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S.C. SUPREME COURT

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Candise Gore,)
)
Plaintiff,)
)
v.)
)
Dorchester County Sheriff's Office,)
Dorchester County, Carol Brown, Kiesha)
Baldwin, Sheriff L.C. Knight, Richard)
Darling, Sharon Branch, Wanda Taylor, and)
Willis Beatty,)
)
Defendants.)
)
_____)

CA No. 2:22-cv-02322-RMG-MHC

REPORT AND RECOMMENDATION

Before the Court are two partial Motions to Dismiss Plaintiff Candise Gore's ("Plaintiff") Second Amended Complaint. The first Motion was filed by Defendant Dorchester County Sheriff's Office. ECF No. 42. Plaintiff filed a Response in Opposition to that Motion. ECF No. 46. The second Motion was filed by the remaining Defendants. ECF No. 47. Plaintiff filed a Response in Opposition to that Motion (ECF No. 51), and Defendants filed a Reply (ECF No. 52). The matter is ripe for review.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.). Because the Motions are dispositive, this Report and Recommendation is entered for review by the District Judge.

I. BACKGROUND

Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983 and the South Carolina Tort Claims Act ("SCTCA"). Plaintiff's litigation stems from allegedly unconstitutional procedures and practices at the Dorchester County Detention Center ("DCDC"), to which Plaintiff

was subjected to while she was an arrestee at the detention center.

According to Plaintiff's Second Amended Complaint, Defendant Dorchester County Sheriff's Office has a Search Policy Manual used at the DCDC. ECF No. 40 at 4. Plaintiff alleges that Defendant Sheriff L.C. Knight reviewed, approved, enacted, and signed this manual in December 2014. ECF No. 40 at 4.

Plaintiff alleges that this manual states "all new intakes/arrestees [] will be strip searched **prior to their release into the General Population of the Detention Center.**" ECF No. 40 at 5 (emphasis Plaintiff's). The manual allegedly defines a strip search as "the removal of all of ones [sic] clothes to reasonably visually inspect ones [sic] person and clothing with only the intention, based on reasonable suspicion or probable cause, to prevent the introduction of contraband, particularly weapons and drugs, into the [DCDC]." ECF No. 40 at 5. The manual also allegedly differentiates a strip search from a body cavity search by defining the latter as "the inspection of one's internal cavity areas based on probable cause/search warrant that one is concealing contraband in cavity areas, particularly drugs and weapons, in order to introduce such items into the [DCDC]. **Body Cavity Searches will only be conducted by trained authorized certified medical personnel.**" ECF No. 40 at 5 (emphasis Plaintiff's). Plaintiff alleges this manual, signed by Defendant Sheriff Knight, states that body cavity searches are not appropriate nor warranted for all arrestees/intakes, and even when warranted, must be completed in the presence of a medical professional. *See* ECF No. 40 at 5. The manual also allegedly defines "general population" as "any area of the detention facility where either sentenced prisoners or pretrial detainees have access to or have the ability to interact with or have contact with new arrestees/intakes." ECF No. 40 at 5.

Plaintiff alleges that, despite the Search Policy Manual instructing that indiscriminate strip searches are to be completed on those who will be "released into general population," Defendant

Sheriff Knight, accompanied and assisted by Defendants Richard Darling, Sharon Branch, Wanda Taylor, and Willis Beatty, personally assured and directed that all arrestee/intakes—regardless of whether they entered general population—were to undergo a full strip search. ECF No. 40 at 5–6. Plaintiff maintains that this included persons who were held until their bond hearing and released on their own recognizance—i.e., persons who were never admitted to nor were ever present in the general population area at the DCDC.¹ ECF No. 40 at 6.

Plaintiff alleges that when Defendants were faced with the question of how to enforce their search policy when a female arrestee was wearing a tampon or other menstruation-related apparatus, Defendants decided to force all female menstruating arrestees who were wearing tampons to strip naked and remove the tampon as the searching Defendants watched them do so, effectively turning a strip search into a body cavity search. ECF No. 40 at 6. Plaintiff alleges Defendants conducted these types of searches without a nurse or other medical professional present, and further maintains that there were no considerations for the privacy or the constitutional rights of arrestees who were *not* bound for general population and had not even faced a bond hearing. ECF No. 40 at 6. Plaintiff estimates an average of thirty-one percent of women arrestees or inmates in the DCDC are menstruating at any given time—indicating that, since 2014, Defendants Sheriff Knight, Darling, Branch, Taylor, and Beatty encountered “hundreds if not thousands of women” who were menstruating at the time they entered the DCDC as arrestees/intakes. ECF No. 40 at 6.

Plaintiff alleges Defendants chose not to clarify, amend, or change this policy, and did nothing to accommodate these women. ECF No. 40 at 7. Rather, menstruating women who were

¹ Thus, it appears Plaintiff is alleging that Defendant Sheriff Knight broke from the Search Policy Manual and created his own search policy, which he and Defendants Darling, Branch, Taylor, and Beatty used—and directed their subordinates to use—in the DCDC.

only supposed to undergo a strip search if entering general population were effectively subjected to a body cavity search if wearing tampons or any other device because Defendants required these women to remove such equipment in front of DCDC personnel. ECF No. 40 at 7. Plaintiff maintains that this search policy was extended to all arrestees entering the DCDC, regardless of whether they were entering general population. ECF No. 40 at 7.

Plaintiff alleges that she was subjected to this unconstitutional search policy. Specifically, in her Second Amended Complaint, Plaintiff alleges that on June 18, 2020, she was arrested for domestic violence second degree and transported to the DCDC. ECF No. 40 at 7. Plaintiff maintains that her arrest was for non-violent conduct, did not involve a weapon, and did not involve drugs or alcohol. ECF No. 40 at 8. Plaintiff was transported to the DCDC by an Officer Wells of the Summerville Police Department, and, upon arrival, Officer Wells and Defendants Carol Brown and Kiesha Baldwin conducted Plaintiff's intake into the DCDC for the purpose of placing Plaintiff in a holding cell. ECF No. 40 at 8. Plaintiff maintains that, at no time was she booked into general population; rather, Plaintiff was put into a holding cell separate and apart from the general population to await her bond hearing. ECF No. 40 at 8.

Prior to her placement in a holding cell, Plaintiff alleges that Defendant Brown forced Plaintiff to strip naked, spread her vaginal body cavity, remove a tampon she was wearing, watched Plaintiff as she removed the tampon, and then denied her soap to wash her hands. ECF No. 40 at 8. Defendant Brown allegedly instructed Plaintiff to dispose of the tampon in the trash can, had Plaintiff stand back up, and then forced her to bend over and spread herself open again. ECF No. 40 at 8. Plaintiff was allegedly then forced by Defendant Brown to bend over and cough in the presence of Officer Wells and an unnamed officer.² Plaintiff alleges that Defendant Brown did not

² Plaintiff states she was forced to cough in the presence of both "Doe and Wells." ECF No. 40 at 8. Plaintiff had previously filed a Complaint and Amended Complaint wherein she named "Jane

search the tampon for contraband, and instead left it in the waste basket. ECF No. 40 at 8.

Plaintiff maintains that, at the time of this search, she was considered an arrestee and was not booked into general population, nor was she subsequently booked into general population nor exposed to any other persons processed in general population. ECF No. 40 at 8. Plaintiff alleges that she subsequently made a complaint to the Office of Professional Standards for the Summerville Police Department regarding her treatment at the DCDC. ECF No. 40 at 8. She alleges that an investigator, R.A. Williams, reached out to Defendant Dorchester County Sheriff's Office regarding its arrestee search policy and was told that the treatment Plaintiff received is the same as every woman arrestee who is menstruating. ECF No. 40 at 9. Plaintiff alleges that Defendant Sheriff Knight told R.A. Williams that "I can do whatever I want in my jail," and further alleges that each officer was separately asked under oath about the jail procedures and confirmed every person who is brought into the facility is strip searched. ECF No. 40 at 9.

Plaintiff alleges that this search policy was not only known but decided on and carried out by the supervisory Defendants Sheriff Knight, Darling, Branch, Taylor, and Beatty. ECF No. 40 at 7. Plaintiff alleges that subordinate jail personnel (Defendants Brown and Baldwin) conducted these searches of menstruating women at the direct command and orders of the supervisory Defendants. ECF No. 40 at 7.

Plaintiff's Second Amended Complaint alleges six causes of action, including: (1) 42 U.S.C. § 1983 improper search, Due Process, and Eighth Amendment violations against all individual Defendants and Dorchester County; (2) 42 U.S.C. § 1983 Equal Protection violations against all individual Defendants and Dorchester County; (3) Negligence and Gross Negligence

Doe" as an unknown officer who participated in the search, and thus this is likely a remnant from Plaintiff's prior Complaints. *See* ECF Nos. 1, 9. Nevertheless, it is not clear who the "Doe" in the Second Amended Complaint is supposed to be.

under the SCTCA against Defendant Dorchester County Sheriff's Office; (4) 42 U.S.C. § 1983 Supervisory Liability, Equal Protection, and Due Process violations against Defendants Sheriff Knight, Darling, Branch, Taylor, Beatty, and Baldwin; (5) 42 U.S.C. § 1983 *Monell* Liability claim against Dorchester County; and (6) "Reckless Infliction of Emotional Distress/S.C. Code § 24-5-90" against Defendant Dorchester County Sheriff's Office. Plaintiff seeks monetary damages.

II. LEGAL STANDARD

Defendants move for partial dismissal of the Second Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint." *Williams v. Preiss-Wal Pat III, LLC*, 17 F. Supp. 3d 528, 531 (D.S.C. 2014) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999)); see *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of [affirmative] defenses."). Pursuant to Rule 8 of the Federal Rules of Civil Procedure, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), such that the defendant will have "fair notice of what the claim is and the grounds upon which it rests," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal quotation marks omitted). "[T]he facts alleged 'must be enough to raise a right to relief above the speculative level' and must provide 'enough facts to state a claim to relief that is plausible on its face.'" *Robinson v. Am. Honda Motor Co.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555, 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This plausibility standard is not analogous to a "probability

requirement,” rather “it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

III. DISCUSSION

Defendants move for partial dismissal of the Second Amended Complaint via two separate Motions to Dismiss. ECF Nos. 42, 47. The first Motion was filed by Defendant Dorchester County Sheriff’s Office (“DCSO”), and the second Motion was filed by the remaining Defendants. The undersigned addresses each in turn.

A. Defendant Dorchester County Sheriff’s Office’s Motion to Dismiss

In its partial Motion to Dismiss, Defendant DCSO seeks dismissal of Plaintiff’s Sixth Cause of Action. ECF No. 42. Specifically, Defendant DCSO argues that, despite Plaintiff’s attempt to frame her claim as one for “Reckless Infliction of Emotional Distress,” her claim is akin to a claim for Intentional Infliction of Emotional Distress (“IIED”). ECF No. 42-1 at 2. Defendant DCSO maintains that the SCTCA bars recovery for IIED claims, such that her Sixth Cause of Action must be dismissed.

Plaintiff argues that the SCTCA does not explicitly exclude the *cause of action* of IIED. Rather, she maintains that the SCTCA only bars *intentional* infliction of emotional harm but does not bar *reckless* infliction of emotional harm. ECF No. 46 at 1–2. Thus, Plaintiff focuses on the *conduct* that can give rise to an IIED claim—arguing that a plain reading of the SCTCA indicates that only intentional conduct, not reckless conduct, is specifically barred. Plaintiff maintains that there is nothing in the SCTCA to indicate that it prohibits recovery from reckless conduct that causes emotional harm, and points to South Carolina state courts which have upheld a general jury verdict against a state agency on SCTCA claims of gross negligence and IIED premised on reckless conduct. ECF No. 46 at 2. Thus, because an IIED claim may be proven by either intentional *or*

reckless conduct, she maintains that her Sixth Cause of Action should remain.

Other judges within this District have considered these arguments, determining that claims for reckless infliction of emotional distress are barred by the SCTCA. As noted most recently in

Munday v. Beaufort County:

Under South Carolina law, intentional infliction of emotional distress is also known as the tort of outrage. *Callum v. CVS Health Corp.*, 137 F. Supp. 3d 817, 856 (D.S.C. 2015). The South Carolina Supreme Court has “held that in order to recover for intentional infliction of emotional distress, the complaining party must establish that:

- (1) the defendant intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from his conduct;
- (2) the conduct was so “extreme and outrageous” so as to exceed “all possible bounds of decency” and must be regarded as “atrocious, and utterly intolerable in a civilized community;”
- (3) the actions of the defendant caused plaintiff’s emotional distress; and
- (4) the emotional distress suffered by the plaintiff was “severe” such that “no reasonable man could be expected to endure it.”

Hansson v. Scalise Builders of S.C., 650 S.E.2d 68, 70 (S.C. 2007) (quoting *Ford v. Hutson*, 276 S.E.2d 776,778 (S.C. 1981) (adopting elements from Rest. (2d) of Torts § 46)) (emphasis added). Importantly, the conduct that may give rise to an outrage claim may be either intentional or reckless. *See id.* However, though varying levels of conduct may give rise to an outrage claim, the name of the tort remains the same: intentional infliction of emotional distress. *Id.*

In pertinent part, the SCTCA defines “loss” to mean “bodily injury, disease, death, or damage, to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.” S.C. Code. § 15-78-30(f) (emphasis added). Thus, the court is confronted with a question of ambiguity: whether the legislature in drafting the statute referenced the tort of intentional infliction of emotional distress or referenced the state of mind requirement for outrage claims such that only a subclass of claims—those alleging reckless behavior—were permissible as asserted against the State.

This court is not the first court to confront this ambiguity. The magistrate judge noted one South Carolina Supreme Court case that in applying the law of outrage implicitly accepted that outrage claims based in recklessness were not barred. R&R at 28 (citing *Bass v. S.C. Dep’t of Soc. Servs.*, 780 S.E.2d 252 (S.C. 2015)

(upholding a general jury verdict against state agency on SCTCA claims of gross negligence and outrage premised on reckless conduct)). However, this court has previously weighed in on this issue and directly considered whether the SCTCA bars outrage claims based in recklessness and held all outrage claims to be barred. *See, e.g., Anderson v. Dorchester Cnty.*, 2021 WL 1186637, at *15 (D.S.C. Mar. 30, 2021). This court’s decision and reasoning were adopted by another court in the district. *Faulkner v. York Cnty. Sch. Dist.*, 2022 WL 673684, at *9 (D.S.C. Mar. 7, 2022) (applying the reasoning in *Anderson*). The court sees no need to diverge from its previous analysis, but nevertheless reiterates the most salient features. First, South Carolina courts have long treated reckless conduct as possessing an element of willfulness, which more closely aligns with intentional torts than those arising from negligence. *Anderson*, 2021 WL 1186637, at *15. Second and more fundamentally, “it [is] hard to believe that the South Carolina legislature would explicitly exclude from recovery any loss caused by ‘the intentional infliction of emotional harm,’ but not exclude from recovery the very same harm when the emotional distress was inflicted recklessly.” *Id.* (quoting S.C. Code § 15-78-30(f)). The language of the SCTCA is also informative because it explicitly asserts that “[t]he provision of this chapter establishing limitations on and exemptions to the liability of the State . . . must be liberally construed in favor of limiting the liability of the state.” S.C. Code § 15-78-20(f). In aggregate, the court is convinced that the SCTCA as drafted intended to bar all outrage torts brought against the State, not just those alleging intentional conduct.

Munday v. Beaufort Cnty., No. 9:20-CV-02144-DCN, 2023 WL 2643792, at *8–9 (D.S.C. Mar. 27, 2023) (footnotes omitted).³ The undersigned incorporates the reasoning of *Munday* in recommending dismissal of Plaintiff’s Sixth Cause of Action.⁴

B. Defendants Dorchester County, Sheriff Knight, Taylor, Darling, Branch, Beatty, and Baldwin’s Motion to Dismiss

The above-named Defendants also filed a partial Motion to Dismiss, alleging that various claims and parties should be dismissed from the action. Specifically, they argue (1) Defendant Beatty is entitled to be dismissed because he was not employed by Defendant DCSO on the date

³ *Munday* was also factually similar to the case at bar, as that case also dealt with an allegedly unconstitutional strip search policy aimed at only female detainees.

⁴ Defendant DCSO also argues that the statute of limitations has run, and that the South Carolina Code section referenced within the Sixth Cause of Action is a criminal statute that has no relevance to Plaintiff’s civil theory of recovery. Because the SCTCA bars the type of claim contained in the Sixth Cause of Action, the undersigned need not address these arguments.

of this incident; (2) Dorchester County is entitled to be dismissed as it does not control the Sheriff, the Sheriff's Office, or the DCDC in any manner; (3) Defendants Sheriff Knight, Taylor, Beatty, Darling, Branch, and Baldwin are entitled to be dismissed from the First and Second Causes of Action; (4) Defendant Sheriff Knight should be dismissed pursuant to Federal Rules of Civil Procedure 8 and 12 as individual capacity claims against Defendant Sheriff Knight are improperly brought against him; and (5) Defendant Baldwin is entitled to be dismissed from the Fourth Cause of Action as she is not—and is not alleged to be—a supervisor.⁵ The undersigned first addresses those Defendants who are entitled to dismissal entirely, and then moves on to consider which causes of action should remain or be dismissed as to the remaining Defendants.

1. Defendants entitled to dismissal

Defendants maintain that Defendants Beatty and Dorchester County should be dismissed from this action. The Court agrees.

i. Defendant Beatty

Defendants argue that, although Defendant Beatty is currently employed by Defendant DCSO and works in the DCDC, he was employed with the Charleston County Sheriff's Office working in the Sheriff Al Cannon Detention Center on the date of the incident giving rise to this litigation (June 18, 2020). Defendants maintain that Defendant Beatty did not begin employment with Defendant DCSO until after November 2020, with a hire date of February 1, 2021. Plaintiff agrees to the dismissal of Defendant Beatty, ECF No. 51 at 8, and, therefore, the undersigned recommends dismissing this Defendant from the action.

⁵ Defendants also copy and paste some of the same arguments from Defendant DCSO's Motion to Dismiss asking for dismissal of the Sixth Cause of action. ECF No. 47-1 at 4–5. However, in their Reply, Defendants appear to retract this line of argument, acknowledging the Sixth Cause of Action is alleged against only Defendant DCSO. *See* ECF No. 52 at 5.

ii. Defendant Dorchester County

Defendants maintain that Dorchester County is not a proper Defendant in this action. ECF No. 47-1 at 2–3. They argue Dorchester County has no employees who work in the detention center. Rather, the detention center is run by Defendant DCSO—specifically Defendant Sheriff Knight and his deputies, all of whom are State, not County, employees. They further maintain that—except for organizational policies established by the governing body—Dorchester County lacks supervisory authority over Defendant DCSO or Defendant Sheriff Knight. ECF 47-1 at 3; *see* S.C. Code Ann. § 4-9-650 (“With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.”).

Plaintiff contends that she can still maintain a § 1983 claim against Dorchester County under a theory of municipality liability, and because Dorchester County owns the building where the incident took place. Plaintiff argues that Dorchester County “allowed” Defendant DCSO and the individual Defendants to operate the facility with unconstitutional policies, and further maintains that because Dorchester County did not report or warn its citizens of this policy, “it effectively *became* the policy of Dorchester County as well as that of Defendant DCSO.” ECF No. 51 at 4–5 (emphasis added).

To maintain a § 1983 municipal liability claim, a plaintiff must affirmatively establish that the alleged constitutional violation was directly caused by an official practice, policy, or custom of the municipality. *Monell v. Department of Social Services*, 436 U.S. 658, 691–94 (1978). “Municipal policy may be found in written ordinances and regulations, in certain affirmative decisions of individual policymaking officials, or in certain omissions on the part of

policymaking officials that manifest deliberate indifference to the rights of citizens[.]” *Carter v. Morris*, 164 F.3d 215, 218 (4th Cir. 1999) (internal citations omitted). Outside of these formal decision-making channels, “a municipal custom may arise if a practice is so persistent and widespread and so permanent and well settled as to constitute a custom or usage with the force of law.” *Id.* (citation and internal quotation marks omitted).

Here, Plaintiff has not pointed to any written ordinances, regulations, policies, or customs of Dorchester County, nor has she alleged that any affirmative decisions by Dorchester County policymakers caused the alleged harms in this case. Instead, Plaintiff points to *Defendant DCSO’s policy* and argues it “effectively *became* the policy of Dorchester County” because Dorchester County “allowed” Defendant DCSO and its subordinates to operate the detention center. Plaintiff’s effort to extend liability to Dorchester County in this manner fails for two reasons.

First, Plaintiff’s argument is premised on the incorrect notion that Dorchester County controls or otherwise oversees Defendant DCSO and its employees. Dorchester County is not responsible for the actions of a deputy sheriff, who is hired and supervised by the elected Sheriff. *See* S.C. Code Ann. § 23-13-10; *Williams v. Duyn*, No. CV 4:16-1805-BHH, 2016 WL 6070144, at *1 (D.S.C. Oct. 17, 2016) (finding a plaintiff failed to state a § 1983 claim against Florence County because the plaintiff’s claims arose out of the alleged actions of a Sheriff Deputy who served “at the pleasure of the Sheriff and not the county”); *see also Allen v. Fid. & Deposit Co. of Maryland*, 515 F. Supp. 1185, 1190 (D.S.C. 1981) (“The county government [in South Carolina] cannot hire or fire the deputies nor can it tell the sheriff the manner or method by which he and his deputies are to perform the official acts of his office.”), *aff’d*, 694 F.2d 716 (4th Cir. 1982). Indeed, Defendants work at the DCDC and are, therefore, employees of Defendant DCSO—not Dorchester County. *See Jones v. Ervin*, No. 2:19-CV-385-RMG, 2019 WL 2241860,

at *2 (D.S.C. May 24, 2019) (noting county jails in South Carolina are operated by sheriffs, not counties, and holding “Greenville County is not liable for the incidents allegedly occurring in the jail” since it has no control over the operations or policy of the jail).

Second, even if Dorchester County were responsible for Defendant DCSO, Plaintiff has still failed to allege that any *Dorchester County policy* served as the moving force behind the alleged constitutional violation. *See Monell*, 436 U.S. at 691 (“Congress did not intend municipalities to be held liable unless action pursuant to official *municipal policy* of some nature caused a constitutional tort.” (emphasis added)). Rather, Plaintiff attempts to bootstrap *Defendant DCSO’s policy* to Dorchester County in an effort to establish *Monell* liability. In essence, Plaintiff seeks to hold Dorchester County vicariously liable for Defendant DCSO’s policy and the actions of the employees of Defendant DCSO. However, the case law is abundantly clear that a *Monell* claim cannot attach liability to a municipality on the basis of *respondeat superior*.⁶ *See Monell*, 436 U.S. at 690–91 (holding that although “Congress *did* intend municipalities and other local government units to be included among those persons to whom § 1983 applies,” it is clear that “a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory” (emphasis in original)).

Accordingly, Dorchester County should be dismissed from this action. *See, e.g., Allen v. Aiken Cnty.*, No. C.A. 4:08-2464-PMD, 2009 WL 1065406, at *3 (D.S.C. Apr. 20, 2009) (holding, in a case where a plaintiff was attempting to hold Aiken County vicariously liable for the acts of

⁶ Plaintiff also argues that Dorchester County’s mere ownership of the DCDC subjects it to § 1983 liability. ECF No. 51 at 4. Such a tenuous link to the alleged constitutional violation is not sufficient to establish municipal liability under § 1983. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989) (noting “the first inquiry in any case alleging municipal liability under § 1983 is the question whether there is a *direct causal link between a municipal policy or custom* and the alleged constitutional deprivation” (emphasis added)).

employees at the Aiken County Detention Center, that the plaintiff’s claims against Aiken County “must fail as a matter of law” because a *Monell* claim cannot be based on the doctrine of *respondeat superior*; see also *Gulledge v. Smart*, 691 F. Supp. 947, 955 (D.S.C. 1988) (“South Carolina’s county governing bodies ‘have no measurable control over the appointment, discharge, . . . , duties, or policies of the [sheriff and his deputies].’” (alteration in original) (citation omitted)), *aff’d*, 878 F.2d 379 (4th Cir. 1989).

2. Causes of Action against Defendants Sheriff Knight, Darling, Taylor, Branch, and Baldwin

Defendants argue that Plaintiff has failed to state a § 1983 claim against Defendants Sheriff Knight, Darling, Taylor, and Branch with regard to the First and Second Causes of Action. ECF No. 47-1 at 6. Defendants further argue that Plaintiff has failed to state a § 1983 supervisory liability claim against Defendant Sheriff Knight, such that he should be dismissed as a party from the lawsuit entirely. ECF No. 47 at 2; ECF No. 47-1 at 6–9. Finally, Defendants argue that Defendant Baldwin should be dismissed from the action entirely. ECF No. 47-1 at 9–11. The Court addresses each argument in turn.

i. First and Second Causes of Action against Defendants Sheriff Knight, Darling, Taylor, and Branch.

Defendants argue that Plaintiff has failed to allege Defendants Sheriff Knight, Darling, Taylor, and Branch had any personal participation in the underlying strip search that serves as a basis for the First and Second Causes of Action. The Court agrees.

To state a § 1983 claim, Plaintiff must demonstrate Defendants, acting under color of state law, deprived her of a right secured by the Constitution or the laws of the United States. 42 U.S.C. § 1983; *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001).

Here, Plaintiff's Second Amended Complaint is devoid of any well pleaded facts that allege these Defendants were personally involved with the strip search on June 18, 2020. *See* ECF No. 40 at 7–8. Indeed, Plaintiff has not alleged that these Defendants personally participated in the strip search, that they were present when Plaintiff was informed she would be strip searched, or that they were even in the building or working when Plaintiff was booked. Rather, Plaintiff's allegations against these Defendants go toward their roles as supervisors, repeatedly noting their roles in authorizing, enacting, or implementing the strip search *policy* that gave rise to the strip search *incident* on June 18, 2020. *See* ECF No. 40. Because Plaintiff has failed to allege that Defendants Sheriff Knight, Darling, Taylor, and Branch had any personal involvement in the actual strip search *incident*, the First and Second Causes of Action should be dismissed as to these Defendants. *See Williamson*, 912 F.3d at 171 (noting a plaintiff must show that the official acted personally in violating the plaintiff's constitutional rights); *Wilcox v. Brown*, 877 F.3d 161, 170 (4th Cir. 2017) (noting liability will only lie in § 1983 actions where it is “affirmatively shown that the official charged acted personally in the deprivation of the plaintiffs’ rights” (citation omitted)).

Nevertheless, Plaintiff argues that a supervisor can be held liable in his or her individual capacity under 42 U.S.C § 1983 if there is a “sufficient causal connection between the supervisor’s wrongful conduct and the constitutional violation.” ECF No. 51 at 5 (quoting *Hansen v. Black*, 885 F.2d 642, 645–46 (9th Cir. 1989)). Plaintiff argues that the wrongful conduct here was that “Defendants Knight, Darling, Branch, Taylor, and Beatty created, implemented, maintained compliance with, and enforced a pre arraignment arrestee search *policy* which Defendants knew [1] forced pre arraignment arrestees to undergo full strip searches in violation of Due Process, and [2] specifically forced female pre arraignment arrestees to be subject to body cavity searches for those who were menstruating in violation of Equal Protection, Due Process, and Eighth

Amendment protections.” ECF No. 51 at 5 (emphasis added). Plaintiff further argues “Defendants knew of this *policy* and more importantly knew *how it was being enforced*, because the named Defendants *were the ones responsible for its creation and enforcement*.” ECF No. 51 at 5 (emphasis added).

Plaintiff’s argument misses the point—she has still failed to allege any facts that Defendants Sheriff Knight, Darling, Taylor, and Branch had any personal involvement with the strip search on June 18, 2020. Rather, Plaintiff’s arguments all go toward holding these Defendants liable in their *supervisory capacities* because of their role in creating, implementing, and maintaining compliance with the strip search *policy* that led to the strip search *incident*.⁷ In other words, Plaintiff’s arguments go toward her supervisory liability claims contained in the Fourth Cause of Action. *See* ECF No. 40 at 15–16. Indeed, Defendants specifically point out in their Reply that they “have not filed a motion to dismiss as to the Fourth Cause of Action for Supervisory Liability” as it relates to Defendants Darling, Taylor, and Branch and their roles as supervisors.⁸ ECF No. 52 at 2. Accordingly, the undersigned recommends the First and Second Causes of Action be dismissed as to Defendants Sheriff Knight, Darling, Taylor, and Branch.

⁷ Plaintiff relies on *Hansen v. Black*, 885 F.2d 642, 645–46 (9th Cir. 1989) for her arguments. Plaintiff has not shown, much less argued, why this Ninth Circuit case has any relevance to the Fourth Circuit’s approach to establishing supervisory liability in § 1983 cases. *See Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994) (detailing what a Plaintiff must show to establish supervisory liability under § 1983 in the Fourth Circuit); *see also generally Timpson by & through Timpson v. Anderson Cnty. Disabilities & Special Needs Bd.*, 31 F.4th 238, 257 (4th Cir. 2022) (relying on *Shaw* and noting the same).

⁸ However, Defendants have moved to dismiss the Fourth Cause of Action for Supervisory Liability as to Defendant Sheriff Knight and have him dismissed from the action entirely. ECF No. 47 at 2; ECF No. 47-1 at 6–9. The arguments as to supervisory liability in the Fourth Cause of Action against Defendant Sheriff Knight are addressed below.

ii. Fourth Cause of Action against Defendant Knight

Defendants argue that the Fourth Cause of Action against Defendant Sheriff Knight should be dismissed, such that he should be dismissed from the lawsuit entirely. ECF No. 47 at 2. Specifically, they maintain that Plaintiff has not sufficiently alleged a § 1983 supervisory liability claim against Defendant Sheriff Knight (the Fourth Cause of Action). ECF No. 47-1 at 6–9. The Court disagrees.

Pure supervisory liability will not lie in § 1983 actions. *Wright v. Collins*, 766 F.2d 841, 850 (4th Cir. 1985) (“The doctrine of *respondeat superior* has no application under this section.” (quoting *Vinnedge v. Gibbs*, 550 F.2d 926, 928 (4th Cir. 1977))). Rather, to hold a supervisor liable for a constitutional injury inflicted by a subordinate under § 1983, Plaintiff must show facts establishing the following elements: (1) the supervisor had actual or constructive knowledge that a subordinate was engaged in conduct that posed “a pervasive and unreasonable risk” of constitutional injury to people like the plaintiff; (2) the supervisor’s response was so inadequate as to constitute deliberate indifference or tacit authorization of the subordinate’s conduct; and (3) there is an “affirmative causal link” between the supervisor’s inaction and the plaintiff’s constitutional injury. *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994). Thus, a supervisory liability claim in the § 1983 context is premised upon “a recognition that supervisory indifference or tacit authorization of subordinates’ misconduct may be a causative factor in the constitutional injuries they inflict[.]” *Id.* at 798 (quoting *Slakan v. Porter*, 737 F.2d 368, 372–73 (4th Cir. 1984)).

“To satisfy the requirements of the first element, a plaintiff must show the following: (1) the supervisor’s knowledge of (2) conduct engaged in by a subordinate (3) where the conduct poses a pervasive and unreasonable risk of constitutional injury to the plaintiff.” *Id.* at 799. “Establishing a ‘pervasive’ and ‘unreasonable risk’ of harm requires evidence that the conduct is widespread, or

at least has been used on several different occasions and that the conduct engaged in by the subordinate poses an unreasonable risk of harm of constitutional injury.” *Id.*

As to the second element, “[a] plaintiff may establish deliberate indifference by demonstrating a supervisor’s continued inaction in the face of documented widespread abuses.” *Id.* (citation and internal quotation marks omitted).

Lastly, regarding the third element, “[c]ausation is established when the plaintiff demonstrates an ‘affirmative causal link’ between the supervisor’s inaction and the harm suffered by the plaintiff.” *Id.* (citation omitted). This causation “concept encompasses cause in fact and proximate cause.” *Id.* Proof of causation may be direct, such as “where the policy commands the injury of which the plaintiff complains . . . [or] may be supplied by [the] tort principle that holds a person liable for the natural consequences of his actions.” *Id.* (citation omitted).

Here, accepting the allegations in the Second Amended Complaint as true and viewing them in the light most favorable to Plaintiff, she has made sufficient allegations of supervisory liability under the Fourth Circuit’s requirements to survive a motion to dismiss. First, Plaintiff has alleged that Defendant Sheriff Knight had both actual and constructive knowledge that his subordinates were behaving in a way that posed “‘a pervasive and unreasonable risk’ of constitutional injury.” *See id.* Specifically, she alleged that since 2014, Defendant Sheriff Knight has known that menstruating women are regularly subjected to the type of strip/body cavity search at issue in this litigation. ECF No. 40 at 5–6. Indeed, Plaintiff alleged that Defendant Sheriff Knight *directed* his subordinates to conduct strip/cavity searches on all arrestees, despite many of those women never being committed to nor housed in the general population of the detention center. ECF No. 40 at 5–6. Furthermore, Plaintiff alleged that from 2014 to the present, based on statistical calculations, approximately thirty-one percent of women arrestees or inmates present in the DCDC

are menstruating, leading to the reasonable inference that Defendant Sheriff Knight and his subordinates “encountered hundreds if not thousands of women” who were menstruating at the time they entered the DCDC as arrestees. This sufficiently alleged the conduct occurred on “several different occasions.” *See Shaw*, 13 F.3d at 799. Coupled with Plaintiff’s allegations regarding Defendant Sheriff Knight’s authorization and direction to implement the strip/cavity search on all arrestees, Plaintiff has pled facts sufficient to satisfy the first element of *Shaw*.

As to the second element, Plaintiff has sufficiently alleged Defendant Knight’s response to that knowledge was “so inadequate as to show ‘deliberate indifference to or tacit authorization of the alleged offensive practices.’” *See id.* As detailed in the Second Amended Complaint, Plaintiff made a complaint to the Office of Professional Standards for the Summerville Police Department regarding her treatment at the DCDC. ECF No. 40 at 8–9. Investigator R.A. Williams reached out to Defendant DCSO regarding its arrestee search policy and was told that the treatment Plaintiff received is the same with every woman arrestee who is menstruating. ECF No. 40 at 8–9. Plaintiff alleged that when Defendant Sheriff Knight was asked about this policy, he told R.A. Williams that “I can do whatever I want in my jail.” ECF No. 40 at 8–9. Plaintiff further alleged that each officer was separately asked under oath about the jail procedures and confirmed every person who is brought into the facility is strip searched. ECF No. 40 at 8–9. Finally, as already discussed with respect to the first *Shaw* element, Plaintiff alleged that Defendant Sheriff Knight directly authorized the alleged offensive practices, and sufficiently alleged that the abuses were indeed widespread. *See Shaw*, 13 F.3d at 799 (noting a plaintiff assumes a heavy burden of proof in establishing deliberate indifference because a plaintiff cannot satisfy this burden by merely pointing to a single incident or isolated incidents). Thus, Plaintiff sufficiently alleged that Defendant Sheriff Knight failed to take measures to stop the strip/cavity searching despite having

the power to do so. Taking these allegations as true and viewing them in the light most favorable to Plaintiff, the Court finds that the above allegations are sufficient to satisfy the second element in *Shaw*. See *Timpson by & through Timpson v. Anderson Cnty. Disabilities & Special Needs Bd.*, 31 F.4th 238, 258 (4th Cir. 2022) (“To prove ‘deliberate indifference’ under the second element, the plaintiff typically must show a supervisor’s ‘continued inaction in the face of documented widespread abuses.’” (quoting *Slakan*, 737 F.2d at 373)).

Finally, Plaintiff has sufficiently alleged that there was an “affirmative causal link” between Defendant Sheriff Knight’s inaction and the particular constitutional injury suffered by Plaintiff. See *Shaw*, 13 F.3d at 799. Specifically, the body cavity search endured by Plaintiff would not have occurred but for the policies and procedures in place. As set forth in the analysis of the first and second *Shaw* elements, Plaintiff alleged that Defendant Sheriff Knight had actual knowledge of such policies and practices—indeed, as alleged, he directed his subordinates to engage in them. Thus, there is a causal link alleged between Defendant Sheriff Knight implementing and allowing such policies to continue and the constitutional harms suffered by Plaintiff as a result of those policies. See *id.* (noting “proof of causation may be direct . . . where *the policy commands the injury* of which the plaintiff complains . . . [or] may be supplied by [the] tort principle that holds a person liable for the natural consequences of his actions” (emphasis added) (quoting *Slakan*, 737 F.2d at 376)).

For the forgoing reasons, Defendants’ Motion to Dismiss the Fourth Cause of Action for failure to state a claim of supervisory liability against Defendant Sheriff Knight should be denied.

iii. Defendant Baldwin

Defendants argue that Defendant Baldwin should be dismissed from the action entirely. ECF No. 47-1 at 9–11. Specifically, they argue that Plaintiff has failed to state a claim against

Defendant Baldwin as set forth in the First, Second, and Fourth Causes of Action. The undersigned disagrees as to the First and Second Causes of Action but agrees as to the Fourth.

a. First and Second Causes of Action against Defendant Baldwin

Initially, Defendants maintain that Plaintiff has failed to sufficiently allege personal participation in the incident, such that the First and Second Causes of action fail as to Defendant Baldwin. ECF No. 47-1 at 9–11. However, Plaintiff contends she has sufficiently stated a claim against Defendant Baldwin under a theory of bystander liability. ECF No. 51 at 8. In their Reply, Defendants agree that dismissal of the First Cause of Action is not appropriate at this time for a bystander liability claim. ECF No. 52 at 4. Accordingly, the undersigned recommends denying Defendants’ Motion as to the First Cause of Action against Defendant Baldwin.

However, Defendants argue that Second Cause of Action should still be dismissed, as that claim is premised on an equal protection claim related to the fact that Defendant Brown had Plaintiff remove her tampon. ECF No. 52 at 4. The Court disagrees.

As the Fourth Circuit has recognized, “an officer may be liable under § 1983, on a theory of bystander liability, if [she]: (1) knows that a fellow officer is violating an individual’s constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act.” *Randall v. Prince George’s Cnty., Md.*, 302 F.3d 188, 204 (4th Cir. 2002) (footnote omitted). In other words, officers cannot stand on the sidelines; rather, in certain situations, they are “obliged to act.” *Id.*; see also *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir. 1994) (“It is widely recognized that all law enforcement officials have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement by other law enforcement officers in their presence.”).

Here, the Court finds Plaintiff has sufficiently alleged facts that could support a bystander liability claim against Defendant Baldwin. As an initial matter, Defendants concede that Plaintiff

has stated a claim for bystander liability against Defendant Baldwin as it relates to the First Cause of Action—that is, Plaintiff has sufficiently alleged that Defendant Baldwin (1) knew that a fellow officer was violating Plaintiff’s constitutional rights; (2) had a reasonable opportunity to prevent the harm; and (3) chose not to act. Thus, considering Defendants’ concession as to Plaintiff sufficiently stating a claim for bystander liability as to the First Cause of Action, Defendants’ position appears to be that Plaintiff has sufficiently alleged Defendant Baldwin knew that a fellow officer was violating Plaintiff’s constitutional rights, but not *specifically* Plaintiff’s constitutional right of equal protection.⁹

Indeed, as to the Second Cause of Action, Defendants appear to attack the knowledge element, arguing that Defendant Baldwin was not in the strip search room, did not participate in the strip search, and would have had no way of knowing whether Plaintiff had a tampon inserted into her vagina at the time she was booked. ECF No. 52 at 4. They maintain that Plaintiff has not alleged that Defendant Baldwin knew that Plaintiff was menstruating or that she was utilizing a tampon, and that Plaintiff “cannot provide even the slightest support for an allegation that she was a bystander who ‘knew or should have known’ that Officer Brown would require [Plaintiff] to remove her tampon.” ECF No. 52 at 5.

The undersigned is unpersuaded by this line of argument. The basis for bystander liability as it relates to the equal protection claim in the Second Cause of Action is not whether Defendant Baldwin knew Plaintiff was menstruating. Rather, it is based on the allegedly unconstitutional strip/cavity search policy that was allegedly used for every female arrestee at the detention center—a policy which Defendants conceded Defendant Baldwin knew about as it related to the

⁹ Defendants have cited to no case law that purports to limit bystander liability to only those officers who know specifically *which* constitutional rights their fellow officers are violating.

First Cause of Action.¹⁰ Moreover, Defendants do not argue that Defendant Baldwin was unaware that Plaintiff was a female, nor do they argue that Defendant Baldwin was unaware that Plaintiff, as a female, was subject to undergo the strip/cavity search policy.

Thus, accepting the allegations in the Second Amended Complaint as true and viewing them in the light most favorable to Plaintiff, she has sufficiently alleged facts that support a bystander liability claim against Defendant Baldwin. In the very first paragraph of the Second Cause of Action, the Court notes that “Plaintiff restates and incorporates by reference each of the foregoing and ensuing paragraphs in each of the following causes of action as if each paragraph was fully set forth herein.” ECF No. 40 at 12. In those preceding paragraphs, Plaintiff alleged that Defendant Baldwin knew of the strip/cavity search and how it was directed at female arrestees. Plaintiff also alleged Defendant Baldwin participated in the intake of Plaintiff, and thus was present and failed to intervene in the unconstitutional search. The substance of this claim “pleads factual content that allows the court to draw the reasonable inference that [Defendant Baldwin] is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678; *see also Twombly*, 550 U.S. at 570, (noting “we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face”). Accordingly, at the Motion to Dismiss stage, Plaintiff has sufficiently pleaded a § 1983 bystander liability claim against Defendant Baldwin.

b. Fourth Cause of Action against Defendant Baldwin

Defendants argue that Defendant Baldwin should be dismissed from the Fourth Cause of action. Specifically, they maintain that Defendant Baldwin is not a supervisor and that Plaintiff has not alleged that she was. The Court agrees.

¹⁰ Defendants only argue that Defendant Baldwin is not liable via a bystander liability theory as it relates to the Second Cause of Action. Defendants do not argue Plaintiff has failed to state an equal protection claim in the Second Cause of Action.

In the Second Amended Complaint, Defendant Baldwin is identified as the intake officer. ECF No. 40 at 3. When identifying Defendants and their various roles, Plaintiff identifies “supervisory Defendants Knight, Darling, Branch, Taylor, and Beatty” and refers to “Subordinate jail personnel (Defendants Brown and Baldwin)” in paragraph thirty-one and again references subordinate detention center personnel in paragraph thirty-two. ECF No. 40 at 7. Plaintiff again refers to Defendant Baldwin as a subordinate in paragraph sixty-one. ECF No. 40 at 15.

Plaintiff also does not mention Defendant Baldwin when discussing the apparent supervisors in the DCDC. In paragraphs five, six, seven, and eight, Defendants Darling, Branch, Taylor, and Beatty are all identified as “Captains” over administration or operations. ECF No. 40 at 2–3. In paragraph twenty-three, Plaintiff asserts that Defendants Darling, Branch, Taylor, and Beatty assisted Defendant Sheriff Knight in assuring and directing that the strip search policy was followed. ECF No. 40 at 5–6. In paragraphs twenty-five, twenty-six, twenty-nine, and thirty Plaintiff refers to Defendants Darling, Branch, Taylor, and Beatty when addressing issues of enforcing the search policy.

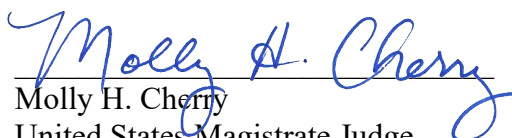
Plaintiff does not challenge Defendants’ contention that Defendant Baldwin is not a supervisor. Indeed, Plaintiff’s Response in Opposition only challenges Defendants’ arguments as to the First and Second Causes of Action. *See* ECF No. 51 at 7. Thus, based on Plaintiff’s failure to allege, much less contest, Defendant Baldwin’s status as a supervisor, the undersigned recommends dismissing the Fourth Cause of Action against Defendant Baldwin.

IV. CONCLUSION

For the reasons set forth above, it is **RECOMMENDED** that Defendant DCSO’s partial Motion to Dismiss (ECF No. 42) be **GRANTED**. It is further **RECOMMENDED** that the remaining Defendants’ partial Motion to Dismiss (ECF No. 47) be **GRANTED** in part and

DENIED in part. Specifically, the undersigned recommends that Defendants Beatty and Dorchester County be dismissed from this action; the First and Second Causes of Action be dismissed as to Defendants Sheriff Knight, Darling, Taylor, and Branch; and the Fourth Cause of Action against Defendant Baldwin be dismissed.

IT IS SO RECOMMENDED.


Molly H. Cherry
United States Magistrate Judge

May 1, 2023
Charleston, South Carolina

The parties are directed to the next page for their rights to file objections to this recommendation.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).