

DA 22-0579

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 150

JOSEPH E. LAWRENCE,

Plaintiff and Appellant,

v.

LARRY PASHA, MONTANA DEPARTMENT OF  
CORRECTIONS, REGINALD MICHAEL, LYNN  
GUYER, MICHELE MORGENROTH, BILL  
WEDDINGTON, HAROLD STREY, MARIEKE  
BECK, CHAD DAY, STATE OF MONTANA,  
MONTANA STATE PRISON, MONTANA  
HUMAN RIGHTS BUREAU, and MONTANA  
MDOC PREA COORDINATION,

Defendants and Appellees.

APPEAL FROM: District Court of the Third Judicial District,  
In and For the County of Powell, Cause No. DV-20-97  
Honorable Ray Dayton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Joseph E. Lawrence, Self-Represented, Deer Lodge, Montana

For Appellees:

Austin Knudsen, Montana Attorney General, Jeremy S. Craft, Agency  
Legal Counsel, Agency Legal Service Bureau, Helena, Montana

Submitted on Briefs: June 7, 2023

Decided: August 8, 2023

Filed:

  
Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Joseph E. Lawrence (Lawrence) appeals the September 26, 2022, Order granting Appellees’ Motion for Summary Judgment issued by the Third Judicial District Court, Powell County. Lawrence argues his Eighth Amendment rights were violated when Sergeant Larry Pasha performed a routine pat down search of Lawrence, an inmate at the Montana State Prison (MSP), while he was fully clothed.

¶2 We affirm and restate the issue on appeal:

*Did the District Court correctly determine there was no genuine dispute of material fact that a routine clothed body search did not violate Lawrence’s Eighth Amendment rights?*

#### **FACTUAL AND PROCEDURAL BACKGROUND**

¶3 On September 25, 2019, around 11:00 a.m., Sergeant Pasha was training three other correctional officers in the lobby of Housing Unit A at the MSP on how to conduct clothed body searches of inmates. As part of the training, they searched every inmate passing through the lobby. Sergeant Pasha—while wearing a body camera for the entirety of the search—conducted a routine clothed body search of Lawrence pursuant to Montana Department of Corrections (DOC) policy.

¶4 Lawrence entered the lobby at 11:18 a.m. and Sergeant Pasha began his clothed body search. During the search, Sergeant Pasha stood behind Lawrence while Lawrence looked forward, with his legs shoulder length apart and hands at his sides. Sergeant Pasha maintained a “bladed” stance, with one of his feet placed slightly in front of the other. He searched Lawrence by placing both gloved hands on Lawrence’s shoulders and moving

them first down the outside of Lawrence's arms and then down the sides of his torso. Sergeant Pasha directed Lawrence to flatten out his arms, making them parallel to the ground. Pasha then placed his right hand on Lawrence's back and kept it there while his left hand reached around to pat down the front left side of Lawrence's torso. Pasha switched hands and performed the same maneuver on Lawrence's right side. This portion of the search lasted around ten seconds.

¶5 Next, Sergeant Pasha kept his hands stationary on Lawrence's back while using his right hand to search the inside of Lawrence's left leg, keeping his fingers together and thumb against his index finger. Sergeant Pasha then moved his right hand to Lawrence's back while using his left hand to search the inside of Lawrence's right leg. Finally, Sergeant Pasha swiped Lawrence's groin and buttocks area with his thumb tight to his index finger. The entire search was conducted over Lawrence's clothing and lasted approximately 28 seconds, similar to other inmate searches Sergeant Pasha conducted. Sergeant Pasha patted Lawrence on the shoulder to indicate the search was over, and Lawrence left the lobby without saying a word. Two of the three correctional officers in training witnessed the search and later declared Sergeant Pasha performed the search correctly and according to policy.

¶6 Later that same day, Lawrence filed a complaint against Sergeant Pasha pursuant to the Prison Rape Elimination Act (PREA) regarding the pat down. Harold Strey (Strey), MSP PREA Investigator, conducted a complete administrative investigation of the pat down as required by DOC policy and MSP procedures. Strey reviewed Sergeant Pasha's

body camera footage and interviewed the correctional officers. Based on his investigation, Strey found Lawrence’s allegations to be unsubstantiated. Lawrence then submitted a sexual discrimination claim to the Human Rights Bureau (HRB). Chad Day (Day) conducted an HRB investigation, in which he also reviewed the body camera footage, interviewed the correctional officers—including Sergeant Pasha, and read Strey’s report. Day found there was no reasonable cause to conclude Lawrence’s discrimination claims were true. Lawrence filed suit against Pasha, Strey, and Day following the determinations in the PREA and HRB investigations.

¶7 On January 27, 2021, Lawrence filed an Amended Complaint in District Court alleging five causes of action. Specifically, Lawrence claimed Sergeant Pasha’s clothed body search: (1) violated unspecified DOC policies and MSP procedures; (2) constituted a criminal assault in violation of §§ 45-5-502 and 45-5-503, MCA; (3) constituted criminal mistreatment of prisoners in violation of § 45-5-204, MCA; (4) violated his Eighth Amendment right to be free from cruel and unusual punishment, and (5) violated 42 U.S.C. § 1983. Lawrence also generally alleged a “collusional [sic] conspiracy” to violate his rights. On March 15, 2022, Appellees filed a Motion for Summary Judgment, requesting the court dismiss all claims in Lawrence’s Amended Complaint. Following briefing and oral argument, the District Court granted summary judgment to Appellees on all claims. Lawrence appeals.

## STANDARD OF REVIEW

¶8 We review district court summary judgment rulings de novo for conformance to the applicable standards specified in M. R. Civ. P. 56. *Dick Anderson Constr., Inc. v. Monroe Prop. Co.*, 2011 MT 138, ¶ 16, 361 Mont. 30, 255 P.3d 1257. Summary judgment is proper only when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3). A genuine issue of material fact is a fact materially inconsistent with proof of an essential element of a claim or defense at issue. *Mt. W. Bank, N.A. v. Mine & Mill Hydraulics, Inc.*, 2003 MT 35, ¶ 28, 314 Mont. 248, 64 P.3d 1048. The party seeking summary judgment has the initial burden of showing a complete absence of any genuine issue of material fact on the Rule 56 record and that the movant is accordingly entitled to judgment as a matter of law. *Weber v. Interbel Tel. Coop.*, 2003 MT 320, ¶ 5, 318 Mont. 295, 80 P.3d 88. The burden then shifts to the opposing party to either show the existence of a genuine issue of material fact precluding summary judgment or that the moving party is nonetheless not entitled to judgment as a matter of law. *Osterman v. Sears, Roebuck & Co.*, 2003 MT 327, ¶ 17, 318 Mont. 342, 80 P.3d 435 (citation omitted).

¶9 To meet the responsive Rule 56 burden of demonstrating that a genuine issue of material fact precludes summary judgment, the non-moving party must in proper form, and by more than mere denial, speculation, or pleading allegation, “set out specific facts” showing the existence of a genuine issue of material fact. M. R. Civ. P. 56(e)(2). The opposing party’s “proffered evidence must be material and of a substantial nature, not

fanciful, frivolous, gauzy or merely suspicious.” *Estate of Willson v. Addison*, 2011 MT 179, ¶ 14, 361 Mont. 269, 258 P.3d 410 (citation omitted). The court must view the Rule 56 factual record in the light most favorable to the non-moving party, with all reasonable inferences drawn in favor thereof. *Weber*, ¶ 5. Whether a genuine issue of material fact exists or whether a party is entitled to judgment as a matter of law are conclusions of law reviewed de novo for correctness. *Speer v. Mont. Dep’t of Corr.*, 2020 MT 45, ¶ 17, 399 Mont. 67, 458 P.3d 1016.

## DISCUSSION

¶10 On appeal, Lawrence claims Sergeant Pasha violated his Eighth Amendment rights when Pasha allegedly held his genitalia two separate times for a “few seconds” during the search. Lawrence further argues Sergeant Pasha then “proceeded to run his hand, thumb extended upwards and inwards towards Lawrence’s body, to ‘swipe’ up the crack of Lawrence’s buttocks with such force as to protrude Pasha’s thumb into Lawrence’s ‘taint’ and anus,” constituting cruel and unusual punishment.

¶11 To prove a sexual assault on an inmate committed by a prison employee constituted cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution, a claimant must establish there was sexual contact or touching (1) for the staff member’s own sexual gratification without legitimate penological justification, or (2) for the purpose of humiliating, degrading, or demeaning the inmate. *Bearchild v. Cobban*, 947 F.3d 1130, 1144 (9th Cir. 2020). When the alleged sexual contact occurs in the context of a clothed body search, “the prisoner must show that the guard’s conduct exceeded the scope of what

was required to satisfy whatever institutional concern justified the initiation of the procedure.” *Bearchild*, 947 F.3d at 1144. Not every inmate contact in a prison setting constitutes an Eighth Amendment violation. *See Martinez v. Scott*, No. CV 18-8133-PA(E), 2022 U.S. Dist. LEXIS 34580, at \*25 (C.D. Cal. Jan. 24, 2022) (“[I]n the prison context, brief unconsented touching, particularly without accompanying sexual comments, usually will not satisfy the objective prong of the Eighth Amendment analysis.”); *White v. Wilks*, No. 2:20-cv-0170 DB P, 2020 U.S. Dist. LEXIS 55201, at \*2–3 (E.D. Cal. Mar. 30, 2020) (holding allegations that defendant rubbed his hands between plaintiff’s legs for ten-to-fifteen seconds did not state an Eighth Amendment violation); *Moreno v. V Hull*, No. EDCV 20-272-CJC (KK), 2020 U.S. Dist. LEXIS 43276, at \*11 (C.D. Cal. Mar. 12, 2020) (holding allegations of contact with and exposure of inmate’s penis during clothed body search, without more, were insufficient to state an Eighth Amendment violation).

¶12 Here, the District Court correctly found Sergeant Pasha conducted a proper search of Lawrence based on the body camera footage.<sup>1</sup> The record lacks any evidence that Sergeant Pasha touched Lawrence for his own sexual gratification or to humiliate Lawrence. Pursuant to DOC policy, Lawrence was randomly searched with dozens of

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<sup>1</sup> The District Court properly relied on the undisputed body camera evidence in concluding there was no constitutional violation. District courts may view videos to make factual findings on a motion for summary judgment in order to draw inferences. *Ritesman v. Pasha*, No. CV 19-71-H-BMM-JTJ, 2021 U.S. Dist. LEXIS 100920, at \*16-17 (D. Mont. Apr. 8, 2021) (citing *Scott v. Harris*, 550 U.S. 372, 378, 127 S. Ct. 1769, 1775 (2007)). Here, there is no evidence that the video lacks an accurate record of what occurred during the clothed body search.

other inmates passing through the lobby. Sergeant Pasha performed the search in the same manner he performed searches of other inmates and he did not exceed the scope of what was required for an ordinary clothed body search. The search lasted approximately 28 seconds, like the other inmate searches he conducted. The undisputed facts demonstrate none of Lawrence's rights were violated.

¶13 The District Court's grant of Appellees' Motion for Summary Judgment is affirmed. There is no genuine dispute of material fact that Sergeant Pasha's search was routine and did not violate Lawrence's Eighth Amendment rights.

### CONCLUSION

¶14 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH  
/S/ JAMES JEREMIAH SHEA  
/S/ INGRID GUSTAFSON  
/S/ DIRK M. SANDEFUR