**[Cite as *Manigault v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-8094.]**

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| KHRISTAN MANIGAULT<br><br>Plaintiff<br><br>v.<br><br>OHIO DEPARTMENT OF REHABILITATION AND CORRECTION<br><br>Defendant | Case No. 2014-00962<br><br>Magistrate Robert Van Schoyck<br><br>DECISION OF THE MAGISTRATE |

**{¶1}** Plaintiff's complaint arises from a strip search performed on her by employees of defendant at the Trumbull Correctional Institution (TCI) when she came there to visit her boyfriend, inmate Ryan Morris, on August 11, 2013. On October 7, 2015, the court issued an entry which dismissed plaintiff's constitutional claims and provided that the case would proceed under plaintiff's claims for invasion of privacy and assault. Additionally, as set forth in orders issued on January 22, 2016, and March 15, 2016, plaintiff's motion for determinations as to whether three of defendant's employees, Natalie Bryant, Sharon Chilson, and Cheri Raber, are entitled to personal immunity under R.C. 2743.02(F) and 9.86 was granted such that the immunity issue would be determined with the trial on the merits. The case proceeded to trial before the undersigned magistrate.

**{¶2}** At the close of trial, the parties were granted leave to file post-trial briefs. After plaintiff moved for leave to exceed the 15-page limit specified in L.C.C.R. 4(E), an order was issued on April 24, 2017, providing that the parties' post-trial briefs were not to exceed 20 pages, exclusive of attachments. On June 2, 2017, defendant filed a motion to strike plaintiff's post-trial brief on the basis that plaintiff circumvented the page limitation by attaching documents to the brief that contain additional arguments. On June 7, 2017, plaintiff filed a response. Upon review, the attachments to the brief and

the ample footnoting within the brief test the bounds of the page limitation, but not so much as to warrant striking the brief. Therefore, defendant's motion is DENIED.

**{¶3}** On another matter, on March 15, 2017, during the pendency of trial, plaintiff filed a motion for sanctions due to spoliation of evidence. On March 28, 2017, defendant filed a response. At issue is a document provided to plaintiff in discovery which omitted a portion of a handwritten note by Chilson. (Plaintiff's Exhibit 33, p. 124.) After plaintiff raised the issue at trial, defendant searched for Chilson's note and produced it on the final day of trial. (Defendant's Exhibit EE.) Upon review, this issue should have been resolved between the parties, or at least not have been raised for the first time at trial, and, regardless, the portion of the note that was omitted is immaterial. Accordingly, plaintiff's motion is DENIED.

**SUMMARY OF TRIAL TESTIMONY**

**{¶4}** Plaintiff explained that she and Morris met in 2004, when she was 18 years old, and saw each other romantically on and off until 2007. Plaintiff stated that they renewed their relationship sometime after Morris went to prison in 2008. Plaintiff testified that Morris was assigned to the Lebanon Correctional Institution when she started visiting him in 2009, driving from her home near Youngstown about twice a month. According to plaintiff, a year or so later Morris was transferred to TCI, which is much closer to her home, and after that she visited Morris about 3 or 4 times a month.

**{¶5}** Plaintiff stated that in order to visit Morris at TCI she was required to call and make a reservation between 7 and 30 days in advance. Plaintiff stated that she typically called as soon as possible to obtain a reservation. Plaintiff testified that when she would arrive for a visit, she would go to the front desk and receive a number from a corrections officer, and then sit and wait for her number to be called. Plaintiff related that when her number was called, she would go to the processing desk and pass through a metal detector.

**{¶6}** Upon entering the visitation area, plaintiff stated, a corrections officer would direct her where to sit. Plaintiff stated that she typically visited Morris from about noon to 2:45 p.m. Plaintiff stated that she was aware there were cameras in the visitation area, as well as two-way mirrors. Plaintiff testified that she was aware of the visitation rules, such as restrictions on visitors' attire. Plaintiff acknowledged that there may have been an instance where she was not allowed to visit due to inappropriate clothing. Otherwise, plaintiff stated, no one ever told her that she did anything wrong during a visit.

**{¶7}** Plaintiff described how the visits are important to her and Morris, being the only way they can spend time together. Plaintiff also explained that while she and Morris do not have children together, she has an 11-year-old son whose father is deceased, and her son enjoys visiting Morris and the two of them have developed a good relationship. Plaintiff stated that she is familiar with Morris's family and that there have been occasions when she accompanied some of them to visit Morris.

**{¶8}** Plaintiff testified that her reservation to visit Morris on August 11, 2013, was scheduled by her in the normal manner by telephone. Plaintiff stated that she was scheduled to visit at noon but was probably late. Plaintiff related that her son was with her that day, and that when they arrived at TCI everything was normal at first. Plaintiff stated that she took a number and sat down with her son and waited.

**{¶9}** Eventually, plaintiff stated, she heard her name called and when she looked toward the desk, she saw an individual, whom she learned to be TCI Investigator Sharon Chilson, waving her to the desk. As plaintiff described, Chilson was accompanied by Corrections Officers Natalie Bryant and Cheri Raber, and Lieutenant Michael Arthur was nearby, and when she walked up to the desk Chilson told her that they had reason to believe she was bringing contraband to Morris. It was plaintiff's testimony that she has never brought contraband into a prison, nor had her son do so. According to plaintiff, Chilson told her that if she would not consent to being searched,

she would be barred from visiting, and when plaintiff asked Chilson if that meant she would never be allowed to visit again, Chilson responded "never." Plaintiff stated that Chilson showed her a document which similarly said the investigator had received credible confidential information that plaintiff would attempt to convey contraband to Morris. (Plaintiff's Exhibit 35; Defendant's Exhibit N.) Plaintiff testified that she denied the accusation. Plaintiff also testified that she asked Chilson whether Morris was in trouble and that Chilson said she did not know.

**{¶10}** Plaintiff stated that she felt bullied and overwhelmed, and that her son and other people in the visiting area were looking at her. Plaintiff further stated that she feared Morris would get in trouble if she did not consent to be searched, and she was afraid of negative consequences herself because it seemed like she was already in trouble. Plaintiff testified that she felt like she needed to act quickly and that there was little choice but to go along with the request, so she went ahead and signed the form that Chilson showed her. (Plaintiff's Exhibit 35; Defendant's Exhibit N.)

**{¶11}** Plaintiff recounted that she was then led into the women's restroom located in the public waiting area accompanied by Chilson, Bryant, and Raber, and that she was not aware of anyone standing by to keep others from entering the restroom during the search, so she was afraid that someone might walk in at any time. Plaintiff stated that Chilson wore gloves and put a paper towel on the floor for her to stand on and instructed her to remove her sandals. Plaintiff stated that Chilson instructed her to part her hair and run her fingers through it while Chilson watched, and then Chilson looked behind and in her ears, and then looked in her mouth. Plaintiff testified that Chilson then told her to remove her blouse and pants, which she handed to Bryant and Raber for inspection.

**{¶12}** According to plaintiff, she originally thought that the search might just be a pat down or something less intrusive than a full strip search, and she had no recollection of seeing a Notification of Personal Search form which described what the

search could entail, although she acknowledged that the signature on the document might be hers. (Plaintiff's Exhibit 34; Defendant's Exhibit M.) Plaintiff, who stated that she had never been strip-searched before, testified that when Chilson instructed her to remove her bra, she was so humiliated and embarrassed that she cannot remember exactly what she said, but that she told Chilson "you've got the wrong girl" and Chilson responded with something to the effect that plaintiff was the only one who visits. Plaintiff stated that she was then instructed to remove her panties, then lift her feet up to show the soles, squat all the way to the floor, squat again with her legs spread further apart and cough twice, and lift her breasts and show her armpits. By plaintiff's description, all three of the staff members were looking at her while she was nude and Chilson seemed adamant that she was hiding something. Plaintiff recalled hearing someone snicker, but she could not identify which employee it was. Plaintiff stated that she was embarrassed and cried. Plaintiff stated that Chilson finally told her she could put her clothes back on, and after doing so and wiping her face after crying, she left the bathroom, rejoined her son, and they were processed through for the visit. Plaintiff stated that the search seemed like it took about 15 minutes, but that it may have felt longer than it really was.

**{¶13}** According to plaintiff, after she and her son entered the visitation room, Chilson entered the room and sat with the corrections officer at the desk and watched her for about 20 minutes. Plaintiff testified that Chilson eventually approached and handed her a copy of the Authorization for Visitor Personal Search form that plaintiff had signed earlier. (Plaintiff's Exhibit 35; Defendant's Exhibit N.) Plaintiff recounted that Morris exchanged words with Chilson, whom plaintiff recalled having an attitude.

**{¶14}** Plaintiff testified that it has been emotionally difficult for her to visit ever since the incident, but that she continues to visit regularly. Plaintiff stated that she develops anxiety as soon as she pulls into the parking lot at TCI and that she deliberately uses a bathroom before going to TCI so that she will not have to go back to

the bathroom where the search took place because it conjures bad memories. Plaintiff testified about how upsetting, humiliating, and frightening the incident was and how it still bothers her, especially when she visits TCI. Plaintiff stated that she spoke to her pastor and to her mother about what happened, and also to Morris, but that she did not have the resources to seek professional counseling. Plaintiff also stated that she did not miss any work due to the incident.

**{¶15}** Sharon Chilson testified that since October 2014 she has been employed with defendant as the Labor Relations Officer at TCI, having previously served as the Investigator there since 1993, and as a corrections officer for several years prior to that. Chilson stated that earlier in her career she worked as a police officer. Chilson stated that she earned a master's degree in criminal justice in 2008 and that she has taught a criminal justice course which included a reasonable suspicion component. Chilson testified that she worked in cooperation with various law enforcement agencies during her time as Investigator and that she once received a commendation from the FBI.

**{¶16}** Chilson described the training and duties associated with the Investigator role and she authenticated a copy of the departmental policy that guided her investigations. (Plaintiff's Exhibit 29A). Chilson related that her responsibilities included overseeing the management of strategic threat groups and investigating inmate and staff misconduct and drug activity, and that with approximately 1,500 inmates at TCI who were basically all classified at security level 3 on a 1 to 5 scale, her workload was heavy. Her office also served as a clearinghouse of sorts for intelligence, according to Chilson. Chilson typically had 10 to 30 active investigations, she stated. Chilson testified that she had no staff in 2013 and worked long hours. Chilson stated that she reported directly to the warden in 2013, and that her annual evaluation following the incident at issue in this case included language from the warden referring to his having set a goal for her a year earlier to "make at least one conveyance prevention a month." (Plaintiff's Exhibit 1, p. 5-D.)

**{¶17}** According to Chilson, in 2013 she began investigating what proved to be an inappropriate relationship between Esther Kusky, who was then a TCI staff member, and an inmate named Kaylan Davis, who was Morris's cellmate. By Chilson's account, when she started this investigation, she listened to recordings of Davis's telephone calls. Chilson explained that as the Investigator, she had the ability to monitor any telephone calls made by inmates.

**{¶18}** Chilson testified that when she would meet with other staff, it was not unusual for others to pass along tips or information gleaned from various sources. To that end, Chilson vaguely recalled that at some point after she began investigating Davis, there were a couple of anonymous tips passed along to her by staff indicating that Morris might be dealing drugs. Chilson recounted that based upon the contents of Davis's telephone calls and the tips that she received about Morris, in approximately June 2013 she opened a separate drug investigation into Morris.

**{¶19}** Chilson testified that she began by reviewing Morris's telephone conversations as well as email messages that he sent or received through the JPay messaging service that is available to inmates at TCI. By Chilson's recollection, she listened to about 26 to 28 hours of recorded telephone conversations between Morris and plaintiff, and between Morris and his mother and other family. According to Chilson, due to the amount of time it took to listen to telephone calls in general, it was her habit to have the recordings placed on a compact disc which she would listen to in her car or elsewhere, and she was typically unable to take notes when doing so. Rather, Chilson testified that she would keep the information in her head and just occasionally make a note to identify a particular recording that might be of some significance.

**{¶20}** Chilson testified that she kept notes where she identified four conversations between Morris and his mother which pre-date the search of plaintiff (Plaintiff's Exhibit 33, p. 124; Defendant's Exhibit EE.), but that she listened to many

others also. Recordings of several telephone conversations between Morris and his mother were played at trial, and while there was some confusion or disagreement as to the exact dates of each recording, Chilson testified that she recognized the voices, that these were recordings she reviewed during her investigation, and that these included the four recordings identified in her notes as taking place between July 5 and 22, 2013. Chilson related that her notes were minimal, as she just used them for reference, noting that one of the calls was simply a "chat," that Morris and his mother discussed a "watch phone" in one call which she thought could be coded language, and that in the two others there was discussion about having plaintiff working on something and having her pick something up. Chilson also testified that she suspected from a call between Morris and his mother that the mother may have been involved in a transaction with another inmate's family.

**{¶21}** Chilson also testified about copies of several JPay messages between plaintiff and Morris that she included in a "strip search file," which she described as comprising evidence that she relied upon in electing to perform the search, and other documentation associated with the search. (Plaintiff's Exhibit 33.) It was Chilson's testimony that she started compiling the file before the search, but she explained that many of the documents were prepared and included after the search, including multiple JPay messages that post-date the search. Of the JPay messages that pre-date the search, Chilson testified that one of them that she found suspicious was a July 9, 2013 message in which Morris told plaintiff that he wanted her to send him money, which Chilson acknowledged is not unusual among inmates, but in that message Morris also noted that he had somehow previously sent some money to plaintiff. (Plaintiff's Exhibit 33, p. 126.) Chilson stated that other messages seemed suspicious insofar as Morris was being manipulative and trying to get plaintiff to do something for him. Chilson also referred to one of the messages as seeming to correspond with Morris's telephone conversation with his mother about a watch phone, which she thought could

be coded language. Chilson noted a July 23, 2013 message in which Morris told plaintiff, in part, "I just hope you go through with this process" and "don't speak about this on e-mails b/c it's nobody's business but ours." (Plaintiff's Exhibit 33, p. 136; Defendant's Exhibit E.)

**{¶22}** From Chilson's description, by the beginning of August 2013 she had a vague suspicion that Morris might be dealing drugs, but the information she had gathered up to that point was nebulous. Chilson acknowledged that Morris was not involved in gang activity to her knowledge, and that she was not aware at that time of Morris having any disciplinary record.

**{¶23}** Chilson testified that on August 5, 2013, she received a copy of an Incident Report prepared one day earlier by a Corrections Officer Squibbs wherein he documented his interview of an inmate who had just been caught with heroin. (Plaintiff's Exhibit 33, p. 102; Defendant's Exhibit I.) The description written by Squibbs states as follows:

> On the above date and time I officer Squibbs interviewed inmate [redacted] about the heroin yard officer Rosak found on him. Inmate [redacted] told me that he was to purchase the heroin off inmate Morris 554-174 cause he was to be getting a visit this weekend. The heroin is being passed in balloons, inmate morris then told him later that it fell through but next weekend for sure. Also said inmate Morris is the heroin man along with inmate [redacted] in 14 east which he said is polluted with Heroin. Inmate was able to locate some Heroin out of 15 east and was suppose to send $175 dollars for a 1/2 gram to a [redacted] wasnt sure of the first name but certain on the last, out of Louisville Kentucky but didnt know the guys name out of 15 east just said he is a 3B inmate that appears half Black and half Hispanic.

**{¶24}** Chilson testified that she believes she spoke to Squibbs, but has no recollection of speaking to the confidential inmate about the matter. According to Chilson, however, she believed the inmate was credible because she had a discussion with him once before where he was honest about his own involvement with drugs.

Chilson admitted, though, that the inmate had never provided any information before that implicated others in wrongdoing. Chilson stated that she also thought it was credible because she felt that the inmate had nothing to gain from providing this information, but that she has no knowledge whether he may have been looking for leniency after getting in trouble.

**{¶25}** Chilson testified that she determined plaintiff was the only adult scheduled to visit Morris the next weekend. Chilson also stated that she felt a JPay message sent from Morris to plaintiff on August 4, 2013, the same day as the Incident Report, corroborated the tip in that Morris said such things as "I just hate when you tell me your going to do something and then you try to change it" and "just do that shit asap." (Plaintiff's Exhibit 33, p. 142; Defendant's Exhibit H.) At this point, Chilson stated, based upon the tip, this JPay message, and the fact that plaintiff was the only adult scheduled to visit the following weekend, as well as all the earlier evidence she gathered, she suspected that plaintiff was going to convey drugs to Morris the following weekend. Chilson testified that she decided there was a strong possibility that she would strip-search plaintiff that following weekend, but that she did not actually make the decision until plaintiff arrived at TCI.

**{¶26}** Chilson described the difficulty in attempting to detect drug conveyances by visitors by means other than a strip search. Chilson testified that most instances of visitors conveying drugs involve female visitors, in her experience, and she described how drugs are often discreetly passed in balloons through a kiss, by hand, or in food. Chilson recounted that during her 20 years on the job, she provided the information upon which every strip search of a visitor was based, and she authenticated a log of those searches. (Plaintiff's Exhibit 32.) Chilson described training she received on strip searches and her experience in performing strip searches on female visitors and female inmates.

**{¶27}** Chilson testified that when she arrived at TCI on the morning of Sunday, August 11, 2013, she told the corrections officer at the desk in the entry building, or B-1 area, to call her when plaintiff arrived. Chilson stated that she then prepared the Notification for Personal Search and Authorization for Visitor Personal Search forms. (Plaintiff's Exhibits 34, 35; Defendant's Exhibits M, N.) Chilson explained that in the portion of the Authorization for Visitor Personal Search form where the "specific objective facts upon which the search is based" are to be set forth, she wrote the following: "The investigator has received credible confidential information that you Khristan Manigault, will attempt to convey contraband into the institution to Morris 554174[.]"

**{¶28}** According to Chilson, around the time that she arrived at TCI she determined who was the shift commander, being Lieutenant Arthur. Chilson explained that even though she was senior to Arthur in terms of the organizational chart, as a matter of policy he was the highest-ranking officer on duty, making him the shift commander and after-hours designee of the warden. The strip search of a visitor must be approved by the highest-ranking officer on duty pursuant to defendant's security policy, which incorporates R.C. 5120.421, Chilson stated. (Plaintiff's Exhibit 28.) From Chilson's recollection, she told Arthur early that morning that she planned to perform a strip search, or that there was at least a strong possibility of that, and that two female officers were needed to assist. Chilson was asked on cross-examination about having two employees assist her insofar as the language on the Notification for Personal Search form which would be presented to plaintiff for signature stated that the search would be conducted by "two employees," and Chilson stated that she was not aware of any actual policy that would prohibit three employees from performing the search, and that in her experience three employees was standard and helped expedite the search, for the benefit of everyone.

**{¶29}** Upon receiving word that plaintiff had arrived in the B-1 area, Chilson stated, she went there and met Arthur, Bryant, and Raber, and obtained Arthur's formal authorization for the search by having him sign the Authorization for Visitor Personal Search form. Chilson could not specifically recall what she would have told Arthur, nor could she recall sharing any documentation with him other than the form that he signed. According to Chilson, the routine practice was that authorization for a visitor strip search would be sought when the visitor actually showed up at TCI, but depending on the circumstances she might discuss it earlier with the person whose authorization she would seek.

**{¶30}** Chilson stated that she next had the corrections officer stationed at the desk identify plaintiff, and then she called aloud for plaintiff to come to the desk. Chilson related that she then read from the Authorization for Visitor Personal Search form, informing plaintiff that there was credible confidential information that she would attempt to convey contraband to Morris. Chilson testified that she next read from the Notification for Personal Search form to apprise plaintiff of what the search could entail, including that she might have to remove all her clothing and undergo a visual inspection of the genitalia, buttocks, or breasts, and to inform plaintiff that if she refused to undergo the search, she would not be permitted to visit and would be subject to a suspension of visiting privileges. Chilson stated that she talked to plaintiff for a few minutes and explained that she had a choice whether to consent to the search, but that if she refused she could be banned and it could be a permanent ban, consistent with defendant's security policy and inmate visitation policy. (Plaintiff's Exhibit 28, p. 70; Plaintiff's Exhibit 29, p. 78.)

**{¶31}** Chilson stated that she observed plaintiff sign the Notification for Personal Search, followed by Bryant and Raber signing as witnesses, and that plaintiff subsequently signed the Authorization for Visitor Personal Search, which Chilson signed as a witness. Plaintiff appeared to be angry when she signed the forms, Chilson

recalled. After this, Chilson stated, plaintiff, Bryant, Raber, and herself went into the women's restroom in the B-1 area. According to Chilson, this was where she typically conducted strip searches of female visitors. Chilson testified that when using this location she always had an employee stand outside the restroom to prevent anyone from entering during the search, and that she is certain she did so in this case. Other rooms nearby had windows and thus were not suitable, according to Chilson.

**{¶32}** Chilson recounted that she would have put paper towels on the floor for plaintiff to stand on and explained to plaintiff that she would be giving her instructions, while Raber and Bryant would inspect her clothing. Chilson testified that she would have had plaintiff run her fingers through her hair, and that she recalls looking inside plaintiff's mouth. Chilson stated that she instructed plaintiff to remove all her clothing and hand it to Bryant and Raber, who were wearing medical gloves. Bryant and Raber put the clothes on a changing table after inspecting them for contraband, Chilson stated. Once plaintiff had disrobed, Chilson testified, she had plaintiff squat and cough so as to expose her vagina, but plaintiff had her knees together at first, so she had plaintiff do it again, this time spreading her legs farther and coughing hard. Chilson related that she then had plaintiff turn around and do the same thing so that she could observe plaintiff's anus. No contraband was found, Chilson stated. From Chilson's recollection, plaintiff was angry throughout, but complied with her instructions. Chilson testified that neither herself nor Bryant or Raber touched plaintiff at any time and that the search was conducted in a professional manner, and she denied that anyone laughed or snickered at plaintiff. A strip search takes about 10 minutes, Chilson stated.

**{¶33}** Chilson stated that after plaintiff put her clothes back on and left the restroom, she told plaintiff that she was sorry plaintiff had to go through that. Then, Chilson stated, she went to make copies of the Notification for Personal Search and Authorization for Visitor Personal Search forms and she gave plaintiff the copies in the visitation area. Chilson did not recall watching plaintiff in the visitation area. The

visitation record for Morris reflects that the next time plaintiff visited was four weeks later, on September 8, 2013, Chilson stated. (Plaintiff's Exhibit 33, p. 151-158; Defendant's Exhibit X.)

**{¶34}** Corrections Officer Natalie Bryant testified that she has been employed with defendant since 2004. Bryant, who stated that she was recognized in 2010 as Corrections Officer of the Year at TCI, testified that prior to the incident she was not acquainted with Morris or plaintiff and had no knowledge about any investigation of them. From Bryant's recollection, on August 11, 2013, she was stationed in the chow hall when she received a call from a supervisor in the shift office directing her to go meet Chilson in the B-1 area to assist with a search. Bryant testified that when she met Chilson she was advised that a visitor was going to be strip-searched for contraband drugs and that her role would be to check the visitor's clothing.

**{¶35}** Bryant testified that she could not recall being involved with a visitor strip search before, but that she had been trained on how to conduct a strip search and had experience strip-searching female inmates. Bryant was asked on cross-examination about her familiarity with the section of defendant's security policy pertaining to strip searches of visitors, and while she could not specifically remember it, she believed that she had seen it before, and when asked about whether she reviewed the policy before assisting with the search, she noted that everything at the prison is governed by one policy or another and she cannot stop and review a policy every time she acts. (Plaintiff's Exhibit 28.) And, Bryant stated, her actions that day were performed in accordance with the instructions of Chilson and she had no reason to question Chilson.

**{¶36}** Bryant testified that she and Corrections Officer Raber never said anything to plaintiff. Bryant stated that she observed Chilson talk to plaintiff, that plaintiff asked some questions, and that her impression from what Chilson said was that plaintiff would be permanently banned if she did not consent to the search. Bryant also stated that

Chilson read from the Notification for Personal Search form before plaintiff signed it, and then she signed it herself as a witness. (Plaintiff's Exhibit 34; Defendant's Exhibit M.)

**{¶37}** As Bryant described, plaintiff, Chilson, Raber, and herself entered the women's restroom, and while she did not know if anyone was stationed outside, no one opened the door while they were inside. Bryant recounted that Chilson directed plaintiff to stand on some paper towels that were placed on the floor, and then Chilson had her disrobe. Bryant stated that she wore a pair of gloves and that she and Raber alternated searching the articles of clothing, and then they placed the clothing on a diaper changing table. Bryant recalled plaintiff squatting once and turning around once, as directed by Chilson. As far as Bryant could recall, plaintiff seemed reluctant during the whole process and may have been upset, but did not cry. According to Bryant, no one snickered or laughed, nor did she observe anyone touch plaintiff or threaten plaintiff. Bryant stated that she conducted herself in a professional manner and took no pleasure in what occurred. After the search, Bryant stated, she prepared an Incident Report. (Plaintiff's Exhibit 33, p. 111.)

**{¶38}** Corrections Officer Cheri Raber testified that she has been employed with defendant at TCI for more than 11 years and is the most recent recipient of the Corrections Officer of the Year award as selected by TCI's warden. Raber testified that she could not recall where she was stationed on August 11, 2013, but that she remembered getting a call from someone instructing her to go to the B-1 area to assist with a strip search. Although she had never strip-searched a visitor before and was not familiar with the section of defendant's security policy pertaining to visitor searches (Plaintiff's Exhibit 28), Raber stated, she had been trained on performing strip searches and had strip-searched female inmates in the past when they were housed at TCI, and the process for searching a visitor was essentially the same.

**{¶39}** Raber stated that she met Chilson and Bryant in the B-1 area and received instructions from Chilson that she would be searching plaintiff's clothing during the

search, and Raber stated that it was her understanding that they were looking for drugs. Raber testified that she had never met plaintiff before and that while she had probably seen Morris before she was not aware of any involvement he may have had with drugs. According to Raber, Chilson was the only person who spoke to plaintiff, and Chilson read the Notification of Personal Search form to plaintiff. (Plaintiff's Exhibit 34; Defendant's Exhibit M.) Raber recalled plaintiff asking about what would happen if she did not consent, and that it was her understanding, apparently from the Notification for Personal Search form, that plaintiff would be barred from visiting if she did not consent. Raber testified that she saw plaintiff sign the Notification for Personal Search, which she herself signed as a witness.

**{¶40}** Raber stated that Chilson, Bryant, herself, and plaintiff then entered the women's restroom in the B-1 area while plaintiff's son remained seated in the public waiting area. Raber could not recall whether anyone was stationed outside the bathroom door, but she stated that she and Bryant stood in the entryway near the door. Raber testified that she relied upon Chilson's direction throughout. According to Raber, she and Bryant did not say anything during the search. Raber related that Chilson put paper towels on the floor for plaintiff to stand on, that Chilson had plaintiff run her fingers through her hair while Chilson watched, then Chilson looked in plaintiff's mouth, and then Chilson had plaintiff remove all of her clothing one article at a time, which was handed to Bryant and herself to inspect. Raber stated that she wore gloves while inspecting the clothing, and when she was done she put the clothing on the changing table. According to Raber, no one snickered or laughed and she has no recollection of saying anything to plaintiff that day. Raber also testified that she never heard or saw anyone threaten plaintiff. After the incident, Raber stated, she prepared an Incident Report. (Plaintiff's Exhibit 33, p. 109.)

**{¶41}** Lieutenant Michael Arthur testified that he works at TCI and has been employed with defendant for 24 years. Arthur testified that he was the highest-ranking

officer on duty on the morning of August 11, 2013, and that he signed the Authorization for Visitor Personal Search form, which he believes Chilson brought to him either in the shift office or in the B-1 area. (Plaintiff's Exhibit 35.) Arthur acknowledged that under the TCI organizational chart Chilson was indirectly above him and that there were times when he reported to her on certain matters, but he stated that the captain was his direct supervisor and that in the captain's absence he was considered the shift commander.

**{¶42}** According to Arthur, in his experience with strip searches the practice typically was that either an Authorization for Visitor Personal Search form would be left in an envelope for him or another officer to review in advance, or Chilson would briefly discuss some of the evidence with him. Arthur stated that even though he cannot recall any specific information Chilson gave him beyond what was written in the form, based on the information that she customarily provided they probably had some discussion about the matter. Arthur also stated that he worked with Chilson for many years, and, while he would not blindly give his approval, he trusted her judgment and would have felt from what she wrote in the Authorization for Visitor Personal Search that there was reasonable suspicion to search plaintiff.

**{¶43}** Arthur testified that he has some recollection of being in the B-1 area when Chilson spoke to plaintiff, and he stated that plaintiff did not appear to be nervous, but was instead at ease or even arrogant. Arthur related that he was aware plaintiff was taken to the women's restroom in the B-1 area for the search, and the only other rooms that he described in that area were a men's restroom, a janitor's closet, and a storage room which he thought had a window on the door.

**{¶44}** Arthur also testified about the conveyance of drugs into TCI, which he said poses various challenges to the secure and orderly operation of the institution, in addition to the risk of inmates overdosing. Heroin in particular is in high demand at TCI, according to Arthur. Arthur testified that in his experience drugs generally get into TCI through visitors or corrupt staff, or by being thrown over a perimeter fence. Arthur, who

stated that he has experience working in the visitation area, testified that with visitors, the drugs are often concealed in a balloon or latex glove in the vaginal or anal cavity of a female visitor and removed in the bathroom of the visitation area. Arthur stated that the drugs are then passed through a kiss or through food from the vending machine, and the inmate, each of whom is strip-searched before and after the visit, swallows the drugs and later induces vomiting to expel the drugs upon returning to his cell. Arthur explained that drugs in prison are valued at about three times the price on the street, and in his experience inmates often have their family send the money to someone on the outside. Arthur testified that in order to prevent the conveyance of contraband, inmates are not supposed to hold hands with visitors and are not to kiss for an extended period of time, nor kiss with their tongues, corrections officers control where everyone sits, and there are cameras and two-way mirrors in the visitation room.

**{¶45}** Christopher LaRose testified that he presently works at a privately-operated correctional center in Youngstown, but that he previously was employed with defendant beginning in 1996 and held a variety of positions at a few different prisons, including service as the warden of TCI at the time of the incident. LaRose testified that during his tenure as warden he authorized several strip searches at Chilson's request and that in each case he felt there was reasonable suspicion for doing so. As LaRose explained, strip searches were to be approved by the highest-ranking officer on duty, and in his absence that person was also in charge of the institution. Insofar as August 11, 2013, was a Sunday, LaRose stated that he would not have been at TCI.

**{¶46}** LaRose explained that drugs inside a correctional facility represent a serious threat to the safety and security of staff and inmates and result in overdoses, violence, and drug-addicted inmates filling up the segregation unit. LaRose explained that drugs can come into a correctional facility through visitation, over the perimeter, through corrupt staff, and through the mail. According to LaRose, drugs were a problem at TCI. Regarding that subject, LaRose testified that he directly supervised Chilson and

that in her annual evaluation following the incident, prepared in March 2014, he left a critical comment noting that she did not meet a goal that had been set a year earlier to "make at least one conveyance prevention a month," noting that "[a]lthough this was an aggressive goal, TCI had an extremely low rate of stop[p]ing conveyances of drugs into the facility." (Plaintiff's Exhibit 2, p. 5-D.) As LaRose testified, the drug interdiction rate at TCI had not been high enough, so he had set this goal for Chilson to stop at least one conveyance a month during the period of time in which this case arose.

**{¶47}** LaRose stated that one way of stopping the conveyance of contraband into the institution was to strip-search visitors. LaRose testified that the strip search of a visitor was to be conducted in a private area and that the B-1 restrooms were a common and appropriate place for it because there were no windows and people could wash their hands afterward, and, moreover, he stated that he did not want strip searches to be done inside the secure area of the prison because he did not want contraband getting through there under any circumstances. LaRose testified that when evaluating visitor strip search requests he relied on Chilson's judgment, but he still needed to be satisfied himself that reasonable suspicion existed. Looking at the Authorization for Visitor Personal Search form that Chilson prepared for the search of plaintiff, LaRose testified that the minimal details are what he would expect to see because there are security concerns with providing more sensitive details due to the fact that documents in prison sometimes fall into the wrong hands. (Plaintiffs Exhibit 35; Defendant's Exhibit N.) Still, LaRose testified that he would want to hear more details in person before he could give his authorization.

**{¶48}** LaRose also testified that in his career he has experience conducting investigations and relying on confidential informants, explaining that they are one of the biggest sources of information in a prison and can play a major role in investigations. In the case of an inmate who provides information for the first time, as opposed to having

a history as a confidential informant, LaRose stated that he would want some further investigation before acting upon the tip.

**{¶49}** LaRose stated that defendant had a policy that provided some guidance on sanctioning visitors who refused to undergo a strip search, and generally either himself or a designee would make the decision whether to ban the visitor permanently or temporarily. LaRose stated that while he could not remember the specifics of each case, in general he remembered banning visitors permanently from all state correctional institutions when they refused to undergo a strip search. LaRose stated, however, that someone banned in this fashion could apply for reinstatement, and that there were times when he granted such requests.

**{¶50}** LaRose stated that he learned about the strip search of plaintiff when he was on a business trip in Washington, D.C. and received a call from his boss. According to LaRose, he was asked to call plaintiff in response to a complaint she had made with prison officials. LaRose testified that, although he cannot remember every detail, when he called plaintiff he apologized to the extent that she felt she had been treated unfairly. LaRose could not recall if he looked into the situation any further.

**{¶51}** Plaintiff's expert witness, Cameron K. Lindsay, testified as to his experience working in law enforcement and corrections, beginning with policing and later transitioning into a career with the Federal Bureau of Prisons, beginning in 1989. Lindsay described the jobs that he held over the years with the Bureau of Prisons at seven different facilities, including serving as warden of the Federal Correctional Institution in Lompoc, California, the United States Penitentiary in Canaan, Pennsylvania, and the Metropolitan Detention Center in Brooklyn, New York. After retiring from federal employment in 2009, Lindsay stated, he went on to serve as warden at two privately-operated correctional facilities in Pennsylvania, retiring from that work in 2014. Lindsay testified that he has a bachelor's degree in criminal justice, a master of arts degree in counseling and guidance, and a master of science degree in

safety, and he stated that he has also taught criminal justice at five different colleges and universities. Lindsay testified that he is now self-employed as an expert in the field of corrections, and that while he had not testified in that capacity in person at a trial before nor served on a case involving the strip search of a visitor, he had testified by deposition in other cases and is familiar with prison industry standards.

**{¶52}** Lindsay testified about how the presence of drugs creates a danger to the prison environment in a multitude of ways and can compromise the orderly operation of the prison. Lindsay also described various ways that drugs can come into a prison, including visitors, corrupt staff, being thrown over a perimeter fence, through the mail, or through inmates who leave the prison temporarily, such as to visit a hospital. Regarding visitors, Lindsay acknowledged that inmates have been known to recruit family or friends to bring them drugs, and that this is accomplished at times by putting the drugs in a balloon and hiding it in the anal or vaginal cavity, removing it in a restroom, and then passing it through a kiss or a beverage. Lindsay stated that he has not seen data to indicate that there is any greater likelihood of female visitors conveying drugs versus male visitors.

**{¶53}** Lindsay, who admitted that he could not speak to the volume of drugs being conveyed into TCI in 2013, acknowledged that every prison should have a drug interdiction program. Lindsay also acknowledged that among the ways prison authorities can investigate a suspected conveyance operation, they can monitor telephone calls, review email messages, and use confidential informants. But a confidential informant must be validated, Lindsay testified, and he stated that in this case he understood the informant had only offered information previously about his own drug use rather than information about others. In Lindsay's opinion, from the materials that he reviewed in connection with this case, he was aware of no history with this individual that would suffice in the corrections field to validate his credibility as an informant.

**{¶54}** Lindsay testified that in an investigation into the conveyance of contraband into a correctional facility, the focus generally should not be on the visitor, who is a free member of society. Although Lindsay acknowledged that he worked exclusively in jurisdictions outside Ohio, mostly for the federal government, he stated that in his experience the focus is more appropriately placed upon the inmates. Lindsay admitted that Ohio has a statute (R.C. 5120.421) providing that visitors may be strip-searched under certain conditions, and he also acknowledged that it is standard industry-wide to find signs on the premises of correctional facilities notifying visitors that they may be subject to search. Indeed, Lindsay testified that in similar fashion the American Correctional Association standards permit strip searches of visitors under certain circumstances, and that the same is true of the Federal Bureau of Prisons, where he spent most of his career.

**{¶55}** Nevertheless, Lindsay testified, despite it being permitted by rule, in his experience it was the practice in the federal prisons not to strip-search visitors. Lindsay admitted that he could not speak to what occurred at every federal prison, but he testified that in his service as warden of facilities in the federal system and beyond, he was never presented with a request to strip-search a visitor, let alone did he ever permit a visitor to be strip-searched. In short, Lindsay related that it is standard practice in the industry to refrain from strip-searching visitors, unless there are exigent circumstances. Lindsay also opined that, assuming some consideration is being given to strip-searching a visitor, the warden should make the decision whether to allow it, although he acknowledged that in this case he could not recall if the warden was present on the day of the search.

**INVASION OF PRIVACY**

**{¶56}** There are four theories of invasion of privacy recognized under Ohio law: 1) wrongful intrusion upon the seclusion of another; 2) public disclosure of one's private affairs; 3) unwarranted appropriation of one's personality; and 4) publicity that places

another in a false light. *See Housh v. Peth*, 165 Ohio St. 35 (1956), paragraph two of the syllabus; *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451, syllabus. Plaintiff's allegations fall within the category of wrongful intrusion upon seclusion. *See Wise v. Ohio Dept. of Rehab. & Corr.*, 97 Ohio App.3d 741, 746 (10th Dist.1994); *Hidey v. Ohio State Hwy. Patrol*, 116 Ohio App.3d 744, 751 (10th Dist.1996). "The intrusion category of invasion of privacy requires a finding of a 'wrongful intrusion into one's private activities in a manner that outrages or causes mental suffering, shame, or humiliation to a person of ordinary sensibilities.'" *Cotten v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-935, 2014-Ohio-2619, ¶ 14, quoting *Peitsmeyer v. Jackson Twp. Bd. of Trustees*, 10th Dist. Franklin No. 02AP-1174, 2003-Ohio-4302, ¶ 26.

**{¶57}** Courts have noted that "people naturally have a diminished expectation of privacy when they enter a prison, and so those visiting a prison cannot credibly claim to carry with them the full panoply of rights they normally enjoy." *Wood v. Clemons*, 89 F.3d 922, 928-929 (1st Cir.1996); *see also Spear v. Sowders*, 71 F.3d 626, 629-630 (6th Cir.1995). "[C]ourts have provided prison administrators 'wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.'" *Humphrey v. Lane*, 89 Ohio St.3d 62, 69 (2000), quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). Plainly, "the duty to keep drugs out of a prison is part of prison administrators' responsibility to maintain a correctional center's institutional security." *Romo v. Champion*, 46 F.3d 1013, 1018 (10th Cir.1995). Nonetheless, while "the preservation of security and order within the prison is unquestionably a weighty state interest, prison officials are not unlimited in ferreting out contraband." *Hunter v. Auger*, 672 F.2d 668, 674 (8th Cir.1982).

**{¶58}** Regarding visitors to state correctional institutions in Ohio, R.C. 5120.421 states, in part:

> (D) * * * visitors who are entering or have entered an institution under the control of the department of rehabilitation and correction may be searched by a strip or body cavity search, but only under the circumstances described in this division. In order for a strip or body cavity search to be conducted of a visitor, the highest officer present in the institution shall expressly authorize the search on the basis of a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in the light of experience, that a visitor proposed to be so searched possesses, and intends to convey or already has conveyed, a deadly weapon, dangerous ordnance, drug of abuse, intoxicating liquor, or electronic communications device onto the grounds of the institution in violation of section 2921.36 of the Revised Code.

**{¶59}** In the context of an invasion of privacy claim in *Wise*, which concerned the strip search of a prison visitor suspected of conveying contraband, the Tenth District Court of Appeals considered whether defendant had reasonable suspicion, under the standards set forth in R.C. 5120.421(D), for conducting the search. The court stated that "[i]f there was a violation of R.C. 5120.421(D) by the failure of the state to comply with the reasonable suspicion standard prior to this search, as we have held that there was, it was an invasion of privacy, since it was an intrusion that is objectionable to a reasonable person." *Id.* at 746. In *Wise*, the court determined that defendant failed to comply with the statutory reasonable suspicion standard and that the visitor had proven a common law claim for the wrongful intrusion theory of invasion of privacy.

**{¶60}** As noted in *Wise*, the enactment of R.C. 5120.421(D) codified the approach taken by federal courts that "have held that strip searches of prison visitors violate the Fourth Amendment to the United States Constitution if conducted without meeting the threshold standard of reasonable suspicion." *Id.* at 745, citing *Hunter*, 672 F.2d 668. "Reasonable suspicion entails some minimal level of objective justification, 'that is, something more than an inchoate and unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause.'" *State v. Jones*, 188 Ohio App.3d 628, 2010-Ohio-2854, ¶ 17 (10th Dist.), quoting *State v. Jones*, 70 Ohio App.3d 554, 556-57 (10th Dist.1990), citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968). "At a

minimum, the reasonable suspicion standard requires that the decision to search be based on articulable factual information bearing at least some indicia of reliability." *Wood*, 89 F.3d at 929.

**{¶61}** "To justify the strip search of a particular visitor under the reasonable suspicion standard, prison officials must point to specific objective facts and rational inferences that they are entitled to draw from those facts in light of their experience. Inchoate, unspecified suspicions fall short of providing reasonable grounds to suspect that a visitor will attempt to smuggle drugs or other contraband into the prison." *Hunter*, 672 F.2d at 674. "The standard requires 'individualized suspicion' specifically directed to the person who is targeted for the strip search." *Rouse v. Texas Dept. of Criminal Justice Inst. Div.*, 479 Fed.Appx. 612, 614 (5th Cir.2012).

**{¶62}** Upon review of the evidence presented at trial, the magistrate finds as follows. In the summer of 2013, Chilson began investigating inmate Morris after receiving vague tips from prison staff reporting that anonymous inmates had identified Morris as a drug dealer. As part of her investigation, Chilson reviewed recordings of Morris's telephone calls. In telephone calls between Morris and his mother, Morris, who had been in prison for several years at that point, would ask his mother if there was any mail. On at least one of the calls, occurring on July 22, 2013, Morris's mother replied that while there had not been any mail, someone named Tammy Collins had called her about a $50 transaction, which Morris then discussed in vague terms with his mother. From the testimony of Lieutenant Arthur, it was established that inmate drug dealers often arrange for their buyers to have family members send money to someone on the outside. Thus, this was suspicious. During that same conversation, Morris's mother talked about how Morris "got me doing this shit" and that "I'm only doing what I'm told to do," whereupon Morris admonished her to "listen" and "just think about what you're saying." From this conversation and others between Morris and his mother, including heated discussions about some kind of electronic device and about having plaintiff do

some unspecified act that Morris wanted to be done, Chilson reasonably inferred from the language that they used that the two of them were trying to hide something, knowing that the conversations could be monitored.

**{¶63}** Chilson also reviewed Morris's JPay messages with plaintiff. In one of those messages, dated July 9, 2013, Morris noted that he had somehow sent plaintiff money, which is suspicious given that Morris is an inmate with few funds in his inmate account, so little that he routinely sought for plaintiff and Morris to put funds in his account. Indeed, the nature of that message was that Morris felt plaintiff needed to put more funds onto his inmate account, and the two traded messages for a few days to that effect, until plaintiff sent a message on July 18, 2013, stating that she would be able to add funds like she was "suppose to do" for him. On July 22, 2013, Morris sent a message to plaintiff complaining about the aforementioned telephone call with his mother and how she was not adequately taking care of some unspecified "shit she was suppose to be handling for me," and then Morris told plaintiff how he hoped that plaintiff would "just go through" with some unspecified act for him. The next day, Morris sent plaintiff another message pleading with her to "go through with this process" and instructing her to "don't speak about this on e-mails b/c it's nobody's business but ours." In subsequent days Morris sent more messages expressing dissatisfaction with plaintiff not doing something that he wanted to be done, and while plaintiff contends that this was about them getting matching tattoos, this was not clear from the messages and the relevant inquiry is not whether there is an explanation for Morris's statements in hindsight, but whether reasonable suspicion existed at the time of plaintiff's search. *Leverette v. Bell*, 247 F.3d 160, 168 (4th Cir.2001), fn. 5.

**{¶64}** On August 4, 2013, at approximately 2:15 p.m., an inmate whose name has been kept confidential was caught with heroin on his person while in the yard at TCI. When Corrections Officer Squibbs questioned the inmate, he informed Squibbs that Morris was "the heroin man" and that he had planned to make a purchase off Morris

because Morris "was to be getting a visit this weekend." The inmate, noting that the heroin was being passed in balloons, stated that Morris told him "it fell through" that weekend, but that he would have more "next weekend for sure." The inmate went on to provide specific information about who he was ultimately able to purchase heroin from that weekend. Although this inmate had not informed on others in the past, he was known to Chilson for having been truthful in the past about his own involvement with drugs at TCI.

**{¶65}** At 6:57 p.m. on August 4, 2013, Morris sent a JPay message to plaintiff in which he stated, in part: "I'm sorry about being a jerk at the visit today, i just hate when you tell me your going to do something and then you try to change it when you already know what's what that shit makes me sooo mad please stop that shit babe alright? But we'll be good i'm over it now just do that shit asap."

**{¶66}** Thus, this message that Morris sent just a few hours after the confidential inmate stated that Morris did not receive an anticipated supply of heroin during a visit that weekend indicated that Morris was upset with plaintiff during their visit that day over something that she failed to do, and Morris ordered her to do it as soon as possible. Chilson checked the visitation records and determined that plaintiff was the only adult scheduled to visit Morris the next weekend.

**{¶67}** On the date of plaintiff's scheduled visit, August 11, 2013, Chilson alerted Arthur that she planned to perform a search that day and would need two female corrections officers to assist her. When plaintiff arrived at TCI, Chilson met Arthur, Bryant, and Raber in the B-1 area. Chilson informed Arthur of her basis for wanting to search plaintiff, likely providing more detail than what she included in the Authorization for Visitor Personal Search form, from which Chilson had omitted sensitive details. Arthur, who was the highest officer present in the institution, approved the search and signed the Authorization for Visitor Personal Search form. Plaintiff was called up to the desk and Chilson read to her the Authorization for Visitor Personal Search form,

informing plaintiff that there was credible confidential information that she would attempt to convey contraband to Morris, and then Chilson read from the Notification for Personal Search to inform plaintiff that the search could include having her remove all her clothing and undergo an inspection that would include her genitalia, buttocks, or breasts. Chilson informed plaintiff that she had the option to refuse the search but that this could result in her being barred, possibly permanently, from visiting again.

**{¶68}** Plaintiff signed both forms and was escorted into the women's restroom in the B-1 area. Chilson had someone monitor the door so that the restroom was kept private while the search was performed. Chilson visually inspected plaintiff's mouth, hair, and ears, and had plaintiff remove all articles of her clothing, which was examined by Bryant and Raber. When plaintiff was nude, Chilson conducted a visual inspection which required plaintiff to lift her breasts, to squat while facing Chilson, and to squat again with her back turned to Chilson. At no time did Chilson, Bryant, or Raber touch plaintiff during the search, nor threaten to do. Chilson, Bryant, and Raber acted professionally at all times before, during, and after the search, simply performing the necessary acts required for a strip search. Once Chilson concluded her visual inspection of plaintiff, plaintiff was able to put her clothes back on and everyone left the restroom. Plaintiff, along with her son who had been sitting in the waiting area where staff could see him, proceeded to visit Morris as planned.

**{¶69}** The greater weight of the evidence establishes that the search of plaintiff was based upon reasonable suspicion that she was conveying contraband to Morris. Following the initial vague, anonymous tips about Morris that prompted Chilson's drug investigation into him in the first place, Chilson gathered telephone calls and JPay messages that created some suspicion that Morris may have been having his mother and plaintiff perform illicit actions on his behalf, that he was having money sent to his mother and plaintiff, and that he was pressuring a reluctant plaintiff to do something which he warned that she could not discuss in writing. Following that, the information

obtained from the confidential inmate plainly indicated that Morris was receiving heroin in balloons during visits, that he was supposed to have obtained heroin that weekend, and that Morris expected to receive heroin the following weekend. While the inmate did not identify plaintiff specifically, there was individualized suspicion specific to plaintiff in that she had just visited Morris that day and was the only adult scheduled to visit the following weekend, and, significantly, Morris's JPay message to plaintiff later that day seemingly corroborated the tip in that he was upset with plaintiff for not doing what she was supposed to during their visit and he ordered her to do it as soon as possible, conspicuously omitting any detail that would identify what it was that he wanted her to do. While Chilson may have initiated her investigation with little more than inchoate suspicion about Morris alone, she had gathered enough at this point to have reasonable suspicion not only that Morris was dealing drugs, but that plaintiff in particular was supplying or going to supply Morris with drugs. This was enough to warrant the search. Chilson's suspicion was not required to reach the higher threshold of probable cause.

**{¶70}** Regarding the confidential inmate, "[b]efore a tip may justify a search, 'the nature of the tip, the reliability of the informant, the degree of corroboration, other factors contributing to suspicion or the lack thereof, and the nature and extent of the search must all be assessed.'" *Daugherty v. Campbell*, 33 F.3d 554, 556-557 (6th Cir.1994), quoting *United States v. Afanador*, 567 F.2d 1325, 1329 (5th Cir.1978), fn. 4; *see also In re B.A.R.*, 10th Dist. Franklin No. 13AP-396, 2013-Ohio-5712, ¶ 16, quoting *Maumee v. Weisner*, 87 Ohio St.3d 295, 299 (1999) ("Factors that should be considered in determining the value of the informant's tip are the informant's 'veracity, reliability, and basis of knowledge.'"). In this case it is undisputed that the inmate had not provided information about others before. Nevertheless, this was an inmate known to Chilson and whose forthrightness in the past about his own drug transactions demonstrated some degree of truthfulness, even if only meager. The nature of the tip was also specific regarding the type of drug that Morris was dealing and the time of

delivery when Morris was to receive supplies of that drug, plus, the inmate gave detailed information about the transaction he ultimately made with another dealer. While it may be possible that the inmate was looking for leniency by offering up this information, Chilson stated that he did not receive any favorable treatment and that as far as she was concerned he had nothing to gain by sharing the information and there was no reason to not believe him. Significantly, Chilson did not merely rely on the tip as the sole basis for searching plaintiff, and instead she investigated further and found a measure of corroboration in the JPay message, in addition to the visitation records showing that Morris was to receive a visit the next weekend only from plaintiff. Additionally, there were other factors that added some support, including the earlier telephone calls and JPay messages.

**{¶71}** Considering the tip and the corroborating details that implicated plaintiff, the information upon which the search of plaintiff was predicated clearly had a greater level of detail and corroboration compared to the facts in *Wise*, where the sole basis for the strip search of a visitor was an anonymous letter that lacked meaningful detail. *Wise*, 97 Ohio App.3d at 745-746. *Wise* followed the reasoning set forth in *Hunter*, 672 F.2d at 676, where it was similarly held that the decision to strip search a visitor without any information to corroborate a bald assertion in an anonymous tip was not based on reasonable suspicion. *See also Sec. & Law Enforcement Emps., Dist. Council 82 v. Carey*, 737 F.2d 187, 206 (2nd Cir.1984) (reasonable suspicion did not exist for the strip search of a corrections officer where it was based upon a tip from an inmate, who, although not anonymous, had never provided reliable information in the past, and there were no corroborating circumstances).

**{¶72}** Plaintiff asserts that the process by which the strip search was carried out did not conform to R.C. 5120.421 or policies or procedures of defendant, arguing, for example, that it was improper for three employees to conduct the search. R.C. 5120.421 does not specify how many employees may participate in the search,

however. Rather, the Notification for Personal Search form includes language stating that searches are conducted by two people, but this is not a formal policy of defendant's. Moreover, Chilson stated that the routine practice was to have three employees conduct the search, it was explained that having three employees results in a quicker search for the benefit of everyone, and having three employees versus two employees did not augment the embarrassing or humiliating nature of the search in so great a manner as to render the search wrongful. Plaintiff also takes issue with the way that Chilson obtained Arthur's authorization for the search, including the lack of details that Chilson wrote in the Authorization for Visitor Personal Search form, and plaintiff contends that the authorization was little more than pro forma. But, it was explained how it could be dangerous from a security standpoint to put sensitive information in writing, and, furthermore, Chilson more likely than not shared more information with Arthur orally than what she included in the written document. Lindsay testified, and plaintiff argued, that the warden should have been the one to approve the search, but as a matter of policy Arthur was the highest officer present in the institution, which is exactly who is supposed to make the authorization under R.C. 5120.421.

**{¶73}** In short, plaintiff's contentions about procedural problems with the search are unavailing. The search substantially complied with R.C. 5120.421 and defendant's policies and procedures. Even if there were some deviation from policies or procedures, it did not in and of itself render the search unreasonable. *See Leverette*, 247 F.3d at 169; *Perez v. New York State Dept. of Corr. Servs.*, N.D.N.Y. No. 9:08-CV-1031, 2010 U.S. Dist. LEXIS 32500 (Mar. 16, 2010). The essential inquiry is whether the search was based upon reasonable suspicion, and as previously stated, that standard was met. Similarly, insofar as plaintiff points to the low percentage of visitor strip searches where contraband was found dating back to the 1990s, not counting the many visitors who refused to be searched, this historical data does not change the facts about this search, which is the only one on trial. Chilson had extensive experience in

investigations, corrections, and law enforcement, but even if the historical data could be viewed in a manner that would cast some negative light upon her experience, it would have little or no significance because it requires minimal deference to Chilson here to conclude that she had reasonable suspicion for the search based upon the plain language of the intercepted communications and the tip.

**{¶74}** Undoubtedly, it was upsetting for plaintiff to be put through the strip search. "Indeed, a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience." *Hunter*, 672 F.2d at 674. Nevertheless, careful consideration of the evidence presented at trial demonstrates that the search was permitted under R.C. 5120.421. And, the search was carried out in a professional manner that caused no more intrusion upon or humiliation to plaintiff than necessary. It lasted approximately ten minutes and was performed in the normal course and in the usual, private location relative to strip searches of female visitors at TCI. The evidence suggests that perhaps it could have been more effectively communicated to plaintiff the potential consequences of not consenting, and that the restroom was secured while everyone was inside, but on the whole the search was carried out in an orderly and reasonable fashion. Although plaintiff's recollection of events indicated otherwise, including that the employees laughed at her while in the restroom, the evidence demonstrates that plaintiff did not accurately remember everything, such as her unsolicited testimony that Chilson wore eyeglasses, when in reality Chilson only started wearing eyeglasses years later, or her inability to recall signing the Notification for Personal Search.

**{¶75}** Based upon the foregoing, plaintiff failed to prove her claim for invasion of privacy.

**ASSAULT**

**{¶76}** "In order to prevail on a claim for assault, a plaintiff must prove by a preponderance of the evidence that the defendant willfully threatened or attempted to

harm or touch the plaintiff offensively in a manner that reasonably placed the plaintiff in fear of the contact." *Ettayem v. Safaryan*, 10th Dist. Franklin No. 13AP-988, 2014-Ohio-4170, ¶ 40, citing *Miller v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 12AP-12, 2012-Ohio-3382, ¶ 11.

**{¶77}** The evidence in this case does not demonstrate that any employee of defendant threatened or attempted to harm or touch plaintiff, much less that they did so in an offensive manner that reasonably placed plaintiff in fear. Bryant, Chilson, and Raber remained a few feet away from plaintiff during the strip search and never touched her nor attempted to touch her. Given the circumstances of the prison environment and the suspicion of her by prison authorities, plaintiff understandably may have felt some fear in general about undergoing the strip search, and even though the fairly small confines of the bathroom where the strip search occurred resulted in everyone being within a few feet of one another, the evidence fails to show that plaintiff had any reasonable fear of being harmed or touched in an offensive manner at any time. Indeed, plaintiff acknowledged that no one threatened her. Accordingly, plaintiff did not prove her claim of assault.

**IMMUNITY DETERMINATIONS**

**{¶78}** "R.C. 2743.02(F) vests the Court of Claims with exclusive jurisdiction to determine whether a state employee is immune from personal liability in a civil action allowed by R.C. 9.86." *Ries v. Ohio State Univ. Med. Ctr.*, 137 Ohio St.3d 151, 2013-Ohio-4545, ¶ 20.

**{¶79}** R.C. 9.86 states, in part:

**{¶80}** "Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or

employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner."

**{¶81}** For purposes of R.C. 9.86, "[m]alicious purpose encompasses exercising 'malice,' which can be defined as the willful and intentional design to do injury, or the intention or desire to harm another, usually seriously, through conduct that is unlawful or unjustified. Bad faith has been defined as the opposite of good faith, generally implying or involving actual or constructive fraud or a design to mislead or deceive another. Bad faith is not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive. Finally, reckless conduct refers to an act done with knowledge or reason to know of facts that would lead a reasonable person to believe that the conduct creates an unnecessary risk of physical harm and that such risk is greater than that necessary to make the conduct negligent. The term 'reckless' is often used interchangeably with the word 'wanton' and has also been held to be a perverse disregard of a known risk." (Citations omitted.) *Caruso v. State*, 136 Ohio App.3d 616, 620-621 (10th Dist.2000).

**{¶82}** Upon review, the evidence clearly establishes that at all times relevant Bryant, Chilson, and Raber acted within the scope of their employment and did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. Plaintiff argued that Chilson conducted the strip search out of a punitive or retaliatory motive to embarrass Morris because he may have had some role in facilitating the illicit relationship between his cellmate and a TCI employee. To the contrary, the facts establish that Chilson, who as the Investigator was responsible for preventing drugs from coming into the institution, had legitimate reasons for investigating Morris's drug activity and for conducting the strip search. Even if it were assumed, for argument's sake, that Chilson had lacked reasonable suspicion for the search, the evidence still overwhelmingly supports the conclusion that Chilson's actions were in furtherance of her job duties relating to drug interdiction rather than any personal animosity against

Morris. Chilson conducted the investigation and the strip search in the normal course of her work responsibilities. Plaintiff's suggestions about Chilson having some ulterior motive is without evidentiary support.

**{¶83}** Similarly, Bryant and Raber assisted Chilson within the scope of their employment. While plaintiff contends that Bryant and Raber had a duty to independently investigate or obtain further information about the basis for the search, there was no requirement that they do so, and, moreover, Chilson was superior to them in the TCI administration, Chilson's basis for conducting the search appeared valid on its face, and they were sent to assist Chilson by the shift office. Strip searches of prison visitors are legal under R.C. 5120.421, and there was nothing obviously invalid or illegal about what Bryant and Raber were ordered to do. Under the circumstances, they had no duty to independently investigate, and indeed requiring them to do so would be seriously problematic to the orderly operation of the prison. *See Varrone v. Bilotti*, 123 F.3d 75, 81 (2nd Cir.1997). Furthermore, Bryant and Raber, as well as Chilson, had training and experience in strip-searching females, and they acted professionally at all times.

**CONCLUSION**

**{¶84}** Based on the foregoing, the magistrate finds that plaintiff failed to prove her claims by a preponderance of the evidence. Accordingly, judgment is recommended in favor of defendant. Further, the magistrate finds that at all times pertinent, Natalie Bryant, Sharon Chilson, and Cheri Raber acted within the scope of their state employment and did not act with malicious purpose, in bad faith, or in a wanton or reckless manner. It is therefore recommended that the court issue a determination that Bryant, Chilson, and Raber are entitled to civil immunity pursuant to R.C. 9.86 and 2743.02(F) and that the courts of common pleas do not have jurisdiction over any civil actions that may be filed against them based upon the allegations in this case.

**{¶85}** *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

ROBERT VAN SCHOYCK
Magistrate

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