2000). When a person
11 intentionally or recklessly engages in "extreme and outrageous conduct" that causes
12 another to suffer "severe emotional distress," he is liable for outrage. *Kloepfel v. Bokor*,
13 66 P.3d 630, 632

14 Deputy McGee is not liable for assault or battery. When he used force to subdue
15 Ms. Coe as she attempted to leave the examination table, she was properly under arrest.
16 Deputy McGee had the right to use force or threaten force to maintain custody of her.
17 RCW 10.31.050 ("If after notice of the intention to arrest the defendant, he or she either
18 flee or forcibly resist, the officer may use all necessary means to effect the arrest."); *State*
19 *v. Smith*, 759 P.2d 372, 376 (Wash. 1988) ("An individual who is privileged to cause
20 injury undeniably is privileged to threaten to do so."). As the court has already found, the
21 force that Deputy McGee used to subdue Ms. Coe was necessary and not excessive as a
22 matter of law.

23 Deputy McGee's choice to hold Ms. Coe down while the physician took her
24 temperature presents a somewhat different question. Ms. Coe had not consented to the
25 medical treatment, and as a general rule, medical treatment without consent is a battery.
26 *Bundrick v. Stewart*, 114 P.3d 1204, 1208 (Wash. Ct. App. 2005). That general rule is
27 subject to exceptions, however, where the patient is in custody. For example, under

1 appropriate circumstances, a court can order involuntary medication in order to permit a
2 criminal defendant to be competent to stand trial. *State v. Hernandez-Ramirez*, 119 P.3d
3 880, 883 (Wash. Ct. App. 2005) (citing *Sell v. United States*, 539 U.S. 166, 180-81
4 (2003)). Whether Washington law permits a physician to conduct a medical examination
5 of an arrestee in Ms. Coe's shoes is a question for which the court finds no clear answer.
6 In this case, however, the physician's conduct is not in question. Instead, the challenged
7 conduct is Deputy McGee's decision to assist the physician by holding Ms. Coe down.
8 In these circumstances, the court holds that an arresting officer's privilege to use force
9 extends to using force to assist a physician in a routine pre-booking medical examination.

10 The court also finds that Deputy McGee is not liable for outrage. The use of force
11 to subdue an arrestee and the use of force to permit a physician to conduct a pre-booking
12 medical examination of an arrestee are not, as a matter of law, "extreme and outrageous
13 conduct."

14 IV. CONCLUSION

15 For the reasons stated above, the court GRANTS Defendants' motion for summary
16 judgment. Dkt. # 44. The court directs the clerk to DISMISS this case and enter
17 judgment for Defendants.

18 DATED this 6th day of December, 2011.

19
20
21 

22 The Honorable Richard A. Jones
23 United States District Court Judge
24
25
26
27