

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION**

Ashley DIAMOND,

Plaintiff,

v.

Arneika SMITH,

Defendant.

Civil Action No.  
5:21-cv-378-MTT

**DEFENDANT’S REPLY BRIEF IN SUPPORT  
OF HER MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant Arneika Smith and presents her reply brief in support of her motion for summary judgment as follows:

**STATEMENT OF FACTS AND PROCEEDINGS**

Plaintiff does not provide a separate statement of facts in her brief. Also, Plaintiff does not dispute the statement of undisputed material facts submitted by Defendant in support of her motion for summary judgment. Thus, the material facts necessary for deciding the motion are established. As a matter of law, the undisputed facts demonstrate Defendant did not violate a clearly established federal or constitutional law. The alleged sexual assault allegations are summarized as follows:

1. On May 9, 2020, Defendant rubbed Plaintiff’s legs and thighs through Plaintiff’s clothes.
2. On May 10, 2020, Defendant, without removing her clothes, exposed her breast

to Plaintiff and Plaintiff, without any physical force, briefly exposed her breasts and genitalia to Defendant. Also, Defendant touched Plaintiff's thighs, legs, and buttocks through her clothes.

[Ex. 1 Pltf. Dep. 155:21-156:16-19, 172:5-7, 184:11-185:19, & 191:17-192:11.]

Plaintiff contends that she was forced to participate in these activities because if she did not then Defendant might do something to get her inmate orderly job taken away.

[Ex. 1 Pltf. Dep. 232:13-24.] It is also undisputed that at no time when Plaintiff was in the officer's office with Defendant, did Plaintiff ever ask to leave the officer's office – Plaintiff never made any objection to the above sexual activities and made no effort whatsoever to leave. [Ex. 1 Pltf. Dep. 156:3-10 & 182:24-183:13.]

Plaintiff contends Defendant was not acting within the scope of her authority when she asked/directed Plaintiff to enter into the officer's office. Putting aside factual allegations of unconstitutional conduct, which the Court must do when considering this issue, the facts cannot be reasonably disputed that a correctional officer may direct an inmate into the officer's office for assistance as such an act is "within, or reasonably related to, the outer perimeter of an [officer's] discretionary duty." Maughon v. City of Covington, 505 Fed. Appx. 818, 821 (11<sup>th</sup> Cir. 2013) citing Harbert Intl. v. James, 157 F.3d 1271, 1282 (11<sup>th</sup> Cir. 1998) (Our inquiry is "whether the act complained of, if done for a proper purpose, would be within or reasonably related to, *the outer perimeter* of an official's discretionary duties.")

(emphasis added)). Plaintiff contends that it is *always* improper for an inmate to go into the officer's office – but this exaggeration is contrary to the evidence. Lt. Shanita McCall (the lieutenant over the sergeant that supervised Defendant at the time in question) testified that inmates could go into the officer's office under “extenuating circumstances” and gave an example of a supervisor directing an inmate to assist with maintenance. [Ex. 2 McCall Dep. 43:13-25 & 68:6-19.] Lt. McCall did not testify that an inmate can never under any circumstances enter the officer's office and specifically testified that an inmate could be directed to go into the officer's office to assist an officer. Plaintiff admits that as an inmate orderly she was supervised by Defendant and her responsibilities included helping Defendant. [Ex. 1 Pltf. Dep. 97:15-99:15.] Plaintiff also testified that based on her job assignment as an orderly, she had special privileges to do things other inmates could not, including doing “whatever” the dorm officer “need[ed]”. [Ex. 1 Pltf. Dep. 97:15-99:15 & 120:17-121:6.] Consistent with this evidence, Defendant testified she had authority to supervise dorm orderlies such as Plaintiff and could ask them to do certain “small” things to help out. [Ex. 3 Dft. Dep. 22:21-24:16-22.] Thus, despite Plaintiff's contentions to the contrary, Defendant clearly had the discretion to direct Plaintiff into the officer's office to assist Defendant in finding her jacket which was on a high shelf above Defendant's line of sight.

Finally, Plaintiff makes no dispute that her only alleged physical injury came

from her multiple and routine suicide attempts and other self-harm practices (all of which are uncorroborated by an eye-witness). Plaintiff contends the incidents that are the subject of this action caused (in part and to some undefined degree) Plaintiff's self-harm that occurred after May 10, 2020, through the present. [Ex. 1 Pltf. Dep. 48:24-50:12, 193:12-199:22, & 228:3-229:3.]<sup>1</sup>

## ARGUMENT AND CITATION OF AUTHORITY

### I. Defendant is entitled to qualified immunity.

In an attempt to avoid qualified immunity, Plaintiff first argues that Defendant was not acting within her discretionary authority as a correctional officer when she directed Plaintiff to enter the officer's office located in the dorm.<sup>2</sup> When presenting a qualified immunity defense, Defendant agrees she has the initial burden of establishing she acted within her discretionary authority. Harbert, 157 F.3d at 1281-1283. "To determine whether the defendant has discharged [her] burden, it is critical

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<sup>1</sup> The cause of Plaintiff's self-harm cannot be established, i.e. tied to the subject incidents in this case, because Plaintiff admitted multiple sexual assaults by inmates and other officers occurring prior and subsequent to May 9 & 10, 2020. For example: 1) Plaintiff alleges she was gang raped and beaten in 2012 (Ex. 1 Pltf. Dep. 23:21-24:5, 68:5-9 & 198:14-199:7); 2) After the 2012 incident, Plaintiff claims she was raped multiple times in prison (Ex. 1 Pltf. Dep. 72:14-25 & 82:17-22); and 3) Plaintiff claims she was raped in her sleep by an inmate about a month prior to the subject incident (Ex. 1 Pltf. Dep. 233:15-25).

<sup>2</sup> Defendant testified that she asked Plaintiff to go into the officer's office to help her look for her jacket. According to Defendant, Plaintiff found the jacket that was up high on the shelf, Plaintiff got the jacket, and gave it to Defendant. The two continued to talk in the room for about five minutes before and after Defendant put her food in the officer's refrigerator. Plaintiff disputes all these facts and so for purposes of the motion, Plaintiff's version of the events are accepted as true except when deciding discretionary authority.

to define properly the inquiry.” Harbert, 157 F.3d at 1282. The question is not whether it was within the Defendant’s authority to commit an allegedly unconstitutional or unlawful act. Id. Instead, the Court should ask whether the conduct served a proper purpose and “would be within, or reasonably related to, the outer perimeter of an official’s discretionary duties.” Id. quoting In re Allen, 106 F.3d 582, 594 (4<sup>th</sup> Cir. 1997). “[The Court should] look to the general nature of the defendant’s action, temporarily putting aside the fact that it may have been committed for an unconstitutional purpose, in an unconstitutional manner, to an unconstitutional extent, or under constitutionally inappropriate circumstances.” Estate of Cummings v. Davenport, 906 F.3d 934 (11<sup>th</sup> Cir. 2018) quoting Mikko v. City of Atlanta, 857 F.3d 1136, 1144 (11<sup>th</sup> Cir. 2017).

“[A] government official can prove [she] acted within the scope of [her] discretionary authority by showing ‘objective circumstances which would compel the conclusion that [her] actions were undertaken pursuant to the performance of [her] duties and within the scope of [her] authority.’” Rich v. Dollar, 841 F.2d 1558, 1564 (11<sup>th</sup> Cir. 1988) quoting Barker v. Norman, 651 F.2d 1107, 1121 (5<sup>th</sup> Cir. Unit A July 1981). The inquiry is not whether it was within Defendant’s authority to commit the allegedly illegal act. “Framed that way, the inquiry is no more than an ‘untenable’ tautology.” Harbert, 157 F.3d at 1282 (citations omitted). A defendant could virtually never establish qualified immunity because accepting a plaintiff’s

allegations of unconstitutional conduct as true, the defendant would always be acting outside his or her authority. See, e.g., Sims v. Metropolitan Date County, 972 F.2d 1230, 1236 (11<sup>th</sup> Cir. 1992); Shechter v. Comptroller of N.Y., 79 F.3d 265, 269 (2d Cir. 1996). See also Davis v. Scherer, 468 U.S. 183, n. 14 (1984) (“The District Court’s finding that appellants ignored a clear legal command does not bear on the ‘ministerial’ nature of appellants’ duties....[A discretionary] authority remains discretionary however egregiously it is abused.”) “Instead, a court must ask whether the act complained of, if done for a proper purpose, would be within, or reasonably related to, the outer perimeter of an official’s discretionary duties. The scope of immunity should be determined by the relation of the injury complained of to the duties entrusted to the office. Maughon v. City of Covington, 505 Fed. Appx. 818, 821 (11<sup>th</sup> Cir. 2013) (internal quotations and citations omitted).

In her response brief, Plaintiff ignores these clear legal principles for establishing discretionary authority. [Doc. 132 pp. 9-10.] When contending Defendant acted outside the scope of her discretionary authority, Plaintiff, improperly focuses on: 1) the allegations of alleged “prohibited sexual abuse”; and 2) her unsubstantiated claim that an inmate could never, under any circumstances, enter the officer’s office – despite the fact that Defendant’s supervisor, Lt. McCall, testified there were exceptions to the general rule for an inmate to go into the room to provide assistance, such as maintenance. Moreover, as stated by the Supreme

Court in Davis, discretionary authority remains discretionary no matter how egregiously it is abused. For these reasons, Defendant has established she acted within the “outer perimeter of her official discretionary duties,” and the burden shifts to Plaintiff to show qualified immunity is inappropriate. Gainey v. Austin, Case No. 3:17cv361/LAC/EMT, 2018 U.S. Dist. LEXIS 212079 (N.D. Fla. Nov. 15, 2018).

Plaintiff does not satisfy her burden of showing there was clearly established law placing Defendant on notice that her actions were unconstitutional. First, Plaintiff relies on DeJesus v. Lewis, 14 F.4<sup>th</sup> 1182 (11<sup>th</sup> Cir. 2021) for her proposition that Defendant had notice the subject activity violated the Eighth Amendment. However, DeJesus was decided in 2021, after the events in this case. For this reason, DeJesus cannot be relied upon to demonstrate a clearly establish law making Defendant’s actions improper. Corbitt v. Vickers, 929 F.3d 1304 (11<sup>th</sup> Cir. 2019).

Next, Plaintiff relies on Sconiers v. Lockhart, 946 F.3d 1256 (11<sup>th</sup> Cir. 2020) for establishing a clearly established law that Defendant’s conduct was an Eighth Amendment violation. Sconiers, however, is clearly distinguishable from the present case. In Sconiers the officer allegedly first pepper sprayed the inmate/plaintiff in the face, slammed him to the ground, and slapped his face, all while the inmate was in hand restraints, leg irons, and wrist restraints; then the officer allegedly drove his knee in the plaintiff’s back, pulled his pants down, and forcefully penetrated plaintiff in the anus with his finger. There is no basis for concluding that the Sconiers decision

placed Defendant on notice that her alleged conduct (while it may be prohibited, illegal, and even tortious) was unconstitutional. The facts testified to by Plaintiff in the present case in no way relate to the facts in Sconiers. Even construing all Plaintiff's testimony in her favor, no clearly establish law at the time of the relevant events clearly made such alleged conduct here an Eighth Amendment violation.

Finally, in support of her alleged privacy violation claim, Plaintiff relies on Fortner v. Thomas, 983 F.2d 1024 (11<sup>th</sup> Cir. 1993). In Fortner, the Eleventh Circuit recognized that prisoners retain a constitutional right to bodily privacy in the context of taking showers in front of female officers such that the defendants were not intitled to qualified immunity on their motion to dismiss. The court held that each court must evaluate such privacy claims on a case-by-case basis. Boxer X v. Harris, 437 F.3d 1107 (11<sup>th</sup> Cir. 2006); Fortner, 983 F.2d at 1030. However, neither Fortner nor any other case cited by Plaintiff has found a constitutional violation of privacy in the context of facts similar to the present case – where an inmate voluntarily participated in limited touching over clothes and show-and-tell of private parts – pressured to participate only by the inmate's fear she might possibly lose her dorm orderly privileges. Thus, Plaintiff fails to satisfy her burden of proving a clearly established law making Defendant's conduct a violation of her right to privacy.

For the foregoing reasons, Defendant is entitled to qualified immunity on all Plaintiff's claims.

## **II. Plaintiff's claims for compensatory damages should be dismissed.**

Although Plaintiff suggests otherwise, Defendant has not argued that Plaintiff's claims for nominal or punitive damages should be dismissed. Only Plaintiff's claims for compensatory damages should be dismissed if the case is not dismissed in its entirety based on qualified immunity. 42 U.S.C. § 1997e(e).

Plaintiff essentially concedes that her claims for compensatory damages should be dismissed by presenting no legal basis for her emotional distress claims, however, Plaintiff argues that her invasion of privacy claim should not be included in this limitation because the damages are neither mental nor emotional in nature. Such a contention is disingenuous. Like her Eighth Amendment claim, Plaintiff points to no damages caused by her alleged privacy invasion other than her emotional distress and the injuries caused by her self-harm. The Eleventh Circuit has clearly spoken, absent allegations that a defendant's actions are related to a physical injury (more than *de minimis* physical injury) or a sexual act, a plaintiff cannot obtain compensatory relief. Brooks v. Powell, 800 F.3d 1295, 1307 (11<sup>th</sup> Cir. 2015) citing Harris v. Garner, 190F.3d 1279, 1286 (11<sup>th</sup> Cir. 1999); Rager v. Augustine, 760 Fed. Appx. 947 (11<sup>th</sup> Cir. 2019). Plaintiff does not even attempt to contend that the conduct alleged here is a sexual act as defined by federal code, nor does she make any allegation of a more than *de minimis* physical injury resulting from any constitutional violation other than her self-harm injuries. Defendant urges this Court

to follow the many case precedent listed in her motion that find self-inflicted injury cannot satisfy the more-than-*de minimus* injury requirement. First, “[t]o allow inmates to allege future infliction of self-harm to bypass §1915(g) would eviscerate Congress’ intent to limit the frequency of inmates’ frivolous suits” (Beau v. Watson, Case No. 7:09-cv-00232, 2009 U.S. Dist. LEXIS 52725 (W.D. Va. June 22, 2009) and second, “allowing a self-inflicted injury to satisfy the physical injury requirement of § 1997e(e) would create a perverse incentive of self harm in prison populations” (Argetsinger v. Ritter, Case No. 08-cv-01990-PAB-KMT, 2009 U.S. Dist. LEXIS 90192 \*4 (D. Colo. Sept. 29, 2009)).

### CONCLUSION

Wherefore, Defendant requests her motion for summary judgment be granted or, alternatively, Plaintiff’s claims for compensatory damages be dismissed.

Respectfully submitted this 10<sup>th</sup> day of June, 2022.

### **SATCHER MCGOVERN LLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the within and foregoing **DEFENDANT ARNEIKA SMITH'S REPLY BRIEF IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT** with the clerk of court using the CM/ECF system which will automatically send email notification of such filing to registered parties as follows:

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This 10<sup>th</sup> day of June, 2022.

**SATCHER MCGOVERN LLC**

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Diamond, Ashley Vs. Smith, Arneika

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

Ashley DIAMOND, )  
Plaintiff, )  
V. ) CIVIL ACTION FILE NO.  
Arneika SMITH, ) 5:21-cv-378-MTT  
Defendant. )  
\_\_\_\_\_ )

The Deposition of  
ASHLEY DIAMOND

February 22, 2022  
9:29 a.m.

VIA ZOOM DEPOSITION

Tammy L. Gardner, CCR  
Certified Court Reporter #2804

1           once again, for this entire line of questions.  
2           I'm also objecting on grounds that it is  
3           harassing, annoying, and calculated to  
4           embarrass my client.

5                     MS. LONG: The objection's note.

6           BY MS. LONG:

7                     Q. Do you recall the inmate's name on the  
8           first PREA?

9                     A. No, I do not. And because of  
10          gang-related reasons and because of safety reasons,  
11          I don't feel comfortable discussing those names  
12          without authorities being present, because I'm in  
13          an environment that is very dangerous, and because  
14          my Defendants are so recklessly cavalierly reckless  
15          with everything, I have to be very careful, and so,  
16          if there's not an order from a judge or if there's  
17          not someone to mediate with this information, I  
18          have to be careful, because this information can be  
19          redistributed and could end up causing me harm from  
20          other inmates, and, yes, staff, too.

21                    Q. When you filled out the PREA, did you  
22          identify who the inmate was?

23                    A. No. I didn't know him.

24                    Q. Okay. Tell me the next incident where  
25          you remember the PREA being filed.

1 MS. EZIE: Object.

2 THE WITNESS: I can't remember. It's  
3 been so many. I'm touched so much throughout  
4 the day. So many things happen so often. We  
5 just filed a PREA, I'm sure your office is  
6 aware of, we just filed one last week, where a  
7 gentleman just ran into the dorm and attacked  
8 me. These things happen so often and so  
9 widespread, that it is very unfortunately and  
10 it's quite sad that I have to sit here and say  
11 this, that's it's unfortunate that I can't  
12 keep up.

13 BY MS. LONG:

14 Q. Has any of the incidents or the  
15 collection of incidents caused you to have any  
16 physical trauma?

17 A. Yes. I have nightmares --

18 MS. EZIE: Object to form.

19 THE WITNESS: -- all the time.

20 BY MS. LONG:

21 Q. I'm sorry. You have nightmares.

22 Any -- any other, m'mm --

23 A. There's been physical manifestations of  
24 suicide. There have been -- just a lots of bouts  
25 of self-harm. Self-doubt. Low self-worth. Low

1 self-esteem. When you -- someone who's been  
2 victimized, and when you've been as victimized as  
3 many times, unfortunately, as I have, those  
4 subjects are difficult.

5 So I'm just trying to answer your  
6 questions as best as I can, as honestly as I can,  
7 and as thoroughly as I can, so you'll just have to  
8 bear with me if I can't give you every single  
9 detail of every PREA, but I will --

10 Q. That's --

11 A. -- do my best.

12 Q. That's great. That's all we're asking,  
13 is that you state what you do recall.

14 Let's take a step backwards, when you  
15 first came into the system after your parole  
16 revocation.

17 Did you have -- you were at GDCP,  
18 correct?

19 A. Yes, ma'am.

20 Q. Did you file any grievances at GDCP?

21 A. I think I -- I did.

22 Q. Tell me what you recall, as far as filing  
23 grievances.

24 A. Well, I definitely recalled being  
25 concerned with my placement. Then I filed a

1 assigned to?

2 A. I was at GDC State Prison, Georgia  
3 Diagnostic Classification Prison, in Jackson,  
4 Georgia.

5 Q. And this was after your parole  
6 revocation?

7 A. Yes, ma'am.

8 Q. Do you recall the month, day that you  
9 first --

10 A. No.

11 Q. -- met her?

12 A. I -- no, I do not. I try to forget it.

13 Q. And what was her relationship to you?  
14 Was she a supervising officer or --

15 A. She was a supervising officer.

16 Q. And you said you were on a detail?

17 A. No.

18 Q. Did she say what --

19 A. I said I was on a detail -- when you  
20 asked me about the PREA that happened, I was on a  
21 detail, but I wor -- as an inmate, I live in a  
22 housing unit, and in each of those housing units,  
23 an officer man's that post. She just happens to be  
24 the officer in my housing unit, so -- if that gives  
25 you any insight on --

1 Q. Yes.

2 Did she supervise your detail?

3 A. She supervised me, but she didn't  
4 supervise my detail. I was the head orderly, and I  
5 had a boss, which was Lachesha Smith, but part of  
6 my work duties would be doing things for my officer  
7 for whatever they needed.

8 Q. So Officer Smith was a dorm officer?

9 A. Officer Arneika was a dorm officer; and,  
10 then, Lachesha Smith was my boss.

11 Q. How long did you know Arneika Smith  
12 before this May 9th incident?

13 A. I only knew of Arneika Smith from Jackson  
14 State Prison, when I met her and came in contact  
15 with her as the officer and, you know, my job duty.

16 Q. How often would you see her?

17 MS. LONG: Oh-oh.

18 (Ms. Diamond lost Zoom connection.)

19 MS. LONG: I think the prison's gone  
20 again.

21 COURT REPORTER: Yes, ma'am.

22 MS. LONG: It's going to be a long day.

23 COURT REPORTER: Should we call Christine  
24 again?

25 MS. LONG: Maybe so.

## Diamond, Ashley Vs. Smith, Arneika

Page 99

1 COURT REPORTER: Want me to do it?

2 MS. LONG: Sure. If you'd like to. I  
3 wasn't sure if maybe Ms. Ezie might mention  
4 something, but --

5 (Off the record to call Christina.)

6 BY MS. LONG:

7 Q. How often would you see Arneika Smith?

8 A. Everyday.

9 Q. Did you speak to her regularly?

10 A. What do you mean?

11 Q. Did you have occasion to have contact  
12 with her before --

13 A. She was my superior, so there was always  
14 times when I was speaking to her and times when she  
15 was giving orders and things of that nature.

16 Q. Did you have any complaints about her  
17 prior to May 9th?

18 A. Yeah. I mean, personally, I didn't  
19 think, you know, she was a very professional or  
20 good person.

21 Q. Elaborate on that, if you would.

22 Why did you not think she was a good  
23 person?

24 A. Her conduct.

25 Q. And tell me what you think about her

1 I was always with her, even when we would be at the  
2 podium. She'd sit here (indicating), I'd sit here  
3 (indicating.) We were always together.

4 Q. Where were you sitting?

5 A. I said even at posts. When I say posts,  
6 that means wherever the officer is stationed. So  
7 even --

8 Q. Right.

9 A. -- if we would be at post, she would do  
10 that.

11 Q. I thought I understood you to say you  
12 were sitting next to her.

13 A. At post. Correct.

14 Q. But she's sitting down?

15 A. At post. Correct. Post --

16 Q. Okay.

17 A. Let me break down post for you. Post is  
18 an officer's desk. It is a desk that is about this  
19 big (indicating), whether it has a thing like this  
20 (indicating), and it has like things coming down  
21 and just all of the little trays. There are  
22 stools. It has a chair. There's a high chair that  
23 sits here (indicating), and there's a high chair  
24 that sits next to. Usually, it's reserved for two  
25 officers, but being that I'm the orderly or, you

## Diamond, Ashley Vs. Smith, Arneika

Page 121

1 know, the elite inmate who was allowed to come out,  
2 I would sit in that chair.

3 Q. Would -- let's see.

4 A. With all the staff members, not just  
5 Arneika, with anyone, because my job is to aid my  
6 officer in whatever they need.

7 Q. And you didn't file any sort of PREA  
8 or -- about Ms. Smith prior to May 9th?

9 A. No.

10 Q. Did you ever make any complaint to  
11 anybody about --

12 A. M'mm-h'mm.

13 Q. -- the touching?

14 A. M'mm-h'mm.

15 Q. All right.

16 A. To the other inmates. To my family.

17 Q. Which family member, in particular?

18 A. Diana.

19 Q. And who is that?

20 A. My sister.

21 Q. What's her last name?

22 A. Wilson.

23 Q. Anybody else that was a family member?

24 A. Not that I can recall.

25 Q. But you didn't file any complaints about

1           A.    Yeah.  I would say asking me things like  
2           what kind of dicks I liked, and those types of  
3           things, would be very offensive.  Asking me if my  
4           breasts are real.  Things of that nature.  Private  
5           stuff.

6           Q.    I'm trying to find out what,  
7           specifically, you recall her saying that you  
8           thought was inappropriate.

9           A.    I specifically told you.  One of the  
10          comments was what kind of dicks do you like.  That  
11          was very inappropriate.

12          Q.    I understand that.  Trying to find out  
13          what else she said that you thought was  
14          inappropriate.

15          A.    Do I fuck boys or girls.

16          Q.    Anything else?

17          A.    Those what come to mind immediately.

18          Q.    Did you respond to any of her questions?

19          A.    Not that I remember.  I mean, I'm sure I  
20          probably did.

21          Q.    During this time that you're in the  
22          closet, did she ever touch you?

23          A.    The second day.  Yeah.  She touched my  
24          leg and my thighs.

25          Q.    The first day she touched your leg and

1 your thighs?

2 A. She touched my legs. Yeah.

3 Q. What else did she -- on the first day,  
4 we're talking about May 9th, did she touch you in  
5 any other way on May 9th?

6 A. Uh-uh. Not that I --

7 Q. I'm sorry?

8 A. No. Besides touching me.

9 Q. At any time did you ask to leave the  
10 room?

11 A. Not that I recall.

12 Q. Other than these inappropriate comments  
13 and touching your legs, was there --

14 A. And thigh.

15 Q. -- any other --

16 A. And thigh.

17 Q. And thigh, was there any other thing that  
18 she did that you felt was inappropriate on May 9?

19 A. No, that I can think of.

20 Q. Did you, at some point, eat Krystal's?

21 A. Yeah. I can't remember if that was the  
22 9th or the 10th; but, yeah, I do remember her  
23 giving me some Krystal's. M'mm-h'mm.

24 Q. Okay. I thought you said on May 9th that  
25 you carried a bag of Krystal's into the --

## Diamond, Ashley Vs. Smith, Arneika

Page 172

1 A. Yeah. Somewhere in that area. Yeah.

2 Q. At that point when he came into the room,  
3 did you have all your clothes on?

4 A. I did.

5 Q. At any point did you take your clothes  
6 off? Any of your clothes off?

7 A. No.

8 Q. I'm not sure I understood your testimony.  
9 I want to go through it just again.

10 You said she opened the door when Officer  
11 Ridley started banging on the door.

12 Did you say she left the room at that  
13 point?

14 A. She went out the door -- outside of the  
15 door with him.

16 Q. Did she close the door behind her?

17 A. She did. Locking it.

18 Q. And did he come back in the room, you  
19 said?

20 A. M'mm-h'mm. They both came back, and when  
21 she --

22 Q. Oh, they both --

23 A. -- unlocked the door, she came back, and,  
24 then, he came back, and that's when he saw me, and  
25 was like --

1           you say anything to Officer Ridley?

2           A.    No.

3           Q.    So you said absolutely nothing to him at  
4           that point?

5           A.    No.

6           Q.    Okay.

7           MS. EZIE:  I'd like to take a short  
8           break --

9           THE WITNESS:  Yes, I would, too.

10          MS. EZIE:  -- at this time.

11          THE WITNESS:  Yeah.

12          MS. EZIE:  How does ten minutes sound?

13          THE WITNESS:  Perfect.

14          MS. LONG:  Okay.

15          THE WITNESS:  I'll be back in ten.

16          MS. LONG:  Okie dokie.

17          THE WITNESS:  Thank you.

18          (A break is taken.)

19          MS. LONG:  Okay.  Madam Court Reporter,  
20          are we back on the record?

21          COURT REPORTER:  Yes, ma'am.

22          MS. LONG:  Okay.

23          BY MS. LONG:

24                Q.    Turning, again, to May 10th, when you  
25                were in the officer's room --

1 A. M'mm-h'mm.

2 Q. -- did you, at any time, yell out for  
3 help?

4 A. No.

5 Q. Did you bang on the door at any time or  
6 try to get out of the officer's room while you were  
7 in there with Ms. Arneika Smith?

8 MS. EZIE: Object to form.

9 THE WITNESS: No, I did not.

10 BY MS. LONG:

11 Q. Did you make any effort at all to try to  
12 leave the room?

13 A. No. Not that I recall.

14 Q. And I think -- I apologize if I asked you  
15 this before. At any time on May 10th did you  
16 remove any of your clothes while you were in the  
17 officer's room?

18 A. On May 10th, I did expose -- I just  
19 showed my breasts and genitalia.

20 Q. So you took off your shirt?

21 A. I just lifted it.

22 Q. And where were you when you did that?  
23 Where were you in the room?

24 A. In the officer -- in the closet. Sitting  
25 on the chair --

1 Q. I understand what --

2 A. Sitting on the bed next to her.

3 Q. Okay. What about -- how did you expose  
4 your genitalia? Did you take off your pants?

5 A. No, I didn't.

6 Q. How did you do that?

7 A. I just unbuttoned them.

8 Q. And how long was this exposure? How long  
9 did it last?

10 A. Just a few seconds.

11 Q. Was there any physical touching of your  
12 skin this -- it's a difficult question to ask.

13 I understand she may be touching you at  
14 some point or touching with your -- or touching  
15 your clothes, but I'm trying to understand did she  
16 actually physically touch your skin?

17 Did she touch your breasts?

18 A. No.

19 Q. Did she touch your genitalia?

20 A. No.

21 Q. Okay. Was this before or after Officer  
22 Ridley came to the room?

23 A. That was before Ridley came.

24 Q. And why did you expose your breasts?

25 A. Because she asked to see them, and she

1 showed me hers, too.

2 Q. What about your genitalia? Why did --  
3 why did you expose your genitalia?

4 A. She wanted to know if I had a dick or a  
5 pussy.

6 Q. And so, you showed her what you had?

7 A. At her request.

8 Q. Okay. Did she remove any of her clothes?

9 A. No.

10 Q. You said she showed you her breasts?

11 A. M'mm-h'mm.

12 Q. How did she do that?

13 A. Showed me like this (indicating).

14 Q. When she showed you her breasts, did you  
15 actually see her breasts or was it just her bra  
16 or how did -- how did that work?

17 A. I don't recall exactly, but I did see her  
18 bra and her breasts, so -- I don't remember like  
19 exactly.

20 Q. And was this before or after Officer  
21 Ridley knocked on the door?

22 A. Before.

23 Q. Is there anything else that you recall  
24 specifically doing in the room? Like, for  
25 instance, not necessarily related to misconduct,

1           A.    Yeah.  She coerced me into writing a  
2   statement.

3           Q.    Tell me about how that happened.

4           A.    She came up to my cell one morning and  
5   said that it was going to be some shit if I didn't  
6   write a statement saying that I didn't tell anybody  
7   about what happened.

8           Q.    And so, you --

9           A.    So she brought me a pen, and she brought  
10  me a piece of paper and said I need you to write me  
11  a statement, and I said what do you want me to  
12  write?  She said you need to say that you didn't  
13  tell anybody about what happened, and I wrote a  
14  statement stating that I did not tell anybody what  
15  happened -- that I did not tell anyone at GDCP what  
16  happened.

17          Q.    In that statement you said I didn't touch  
18  Officer Smith, as well.  So I'm assuming from that,  
19  that you did not touch Officer Smith in anyway  
20  while you were in the officer's closet --

21          A.    Correct.

22          Q.    -- is that correct?  Okay.

23                   And I believe your testimony earlier was  
24  that she didn't touch you while you were in the  
25  officer's closet.

1 in segregation.

2 Q. And how did you try to kill yourself  
3 there?

4 A. I think I tried to hang myself.

5 Q. What did you try to hang yourself with?

6 A. At this time, I think it was a belt.

7 Q. Did anybody at Corrections find out about  
8 this suicide attempt?

9 A. I don't -- I think so.

10 Q. What happened? How did they find out?

11 A. I think my counselors. Through  
12 counseling. I was taking counseling, and it was  
13 very traumatic for me.

14 Q. So you told your counselors about it?

15 A. They knew. They knew I'd been raped and  
16 all of that. They knew that I was suicidal, yeah.  
17 Cause they knew. They already knew.

18 Q. Did they know that you had tried to kill  
19 yourself with a belt?

20 A. I think so.

21 Q. Okay.

22 A. I think I did tell Dr. Sloan.

23 COURT REPORTER: Doctor who?

24 THE WITNESS: Sloan.

25 COURT REPORTER: Thank you.

1 be through the clothes, on top of the clothing, or  
2 it can even be considered an unwanted gesture.

3 Q. Were Arneika Smith's gestures and  
4 touching you unwanted?

5 A. Absolutely unwanted.

6 Q. Did you consider them to be sexual abuse?

7 A. I did.

8 Q. How did Arneika Smith sexually abusing  
9 you impact you emotionally?

10 A. The fact that she used me and groomed me  
11 for her own superfluous needs has left me -- I'm  
12 numb. I'm numb to their shit. I'm numb to  
13 enforcement. I'm numb to Corrections. I question  
14 the validity of all of it.

15 Q. You described feeling numb now.

16 How did you feel in the immediate  
17 aftermath of the incident?

18 A. I wanted to die. I felt horrible.

19 Q. Why? Can you just describe? What was  
20 going through your head at that time?

21 A. At the time, all I could think about was  
22 how this person I trusted manipulated, coerced, and  
23 tricked me. It hurts. My fabric of trust is  
24 forever torn with me and officials. I am  
25 constantly contemplating suicide. I don't feel

1 like I am a worthwhile human being or that I  
2 deserve life, because of this series of events that  
3 have happened to me.

4 Q. Now, earlier you were asked a series of  
5 questions about the suicide attempts that you've  
6 had.

7 Do you recall that?

8 A. I do. I do.

9 Q. And you described an incident that  
10 occurred after May 9th, where you attempted to  
11 overdose on pills and medications?

12 A. Yes.

13 Q. Do you recall that?

14 A. Yes.

15 Q. What was the motivation for that suicide  
16 attempt?

17 A. The motivation was because I was hurt by  
18 the officer. It was Arneika Smith's actions that  
19 directly affected me.

20 Q. How did -- and I'm sorry if this is  
21 asking you to repeat yourself, but how did Arneika  
22 Smith's actions motivate you to attempt suicide  
23 that day?

24 A. They were disgusting. They were  
25 implorable. I need a minute.

1 Q. When did Arneika Smith threaten --  
2 threaten you, when it came to being an orderly?  
3 What were the circumstances that she made those  
4 threats?

5 A. That if I told or if I didn't go along  
6 with her, that I would not have my job, and that I  
7 would be put up.

8 Q. What were some of the things that she was  
9 asking you to do with that threat dangling?

10 A. Asking me to expose myself, touching me,  
11 exposing herself to me, touching me, verbally  
12 degrading me.

13 Q. You're describing the incidents that took  
14 place in the closet?

15 A. Yes.

16 Q. Were there times, prior to the closet  
17 incident, where you felt as though Arneika Smith  
18 was manipulating or threatening you?

19 A. Yes. Always. I always felt like she was  
20 manipulating and threatening me, because she would  
21 always tell me -- that would be, you know, if you  
22 don't do this, you're not going to be my bitch  
23 anymore. I'm going to all -- I'm going to replace  
24 you, and --

25 Q. When you say replace you, what do you

# EXHIBIT 1

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UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

----- x  
ASHLEY DIAMOND, :  
 :  
 Plaintiff, : Case  
 :  
 v. : No. 5:20-cv-378-MTT  
 :  
 ARNEIKA SMITH, :  
 :  
 Defendant. :  
----- x

Virtual Videotaped Deposition of  
SHANITA McCALL  
Tuesday, March 22, 2022  
8:37 a.m. CST

Job No.: 437058  
Pages: 1 - 84  
Reported by: THERESA A. VORKAPIC,  
CSR, RMR, CRR, RPR

Transcript of Shanita McCall  
Conducted on March 22, 2022

43

1 come back at 10:45 Eastern. Sorry, let's go off 09:34:41  
2 the record. 09:34:47  
3 THE VIDEOGRAPHER: Going off the record. 09:34:49  
4 The time is 9:34. It's the end of recording one. 09:34:51  
5 (A recess was had.) 09:34:54  
6 THE VIDEOGRAPHER: The time is 9:46. 09:46:14  
7 We're on the record at the start of recording two. 09:46:16  
8 BY MR. FLEISHER: 09:46:22  
9 Q Great. Was that enough time for you, 09:46:23  
10 Ms. McCall? 09:46:25  
11 A Yes, thank you. 09:46:26  
12 Q Of course. No problem. 09:46:27  
13 Ms. McCall, would there ever be -- could 09:46:29  
14 an officer get permission to bring an offender 09:46:40  
15 into this closet that we've talked about with 09:46:42  
16 them? 09:46:44  
17 A Extenuating circumstances like a 09:46:48  
18 supervisor would be present if, like, say, for 09:46:55  
19 instance there was a maintenance issue and 09:47:00  
20 maintenance had to go in there for a reason, then 09:47:04  
21 an offender would go in with maintenance, but just 09:47:07  
22 an ordinary offender, no, but like if the toilet 09:47:11  
23 was backed up and he needed the offender to help 09:47:18  
24 him with the tools or whatever it is he was doing, 09:47:20  
25 the maintenance person, would be like the only 09:47:23

Transcript of Shanita McCall  
Conducted on March 22, 2022

68

1	Q Can orderlies go into a utility closet in	10:37:13
2	C-House?	10:37:17
3	A In the offender utility closet, yes, they	10:37:26
4	can get the brooms, the mops and the chemicals	10:37:30
5	they need for cleaning of the dorm, yes.	10:37:32
6	Q I believe you indicated that an inmate can	10:37:34
7	go into the officer's closet if they are assisting	10:37:37
8	maintenance; is that correct?	10:37:40
9	A I said what?	10:37:45
10	Q Did you testify that an orderly could go	10:37:47
11	into the officer's closet to assist with	10:37:52
12	maintenance?	10:37:55
13	A Permission and maintenance if there is any	10:38:00
14	extenuating circumstance and the maintenance	10:38:04
15	needed assistance maintenance crew, there is	10:38:06
16	permission given or there is supervision of that	10:38:11
17	offender and permission is given so we would know,	10:38:13
18	and there is never a time when they are locked in	10:38:17
19	the closet with an offender.	10:38:20
20	Q Did you have any knowledge about Officer	10:38:25
21	Arneika Smith leaving her jacket at the prison the	10:38:29
22	day before this incident occurred?	10:38:31
23	A I did not.	10:38:37
24	Q Do you have any knowledge about where she	10:38:46
25	stated her jacket was in the closet, the officer	10:38:48

# EXHIBIT 3



1 like -- it was like you're at a day care center. 08:56:30

2 You're just babysitting bad adults. 08:56:34

3 Q Did you also supervise, if that's the 08:56:42

4 right word, people who were on work detail, so 08:56:45

5 orderlies, for example? 08:56:48

6 A Yes, yes. 08:56:50

7 Q Were you sort of in charge of them when 08:56:50

8 you're on that post? 08:56:52

9 A Yes, ma'am. 08:56:53

10 Q Did they report to you, so to speak, ask 08:56:54

11 you what you needed or check in or did you tell 08:56:57

12 them what you needed? 08:57:00

13 A A little bit of both. If I needed 08:57:03

14 something done or if the unit manager needed me to 08:57:09

15 have the orderly do something, like if they wanted 08:57:11

16 the floors cleaned by a certain time or that 08:57:14

17 particular day. If that came from the unit 08:57:17

18 manager, I would let the orderlies know, but if 08:57:19

19 they needed help, other inmates could help out if 08:57:22

20 it was allowed, things like that. 08:57:24

21 Q Anything else -- 08:57:30

22 A But I didn't like -- sorry. Go ahead. 08:57:31

23 Q That was me. I interrupted you. I was 08:57:34

24 going to ask you to get a better understanding of 08:57:38

25 the orderlies sort of role, I guess, in the post. 08:57:40

1           What's your understanding of the role that           08:57:45  
2 orderlies played?           08:57:47

3           A They actually would, like I said, do           08:57:53  
4 things for the unit manager. The COs would never           08:57:58  
5 give them the responsibilities that the unit           08:58:01  
6 manager would give, and that would be like passing           08:58:09  
7 out certain paperwork, cleaning certain things,           08:58:11  
8 or -- I don't know. I didn't really see the use           08:58:16  
9 for them, but they had special privileges where           08:58:20  
10 they could be out while the others would be locked           08:58:24  
11 up until it was time for them to go in for bed,           08:58:28  
12 and I never did that because I didn't work night           08:58:34  
13 shift, but that's pretty much it. I didn't give           08:58:36  
14 any orders unless it was given by the unit           08:58:41  
15 manager.           08:58:44

16           Q So you only passed down orders. You never           08:58:45  
17 on your own asked them to do something for you?           08:58:50

18           A No, not unless it was like go take this to           08:58:53  
19 another offender or, you know, small things like           08:58:56  
20 that, you know, they passed out food. If they're           08:59:00  
21 on lockdown, the orderlies do pass out the food or           08:59:03  
22 help pass out the food.           08:59:07

23           Q Can you think of the names of any           08:59:15  
24 incarcerated people who were orderlies while you           08:59:17  
25 were at GDCP?           08:59:20

1 A No, ma'am. Other than Ashley Diamond, no, 08:59:28  
2 no. No, ma'am. 08:59:33  
3 Q Who was Frank Mack? 08:59:37  
4 A He was an orderly. He was an orderly. He 08:59:45  
5 was in a wheelchair. 08:59:47  
6 Q Any other orderlies that you can recall at 08:59:49  
7 this moment now that maybe you start thinking 08:59:54  
8 about it? 08:59:56  
9 A I mean if you throw their names up, maybe 09:00:00  
10 I can remember. But just off top, I can't 09:00:03  
11 remember their names. I can, like, vividly 09:00:06  
12 remember some would stay on mentally, like the way 09:00:15  
13 they look, but I can't think of their names. 09:00:21  
14 Sorry. 09:00:23  
15 Q What about Jimmy Horn? Do you know who 09:00:26  
16 that is? 09:00:30  
17 A Who? 09:00:31  
18 Q Jimmy Horn, was he an orderly? 09:00:31  
19 A No, ma'am. No, ma'am. 09:00:33  
20 Q Not that you can recall? 09:00:42  
21 A At all. 09:00:42  
22 Q When was your last day at GDCP? 09:00:42  
23 A I don't exactly remember because I went 09:00:50  
24 out on leave without pay. I want to say it was 09:00:54  
25 sometime in December, but I'm not sure. I know I 09:01:00