STATE OF MAINE
YORK, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-19-164

CALEB GAUL,

Plaintiff,

v.

YORK COUNTY, YORK COUNTY SHERIFF WILLIAM KING, DEPUTY JOSHUA E. MORNEAU, and CORRECTIONS OFFICER ROBERT H. CORCORAN,

Defendants.

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Caleb Gaul filed this action seeking damages and declaratory relief with regard to a January 2018 incident in which he was arrested for obstruction of government administration pursuant to 17-A M.R.S. § 751(1); transported to the York County Jail; and subjected to a search at the jail. Pending before the court is Defendants' motion for summary judgment. For the reasons set out below, the motion is granted in part and denied in part.

I. Summary Judgment Factual Record

At about 7:45 a.m. on January 30, 2018, Deputy Joshua Morneau of the York County Sheriff's Office was dispatched to the intersection of Ossipee Hill Road and Gold Mine Trail in Waterboro in response to a report that a male was blocking an RSU 57 school bus. (Defendants' Statement of Material Facts, "D.S.M.F." ¶ 1.) Upon arriving, Morneau observed the school bus backed into Gold Mine Trail, a private road, and a 2016 Toyota Tacoma parked perpendicular to and directly in front of the bus. (D.S.M.F. ¶¶ 2-3.) The truck was unoccupied

and its engine was not running. (D.S.M.F. ¶ 5.) Morneau called in the registration number to dispatch and learned the truck was registered to a Caleb Gaul. (D.S.M.F. ¶ 6.) Morneau observed the road to be ice-covered and slippery. (D.S.M.F. ¶ 7.)

As he approached the bus to speak with its occupants, Morneau saw a male walking down Gold Mine Trail in his direction. (D.S.M.F. ¶¶ 8-9.) Morneau instructed the man to "freeze and put his hands up." (Plaintiff's Statement of Additional Material Facts, "P.S.A.M.F." ¶¶ 77-78.) Morneau spoke with the man and learned he was Caleb Gaul, the owner of the truck parked in front of the bus. (D.S.M.F. ¶ 7.) Morneau learned that Gaul had asked the bus driver to move the bus; placed his truck in front of the bus when the bus driver declined to move the bus; and walked away, leaving his truck parked in front of the bus as Morneau had observed upon arriving at the scene. (D.S.M.F. ¶¶ 10-11.)

Morneau spoke with the bus driver, Craig Theriault, and the bus monitor, Catherine Shriver. (D.S.M.F. ¶ 13.) Theriault told Morneau that he (Theriault) routinely parked the bus at this location. (D.S.M.F. ¶ 14.) Theriault and Shriver said that Gaul's behavior had upset and worried them; that Gaul had moved the truck from its initial position beside the bus to park it in front of the bus; and then walked away with his keys. (D.S.M.F. ¶¶ 15-16.) Theriault said that they were on their way to pick up students but could not go around the truck given the icy road conditions.[1] (D.S.M.F. ¶¶ 17-18; Morneau Dep. 29:30 – 29:55.)

Morneau spoke with Matthew Kerns, the RSU 57 transportation director, who confirmed that RSU 57 wanted to file criminal charges against Gaul. (D.S.M.F. ¶ 19, 20.)

---

[1] Plaintiff asserts that there is a disputed material fact as to whether the school bus was capable of being maneuvered around the truck and, therefore, whether there was any obstruction. It is undisputed, however, that it was the bus driver's belief that given the icy conditions it was not safe to attempt to move the bus around the truck in the position initially observed by Deputy Morneau upon arriving at the scene.

Morneau spoke again with Gaul and asked him to move the truck. Gaul moved the truck less than two minutes later, thus allowing the bus to leave. (P.S.A.M.F. ¶ 84.) Morneau arrested Gaul for obstructing governmental administration and transported him to York County Jail. (D.S.M.F. ¶¶ 22, 33.)

At the jail, Gaul was fingerprinted and photographed. (P.S.A.M.F. ¶ 107-108.) Although his memory of events is limited, he recalls being escorted to a shower stall to change into an orange jumpsuit and alleges that one or two officers gave him instructions to disrobe and show them his genitals and anus. (D.S.M.F. ¶¶ 38, 41, P.S.A.M.F. ¶ 107.) Defendants deny this. (D.R.S.M.F. ¶ 108.)

On the morning of January 30, 2018, Robert Corcoran was on duty as a corrections officer at York County Jail. (D.S.M.F. ¶ 44.) Corcoran has no recollection of performing a strip search of Gaul on January 30, 2018; and although a record he contemporaneously prepared appears to corroborate his memory, another jail record prepared the same day by another officer indicates that a strip search was performed by Corcoran on that date.[2] (D.S.M.F. ¶¶ 45-46; Plaintiff's Opposing Statement of Material Facts, "P.O.S.M.F." ¶ 45-46.)

At the time of the incident in question, the York County Jail had a policy governing the conduct of searches, including strip-searches, during the intake process. As relevant here, the policy stated that "[s]trip searches may only be conducted during the intake process when . . . [t]he person is arrested for, or charged with, a violent crime involving weapons, drugs, or other contraband" or there exists "[r]easonable suspicion that inmate is concealing

---

[2] The Pre-arraignment/Detainee Report Corcoran prepared at 9:05 am that morning has check-marks in the boxes for "Pat Search", "Fully Clothed Search", and "Electronic Scan"; but no checkmarks in the boxes for "Strip Search" and "Body Cavity Search". However, the Male Adult Booking Inmate Report prepared by another officer on that date states: "Strip search: 1/30/2018 @ 10:00 By: Corrections Officer Robert H. Corcoran." (Corcoran Dep. 45:17-21; Sanborn Dep. Ex. 15.)

weapons, drugs, or other contraband." (D.S.M.F. ¶ 47; P.O.S.M.F. ¶ 47; York Cty. Dep. Ex. 16 YOR 2215.)

During the intake process, corrections officers referred to, and relied upon, a list of offenses posted in the jail's intake area in determining whether to conduct a strip search on an arrestee being processed. (D.S.M.F. ¶ 49.). The list is entitled, "Violent, Weapons and Drug Offenses"; and an updated version of the list had been provided to the jail by letter from an Assistant Attorney General in October 2011.[3] (D.S.M.F. ¶¶ 51-52; Bean Aff., Ex. 1) The offense for which Plaintiff was arrested—obstructing government administration—was included on the list. (P.S.A.M.F. ¶ 126.)

York County had entered into a settlement agreement in September 2005 to resolve a 2002 class action law suit challenging the practice of conducting strip-searches at the York County Jail. (*See* D.S.M.F. ¶ 54; P.O.S.M.F. ¶ 54.) The settlement agreement states, in part, as follows:

> York County agrees that it will maintain a formal written policy that provides that a pre-arraignment detainee for a non-excluded crime is to remove his or her underclothing behind a screen to protect the person from displaying his or her genitals, anus or, in the case of females, bare breasts, to the inspection by a corrections officer unless the officer is conducting a strip search based on reasonable suspicion and documented at the time of the search in a log of all such searches.

---

[3] The letter states that "as a courtesy . . . a list of violent, weapon, and drug offenses [is provided] to guide your intake officers." The letter states that the Attorney General's rule "is based on both the federal constitutional law as set out by the U.S. Court of Appeals for the First Circuit . . . and the Maine state statute (5 M.R.S.A § 200-G(1)); and notes that "the U.S. Supreme Court is currently hearing a jail strip search case, which, hopefully, will clarify the federal constitutional law." Also, "no matter what the Supreme Court decides, your facility will still have to adhere to the Attorney General's rule unless and until it is amended, something which might require an amendment to the state statute beforehand." (Bean Aff., Ex. 1.).

(D.S.M.F. ¶ 55.) The agreement provides that jail employees are to "allow these detainees to change into a jail uniform without exposing . . . bare genitals or buttocks of either gender to the 'inspection' of a correctional officer." (P.S.A.M.F. ¶ 113.) It further requires that the County maintain a formal written policy that provides a detainee in custody for a non-excluded offense to remove clothing behind a screen so as not to display genitals to corrections officers. (D.S.M.F. ¶ 55; P.S.A.M.F. ¶ 113.) The agreement states that the policy also applies to those "who are held at York County Jail while waiting for bail to be set. . . .." (P.S.A.M.F. ¶ 112.)

After spending several hours in detention, Gaul was released on $300 cash bail, which his wife posted. (P.S.A.M.F. ¶ 133.) The State subsequently dismissed the charge. The $300 cash bail was refunded to him (but the additional $60 bail commissioner fee his wife was required to pay was not refunded). (P.S.A.M.F. ¶¶ 134, 136.) Following his release, Gaul wrote a letter to Sargent Michael Hayes of the York County Sheriff's Office complaining about the incident; the letter did not mention a strip-search. (D.S.M.F. ¶ 40.)

II. Standard of Review

Summary judgment is warranted when a review of the parties' statements of material fact and the record evidence to which they refer, considered in the light most favorable to the nonmoving party, establish that there is no genuine issue of material fact in dispute and that the moving party is entitled to judgment as a matter of law. M.R. Civ. P. 56(c); *Ogden v. Labonville,* 2020 ME 133, ¶ 10, 242 A.3d 177; *Estate of Kay v. Estate of Wiggins,* 2016 ME 108, ¶ 9, 143 A.3d 1290. Defendants bear the initial burden to make this showing. A material fact has the potential to influence the outcome of the case; and a genuine issue of material

fact exists if the factfinder must decide between competing versions of the truth. *Lewis v. Concord General Mut. Ins. Co.*, 2014 ME 34, ¶ 10, 87 A.3d 732.

If a properly supported motion has been filed, Plaintiff, as the nonmoving party, must demonstrate supporting record facts, disputed or undisputed, that establish a *prima facie* case for the claim(s) in issue. *Watt v. Unifirst Corp.*, 2009 ME 47, ¶ 21, 969 A.2d 897. In that regard, the court considers both the record facts in the light most favorable to Plaintiff and gives him the benefit of all favorable inferences that may be drawn from the record facts. *Levis v. Konitzky,* 2016 ME 167, ¶ 20, 151 A.3d 20; *Curtis v. Porter,* 2001 ME 158, ¶ 9, 784 A.2d 18. The record is assessed for sufficiency—not persuasiveness—such that a court can make a factual determination without speculating. *Estate of Smith v. Cumberland County,* 2013 ME 13, ¶ 19, 60 A.3d 759.

III. Discussion

The complaint as amended alleges seven counts. Five of the seven counts arise out of Plaintiff's arrest and are brought exclusively against Deputy Sheriff Joshua Morneau. Three of those counts remain active:[4] Count I (unreasonable, warrantless misdemeanor arrest in violation of Me. Const. Art. I, §§ 1, 5 and 5 M.R.S. § 1486(2) of the Maine Civil Rights Act ("MCRA")); Count II (unreasonable warrantless misdemeanor arrest in violation of 17-A M.R.S. § 15); and Count VII (unlawful pretrial punishment under Me. Const. Art. I, §§ 1, 6-A). The remaining two counts arise out of the search conducted at the jail following Plaintiff's

[4] Plaintiff has waived and no longer asserts Count III (false imprisonment) and Count IV (battery). *See* Opp. to Defs.' Mot. for Summ. Judg., 1, n. 1. Both are tort claims that are precluded by the Maine Tort Claims Act, 14 M.R.S. §§ 8001 *et seq.*

arrest: Count V (unreasonable search in violation of Me. Const. Art. I, §§ 1, 5 and 5 M.R.S. § 1486(2) of the MCRA) and Count VI (breach of contract).

A. Claims Relating to the Arrest—Counts I, II, and VII

1. Counts I and II

Count I alleges that Plaintiff's arrest for a misdemeanor offense was unreasonable and violated Article I, Sections 1 and 5 of the Maine Constitution[5] and the MCRA, 5 M.R.S. § 4681 *et seq.*[6] Count II, in addition, alleges that the arrest violated Maine's statute on warrantless

---

[5] Article I, Section 1:

> All people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of *enjoying and defending life and liberty*, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

Me. Const. Art I, § 1 (emphasis added).

Article I, Section 5:

> The people shall be secure in their persons, houses, papers and possessions from all *unreasonable searches and seizures*; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, *nor without probable cause*—supported by oath or affirmation.

Me. Const. Art I, § 5 (emphasis added).

[6] Section 4682(1):

> Whenever any person, whether or not acting under color of law, intentionally interferes or attempts to intentionally interfere by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage or destruction of property or trespass on property with the exercise or enjoyment by any other person of rights secured by the United States Constitution or the laws of the United States or of rights secured by the Constitution of Maine or laws of the State or violates section 4684-B, the person whose exercise or enjoyment of these rights has been interfered with, or attempted to be interfered with, may institute and prosecute in that person's own name and on that person's own behalf a civil action for legal or equitable relief.

arrests because the offense did not occur in Morneau's presence.[7] At the very least, Plaintiff contends that there is a genuine dispute as to the facts relevant to the question of whether his arrest was reasonable and therefore the motion for summary judgment should be denied. Morneau contends that the offense was committed in his presence and there was probable cause, and therefore under established Fourth Amendment jurisprudence Plaintiff's arrest was justified. Further, he maintains that he is shielded from liability in any event by the doctrine of qualified immunity.

The protections against unreasonable searches and seizures in the Maine Constitution "are coextensive with the Fourth Amendment." *State v. Martin,* 2015 ME 91, ¶ 17 n. 2, 120 A.3d 113; *Clifford v. MaineGeneral Med. Ctr.,* 2014 ME 60, ¶ 67 n. 21, 91 A.3d 567. A warrantless arrest for a misdemeanor offense is not unreasonable under the Fourth Amendment if the arresting officer had probable cause to believe that an offense occurred, and it was committed or continuing to be committed in that officer's presence. *District of*

---

5 M.R.S. § 4682(1). The MCRA is modeled after 42 U.S.C. § 1983 and claims thereunder are interpreted consistently therewith. *Marshall v. Town of Dexter*, 2015 ME 135, ¶ 16, 125 A.3d 1141; *Doe v. Williams*, 2013 ME 24, ¶ 72, 61 A.3d 718.

[7] The statute provides:

> [C]riminal conduct has been committed or is being committed in the presence of a law enforcement officer when one or more of the officer's senses afford that officer personal knowledge of facts that are sufficient to warrant a prudent and cautious law enforcement officer's belief that a Class D or Class E crime is being or has just been committed and that the person arrested has committed or is committing that Class D or Class E crime. An arrest made pursuant to subsection 1, paragraph B must be made at the time of the commission of the criminal conduct, or some part thereof, or within a reasonable time thereafter or upon fresh pursuit.

17-A M.R.S. § 15(2).

Columbia v. Wesby, 138 7 S. Ct. 577, 586 (2018); *Atwater v. Lago Vista,* 532 U.S. 318, 354 (2001).[8]

Based on undisputed facts in the summary judgment record, there was probable cause to believe that Plaintiff committed the offense in question, and that it was committed or being committed in Morneau's presence. Probable cause exists when facts and circumstances of which the arresting officer has reasonably trustworthy information would warrant an ordinarily prudent and cautious police officer to believe the subject did commit or was committing a crime. *Richards v. Town of Eliot,* 2001 ME 136, ¶ 15, 780 A.2d 218; *State v. Boylan,* 665 A.2d 1016, 1019 (Me. 1995). The existence of probable cause (and the validity of an ensuing arrest) is measured by an objective standard; the officer's subjective motivations, if any, are not determinative. If the facts and circumstances known to the officer at the time support a reasonable belief that the offense was or is being committed, then an arrest may be justified. *Richards,* 2011 ME 136, ¶ 15, 780 A.2d 218.

The offense which Morneau charged was obstructing government administration, 17-A M.R.S. 751(1). Section 751(1) provides that a person is guilty of this offense if he "intentionally interferes by force, violence or intimidation or by *any physical act* with a public servant performing or purporting to perform an official function." 17-A M.R.S. § 751(1) (emphasis added). The following facts were known to Morneau on the morning of January

---

[8] Citing cases from other jurisdictions, Plaintiff urges the court to abandon the *Atwater* standard despite the holdings in *Martin* and *Clifford* and instead construe Maine's Constitution as requiring a broader standard of reasonableness balancing an individual's liberty interests against the State's legitimate interests in security. However, it is not this court's prerogative to depart from established precedent as presented in this context. Moreover, *Atwater* noted that "a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need [for an arrest], lest every discretionary judgment in the field be converted into an occasion for constitutional review. *Id.,* at 347.

30, 2018. He received a report that a male was blocking an RSU 57 school bus on the Ossipee Hill Road. Upon arriving at the scene, Morneau observed a school bus on Gold Mine Trail facing the main road and a 2016 Toyota Tacoma parked perpendicular to and in front of the school bus. The truck was unoccupied. The truck's engine was off. The road conditions were icy. Morneau called in the truck's plate number to dispatch and learned that the truck was registered to Caleb Gaul. A male walking on Gold Mine Trail approached. Morneau spoke with and identified the male as Caleb Gaul, owner of the truck. Morneau spoke with the bus driver and bus monitor, who said that Gaul had initially pulled his truck alongside the bus; repositioned the truck in front of the bus when the bus driver declined to move; and then walked back up Gold Mine Trail. The bus driver reported that he was on his way to pick up school children and could not safely move the bus around the truck. These facts—all undisputed—are sufficient to establish probable cause that Plaintiff had interfered by physical act (parking the truck in front of the bus) with a public servant (the bus driver) in the performance of an official function (transporting students to public school) and did so intentionally.

The foregoing facts also establish that the offense was committed, or was still in the process of being committed, "in the presence of a law enforcement officer" and "one or more of the officer's senses afford[ed] that officer personal knowledge of the facts that [were] sufficient to warrant a prudent and cautious law enforcement officer's belief" that the offense was being committed. 17-A M.R.S. §15(2). From the time Morneau arrived on the scene until it was subsequently moved, the truck was positioned in such a way that the bus driver did not believe he could safely move the bus around it.

Plaintiff contends that other facts are disputed and therefore preclude summary judgment, including, for example, whether the bus could have maneuvered around the truck or whether Morneau was already predisposed to arrest Plaintiff regardless of the circumstances. Both are immaterial. As noted, it is undisputed that the bus driver believed he could not safely move the bus with the truck in position where Plaintiff had deliberately parked it. Morneau's subjective intention is not relevant; the objective facts with which he was presented were sufficient to establish probable cause. Nor does the fact that the State subsequently dismissed the charge negate the existence of probable cause at the time of the arrest.

This is not to say that the court endorses the deputy's decision to arrest Plaintiff on January 30, 2018. The only question presented by the instant motion is whether the arrest was lawful, not whether it was necessary or advisable. Even if his decision to arrest Plaintiff was a questionable exercise of discretion, Morneau is immune from liability under the doctrine of qualified immunity.

Qualified immunity shields government officials performing discretionary functions from liability from civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Clifford,* 2014 ME 60, ¶ 54, 91 A.3d 567; *Richards,* 2001 ME 132, ¶ 23, 780 A.2d 218; *Lyons v. City of Lewiston,* 666 A.2d 95, 99 (Me. 1995). Whether a defendant is entitled to immunity is a question of law that may be resolved by summary judgment in the absence of factual contradiction. *Gove v. Carter,* 2001 ME 126,¶ 8, 775 A.2d 368. On the basis of the undisputed factual record and legal conclusions discussed above, summary judgment in Morneau's favor on the independent basis of qualified immunity would be warranted. Further, even though

a defendant may not invoke qualified immunity as a defense to a claim for declaratory relief, *Andrews v Dept. of Envtl. Protection*, 1998 ME 198, ¶ 19, 716 A.2d 212, the court's conclusions above that the arrest was lawful disposes of Plaintiff's request for declaratory relief on these counts.

2. Count VII

Count VII asserts that Morneau "subjected [Plaintiff] to an invasive custodial arrest for the purpose of holding him accountable and punishing him for perceived wrongdoing" and this violated his due process right to be free from pretrial punishment in violation of Article I, § 6-A of the Maine Constitution.[9] Defendant's motion for summary judgment on this count is warranted for the same reasons discussed above with respect to Counts I and II. There is no cognizable claim here for a due process violation. Moreover, the claim is waived because Plaintiff's memorandum in opposition fails to address or mention it.

B. Claims Relating to the Search—Counts V and VI

1. Count V

Count V alleges that the strip search conducted in this case was unreasonable and violated Plaintiff's rights under Article I, Section 5 of the Maine Constitution and 5 M.R.S. § 4682(1). Both Count V and Count VI (discussed below) are brought against York County, Sheriff King in his official capacity, and Officer Corcoran in his individual capacity.

Sheriff King is named only in his official capacity. An action against a public official in his official capacity is a suit against the governmental entity itself; and it is the governmental entity—here York County—that is the real party in interest. *Suprenant v. Rivas,* 424 F.3d 5,

[9] Section 6-A provides: "No person shall be deprived of life, liberty or property without due process of law, nor be denied equal protection of the laws, nor be denied the enjoyment of that person's civil rights or be discriminated against in the exercise thereof." Me. Const., Art. I, § 6-A.

19 (1st Cir. 2005); *Wood v. Hancock County Sheriff's Dept.*, 354 F.3d 57, 59 n. 1 (1st Cir. 2003). No facts have been asserted that implicate or involve Sheriff King directly in the events of January 30, 2018. Accordingly, the motion for summary judgment on Counts V and VI as to Sheriff King in his official capacity is granted.

As to Corcoran, the motion is granted with respect to Count V because he is entitled to qualified immunity. Even if the strip search violated Plaintiff's rights, for the reasons discussed below the court cannot conclude that those rights were "clearly established".

As for the claim against the County, the motion for summary judgment is denied. There are genuine issues of material fact with regard to whether, in what manner, and by whom the search was conducted on January 30, 2018. Plaintiff testified at his deposition that officers led him to an area with a shower stall with a curtain and instructed him to disrobe and display his genitals and anus. Defendants deny this occurred. Corcoran denies conducting a strip search, and his contemporaneous record of the event does not reflect such a search was done. However, a second jail record prepared by another corrections officer indicates that a strip search was conducted, and that Corcoran conducted it.

Defendants contend that even if Plaintiff were strip searched, his rights were not violated. They cite *Florence v. Board of Chosen Freeholders,* 566 U.S. 318 (2012) in support of their position. In *Florence, the* U.S. Supreme Court held that a county jail's strip search of an arrestee charged with a minor offense does not violate the Fourth Amendment so long as conducted pursuant to a policy that is reasonably related to legitimate security interests. The Law Court has expressly acknowledged this holding. *See Clifford,* 2014 ME 160, ¶ 70, 91 A.3d 567. Nonetheless, *Florence* is not dispositive of Plaintiff's claim.

Count V asserts that the search in this case violated Maine law, namely Article I, Section 5 of the Maine Constitution and Section 4682(1) of the MCRA. Unlike the analysis with respect to Counts I and II, above, there is a reasonable basis for concluding that the rights afforded under Maine law in this context are not merely coterminous with, and may be arguably broader than, the Fourth Amendment as interpreted by *Florence.*

By statute, the Maine Attorney General was directed to promulgate rules:

> relating to strip searches and body cavity searches of arrestees . . . [as] a guide for the conduct of law enforcement officers in enforcing the law and [to] establish acceptable procedures for conducting a strip search or a body cavity search of an arrestee *when the arrestee is concealing a weapon or where an officer has a reasonable belief that the arrestee may be concealing contraband or evidence of a crime.*

5 M.R.S. § 200-G (1) (emphasis added). In addition to directing the Attorney General's office to promulgate rules as a guide for law enforcement officers conducting strip searches of arrestees, the statute arguably establishes the predicates for such searches— "when the arrestee is concealing a weapon or where an officer has a reasonable belief that the arrestee may be concealing contraband or evidence of a crime."

Pursuant to this authority, the Maine Attorney General's office has promulgated rules authorizing a strip search when an individual is arrested for a "violent, weapon, or drug offense" or if there is "reasonable suspicion that the arrestee is concealing on or inside the arrestee's body a weapon, contraband, or evidence of a crime." 26 C.M.R. § 239-1-II (1). In 2007, the rules were apparently updated, but the record before the court does not appear to contain a complete copy of the update. (See York County Dep. Ex. 16.).

The record does contain a 2011 letter from an Assistant Attorney General forwarding to the jail a list of "Violent, Weapon, and Drug Offenses" with respect to which strip searches would be justified. It is unclear, though, how and under what authority this list was

generated. A number of the offenses on the list—including the offense in question in this case, obstructing government administration—would not facially appear to involve violence, weapons, or drugs.

Despite *Florence*'s approval under the Fourth Amendment of suspicion-less searches of individuals arrested on minor charges, Maine law may have a higher or different threshold. *Cf. Alliance for Retired Ams. v. Sec'y of State,* 2020 ME 123, ¶ 39 n. 16, 240 A.3d 45 (*Jabar, J. dissenting*) (State is "free to accord Maine citizens greater rights than those provided under federal jurisprudence when it comes to protection of individual rights."). Both statute and rule establish predicates for strip searches. The rights guaranteed under Article I, Section 5 of the Maine Constitution would cover no less.[10]

2. Count VI

Count VI alleges a breach of contract based on a 2005 settlement agreement that York County entered to resolve a federal class action lawsuit which had challenged the jail's practices of searching certain arrestees. Defendants contend that the agreement reflects a 2005 settlement with a discrete class of plaintiffs that did not include this Plaintiff; and because he was neither a party to nor beneficiary of the agreement Plaintiff lacks standing.

The 2002 class action was brought on behalf of arrestees who were waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drug or a violent felony. The settlement required jail employees to allow these individuals to change into a jail uniform without exposing certain parts of their body to the visual inspection of correction officers. The settlement agreement provides, in part:

---

[10] Here, unlike the situation addressed above with respect to Plaintiff's argument that the court should depart from the *Atwater* standard, the statute and rule discussed above provide a potential basis for construing Article I, Section 5 of the Maine Constitution more broadly.

> York County agrees that it will maintain a formal written policy that provides that a pre-arraignment detainee for a non-excluded crime is to remove his or her underclothing behind a screen to protect the person from displaying his or her genitals, anus or, in the case of females, bare breasts, to the inspection by a correctional officer unless the officer is conducting a strip search based on reasonable suspicion and documented at the time of the search in a log of all such searches. It will not be a violation of this Agreement if a detainee refuses to comply with this policy so long as York County makes reasonable, good faith efforts to enforce this policy.

Second Am. Sett. Agreement, § II(B)(4). Although Plaintiff was not a member of the class on whose behalf the 2002 lawsuit was filed, he may have rights thereunder as a third-party beneficiary.

A person may be an intended beneficiary of a contract where recognition of a right to performance in the beneficiary effectuates the intention of the parties to the contract and the circumstances indicate that "the promise intends to give the beneficiary the benefit of the promised performance." *F.O. Bailey Co. v. Ledgewood, Inc.,* 603 A.2d 466, 468 (Me. 1992) (quoting Restatement (Second) of Contracts). A person claiming to be a beneficiary must show that the contracting parties intended that he have an enforceable right under the contract in order to maintain standing as an intended beneficiary. It is not enough that the party claiming to be the beneficiary could have benefitted from performance, there must be "clear and definite" intent of the part of the contracting parties. *Devine v. Roche Biomedical Labs*, 659 A.2d 868, 870 (Me. 1995). If the contract language is ambiguous or uncertain, its interpretation is a question of fact to be determined by a fact-finder. *F.O. Bailey Co.,* 603 A.2d at 468.

At the very least, there is a genuine issue of fact as to whether the settlement agreement was intended to benefit future arrestees such as Plaintiff. The agreement is partly prospective in nature—requiring York County to maintain certain policies and practices.

Whether Plaintiff was being held for a "non-excluded" crime and whether in these circumstances there was a breach of the settlement agreement are questions of fact for a fact-finder to determine. This is sufficient to preclude summary judgment as to York County.

As to Corcoran, however, his involvement with respect to this count would be solely as an agent for the County. He was not a party to the contract, and so has no personal liability with respect to Count VI. He is entitled to summary judgment with respect to Count VI.

IV. Order

In accordance with the foregoing, it is hereby ordered and the entry is: "Defendants Motion for Summary Judgment is GRANTED with respect to Counts I, II, III, IV, and VII; GRANTED with respect to Counts V and VI as to Sheriff William King and Robert H. Corcoran only; and DENIED in all other respects."

The clerk may enter this Memorandum of Decision and Order on Defendant's Motion for Summary Judgment on the docket by reference pursuant to M.R. Civ. P. 79(a).

SO ORDERED

Dated: January 12, 2022

Wayne R. Douglas
Justice, Superior Court

ENTERED ON THE DOCKET ON: 1/12/2022

CLERK OF COURTS
Superior Court - York County
P.O. Box 160
Alfred, Maine 04002-0160

EMMA BOND ESQ
AMERICAN CIVIL LIBERTIES UNION OF MAINE
PO BOX 7860
PORTLAND ME 04112