

**SLEET, District Judge.**

## **I. INTRODUCTION**

Michael Jordan (“Jordan”) is presently incarcerated at the Delaware Correctional Center (“DCC”) which is located in Smyrna, Delaware. On May 1, 1998, he filed a complaint with this court alleging that several correctional officers at the prison violated his constitutional rights while conducting a search of his cell. *See* 42 U.S.C. § 1983 (1994). Specifically, Jordan alleges that Captain Bellinger, Lieutenant Burton, and Lieutenant Tailor (“the defendants”), who are employees of the DCC, acted unreasonably in conducting their search in violation of his Fourth Amendment rights. Jordan also seeks to recover for the common law tort of conversion relating to the alleged deprivation of his property. Presently before the court is the defendants’ motion for summary judgment.<sup>1</sup> Because Jordan has failed to raise a genuine issue of material fact, the court will grant the defendants’ motion. The following sections explain the reasons for the court’s decision more thoroughly.

## **II. BACKGROUND**

### **A. Facts**

The court has already previously described the factual background of this case in detail in two lengthy opinions. *See Jordan v. Bellinger*, 2000 WL 1239956 (D. Del. Aug. 28, 2000); *Jordan v. Bellinger*, 123 F. Supp. 2d 228 (D. Del. 2000). Thus, the court will only briefly describe the facts giving rise to Jordan’s remaining claims for an alleged unreasonable search and conversion. In his complaint, Jordan alleges that three prison guards burst into his cell on November 11, 1997, to conduct a search of

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<sup>1</sup>The defendants originally filed a motion to dismiss or, in the alternative, a motion for summary judgment. Because the defendants have submitted materials outside the pleadings, the court will consider the motion as one for summary judgment.

his cell. During the search Jordan alleges that the defendants performed a visual body-cavity inspection and searched his cell for dangerous contraband. According to Jordan, the defendants' conduct violated his Fourth Amendment right to be free from unreasonable searches and seizures. As a result of the search, the DCC held a disciplinary hearing and Jordan was found guilty of being in possession of non-dangerous contraband.<sup>2</sup> Additionally, because he claims that his property was wrongfully seized and not returned to him, Jordan seeks to recover for the common law tort of conversion.

## **B. Procedural History**

As the court has already stated, it has addressed the claims currently at issue in the defendants' motion in two prior rulings. The court first addressed these issues in the defendants' April 19, 1999, motion to dismiss. Because both the defendants and Jordan attached matters outside the pleadings, the court treated the motion to dismiss as one for summary judgment. On August 28, 2000, the court granted, in part, and denied, in part, the defendants' April 19, 1999, motion. Specifically, the court dismissed Jordan's claims for denial of access to the courts and violations of due process. *See Jordan v. Bellinger*, 2000 WL 1239956 (D. Del. Aug. 28, 2000). However, because the record was not fully developed, the court did rule on Jordan's claims of unreasonable search and seizure and the common law tort of conversion. *See id.* Finally, in its August 28, 2000 ruling, the court ordered Jordan to amend his complaint to clearly set forth the basis for these remaining claims. *See id.*

The court addressed Jordan's Fourth Amendment claim and his conversion claim for a second time

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<sup>2</sup>It is undisputed that only non-dangerous contraband was found and confiscated non-dangerous contraband is any excess material against prison regulations that the inmates are allowed to possess, whereas dangerous contraband refers to guns, weapons, drugs, etc.

when Jordan filed a motion for summary judgment on July 7, 2000. On November 27, 2000, the court denied Jordan's motion because most of the issues Jordan raised had been rendered moot by the August ruling. However, the court determined that there were still genuine issues of material fact surrounding the alleged unreasonable search and conversion claims. *See Jordan v. Bellinger*, 123 F. Supp.2d 228 (D. Del. 2000). The court again declined to rule on the remaining Fourth Amendment claims and conversion claims because "Jordan has not yet provided the additional clarification concerning his allegations that the court requested. Instead, he has moved for summary judgment on all of his claims." 123 F. Supp. 2d at 230. As a result of Jordan's failure to clarify his allegations, the court also stated that it would again "require Jordan to file a revised complaint which clarifies his factual allegations concerning the search of his cell and person. A failure to do so may result in the dismissal of his complaint." *See id.*

Pursuant to the court's August 28, 2000 and November 27, 2000 rulings, Jordan amended his complaint on January 3, 2001. In his amended complaint, Jordan attempted to specify the basis for both his unreasonable search and seizure claim and his conversion claim. The amended complaint clarified the allegation that there was a visual body inspection and that the purpose of the search was to look for contraband (e.g., weapons, drugs, etc.). Jordan further explained that his conversion claim is premised upon DCC housing rules and regulations, which he attached to his amended complaint. He alleges that under these rules, he is allowed to possess a reasonable amount of personal property. The amended complaint was accompanied by an affidavit, of an inmate housed in the same unit as the plaintiff, describing the procedure followed when his own legal materials were confiscated as "contraband."

Presently before the court is the defendants' February 1, 2001, motion to dismiss Jordan's revised amended complaint. In the alternative, the defendants have also moved for summary judgment. The court

will next determine whether the motion should be viewed as a motion to dismiss or a motion for summary judgment.

### **III. SUMMARY JUDGMENT STANDARD**

Because the defendants have attached materials outside of the pleadings to their submission,<sup>3</sup> the court will consider this as a motion for summary judgment. Under Rule 12(c) when a “motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.” Fed. R. Civ. P. 12(c). Although Jordan did not attach any supplemental materials to his answering brief to the defendants’ motion, he was on notice of the motion for summary judgment and had ample opportunity to attach any materials to support his claim. The court notes Jordan has attached matters outside the pleadings in two prior motions for summary judgment, including his own motion for summary judgment. In addition, in his answering brief on the present motion for summary judgment, Jordan refers to supplemental materials he attached to his briefing on the previous motions. Therefore, the court determines that Jordan had notice and an opportunity to attach supplemental materials to his answering brief on the present motion.

A moving party is entitled to summary judgment as a matter of law if there are no genuine issues of material fact. Fed. R. Civ. P. 56(c) (2000). An issue is “genuine” if, given the evidence, a reasonable jury could return a verdict in favor of the nonmoving party. *See, e.g., Iseley v. Horn*, Civ. A. No. 95-5389, 1996 WL 510090, at \*2 (E.D. Pa. Sept. 3, 1996) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). However, if the nonmoving party has the burden of proof with respect to an

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<sup>3</sup> The defendants have attached two affidavits of correctional officers in support of their motion.

essential element of their case and they fail to make a sufficient showing on that essential element, no genuine issue of material fact exists. *See id.*, (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986)). A fact is “material” if it bears on an essential element of the plaintiff’s claim that might affect the outcome of the case. *See, e.g., Robinson v. Klotz*, Civ. A. No. 94-1993, 1995 WL 27479, at \*1 (E.D. Pa. Jan 23, 1995) (citing *Anderson*, 477 U.S. at 248-249).

When a motion for summary judgment is made, the moving party has the initial burden of identifying the absence of material facts within the nonmoving party’s claim. Once the moving party meets this burden, the burden shifts to the nonmoving party to “set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). The nonmoving party may not rest upon the mere allegations or denials of the adverse party’s pleading. To support its claim, the nonmoving party must show that there will be testimonial, documentary, or other evidence that demonstrates a genuine issue of material fact. 11 *Moore’s Federal Practice*, § 56.11 (Matthew Bender 3d ed. 2000). If the nonmoving party does not meet this burden, summary judgment, if appropriate, will be entered. Fed. R. Civ. P. 56(e).

#### **IV. DISCUSSION**

In their motion, the defendants argue that because Jordan rests on the allegations of his complaint, he has failed to raise a genuine issue of material fact concerning his unreasonable search and conversion claims. The court will first address the unreasonable search claim, and will then turn to Jordan’s conversion claim.

##### **A. Unreasonable Search Claim**

In order to conform with penological interests and maintain institutional security, prison inmates are not accorded a constitutionally-protected right of privacy in their prison cells. *See Hudson v. Palmer*, 468

U.S. 517, 524-526 (1984) (holding that “society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell.”). The Supreme Court in *Bell v. Wolfish* identified that there are serious security dangers where contraband is smuggled and concealed in prison cells and in the inmates’ body cavities. 441 U.S. 520, 559 (1979). To accommodate the objectives of prison facilities, certain rights can be curtailed and visual body-cavity inspections can be conducted on less than probable cause. *See id* at 560; *Wilson v. Shannon*, 982 F. Supp. 337, 339-340 (E.D. Pa 1997) (holding there was no Fourth Amendment violation of an inmate who was strip searched in his cell during a security search).

Although inmates do not retain a right to privacy, searches of prison inmates or their cells “must be conducted in a reasonable manner.” *See Bell v. Wolfish*, 441 U.S. at 560. In order to have a Fourth Amendment claim, an inmate must show that the government official (a prison guard) acted unreasonably. This involves balancing the interests of the government to maintain detention facility security against the invasion and privacy interests of the inmate. *See Hudson*, 468 U.S. at 527. A search’s reasonableness can be evaluated in terms of the scope of the intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Bell*, 441 U.S. at 559.

In this case, the defendants contend that Jordan was searched in a reasonable manner. In support of this contention, the defendants have submitted the affidavits of two DCC employees. In one of the affidavits, a lieutenant who participated in the shakedown stated that Jordan was never pulled off the toilet nor spit in the face by officers as he alleges. In addition, the affiant stated that the purpose of the “shakedown” search was to maintain facility safety and security. Finally, the affiant stated that Jordan

possessed excess personal property against housing rules. This property was confiscated and subsequently inventoried. In the second affidavit, another lieutenant who conducted Jordan's disciplinary hearing stated that the evidence at the hearing showed that Jordan possessed non-dangerous contraband and the confiscated property which was turned over to DCC Internal Affairs.

In response to the defendants' affidavits, Jordan merely restates the allegations made in his complaint. Specifically, his complaint alleges that correctional officers rushed into his cell and pulled him off the toilet. According to Jordan, the officers then handcuffed and dragged him outside his cell into a common area where a visual body cavity inspection was conducted in front of other inmates and officers. Jordan contends that someone spit in his face and that he was forced to wait in his boxer shorts for the duration of the search.

Despite being given three opportunities to support his contention that the search was unreasonable, Jordan has failed to supply testimonial, documentary, or other evidence which would raise a genuine issue of material fact as to whether the search was conducted unreasonably. In contrast, the defendants have submitted affidavits which demonstrate that the search was not conducted in a constitutionally unreasonable manner. There is testimonial evidence in the record that the guards did not spit on Jordan or pull him off the toilet as alleged. Moreover, the record indicates that the search was justified as a matter of procedure and was not unreasonably intrusive. Specifically, the defendants have shown that the search was consistent with correctional institutional procedure (as Jordan concedes) that supports a legitimate penological interest in maintaining the security of inmates and employees through the reduction of the amount of contraband in the prison community. Aside from his own allegations, Jordan has not provided any evidence that the search of his cell, or of his person, was unreasonable. Absent substantial evidence in the record to indicate

that the officials have exaggerated their response to the objectives of the penal facility, deference should be given to the expert judgment of the correctional officers. *See Bell*, 441 U.S. at 548.

In light of the evidence in the record, the court determines that the defendants are entitled to summary judgment because they have demonstrated that there is an absence of a genuine issue of material fact concerning Jordan's unreasonable search claim. Jordan has failed to meet his burden on summary judgment because he has not pointed to specific facts in the record, aside from the allegations of his complaint, which would raise genuine issues for trial. *See Parker v. McMillan*, No. Civ. A. 95-1411, 1996 WL 412816, at \* 3 (E.D. Pa. July 15, 1996); *Tate v. Moore*, No. Civ. A. 94-4638, 1995 WL 625665, \*2 (E.D. Pa. Oct. 23, 1995) (both granting summary judgment in favor of defendant where prisoner-plaintiff, in relying on allegations from his complaint, failed to raise a genuine issue of material fact). "Rather, in order to defeat the motion for summary judgment, the nonmoving party, by its own affidavits, or by depositions, or by answers to interrogatories or admissions on file, as stated in F.R.C.P. 56(e), 'must set forth specific facts showing that there is a genuine issue for trial.'" *Parker*, 1996 WL 412816, at \*1. Accordingly, the court will enter judgment in favor of the defendants as a matter of law on Jordan's unreasonable search claim.

## **B. Conversion Claim**

Jordan also contends that the defendants committed the tort of conversion by intentionally interfering with his right to possess personal property. Specifically, Jordan claims that the defendants seized numerous items during their search of his cell and have since refused to return these items to him.

Under Delaware law, the tort of conversion is defined as the "wrongful exercise of dominion over the property of another, in denial of his right, or inconsistent with it." *See Resource Ventures, Inc. v.*

*Resources Mgmt. Int'l, Inc.*, 42 F. Supp.2d 423, 439 (D. Del. 1999) (quoting *Carlton Investments v. TLC Beatrice Int'l Holdings, Inc.*, 1995 WL 694397, at \*16 (Del. Ch. Ct. Nov.21, 1995));

As the court has already explained with regard to Jordan's unreasonable search claim, the defendants have demonstrated, through testimonial evidence, that they did not wrongfully deprive Jordan of his property. In particular, the defendants have demonstrated that because Jordan violated prison regulations, the materials at issue were properly seized. Again, Jordan has failed to raise a genuine issue of material fact concerning whether his property was wrongfully deprived. As a result, the court will also enter judgment as a matter of law in favor of the defendants on Jordan's conversion claim.

## **V. CONCLUSION**

The defendants have shown that there is an absence of material fact regarding Jordan's unreasonable search and conversion claims. Because Jordan has chosen to rely upon mere allegations, and has failed to identify specific facts, his claims cannot survive summary judgment. This court will issue an order to this effect in conjunction with this opinion.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MICHAEL JORDAN, )  
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 Plaintiff, )  
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 v. )  
 )  
 CAPTAIN BELLINGER, *et al.*, )  
 )  
 Defendants. )

Civil Action No. 98-230-GMS

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Michael Jordan, *pro se*, Smyrna, Delaware.  
Plaintiff.

Ophelia M. Waters, Esquire of the State of Delaware Department of Justice, Wilmington, Delaware.  
Attorney for Defendants.

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**MEMORANDUM OPINION**

July \_\_\_\_, 2001.

Wilmington, Delaware.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MICHAEL JORDAN, )  
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 Plaintiff, )  
 )  
 v. ) Civil Action No. 98-230-GMS  
 )  
 CAPTAIN BELLINGER, *et al.*, )  
 )  
 Defendants. )

**ORDER**

For the reasons stated in the court's memorandum opinion of this date, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that:

1. Pursuant to Rule 56(e) of the Federal Rules of Civil Procedure, the defendants' Motion for Summary Judgment (D.I. 61) is GRANTED.
2. Summary Judgment be and hereby is ENTERED in favor of the defendants and against Jordan on all claims in the complaint.

Date: July 13, 2001

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE