

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KENNETH POWELL :
v. : CIV. NO. 3:00CV1638 (HBF)
CAPT. JOHN CUSIMANO, :
LT. EDWARD LINARES,¹ :
C.O. DONALD FIGIELA, :
C.O. EDWARD HELLER, :
C.O. BRIAN SIWICKI, :
C.O. FRED DEROTA, :
C.O. SCOTT PETERSON, and :
IRENE CARLON :
:
:
:

BENCH RULING

Kenneth Powell, a former state prisoner, brings this civil rights action against eight employees² of the Connecticut Department of Corrections ("DOC"), alleging violation of his rights under the Eighth and Fourteenth Amendment the United States Constitution and various state law claims.³ Plaintiff seeks compensatory damages,

¹Lieutenant Linares identified himself as "Edgardo Linares" at trial. [Doc. #81 at 110]. He was identified in the amended complaint as "Edward Linares". [Doc. #40]. In this ruling the Court will refer to the Lieutenant as Edgardo Linares.

²The defendants are Captain John Cusimano, Lieutenant Edgardo Linares, Corrections Officers Donald Figiela, Edward Heller, Brian Siwicki, Fred DeRota, Scott Peterson and Nurse Irene Carlon.

³The Amended Complaint contains the following seven counts: (1) deliberate indifference to serious medical needs under the Eighth Amendment; (2) excessive force under the Eighth Amendment; (3) violation of Conn. Gen. Stat. §53a-181k "Intimidation based on

punitive damages, treble damages under Conn. Gen. Stat. §52-571c(b) and attorneys' fees and costs under Conn. Gen. Stat. §52-571c(b) and 42 U.S.C. §1988.

A bench trial was held on September 15 and 16, 2003. Edward Heller, Kenneth Powell, Fred DeRota, John Cusimano, Irene Carlon, Thomasena Vaughn and Edgardo Linares testified at trial. Testimony and evidence adduced at the hearing are summarized below as necessary to explain the Court's findings and conclusions.

FINDINGS OF FACT

Based on the credible testimony, the exhibits, and the entire record compiled during the trial, including a videotape of the subject incident [Def. Ex. J], the Court finds established the following facts which are relevant to this ruling.⁴

1. Plaintiff, Kenneth Powell, is a thirty-three (33) year old male

bigotry or bias in the second degree: Class D felony" and §52-571c "Action for damages resulting from intimidation based on bigotry or bias"; (4) "employing unnecessary, excessive and unreasonable force against plaintiff by denying medical attention and by making bigoted, biased statements and committing bigoted and biased actions" in violation of his Equal Protection under the Fourteenth Amendment; (5) acts of intimidation and harassment based on plaintiff's sexual orientation proscribed by Conn. Gen. Stat §§53a-118k and 52-571c in violation of the Fourth, Eighth and Fourteenth Amendments; (6) violation of Sections 1, 7, and 9 of the Connecticut Constitution; and (7) intentional infliction of emotional distress.

⁴The parties stipulated to certain facts, which are listed in the Plaintiff's Trial Memorandum [Doc. #71], and cited in this opinion as "Stip." Transcripts of the trial are also part of the Court's record. [Doc. ##80, 81].

who was formerly an inmate at Walker Reception and Special Management Unit ("Walker"), a facility run by the Connecticut Department of Corrections.

2. On November 20, 1998, plaintiff was sentenced on five different criminal convictions, including Larceny third degree, (Conn. Gen. Stat. §53a-123), three counts of violation of probation, (Conn. Gen. Stat. §53a-32) and one count of prostitution (Conn. Gen. Stat. §53a-82). He was ordered to serve concurrent sentences for a total effective sentence of three years. [See Mittimuses, Ex. G; Doc. #80 at 94].
3. Powell also had two prior felony drug convictions, one for possession of narcotics and one for sale of narcotics, [Doc. #80 at 94], and twelve separate convictions for larceny, sixth degree. [Doc. #80 at 95].
4. On November 23 and 24, 1998, Kenneth Powell was an inmate of the Connecticut Department of Corrections. [Stip.]. He was incarcerated at the Bridgeport Correctional Facility on November 23, then transferred to Walker on November 24, 1998. [Stip.].
5. On cross examination, in response to the question, "Mr. Powell, on direct examination you indicated that you, 'were arrested one or two times.' Isn't it true, sir, that in fact, you were arrested 26 times?," Powell responded, "I mean, well, if we

got to get into it basically. I just basically threw that out there to show you that I'm not new to being arrested." [Doc. #80 at 93].

6. Powell testified that he was very familiar with all aspects of rules, procedures and regulations of the Department of Corrections, as he had been incarcerated, as he said, at least "one or two times" over the years. [Doc. #80 at 93, 157].

7. Powell testified,

I've been in the Department of Corrections, you know, as I stated, a few times, and I do know the procedures and the way in which that inmates and staff members interact. I know about the [mailing] system, recreation, medical, mental health. I'm fully knowledgeable and aware of all that goes into an institution."

[Doc. #80 at 157].

Arrival at Walker

8. Powell was transferred from Bridgeport Correctional Center to Walker Reception and Special Management Unit ("RSMU") on November 24, 1998. [Doc. #80 at 53, 137].

9. Plaintiff stated that he was not "too particularly sure" any of the defendants were present on his arrival at Walker on November 24, 1998. [Doc. #80 at 139].

10. On November 24, 1998, the defendants were employed by the State of Connecticut and were assigned to Walker. [Stip.].

11. On November 24, 1998, Lieutenant Edgardo Linares was on duty at Walker during the second shift. Linares supervised defendant Corrections Officers Donald Figiela, Brian Siwicki, Fred DeRota and Scott Peterson on that shift. [Stip.]
12. On November 24, 1998, Nurse Irene Carlon was on duty at Walker during the second shift. [Stip.].
13. On November 24, 1998, Officer Fred DeRota was on duty in the segregation unit at Walker. [Doc. #80 at 170]. As a segregation officer, he was responsible for maintaining a logbook of all the activities in the unit. Id.
14. On November 24, 1998, Captain John Cusimano was on duty at Walker. He was responsible for facility operations. [Doc. #80 at 211, 221].
15. On November 24, 1998, Officer Edward Heller was assigned to the second shift as a property officer working in the property room of the Admitting and Processing ("A & P") area of Walker. He was responsible for the intake and inventory of inmate property. All inmate property was searched for contraband on intake. [Doc. #80 at 6; Def. Ex. L].
16. At the time of his transfer to Walker, plaintiff was wearing artificial braided hair extensions woven into his own real hair. [Stip.; Pl. Ex. 14].
17. Mr. Powell knew that his fake hair extensions were contraband;

indeed, he testified that he was "well aware of that." [Doc. #80 at 136].

Medical Intake Interview

18. After arriving at Walker, Powell was escorted from the holding cell to the interview room for a medical intake interview performed by Nurse Carlon. [Doc. #80 at 58; Pl. Ex. 29].
19. Powell was wearing artificial braided hair extensions and blue contact lenses upon his admission to Walker. [Doc. Def. Ex. C; Pl. Ex. 16].
20. Nurse Carlon testified that she received a direct order to check Powell's hair. [Doc. #81 at 69].
21. Administrative Directive 6.10, Inmate Property, defines "contraband" as "[a]nything not authorized to be in an inmate's possession; used in an unauthorized or prohibited manner; or altered in any way." "Unauthorized property" is defined as "[p]roperty which is either not allowed by the terms of this Directive or is in excess quantity of property permitted by this Directive." "No inmate will be permitted to retain any item which does not conform to the Inmate Property Matrix or is in excess of the quantities allowed in Section 16 of this Directive." [Def. Ex. Q].
22. Administrative Directive 9.5, Code of Penal Discipline, defines "contraband" as "[a]nything not authorized to be in any

inmate's possession or anything used in an unauthorized or prohibited manner." [Def. Ex. R].

23. Powell's clinical record states for November 24, 1998, written by Nurse Carlon: "Unable to do assessment at this time due to inmate being uncooperative and belligerent, refused to remove fake braids and contact lenses. Given direct order to do so, refused - Captain Cusimano notified of the fake braids. Removed to seg by this writer. Contact lenses removed by inmate, placed in sterile cups and saline solution, marked and placed in property. Head to toe check done but no injuries noted at this time or bruises, good R.O.M. [range of motion] all extremities, no open areas, neuro check done, pupils equal and reactive to light." [Def. Ex. B at 6; Doc. #81 at 86-87].
24. Officer Heller was processing inmate property in the Property Cage when he heard loud voices coming from the Nurse's interview room, IP 22, where Nurse Carlon was conducting medical intake interviews. [Doc. #80 at 11; Def. Ex. L]. Carlon called Heller into the room. [Doc. #80 at 11, 37-38; Def. Ex. A at 08].
25. Officer Donald Figiela was working in the A & P area and also responded to the loud voices coming from the nurse's interview room. [Doc. #80 at 8-9].
26. Heller testified that plaintiff's demeanor, raised voice and

- continued noncompliance with direct orders raised concerns in Heller's mind for Nurse Carlon's safety. [Doc. #80 at 35-36].
27. Figiela gave Powell a direct order to remove his contraband hair braids and Powell refused in a threatening manner, stating he was not going to remove his hair braids and that the correction officers were not going to remove them either. [Doc. #80 at 11, 29-30; Def. Ex. A at 22].
 28. Nurse Carlon noted in her medical chart that Powell was argumentative and belligerent, refusing to remove his fake hair braids and his contact lenses. She called the shift supervisor, Capt. Cusimano, who directed Lt. Linares to respond to the nurse's office. [Def. Ex. A at 02; Def. Ex. B at 01, 06; Def. Ex. H at 330].
 29. Heller testified that, after plaintiff refused Figiela's direct orders, Heller left the office and told Officers Siwicki and Peterson. [Doc. #80 at 14]. Heller then returned to the interviewing office. [Doc. #80 at 15].
 30. Heller testified that Powell adamantly refused to remove his braids. [Doc. #80 at 30; Def. Ex. A at 8]. At no time did Powell request a comb or indicate by body movement, gesture, or in any way that he was willing and cooperative to remove his hair braids. [Doc. #80 at 34].
 31. Lt. Linares responded to a radio call, arrived in the interview

- room, and was apprised of the situation by his staff. [Doc. #81 at 113].
32. Upon his arrival, he was informed that Powell had refused a direct order from Nurse Carlon and Officer Figiela to remove the braids. [Doc. #81 at 116-117].
33. Linares gave plaintiff a direct order to remove the braids. "When I gave Mr. Powell the direct order to remove his braids, he - his eyes opened up and he looked at me and said, 'I'm not removing my braids, so you do what you have to do.'" [Doc. #81 at 118-120, 130]. "It was like it was in the video, he was like arrogant towards the direction that I was giving him, like I was bothering him by asking him to do this." [Doc. #130].
34. In response to the question, "You didn't want to investigate, since you testified that you didn't really understand the nature of the hair extensions?," Linares replied, "I believe that Mr. Powell is an adult and he had a choice to make, and he made a choice before I arrived at that office." [Doc. #81 at 124].
35. In response to the next question, "And so you didn't have any investigation to do, even though you were the supervisor of the incident?," Linares replied, "Mr. Powell had refused two direct orders from staff, he refused my order. He never asked me to give him time." [Doc. #81 at 124, 153, 157-58].

36. Linares stated that Powell never asked for time, he never asked for a comb, he never asked for help removing the braids. Powell made no effort to demonstrate compliance with the orders given. [Doc. #81 at 134].
37. Nurse Carlon testified that, if it had been requested, she did not have a comb to give plaintiff. [Doc. #81 at 94].
38. Capt. Cusimano testified that "technically, an inmate doesn't have to be directly told, 'You are being given a direct order.' It's understood that a staff member's instructions to an inmate, at all times, are a direct order, and they are to be complied with expeditiously, and if an inmate fails to do so, he is in violation of the code of penal discipline." [Doc. #81 at 23].
39. Administrative Directive 9.5(13), Code of Penal Discipline, states it is a Class B Offense to disobey a direct order, "Failing to comply expeditiously with an instruction of a staff member or failing to comply with any disciplinary sanction imposed." [Def. Ex. R at 9].

Escort to Segregation

40. Linares ordered Figiela and Heller to escort Powell to segregation to remove Powell from the interview office where the nurse had to do intakes. [Doc. #81 at 126, 135]

41. Linares was concerned that Powell's disturbance would agitate the fifteen or more inmates who were in the holding cell just a short distance from the nurse's office. "I was trying to keep the incident from escalating, and just removing him, and like I said, he was being passively resistant, he was being verbal, but he was not showing - he was not clenching his fists or showing that he was gonna become resistive in any manner, at that point." [Def. Ex. A at 04; Doc. #81 at 128-29].
42. Powell was assisted out of the chair by Figiela and Heller, who held plaintiff in a wrist elbow escort hold, one officer on each side of plaintiff. [Doc. #81 at 135-36; Def. Ex. A at 04, 08, 18, 20].
43. Linares stated that Powell's behavior was interfering with the orderly operation of the intake unit. "The officers that were in that area had to stop doing what they were doing to come and escort Mr. Powell out of there." [Doc. #81 at 135].
44. Linares testified, "I didn't want the incident to escalate. I didn't want the other inmates to hear what was going on and have them start going off in the bullpen, believing that something was happening to inmate Powell, or something like that." [Doc. #81 at 150].
45. This was a routine escort, and it was conducted pursuant to normal institutional procedure, in accordance with standard

escort techniques taught at the DOC training academy. [Doc. #81 at 136; Def. Ex. A at 8-9].

46. Upon arrival in the segregation foyer, plaintiff began passively resisting the escort, refusing to move his own feet, and actively struggling to escape the grasp of the officers. [Doc. #81 at 139; Def. Ex. A at 04, 07-10, 12-13, 16, 18, 20].
47. Plaintiff was ordered to face the wall, and he began to vigorously resist the officer's escort, struggling to get free. [Doc. #81 at 139-140].
48. Linares testified that Powell began to push away or pull away, "attempting to move and release himself from the officer's escort, and moving his head. He was attempting to turn his face and pull away from the officer's escort." [Doc. #81 at 141-42].
49. Lt. Linares instructed the correctional officers to escort Mr. Powell to the prone position, and Powell was guided down by Figiela and Heller, who had his upper extremities; Peterson, who maintained control of the upper torso, and Siwicki, who maintained control of plaintiff's lower torso. [Doc. #81 at 142-146; Def. Ex. A at 8-9, 16, 17, 18, 20, 21].
50. Linares explained, "What I mean by directing him to the prone position, means that the officers still have control of the inmate, and they basically bring him down to the prone without

causing themselves or the inmate injury. They still have control of the inmate, they have a hold of his elbow and wrist still, and they are directing him down towards the ground. They're not dropping him or throwing him." [Doc. #81 at 142-43].

51. In response to the question, "The reports use the phrase, 'escort to the prone,' Isn't that just a nice way of saying that you're slamming him down to the ground?," Linares responded, "He was not slammed down, sir. He was directed, and escorted is basically the officers have control of what's going on and they're bringing the inmate down, attempting not to have harm caused either to them or the inmate." [Doc. #81 at 143].
52. Plaintiff was escorted to the prone position "to maintain control of the inmate and for safety reasons, the safety of the staff and also the safety of the inmate." [Doc. #81 at 146].
53. Capt. Cusimano testified that he arrived on the scene after Powell was in the prone position being controlled by staff. [Doc. #81 at 4].
54. Cusimano directed Officer Heller to retrieve the video camcorder. This instruction was made subsequent to the use of force and prior to Powell having his hair extensions removed. [Doc. #81 at 4, Def. Ex. A at 8].
55. Cusimano explained, "[a]fter responding to the area, and he -

force was already utilized. There was no predicting what kind of behavior that the inmate might conduct or display, you know, from that time on, so a video camera was retrieved." [Doc. #81 at 6].

56. Cusimano testified that the video was operating continuously until Powell was secured in his cell and Cusimano directed Heller to stop taping. [Doc. #81 at 7; Def. Ex. J].
57. The Court finds that plaintiff failed to produce any credible evidence that defendant Linares, and the other defendants involved in the escort, acted for any other motive other than to maintain safety, control and order at Walker on November 24, 1998. [Doc. #81 at 145-46; Def. Ex. A; Def. Ex. B, 01, 06; Def. Ex. J].
58. Cusimano testified that he did not observe any facial injuries to plaintiff. [Doc. #81 at 5; Def. Ex. C].
59. Officer DeRota testified that when he arrived, Powell was in the prone position. He stated that no officer was beating or punching Powell. He observed Powell being lifted and assisted to a chair. At no time did Powell complain of an injury in DeRota's presence. DeRota testified he remained in the area during the videotaping while Powell's braids were cut off. [Doc. #80 at 165-168].
60. Powell's head did not hit the wall or the floor and there was

no evidence or objective findings of any bruises. [Pl. Ex. B at 01, 06; Doc. #81 at 5; Def. Ex. A, C; Doc. #81 at 141, 143, 147-48].

61. Powell stipulated at trial that he made no complaints of any on going injuries arising from this incident from March 1999 onward. [Doc. #80 at 146]
62. The Court also finds that the defendants acted to restore control, order and safety, and that the number of officers involved in the incident was reasonably necessary to maintain control and safely escort plaintiff to the prone position.[Doc. #81 at 43-50].
63. The Department of Correction's Directive 6.5 authorizes the use of force to protect a person from an immediate threat. [Def. Ex. N at 03, ¶5.A]. Force is defined as "[p]hysical contact or contact through use of an armory item by a staff member in a confrontational situation to establish control or restore order." [Def. Ex. N. At 02, ¶3(C)].
64. The Court finds that defendants escorted plaintiff to the prone because they reasonably believed that plaintiff posed an immediate threat to Correction Officers Heller and Figiela, when plaintiff was struggling to get his arms free from the escort.
65. The defendants reasonably believed that they were authorized to

use force under the circumstances of this case.

66. A supervisor, Lt. Linares, was on the scene, and sufficient staff were in place to assure the safety of plaintiff when escorted to the prone position. [Doc. #81 at 43-49, 140-48].
67. Sufficient staff were present so that chemical agents did not have to be used. [Doc. #81 at 44].
68. The only force used was the reasonable application of a hand hold (wrist-elbow) escort position and the escort of plaintiff to the prone position. These are standard security procedures taught in the DOC training academy, and provided for by DOC directives and policies.
69. Plaintiff was not escorted to the prone until after he began resisting the escort, twisting his body and head, and attempting to pull his hands away when he was asked to face the wall, after his hands were placed on the wall outside segregation. [Doc. #81 at 140-48, Def. Ex. A at 8].
70. Capt. Cusimano explained that, "[f]rom viewing an inmate on the floor and there was an altercation with staff, you need - the administrative directive requires that we video all use of force." [Doc. #80 at 232].
71. Cusimano testified, "[u]se of force is physical contact with an inmate as a result of a confrontational situation in which we need to maintain control and restore order to an area." [Doc.

#80 at 233].

72. Cusimano opined that he did not consider this incident a planned use of force. "The inmate was being escorted to RHU. When the escort commenced, although he might a been, you know, objecting to verbal instruction, he was not physically resistive at the time." [Doc. #80 at 234].
73. Cusimano testified that "the officers were escorting the inmate to [the Restricted Housing Unit] for failing to comply with instructions, and he became hostile, and was taken to the prone. So, I wouldn't consider . . . [seven officers] an excessive amount of officers to control a situation, no." [Doc. #80 at 224].
74. The Court finds that the use of force was necessary, and was reasonably related to legitimate penological objectives [Doc. #81 at 43-49, 140-48], to maintain safety for the staff and plaintiff as well, and to maintain order in the Walker facility. [Def. Ex. A, J].

Removal of the Hair Extensions

75. Powell was placed in a chair in the segregation foyer, and Nurse Carlon was summoned to cut out Powell's artificial hair braids. [Def. Ex. A at 05, 06; Def. Ex. J].
76. Captain Cusimano testified that, from the time plaintiff was seated in the chair, he was compliant and remained compliant

during the process of removing the hair extensions. [Doc. #80 at 235, Def. Ex. J].

77. Officer DeRota filed a disciplinary report on Powell for possession of contraband. [Doc. #80 at 179]. He testified that inmates can hide materials such as razor blades or handcuff keys in braids. Braids can be tied together and used to hang oneself or to strangle another inmate. [Doc. #80 at 179].
78. DeRota's "Use of Force" report states that he "observed" Nurse Carlon remove the contraband braids but did not use any force on Powell. [Def. Ex. A at 14].
79. Officer Heller testified that hair extensions present a danger as their removal can alter an inmate's appearance. "It's possible they can be woven together, could have a piece of rope, strangle someone, tie someone up with it." [Doc. #80 at 24].
80. Heller agreed with the statement "that individuals who have fake hair extensions, whether they are gay, straight, bi, transsexual, are ordered to remove those hair extensions." [Doc. #80 at 39].
81. Captain Cusimano testified that it would not be sound correctional practice to permit Powell to enter the restrictive housing unit (RHU) with hair braids. "I would not be able to thoroughly inspect those on his head. I mean, I don't know

what he could actually be hiding in the hair braids, what actually he would put - conceal in the hair braids possibly a razor. . . I imagine, it could be tied together, fashioned into some type of rope or, you know, there is numerous things that inmates think of to do with contraband" [Doc. #81 at 21].

82. The removal of plaintiff's artificial hair extensions was undertaken solely for legitimate penological reasons related to preventing escape, and protecting inmate and facility safety.
83. Nurse Carlon carefully separated the braids, and gently cut them with medical trauma shears. [Def. Ex. J; Doc. #81 at 15].
84. Thomasena Vaughn, plaintiff's hairdresser, testified that it would take approximately six and a half (6.5) hours to remove the braids manually without a comb, if you were able to snip the ends off first. With a comb, she estimated it would take "anywhere from two and a half (2.5) to three (3) hours" to remove the braids. [Doc. #81 at 99].
85. Ms. Vaughn testified that the synthetic material of the braids is very strong. She estimated that each braid was approximately fourteen inches (14") in length and there were about seventy (70) to eighty (80) braids on Powell's head. She testified it was possible to connect the braids with the right technique. [Doc. #81 at 105-06].

86. Lt. Linares testified,

If Mr. Powell would have requested the comb, we would have given him ample time and placed him in a single cell, and staff had other duties to tend to besides this, so yes, he would have been given time.

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He could've been put in a single cell by himself and he could have removed the extensions while staff took care of other duties that they had, like the AP officers, they would've been around that area and they could've kept looking in on him.

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It would have saved the whole incident.

[Doc. #81 at 122].

87. Nurse Carlon testified that she lifted the braids to cut them, which enabled her to observe Powell's skull. She stated that she observed no "golf sized" lumps. [Doc. #81 at 88].

88. Contrary to Powell's statement [Def. Ex. X], the video [Def. Ex. J], and the photograph of plaintiff's head [Def. Ex. C] clearly demonstrate that plaintiff had no bald spots, but rather was left with approximately two (2) inches of natural hair. [Doc. #81 at 14].

89. The Court finds Powell's allegation that he was left with numerous bald patches completely unsubstantiated. [Def. Ex. C, J; Doc. #81 at 15].

90. Roll Call Notice dated June 1, 1998, clearly states that contact lenses are not listed on the property matrix and

inmates are not permitted to possess them. "Any contact lens which are encountered during [the] course of cell shakedowns should be treated as contraband and confiscated." [Def. Ex. T].

91. Powell's testimony is contradicted by the video in several material respects, including Powell's claim that he was first ordered to remove his contact lenses, and second, given a hair cut. [Doc. #80 at 102; Def. Ex. X; Def. Ex. J].
92. Powell's claim during the video that, without contact lenses, "he couldn't see a thing without them," is squarely contradicted by plaintiff's medical record which shows 20/20 in Powell's left eye and 20/40(-)(1) in Powell's right eye. [Def. Ex. B at 09, Doc. #80 at 123].
93. The video contradicts Powell's claim that Nurse Carlon roughly grabbed and pulled plaintiff's hair and cut it at the base of his scalp. [Def. Ex. X; Def. Ex. J].
94. In the video, Mr. Powell is seated calmly in the chair. He does not appear to have just been brutally beaten by four correction officers. [Def. Ex. J]. He is not breathing heavily nor is he stating for the video camera, as he alleged, that he is being treated unjustly because of his sexual orientation. [Def. Ex. X; Def. Ex. J; Doc. #80 at 102, 119].
95. Officer DeRota and Captain Cusimano testified they did not hear plaintiff complain about pain and did not observe any head

- injury to plaintiff. [Doc. #80 at 170; Doc. #81 at 15, 25].
96. Plaintiff received a hair cut a few days after the braids were removed. [Doc. #80 at 81; Pl. Ex. 13].
97. Plaintiff testified at trial that he "never watched that video. To this day, I still have not watched the video. I don't want to watch it." [Doc. #80 at 120].

Homophobic Epithets/Remarks

98. Administrative Directive on standards of conduct 2.17(5)(B)(10) "strictly prohibit[s]" DOC employees from engaging in "abusive or obscene language, threats and/or intimidating behavior." [Def. Ex. M at 3].
99. Powell's claim that he was the subject of numerous vulgar homophobic epithets, allegedly captured on video while plaintiff was strip searched, is not supported by the evidence. [Compare Def. Ex. J, with Doc. #80 at 11, 119].
100. Nurse Carlon testified that she did not perceive Powell to be a transsexual, homosexual or as having a gender identity disorder. [Doc. #81 at 73-74]. She did not perceive Powell to be wearing a woman's hairstyle. [Doc. #82 at 75].
101. Lt. Linares testified that he did not perceive Powell to be grooming himself like a woman. "We have inmates with long hair in the facility. I mean, how he carried his hair or how he was wearing his hair really didn't mean anything to me at that

- point." [Doc. #81 at 114].
102. Linares testified that he did not hear the correctional officers direct vulgar, profane or otherwise homophobic remarks in his presence. [Doc. #81 at 149]. He stated that other inmates react to that type of staff conduct. "If they hear what you're saying, they will tell on you and they will join in." [Doc. #81 at 151]. "It's always inmates versus staff in a situation like that." Id.
103. Officer DeRota testified that he did not recall anyone speaking "vulgar, homophobic remarks" in his presence. [Doc. #80 at 168-69].
104. Capt. Cusimano testified he did not observe any of the correctional officers direct any vulgar homophobic remarks towards Powell. [Doc. #81 at 14-17].
105. Officer Heller testified that he did not see Figiela threaten Powell or hear him direct a stream of slurs, insults, or derogatory statements at Powell. [Doc. #80 at 40-41].
106. Heller testified that individuals with fake hair extensions, whether they're gay, straight, bi, or transsexual, are ordered to remove those hair extensions. [Doc. #80 at 39].
107. Lt. Linares testified that he did not hear Officer Figiela direct any vulgar homophobic remarks towards Powell. [Doc. #81 at 132-33].

108. The Court does not find that the defendants made homophobic or unprofessional remarks to plaintiff. The Court finds, based on the evidence, that defendants acted in a professional manner, within the scope of their employment. Plaintiff was strip searched in a routine, professional manner in accordance with DOC policy. [Def. Ex. O, A.D. 6.7; Def. Ex. J].

109. There was no evidence that plaintiff was treated in a discriminatory manner simply because he was a homosexual.

110. There is no credible evidence of any discrimination against plaintiff because he is homosexual.

Strip Search

111. Administrative Directive 6.7(5)(D) provides that an inmate strip and visual body cavity search will be conducted "[u]pon initial placement in a restrictive housing, protective custody or close custody unit." [Def. Ex. O].

112. Captain Cusimano ended the video taping when Powell was secured in a cell "pending medical attention to the inmate, at that point, the camera was reintroduced to the cell to videotape . . . the medical examination of inmate Powell in the cell." [Doc. #81 at 25].

113. Cusimano testified that he observed no serious injury to Powell during the strip search. Powell was able to lift his feet and spread his toes, with no visible swelling or difficulty

disrobing. [Doc. #81 at 35-36, 40-41; Def. Ex. C].

Medical/Mental Health Treatment

114. Nurse Carlon was a licensed and practicing nurse for forty-five (45) years, and was also certified as an Emergency Medical Technician (EMT). [Doc. #81 at 86].

115. After plaintiff was escorted to segregation cell S-09, he was examined by Nurse Carlon in a matter of minutes. [Doc. #80 at 100].

116. Nurse Carlon performed a complete head to toe examination of plaintiff. [Def. Ex. B; Def. Ex. J; Doc. #81 at 82].

117. She testified that she did not recommend any treatment on the medical form after the examination "because there was no treatment needed," "no injuries, no symptoms." [Doc. #81 at 82-83]. Nurse Carlon testified that she examined Powell's skull with her hands and felt no "golf ball" sized lumps. [Doc. #81 at 89].

118. Nurse Carlon found no bruises on plaintiff and so indicated in her medical incident report and medical chart note. [Def. Ex. B at 01, 06; Doc. #81 at 87, 89].

119. Plaintiff was seen by medical and/or mental health staff on November 24, 25, 27 and 30, and twice on December 1, 1998, once by Dr. Heller. Plaintiff was seen by mental health staff on December 2, 9, 10 and 21, 1998. [Def. Ex. B at 01-06; Def. Ex.

- H at 33-36, 92-95, 328; Def. Ex. K at 272-74, 280, 283-84, 287, 290, 293-94, 296; Doc. #80 at 96, 103, 111, 148-153, 180].
120. On November 30, 1998 plaintiff was given routine blood laboratory work, as part of his intake physical, including a urine sample. [Def. Ex. H at 92-95; Doc. #80 at 148-151].
121. Officer DeRota testified that a unit lieutenant tours segregation a couple of times a shift. [Doc. #80 at 185]. For example, on November 25, 1998, Lt. Linares toured segregation at 3:54 p.m. and 6:08 p.m. [Def. Ex. K at 275]. On November 27, 1998, Deputy Warden Chewinski and Complex Warden Huckabee toured the unit at 12:45 p.m. and Linares toured at 4:03 p.m. [Doc. #80 at 185-87; Def. Ex. K at 283-84]. At no time did inmate Powell register a complaint.
122. There is no documentation anywhere in plaintiff's medical chart which corroborates plaintiff's claim of injury. [Def. Ex. H; Def. Ex. B at 10-06].
123. Powell's assertion at trial that he was suicidal is completely contradicted by the contemporaneous notes taken by mental health staff, which state unequivocally that plaintiff was not suicidal. [Pl. Ex. 27 at 3; Def. Ex. H 33-36; 328-330; Def. Ex. B at 04, 05; Doc. #80 at 97].
124. C.O. DeRota testified that plaintiff never notified him that he was suicidal or needed to be placed on suicide watch. [Doc. #80

at 180].

125. Powell testified that he received satisfactory mental health care and met with mental health treaters fairly regularly.

[Doc. #80 at 95-96, 110; Def. Ex. B at 04-05; Def. Ex. H 33-36].

126. There was no evidence offered at trial that Nurse Carlon had any duties or responsibility for providing plaintiff with treatment for an alleged "gender identity disorder." [Doc. #81 at 73].

127. The only evidence at trial as to Nurse Carlon's duties was that she was assigned to perform intake medical interviews and intake physical examinations, as well as respond when needed to segregation, for example, for medication administration or upon being summoned by the unit officer. [Def. Ex. K at 17 (log p. 287); Def. Ex. B at 6; Def. Ex. A at 25; Doc. #81 at 76-77, 79, 93].

128. The logbook pages document prompt responses by medical and mental health staff, who responded to segregation when called by the segregation officers. [Def. Ex. K; Doc. #80 at 100].

129. Plaintiff had no visible injuries and all examinations were within normal limits. [Def. Ex. H; Def. Ex. B at 10-06].

DISCUSSION

Plaintiff alleges that defendants violated his constitutional rights under the Fourth, Eighth and Fourteenth Amendments to the United States Constitution and Sections One, Seven, and Nine of Article First of Connecticut's Constitution. At trial plaintiff's testimony was uncorroborated by any other witnesses on the key issues of this lawsuit. The question before the Court is whether plaintiff has sustained his burden of proof on these claims. The Court concludes that he has not and finds in favor of the defendants on all counts.

A. Fourth Amendment Privacy Rights and Fourteenth Amendment Substantive Due Process Clause

Plaintiff contends that "defendants exceeded their authority" by executing a routine strip search in a "humiliating manner" in the presence of the assaulting officers and "intentionally and needlessly cutting off the plaintiff's hair extensions," and a portion of plaintiff's natural hair, instead of permitting Powell to remove the extensions himself. [Doc. #74 at 18]. Plaintiff contends these actions violated his Fourth and Fourteenth Amendment rights to be free from unreasonable searches.

Administrative Directive 6.7(5)(D) provides that an inmate strip and visual body cavity search will be conducted "[u]pon initial placement in a restrictive housing, protective custody or close custody unit." [Def. Ex. 0]. Plaintiff contends that a strip search

"undertaken in a non-routine and/or harassing manner may offend the Fourth Amendment as 'the searches must be conducted in a reasonable manner.'" [Doc. #74 at 19 citing Bell v. Wolfish, 441 U.S. 520, 560 (1979)].

To assess whether Powell has proven a violation of his Fourth and Fourteenth Amendment rights, the Court must "determine whether the search in question was reasonable under the Fourth Amendment." Covino v. Patrissi, 967 F.2d 73, 77 (2d Cir. 1992) (citation omitted).

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Bell v. Wolfish, 441 U.S. 520, 559 (1979). It is clearly established in this Circuit that inmates retain a limited right to bodily privacy under the Fourth Amendment. Covino, 967 F.2d at 78.

The Court's second inquiry is whether prison officials had sufficient justification to intrude on Powell's Fourth Amendment rights. Id. In Washington v. Harper, the Supreme Court stated that

the proper standard for determining the validity of a prison regulation claimed to infringe on an inmate's constitutional rights is to ask whether the regulation is reasonably related to legitimate penological interests.

This is true even when the constitutional right claimed to have been infringed is fundamental, and the State under other circumstances would have been required to satisfy a more rigorous standard of review [This standard applies] in all cases in which a prisoner asserts that a prison regulation violates the Constitution We made quite clear that the standard of review we adopted in Turner applies to all circumstances in which the needs of prison administration implicate constitutional rights.

494 U.S. 210, 223-24 (1990) (citations and internal quotation marks omitted).

In Turner v. Safley, 482 U.S. 78 (1987), the Supreme Court listed four factors governing the review of prison regulations:

(i) whether there is a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it; (ii) whether there are alternative means of exercising the right in question that remain open to prison inmates; (iii) whether accommodation of the asserted constitutional right will have an unreasonable impact upon guards and other inmates, and upon the allocation of prison resources generally; and (iv) whether there are reasonable alternatives available to the prison authorities.

Covino, 967 F.2d at 78-79 (citing Turner, 494 U.S. at 89-90). "The burden is upon the prisoner to show that a challenged prison regulation is unreasonable." Covino, 967 F.2d at 79 (citing Fromer v. Scully, 874 F.2d 69, 74 (2d Cir. 1989)).

Plaintiff has not challenged the reasonableness of the DOC's Administrative Directive 6.7(5)(D) requiring that a strip and visual

body cavity search be conducted "[u]pon initial placement in a restrictive housing, protective custody or close custody unit strip searches prior to admission to restrictive housing." Rather, plaintiff argues that a "non-routine and/or harassing manner" violates the Fourth Amendment and such "searches must be conducted in a reasonable manner." [Doc. #75 at 18]. He argues that "an unnecessary number of persons present would violate the inmate's rights to privacy." Id.

This Court does not find these arguments persuasive. The Court finds that the DOC's Administrative Directive 6.7(5)(D) is reasonable on its face. Absent any challenge to the Directive from the plaintiff, the Court declines to undertake further analysis of the directive under the four prongs articulated in Turner.

After carefully reviewing the videotape and trial transcripts and weighing the credibility of the witnesses, the Court finds that the strip search of plaintiff was reasonably conducted. Addressing plaintiff's other arguments, the Court finds no credible evidence that the search was "accompanied by verbal abuse." [Doc. #74 at 18]. The Court does not find the number of officers present during the strip search excessive in light of plaintiff's prior resistance to the escort to segregation. The officers were on hand after the escort, throughout the removal of the hair extensions and through the strip search, up to the placement of plaintiff in his cell in

restrictive housing.

Similarly, plaintiff fails to challenge the reasonableness of the DOC's policy classifying artificial hair extensions as contraband. Rather, plaintiff argues that the intentional and needless removal of plaintiff's hair extensions and a portion of plaintiff's natural hair was a violation of the Fourth Amendment, arguing that he should have been allowed to remove the braids himself. [Doc. #74 at 18]. The Court finds that the policy classifying artificial hair extensions as contraband and requiring the removal of the artificial hair extensions is reasonable under the DOC's duty to maintain safety and security. Pell v. Procunier, 417 U.S. 817, 826-27 (1974). Absent any challenge to the policy from the plaintiff, the Court declines to undertake further analysis.

Accordingly, the Court finds in favor of defendants on plaintiff's claim that defendants violated his Fourth and Fourteenth Amendment rights to be free from unreasonable searches.

B.

Eighth Amendment

1. Deliberate Indifference to Serious Medical Need

The Court finds no credible evidence of deliberate indifference to serious medical or mental health needs of the plaintiff.⁵

⁵Post-trial, plaintiff has abandoned his claim of deliberate indifference to serious mental health needs, stating "the plaintiff clearly and repeatedly asked for both physical and mental health

The defendants argue that there is no factual basis for the plaintiff's claim of deliberate indifference to a serious medical need. Deliberate indifference by prison officials to a prisoner's serious medical need constitutes cruel and unusual punishment in violation of the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). To prevail on such a claim, however, the plaintiff must allege "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." Id. at 106. A prisoner must show intent to either deny or unreasonably delay access to needed medical care or the wanton infliction of unnecessary pain by prison personnel. See Id. at 104-05. Mere negligence will not support a §1983 claim; the conduct complained of must "shock the conscience" or constitute a "barbarous act." McCloud v. Delaney, 677 F. Supp. 230, 232 (S.D.N.Y. 1988) (citing United States ex rel. Hyde v. McGinnis, 429 F.2d 864 (2d Cir. 1970)).

There are both subjective and objective components to the deliberate indifference standard. See Hathaway v. Coughlin, 37 F.3d 63, 66 (2d Cir. 1994), cert. denied sub nom., Foote v. Hathaway, 513 U.S. 1154 (1995). The alleged deprivation must be "sufficiently serious" in objective terms. Wilson v. Seiter, 501 U.S. 294, 298

care, but received the latter only." [Doc. #75 at 22]. Indeed, Powell testified that he received satisfactory mental health care and met with mental health treaters fairly regularly. [Doc. #80 at 95-96, 110; Def. Ex. B at 04-05; Def. Ex. H 33-36].

(1991); see Nance v. Kelly, 912 F.2d 605, 607 (2d Cir. 1990) (Pratt, J., dissenting) ("'serious medical need' requirement contemplates a condition of urgency, one that may produce death, degeneration, or extreme pain"); see, e.g., Neitzke v. Williams, 490 U.S. at 319 (1989) (brain tumor); Hathaway v. Coughlin, 841 F.2d 48 (2d Cir. 1988) (broken pins in hip); Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974) (doctor discarded inmate's ear and stitched stump rather than attempting to reattach ear); Martinez v. Mancusi, 443 F.2d 921 (2d Cir. 1970) (prison doctor refused to follow surgeon's instructions and refused to give prescribed painkiller to inmate), cert. denied, 401 U.S. 983 (1971). Not all medical conditions, however, satisfy this component of the standard. See, e.g., Jones v. Lewis, 874 F.2d 1125 (6th Cir. 1989) (mild concussion and broken jaw), cert. denied, 506 U.S. 841 (1992); Hutchinson v. United States, 838 F.2d 390 (9th Cir. 1988) (kidney stone); Hanton v. Grotta, No. 3:97CV93, 2000 WL 303428 (D. Conn. Feb. 11, 2000) (back and neck pain, denial of bottom bunk); Malsh v. Austin, 901 F. Supp. 757 (S.D.N.Y. 1995) (delay in providing routine dental treatment); Glasper v. Wilson, 559 F. Supp. 13 (W.D.N.Y. 1982) ("bowel problems").

In addition to demonstrating a serious medical need to satisfy the objective component of the deliberate indifference standard, an inmate also must present evidence that, subjectively, the charged

prison official acted with "a sufficiently culpable state of mind." Hathaway, 37 F.3d at 66 (citing Wilson, 501 U.S. at 298). "[A] prison official does not act in a deliberately indifferent manner unless that official 'knows and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.' " Id. (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)); Cuoco v. Moritsugu, 222 F.3d 99, 107 (2d Cir. 2000)).

A difference of opinion between a prisoner and prison officials regarding medical treatment does not, as a matter of law, constitute deliberate indifference. Chance v. Armstrong, 143 F.3d 698, 703 (2d Cir. 1998); United States ex rel. Hyde v. McGinnis, 429 F.2d 864, 867 (2d Cir. 1970) (citing Coppinger v. Townsend, 398 F.2d 392, 394 (10th Cir. 1968)); McCloud v. Delaney, 677 F. Supp. 230, 232 (S.D.N.Y. 1988) ("[t]here is no right to the medical treatment of one's choice..."). Nor does the fact that an inmate might prefer an alternative treatment, or feels that he did not get the level of medical attention he preferred. Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986). As long as the medical care is adequate, there is no Eighth Amendment violation. Wandell v. Koenigsmann, No. Civ.A. 99-8652, 2000 WL 1036030, at *3 (S.D.N.Y. July 27, 2000).

Indeed, prison officials and medical officers have wide discretion in treating prisoners, and Section 1983 is not designed to permit federal courts to interfere in the ordinary medical practices of state prisons. Church v. Hegstrom, 416 F.2d 449, 450-451 (2d Cir. 1969). Federal courts are generally hesitant to second

guess medical judgments and to constitutionalize claims which sound in state tort law. Dean v. Coughlin, 804 F.2d 207, 215 (2d Cir. 1986) ("The Constitution does not command that inmates be given medical attention that judges would wish to have for themselves.") So strong is this view that determinations of medical providers concerning the care and safety of patients are given a "presumption of correctness." Perez v. The County of Westchester, 83 F. Supp.2d 435, 440 (S.D.N.Y. 2000) (citing Kulak v. City of New York, 88 F.3d 63, 77 (2d Cir. 1996)).

Sonds v. St. Barnabas Hospital Correctional Health Services, 151 F. Supp. 2d 303, 311 (S.D.N.Y. 2001).

Plaintiff claims that his Eighth Amendment rights were violated by defendants' failure to provide him with prompt medical care and that his "complaints of serious symptoms such as coughing up blood and severe head pain were nominally examined, then ascribed to anything other than the most logical cause-i.e. the assault that he had just undergone." [Doc. #74 at 22].

There is no objective medical evidence that the denial of overall medical care for plaintiff's knee and head complaints or vomiting rose to the level of deliberate indifference. The record clearly demonstrates that plaintiff was not denied medical attention for his complaints. Rather, the medical records and evidence demonstrate that plaintiff was examined by Nurse Carlon within a matter of minutes after arriving in the restricted housing unit. [Doc. #80 at 100; Def. Ex. B; Def. Ex. J; Doc. #81 at 82]. Nurse

Carlton testified she did not recommend any treatment on the medical record after the examination "because there was no treatment needed," "no symptoms," and "no injuries." [Doc. #81 at 82-83]. She found no bruises and felt no "golf ball" sized lumps on plaintiff's skull. [Doc. #82 at 87, 89; Def. Ex. B at 01, 06].

Plaintiff clearly believes that his medical care has been inadequate. However, "differences of opinion between a prisoner and prison officials concerning the appropriate course of treatment for the prisoner's medical condition do not rise to the level of an Eighth Amendment violation." Edmonds, 2002 WL 368446, at 8 (citing Chance v. Armstrong 143 F.3d 698, 703 (2d Cir. 1998); see Estelle, 429 U.S. at 107 (the "question whether an X-ray or additional diagnostic techniques or forms of treatment is indicated is a classic example of a matter for medical judgment. A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment. At most it is medical malpractice, . . .").

Plaintiff was seen by medical and/or mental health staff on November 24, 25, 27 and 30 and twice on December 1, 1998, once by Dr. Heller. Plaintiff was seen by mental health staff on December 2, 9, 10, and 21, 1998. [Def. Ex. B at 01-06; Def. Ex. H at 33-36, 92-95, 328; Def. Ex. K at 272-74, 280, 283-84, 287, 290, 293-94, 296; Doc. #80 at 96, 103, 111, 148-153, 180]. Medical notations of November 25 indicate that plaintiff "stated [he] vomited blood. No specimen to

detect blood in vomitus. Specimen cup issued. [Inmate] stated I had 'red juice [with] breakfast.'" "[Inmate] placed temporarily on clear liquid diet." On November 27, Powell requested to be taken off the liquid diet stating "he ha[d] not vomited since 11/25/98." [Def. Ex. B at 06-07]. On November 30, 1998 plaintiff was given routine blood laboratory work, as part of his intake physical, including a urine sample. [Def. Ex. H at 92-95; Doc. #80 at 148-151].

The objective medical evidence documented in plaintiff's medical chart fails to corroborate plaintiff's claim of injury. [Def. Ex. H; Def. Ex. B at 10-06]. The logbook documents prompt responses by medical and mental health staff, who responded to segregation when called by the segregation officers. [Def. Ex. K; Doc. #80 at 100]. Plaintiff had no visible injuries and all examinations were within normal limits. [Def. Ex. H; Def. Ex. B at 10-06].

It is clear from other cases that have considered inmate complaints of denial or delay of medical treatment that plaintiff's complaints of knee and head pain and vomiting do not constitute a "serious medical need." Estelle, 429 U.S. at 106; see Nance, 912 F.2d at 607 (Pratt, J., dissenting) (discussing cases which have met the "serious medical needs" requirement). Powell was examined by Nurse Carlon within minutes of being secured in his cell in segregation. No medical evidence corroborates plaintiff's claim that he was coughing up blood. The medical records indicate he was seen on

the day of his complaint, he was treated with a liquid diet, and there was a follow-up entry a day and a half later. Plaintiff's requests for medical examination were responded to in a timely manner. Nance, 912 F.2d at 607. Plaintiff's disagreement with his diagnosis and medical treatment, on this record, does not constitute deliberate indifference to a serious medical need and does not constitute cruel and unusual punishment.

Finally, there was no evidence offered at trial that Nurse Carlon had any duty or responsibility to provide plaintiff with treatment for an alleged "gender identity disorder." [Doc. #81 at 73]. The only evidence at trial as to Nurse Carlon's duties was that she was assigned to perform intake medical interviews and intake physical examinations, as well as respond when needed to segregation, for example for medication administration or upon being summoned by the unit officer. [Def. Ex. K at 17 (log p. 287); Def. Ex. B at 6; Def. Ex. A at 25; Doc. #81 at 76-77, 79, 93]. Indeed, there is no evidence in the medical record that plaintiff identified himself as having "gender identity disorder" or that defendants were on notice of this condition. Plaintiff seems to argue that this condition of "gender identity disorder" was self evident because of plaintiff's long hair extensions and disclosure that he has slept with other men. The Court does not find this argument persuasive. Accordingly, the Court need not address plaintiff's further argument that "gender

identity disorder" is a medical condition that would have permitted plaintiff to keep his artificial hair extensions.

The Court finds in favor of defendants on plaintiff's Eighth Amendment claims that defendants were deliberately indifferent to plaintiff's serious medical or mental health needs.

2. Excessive Force

The excessive force plaintiff complains of is the unauthorized cutting of plaintiff's artificial hair extensions. Plaintiff first argues that he did not refuse to obey an order to remove his hair extensions, he did not "alarm or threaten anybody" and thus there was "never sufficient justification for the use of force." [Doc. #74 at 23-24]. He contends that the hair extensions never posed any threat to security. Id. at 24-25. Finally, plaintiff argues that, by removing his artificial hair, defendants "exceeded their authority by acting in the *absence* of a regulation, as opposed to any claim that the very enforcement of a regulation violates a constitutional right." [Doc. #74 at 26-27 (emphasis in original)]. Powell contends he "was simply the victim of discriminatory treatment that had nothing to do with the penological purposes asserted by the defendants' counsel for trial purposes." Id. at 27.

a. Hair Extensions

It is well established that evaluation of penological objectives is committed to the considered judgment of prison

administrators, "who are actually charged with and trained in the running of the particular institution under examination." Bell v. Wolfish, 441 U.S. 520, 562 (1979); See Turner v. Safley, 482 U.S. at 86-87. Clearly prison inmates "do not forfeit all constitutional protections by reason of their conviction and confinement in prison," Bell v. Wolfish, 441 U.S. at 545; "federal courts must take cognizance of the valid constitutional claims of prison inmates." Turner, 482 U.S. at 84. Valid constitutional claims include actions based on an inmate's free exercise rights under the First Amendment. See Pell v. Procunier, 417 U.S. 817, 822 (1974). Inmates who have challenged prison regulations prohibiting facial hair and/or hair length have done so arguing infringement of their First Amendment free exercise rights. See Friedman v. Arizona, 912 F.3d 328, 329-30 (9th Cir. 1990) (prison policy preventing Orthodox Jewish prisoners from growing beards did not unconstitutionally restrict the prisoner's free exercise rights); Fromer v. Scully, 874 F.2d 69 (2d Cir. 1989) (prison regulation which prohibited inmates from wearing beards longer than one inch in length did not violate the free exercise rights of an Orthodox Jew); Iron Eyes v. Henry, 907 F.2d 810 (8th Cir. 1990) (short hair prison regulation did not unconstitutionally infringe upon a Native American's First Amendment right to freely exercise his religious beliefs).

Plaintiff contends that the taking of his hair extensions was

an improper use of force under the Eighth Amendment. [Doc. #74 at 23 (emphasis added)]. He asserts that he had a right to wear his artificial hair extensions in the absence of an administrative directive. Id. at 26-27. However, he does not assert a constitutional right to wear his artificial hair extensions. "[T]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the Constitution or, in the case of a federal prison, a statute." Bell v. Wolfish, 441 U.S. at 562. Without the assertion of a constitutional violation, this Court defers to the judgment of the prison officials that artificial hair extensions posed a potential safety threat to the institution and are not permitted. [Doc. #80 at 24, 179; Doc. #81 at 21, 105-06]. Plaintiff was subjected to generally applicable, neutral rules governing the prohibition of contraband, which apply to wigs and other facial disguises, including artificial hair extensions. The prison officials were authorized to remove contraband, such as contact lenses [Def. Ex. T] and artificial hair extensions, to preserve security. [Def. Ex. Q (A.D. 6.10 contraband)]. The Court credits the testimony and evidence that plaintiff refused several orders from the officers, Lieutenant Linares and Captain Cusimano, to remove his contact lenses and hair extensions. The Court does not find credible plaintiff's testimony that he asked for a comb and/or time to remove the braids on his own.

"The 'normal activity' to which a prison is committed--the involuntary confinement and isolation of large numbers of people, some of whom have demonstrated a capacity for violence--necessarily requires that considerable attention be devoted to the maintenance of security." Pell v. Procunier, 417 U.S. 817, 826-27 (1974). Powell simply has not met his heavy burden of showing that these officials exaggerated their response to the genuine security considerations that triggered the chain of events at issue in this lawsuit. Bell v. Wolfish, 441 U.S. at 561-62. This Court must, therefore, defer to the legitimate penological interests of the prison to maintain safety.

b. Escort to Segregation

When an inmate claims that excessive force has been used against him by a prison official, he has the burden of establishing both an objective and subjective component to his claim. See Romano v. Howarth, 998 F.2d 101, 105 (2d Cir. 1993) "The objective component relates to the seriousness of the injury; however, 'the use of excessive force against a prisoner may constitute cruel and unusual punishment [even] when the inmate does not suffer serious injury.'" Davidson v. Flynn, 32 F.3d 27, 29 (2d Cir. 1994) (quoting Hudson v. McMillian, 503 U.S. 1, 8-9 (1992)). This component is "contextual and responsive to 'contemporary standards of decency.'" Hudson, 503 U.S. at 2 (quoting Estelle v. Gamble, 429 U.S. 97, 103

(1976)). The subjective component requires the inmate to show that the prison officials acted wantonly. With regard to an excessive force claim, the inmate must show that the prison officials acted "maliciously and sadistically to cause harm" Id. at 7.

"An inmate's constitutional protection against excessive force 'is nowhere nearly so extensive as that afforded by the common law tort action for battery.'" Hunt v. Budd, 895 F. Supp. 35, 38 (N.D.N.Y. 1995) (quoting Johnson v. Glick, 481 F.2d 1028 (1973)). What constitutes such conduct varies according to the nature and circumstances of the alleged constitutional violation. Whitley v. Albers, 475 U.S. 312, 320 (1986). "[T]he question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on 'whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.' " Id. at 320-21 (quoting Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir.), cert. denied, 414 U.S. 1033 (1973)). "Whether the prison disturbance is a riot or a lesser disruption, corrections officers must balance the need 'to maintain or restore discipline' through force against the risk of injury to inmates." Hudson v. McMillian, 503 U.S. 1 (1992) (citation omitted). Prison administrators are, therefore, "'accorded 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.'" Id. (citation omitted). "The absence of serious injury is therefore relevant to the Eighth Amendment inquiry, but does not end it." Id. "That is not to say that every malevolent touch by a prison guard gives rise to a federal cause of action." Id. at 1000. "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates a prisoner's constitutional rights." Johnson, 481 F.2d at 1033.

"The Eighth Amendment prohibition of 'cruel and unusual' punishment necessarily excludes from constitutional recognition de minimis uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind'" Hudson, 112 S.Ct. at 1000 (quoting Whitley, 475 U.S. at 327).

Plaintiff asserts that during the escort to segregation, he suffered bruises, injury to his head and an injured knee. Plaintiff's medical records raise questions concerning the credibility of plaintiff's allegations. In fact, a medical examination conducted within minutes of the alleged assault revealed no bruise, no swelling, no redness, no pain, and no other indication of physical injury. Nurse Carlon's examination determined that plaintiff was "uncooperative and belligerent" and refused to remove his artificial hair extensions and contacts. [Def. Ex. A at 25; Def. Ex. B at 06]. The Court also credits the officers' testimony and

incident reports that, when they were called to the interview room by Nurse Carlon, plaintiff continued to refuse the request to remove his artificial hair extensions and contacts. [Def. Ex. A at 04 (Linares), 08 (Heller), 09 (Peterson), 10 (Siwicki)]. In their entirety, plaintiff's medical records lead to the conclusion that plaintiff did not suffer significant pain, bruising or injury when examined by Nurse Carlon and that he has since exaggerated his condition. When officials use force maliciously and sadistically to cause harm, the Eighth Amendment is violated "whether or not significant injury is evident." Hudson, 112 S.Ct. at 1000. No evidence of malicious purpose or sadism has been presented to the Court; no such intent may be logically implied from the evidence.

The Court, therefore, finds in favor of defendants on plaintiff's Eighth Amendment claims.

C. Fourteenth Amendment: Equal Protection Clause

Plaintiff, as a transsexual male, asserts gender based discrimination under the Equal Protection Clause of the Fourteenth Amendment. He argues that the Court should apply an intermediate level of scrutiny to his gender based discrimination claim.

The Fourteenth Amendment to the United States Constitution guarantees that "[n]o state shall ... deny to any person within its jurisdiction the equal protection of the laws." This means the state

must treat similarly situated individuals similarly, in the absence of an adequate reason to distinguish between them. "The Fourteenth Amendment's promise that no person shall be denied the equal protection of the laws must coexist with the practical necessity that most legislation classifies for one purpose or another, with resulting disadvantage to various groups or persons." Romer v. Evans, 517 U.S. 620, 632 (1996)(citations omitted). The Supreme Court has "attempted to reconcile the principle with the reality by stating that, if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification so long as it bears a rational relation to some legitimate end." Id. (citing Heller v. Doe, 509 U.S. 312, 319-320 (1993)).

"As a general rule, the equal protection guarantee of the Constitution is satisfied when the government differentiates between persons for a reason that bears a rational relationship to an appropriate governmental interest." Able v. U.S., 155 F.3d 628, 622 (2d Cir. 1998). This Circuit has not recognized homosexuals as a suspect class, see Id., 155 F.3d at 632 (declining to decide the question of what scrutiny to apply to discrimination on the basis of homosexuality), other Circuits have not recognized homosexuals as a suspect class and have applied a rational basis test. See Romer v. Evans, 517 U.S. 620, 634-35 (1996) (applying rational basis analysis), see also Stemler v. City of Florence, 126 F.3d 856, 874

(6th Cir. 1997) (same), Schroeder v. Hamilton School Dist., 282 F.3d 946, 957 (7th Cir. 2002) ("Homosexuals have not been accorded the constitutional status of blacks or women."), Reichenberg v. Perry, 97 F.3d 256, 260-61 (8th Cir. 1996), cert. denied, 522 U.S. 807 (1997); Thomasson v. Perry, 80 F.3d 915, 928 (4th Cir.), cert. denied, 519 U.S. 948 (1996).

The prohibition of contraband hair extensions and contact lenses does not single out any class or group of inmates and is neutral on its face. Plaintiff argues that "inmates who arrive at Walker wearing unauthorized items, such as clothing, surrender them to an officer in a dignified manner and without suffering any disciplinary repercussions." [Doc. #74 at 19]. Plaintiff contends that the defendants who "demanded immediate removal" of his "hair by scissors had already exceeded their authority and were no longer acting in the interests of safety; they were instead exercising their personal prejudices regarding gender." Id. at 20. However, there is no evidence that plaintiff was singled out or treated differently than any other inmate with hair extensions. The evidence demonstrates that the defendants' prohibition on contraband hair extensions and contact lenses was a generally applicable security procedure that was uniformly applied to all inmates.

Indeed, there is insufficient evidence to show that plaintiff identified himself as a transsexual to Nurse Carlon or the other

defendants. [Doc. #81 at 73-74]. Indeed, Nurse Carlon testified that she did not perceive Powell to be a transsexual, homosexual or as having a gender identity disorder. Id. She did not perceive Powell to be wearing a woman's hairstyle. Id. There is no evidence demonstrating that the defendants perceived plaintiff to be a transsexual and there is no reference in the medical files that he was a transsexual. Lieutenant Linares testified he did not perceive Powell to be grooming himself like a woman. "We have inmates with long hair in the facility. I mean, how he carried his hair or how he was wearing his hair really didn't mean anything to me at that point." [Doc. #81 at 114]. The video shows plaintiff was not dressed in women's clothing, rather, he was dressed in DOC issued clothing. Plaintiff has failed to prove that defendants were on notice that he was a transsexual or that he was perceived by defendants to be a transsexual.

Accordingly, the Court finds in favor of the defendants on plaintiff's Equal Protection claim under the Fourteenth Amendment.

D. Connecticut Constitutional Claims

1. Article First, Section One: Equal Protection Clause

Plaintiff's claims under Article First, Section One of the Connecticut Constitution, which guarantees equality of rights for all, also fail. Plaintiff argues that the "evidence produced at

trial showed that the defendants harassed and punished the plaintiff more harshly than other inmates because they perceived him to be a homosexual and/or transsexual person, and this harassment by a state official constitutes a violation of Section One." [Doc. #74 at 30].

Even applying "strict scrutiny," as plaintiff argues, his claims are unsupported. As set forth above, under either the traditional 'rational basis' test, or the more stringent 'strict scrutiny' test, there is insufficient evidence to support plaintiff's claim of discrimination on the basis of his sexual orientation.

Accordingly, the Court finds in favor of defendants on the equal protection claim under Article First, Section One of the Connecticut Constitution.

2. Article First, Section Seven: Search and Seizure

Plaintiff also brings a claim under Article First, Section Seven of the Connecticut Constitution, which protects individuals from unreasonable search and seizure. Plaintiff argues that the state constitution offers greater protections than the Fourteenth Amendment to the United States Constitution. He argues that "defendants' seizure of the plaintiff's hair was unconstitutional." [Doc. #74 at 31]. No Connecticut case law was cited to support this proposition that would persuade this Court to apply a stricter standard in the context of a prison than under the Fourth Amendment to the United States Constitution.

Accordingly, judgment will enter for the defendants on plaintiff's claim under Article One, Section Seven of the Connecticut Constitution for the reasons stated by the Court under the Fourth Amendment.

3. Article First, Section Nine: Excessive Force

Similarly, plaintiff argues that Article First, Section Nine of the Connecticut Constitution "differs significantly" from the Eighth and Fourteenth Amendments to the United States Constitution. [Doc. #74 at 31-32]. Plaintiff argues, among other things, that defendants' actions were unauthorized under DOC policy and "[s]uch unauthorized punishments violates Section 9, inasmuch as the right of privacy over matters such as one's hair are constitutionally protectable." [Doc. #74 at 31]. He contends that "defendants punished the plaintiff in ways not clearly warranted by law . . . [t]hese punishments were extraordinary and excessive" Id. at 32. Plaintiff offers no case law to support this proposition that would persuade this Court to apply a stricter standard in the context of a prison than under the Eighth Amendment to the United States Constitution.

Accordingly, judgment will enter for the defendants on plaintiff's claim under Article One, Section Nine of the Connecticut Constitution for the reasons stated by the Court under the Eighth Amendment.

E. Connecticut Statutory Claim: Conn. Gen. Stat. §52-571c

Plaintiff seeks treble damages under Conn. Gen. Stat. §52-571c⁶ for acts he contends constituted a violation of §53a-181k.⁷ Based on the findings of facts and conclusions of law, this Court cannot find "malicious[ness]" or "specific intent" necessary under Section 53a-181k(a) to warrant a damages award under Section 52-571c. Accordingly, judgment must enter in favor of defendants on this claim.

⁶Section 52-571c(a), Action for damages resulting from intimidation based on bigotry or bias, provides that

(a) A person injured or property as a result of an act that constitutes a violation of . . . §53a-181k . . . may bring a civil action against the person who committed such act to recover damages for such injury.

⁷Section 53a-181k(a), Intimidation based on bigotry or bias in the second degree: Class D felony, provides that

(a) A person is guilty of intimidation based on bigotry or bias in the second degree when such person maliciously, and with specific intent to intimidate or harass another person because of the actual or perceived race, religion, ethnicity or sexual orientation of such another person does any of the following: (1) Causes physical contact with such other person, (2) damages, destroys or defaces any real or personal property of such other person, or (3) threatens, by work or act, to do an act described in subdivision (1) or (2) of this subsection, if there is reasonable cause to believe that an act described in subdivision (1) or (2) or this subsection will occur.

CONCLUSION

Based on the foregoing, the Court finds for defendants on all counts.

This is not a recommended ruling. The parties consented to proceed before a United States Magistrate Judge [Doc. #13] on August 1 and 6, 2001, with appeal to the Court of Appeals.

ENTERED at Bridgeport this 23rd day of July 2004.

____/s/_____
HOLLY B. FITZSIMMONS
UNITED STATES MAGISTRATE JUDGE