

**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 ARNEIKA SMITH'S RESPONSE TO PLAINTIFF'S
STATEMENT OF UNDISPUTED MATERIAL FACTS**

COMES NOW Defendant Arneika Smith, through her undersigned counsel, and presents her response to Plaintiff's alleged undisputed material facts as follows:

ALLEGED FACT NO. 1: Prison policy prohibits incarcerated persons from being in the officer's room/closet in which Defendant Smith locked herself and Ms. Diamond.

RESPONSE TO ALLEGED FACT NO. 1:

Alleged fact number 1 is denied. Defendant further denies that this fact is material to the legal issues in the motion for summary judgment. While inmates are not normally allowed into the officer's office/restroom, the undisputed testimony is that inmates were permitted to enter into the officer's room, if they received permission from an officer for the purpose of assisting an officer. [Ex. 1 McCall Dep. 43:13-25; Ex. 2 Dft. Dep. 151:5-153:25.]

ALLEGED FACT NO. 2: Defendant Smith's actions in locking herself in the

officer's room/closet with Ms. Diamond constituted abandonment of her post which is prohibited under GDC policy.

RESPONSE TO ALLEGED FACT NO. 2:

Alleged fact number 2 is denied. Defendant further denies that this fact is material to the legal issues in the motion for summary judgment. Officers were permitted to enter the officer's closet to get there food in and out of the refrigerator, get forms ("paperwork"), and to use the restroom. An officer obtaining their jacket out of the closet and utilizing the assistance of an inmate to obtain their jacket, even if they stayed in the closet for about five minutes talking, did not amount to an abandonment of the post. [Ex. 2 Dft. Dep. 52:25-53:17, 152:19-25, 157:4-17, 166:13-15.]

ALLEGED FACT NO. 3: Prison rules establish that there can be no consensual relationships between correctional staff and incarcerated persons.

RESPONSE TO ALLEGED FACT NO. 3:

Alleged fact number 3 is denied. Defendant further denies that this fact is material to the legal issues in the motion for summary judgment. In addition, Defendant objects to allegation number 3 on the grounds the allegations are vague and ambiguous because Plaintiff does not clarify the term "relationship" and, therefore, a response cannot be made. Defendant admits that a correctional officer cannot have a sexual or intimate relationship with an inmate, however, professional relationships such as doctor/patient, counselor/patient, and teacher/student.

ALLEGED FACT NO. 4: Prison rules and Georgia law prohibit correctional staff from touching an incarcerated person in a sexual manner, and Defendant Smith was aware of those prohibitions.

RESPONSE TO ALLEGED FACT NO. 4:

Alleged fact number 4 is admitted; provided, however, Defendant denies that this fact is material to the legal issues in the motion for summary judgment.

ALLEGED FACT NO. 5: Defendant Smith also knew that touching incarcerated people and having personal conversations and/or dealings with them was prohibited at the time she committed the acts alleged.

RESPONSE TO ALLEGED FACT NO. 5:

Alleged fact number 5 is denied. Defendant further denies that this fact is material to the legal issues in the motion for summary judgment. In addition, Defendant objects to allegation number 5 on the grounds the allegations are vague and ambiguous because Plaintiff does not clarify the terms “personal conversations” or “personal dealings” and, therefore, a response cannot be made. Defendant admits that under certain circumstances touching an inmate or having personal dealings with an inmate was prohibited by Georgia Department of Corrections’ policy.

ALLEGED FACT NO. 6: Defendant Smith’s actions, undisputed for purposes of this motion, were contrary to prison rules and had no penological or legitimate justification.

RESPONSE TO ALLEGED FACT NO. 6:

Alleged fact number 6 is denied. Defendant further denies that this fact is material to the legal issues in the motion for summary judgment.

ALLEGED FACT NO. 7: Ms. Diamond attempted suicide and engaged in self harm as a result of the abuse by Defendant Smith.

RESPONSE TO ALLEGED FACT NO. 7:

Defendant is without sufficient information to form a belief as to the truthfulness of Plaintiff's allegation number 7, but this fact is admitted for purposes of the motion for summary judgment only.

ALLEGED FACT NO. 8: Defendant Smith's violation of prison rules and her decision to abandon her post led to official discipline and the termination of Smith's employment at the Georgia Department of Corrections (GDC).

RESPONSE TO ALLEGED FACT NO. 8:

Defendant Smith admits only that she was terminated from employment from the Georgia Department of Corrections for reasons unrelated to the allegations in this case. Defendant specifically denies that she was terminated for abandoning her post and further denies she was terminated for violating prison policy with respect to any actions relating to Plaintiff. No evidence cited by Plaintiff substantiates a termination for the reasons stated in alleged fact number 8. Defendant further denies that this fact is material to the legal issues in the motion for summary judgment.

Respectfully submitted this 10th day of June, 2022.

SATCHER MCGOVERN LLC

/s/ Annarita L. McGovern
ANNARITA L. MCGOVERN
Georgia Bar No. 098141

/s/ Terry L. Long

TERRY L. LONG

Georgia Bar No. 457460

Counsel for Defendant Arneika Smith

288 South Main Street

Suite 100

Alpharetta, Georgia 30009

Office: (770) 765-0225

Direct: (770) 847-7280

amcgovern@satchermcgovernlaw.com

tlong@satchermcgovernlaw.com

CERTIFICATE OF SERVICE

I certify I have this day served a true and correct copy of the foregoing **DEFENDANT ARNEIKA SMITH'S RESPONSE TO PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS** with the clerk of court using the CM/ECF system which will automatically send email notification of such filing to registered parties as follows:

Elizabeth Littrell
Scott D. McCoy
Aaron Fleisher
Southern Poverty Law Center
Chinyere Ezie
Rafaela Uribe
Center for Constitutional Rights
Counsel for Plaintiff

Lance Simon
Amy Senier
United States of America
Attorney's Office
Interested Party

This 10th day of June, 2022.

SATCHER MCGOVERN LLC

/s/ Annarita L. McGovern
ANNARITA L. MCGOVERN
Georgia Bar No. 098141
Counsel for Defendant Arneika Smith

288 South Main Street
Suite 100
Alpharetta, Georgia 30009
Office: (770) 765-0225
Direct: (770) 847-7280
amcgovern@satchermcgovernlaw.com

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

1 A It's two. It's two. It's the officer's 09:41:11
2 closet and then the supplies closet. 09:41:14

3 Q Do they connect to each other or you have 09:41:16
4 to enter them separately? 09:41:21

5 A No, you have to enter them separately. 09:41:23

6 Q Are they right next to each other? 09:41:26

7 A Yes, ma'am, side by side. 09:41:28

8 Q So in the officer's room -- what is that? 09:41:31

9 How big is that? What's inside there? What can 09:41:39
10 you tell me about to paint a picture? 09:41:43

11 A It's not big at all. It's really small. 09:41:44

12 It has, like, a little mini refrigerator. It has, 09:41:47

13 like, high shelves where a lot of the paperwork -- 09:41:51

14 the daily paperwork we would have to do. So if we 09:41:58

15 were out of paperwork, we would go to the employee 09:42:00

16 closet and grab what's needed. Tissue, everything 09:42:03

17 that's stored in the shelf would be like personal 09:42:11

18 things you would need, but there is not much you 09:42:13

19 can put in there, like, a little sink and a little 09:42:15

20 toilet. 09:42:17

21 Q There is a sink and a toilet in there? 09:42:18

22 A Very compact, like an inmate's room, you 09:42:20

23 can barely turn around in it. It's only meant 09:42:23

24 for, like, really one person. 09:42:26

25 Q So was that also the employee bathroom? 09:42:29

1 A Yes. There is a toilet in there, and you 09:42:32
2 can wash your hands and all that, and a 09:42:37
3 refrigerator. 09:42:39
4 Q Was the toilet on the other side of a door 09:42:39
5 or is it if you walked in the officer's closet and 09:42:42
6 someone was using the bathroom, you could see them 09:42:45
7 using the bathroom? 09:42:48
8 A Right. You could see them. You could see 09:42:49
9 them. Everything is open. 09:42:51
10 Q It's one big open room? 09:42:53
11 A I wouldn't say big, but they were able to 09:42:56
12 get -- 09:42:58
13 Q Sorry. 09:42:58
14 A Yeah. They were able to get all that 09:42:59
15 little stuff in that space, right. Just think of 09:43:02
16 your little closet with a toilet and a sink in it 09:43:05
17 and that being able to work. 09:43:11
18 Q So there's a refrigerator there. Was 09:43:13
19 there also a counter space at all, like a 09:43:17
20 countertop where you could make a sandwich or 09:43:20
21 something where you could set something down? 09:43:23
22 A Not at all. Just shelves, just high 09:43:24
23 shelves. 09:43:28
24 Q Was there, like, a table or anything where 09:43:28
25 you could eat your lunch at? 09:43:30

1 you say another female? 13:03:25

2 A Yes, ma'am. Yes, ma'am. 13:03:27

3 Q It was not a male officer that -- 13:03:30

4 A Not to my recollection. 13:03:32

5 Q Do you recall saying anything about your 13:03:34

6 jacket to that person, the woman that you 13:03:35

7 relieved? 13:03:40

8 A I can't remember because, like I said, I'm 13:03:41

9 focused on the procedures that we're supposed to 13:03:43

10 go by before she leaves and I take anything from 13:03:49

11 her. 13:03:56

12 Q If it was McCumber, why would you not ask 13:03:56

13 her if she found your jacket or did you? 13:04:00

14 A I'm not sure because, like I just said, I 13:04:05

15 don't remember if I said anything or not. I'm 13:04:09

16 just not going to say, hey, I said something or, 13:04:11

17 no, I didn't say anything. I don't remember. So 13:04:13

18 I could have or I couldn't have, but considering, 13:04:16

19 like, it really wasn't on the forefront of my mind 13:04:20

20 because I knew when I asked her to put it up, she 13:04:23

21 would do that. There was no reason for me to 13:04:25

22 think otherwise. 13:04:28

23 Q How would you know where she would put it 13:04:31

24 up, though? 13:04:33

25 A I didn't. It could only be two places, in 13:04:34

1 that drawer or the employee closet. 13:04:36

2 Q I see. Why did you ask Ashley Diamond 13:04:38

3 where it was if you said there was only two places 13:04:42

4 it could have been? 13:04:45

5 A She's always out. Like, for one, she 13:04:46

6 would have to help me get it, anyway. Either it 13:04:50

7 would be her or another offender. It could have 13:04:53

8 been the other orderly. Someone would have to 13:04:55

9 reach it for me. 13:04:57

10 Q Why is that? 13:05:00

11 A I'm 4-11. 13:05:00

12 Q How would you know that it would be above 13:05:03

13 your arm length? 13:05:07

14 A When I went into the closet and seen that 13:05:08

15 it was up high, she came in and she helped me. I 13:05:10

16 went and got Ashley to help me. 13:05:15

17 Q You went into the closet first and found 13:05:22

18 it and then asked Ashley to reach it for you? 13:05:24

19 A No. Okay. So I went it. I didn't see 13:05:27

20 it. There's shelves on both sides. When you 13:05:30

21 first come in, you have the microwave. You have 13:05:34

22 the refrigerator, and you have the shelves with 13:05:37

23 all the papers. And on the other side there's, 13:05:40

24 like, I want to say other paperwork and other 13:05:43

25 things that you could store. I didn't see it 13:05:45

1 visibly when I went in. Ashley Diamond actually 13:05:48

2 reached up and grabbed it for me. 13:05:52

3 Q So you testified that you looked in the 13:05:58

4 drawer while the two orderlies were still sitting 13:06:02

5 there? 13:06:05

6 A Yes. 13:06:06

7 Q You didn't find it? 13:06:06

8 A Right. 13:06:07

9 Q You didn't find it, and then you said to 13:06:10

10 them where did McCumber -- what did you say to 13:06:13

11 them next? 13:06:15

12 MS. LONG: Objection to form. 13:06:16

13 BY MS. LITTRELL: 13:06:20

14 Q What's the next thing that you said? 13:06:21

15 A I actually went and unlocked the closet 13:06:23

16 myself. I just looked in. I went in. I didn't 13:06:26

17 see it and I went to ask Ashley, "Did you see her 13:06:29

18 put my jacket up?" 13:06:33

19 She said, "It ain't in the drawer?" 13:06:34

20 And I said, "No, it's not in the drawer," 13:06:36

21 and she came and looked in the closet with me. 13:06:38

22 Q So you looked in there first and then came 13:06:44

23 back out and asked her; is that right? 13:06:47

24 A Yes, if she seen where she put it, because 13:06:51

25 she's always out. She doesn't have to go up 13:06:55

Transcript of Arneika Smith, Volume 1

Conducted on March 18, 2022

157

1 A It took her no time to get it down for me.

2 Q What happened next? Did she immediately 13:11:07

3 look up? Did she know exactly where it was? 13:11:08

4 A It almost seemed like it. It almost 13:11:14

5 seemed like it. It was my first time going into 13:11:17

6 the employee's closet that morning, so I still had 13:11:19

7 my bag to put up, so I put all that stuff down. I 13:11:23

8 put my stuff in the refrigerator as well, like 13:11:27

9 juices, you know. 13:11:33

10 Q Did that happen after you found the jacket 13:11:40

11 or before? 13:11:43

12 A I was putting my stuff up, like, she was 13:11:43

13 getting the jacket down, putting my book bag on 13:11:47

14 the broken chair and I put my drinks into the 13:11:50

15 refrigerator. I was always buy, like, two out of 13:11:53

16 the vending machine. While she was doing that, I 13:11:56

17 was putting my stuff up. I do remember that. 13:11:59

18 Q Did you ask her to help you look for the 13:12:02

19 jacket or to the reach up and find it and grab it 13:12:04

20 for you? 13:12:07

21 A Both, both because I didn't see it 13:12:07

22 initially when I went in, remember? 13:12:09

23 Q When you went back out, what did you say? 13:12:18

24 Was Ashley still sitting in the same place? 13:12:21

25 A Yes, ma'am, her and the other guy. 13:12:24

1 Q Did she know that you were dating him? 13:22:32

2 A Not from me, she didn't. I think she knew 13:22:34

3 from other employees, other officers, and she was 13:22:38

4 just telling me because she knew that I was, like, 13:22:40

5 friends with him a little. 13:22:43

6 Q Did it seem like she was telling you this 13:22:51

7 information because you'd want to know? 13:22:53

8 MS. LONG: Objection. 13:22:55

9 BY THE WITNESS: 13:23:10

10 A She gave me the information, but what a 13:23:10

11 coincidence, huh? 13:23:12

12 BY MS. LITTRELL:

13 Q How long were you in the room with 13:23:19

14 Ms. Diamond? 13:23:21

15 A Not long at all, maybe five, six minutes. 13:23:22

16 It wasn't long at all. Long enough for her to, 13:23:25

17 like, say that and then Ridley, like, busted in 13:23:29

18 like he actually caught us doing something the way 13:23:38

19 he busted in, the way he came around the corner. 13:23:47

20 It was weird. 13:23:54

21 May I ask a question? 13:24:02

22 Q No. 13:24:04

23 MS. LITTRELL: If you could, Mr. Tech, 13:24:31

24 please put in the chat for me, will you pull up 13:24:33

25 what is marked as date 21-12-06. It starts with 13:24:40