

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>MICHAEL J. GIGNAC,</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 89-0226 P</b>
	)	
<b>DONALD ALLEN, et al.,</b>	)	
	)	
<b>Defendants</b>	)	

**MEMORANDUM DECISION ON MOTIONS FOR SUMMARY JUDGMENT  
OF DEFENDANTS ALLEN AND MAGNUSSON<sup>1</sup>**

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<sup>1</sup> Pursuant to 28 U.S.C. ' 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

Defendants Donald Allen, commissioner of the Maine Department of Corrections, and Martin Magnusson, warden of the Maine State Prison ("prison"), request summary judgment in the instant lawsuit as to all claims asserted against them. Plaintiff Michael Gignac charges that Allen and Magnusson, among others, violated 42 U.S.C. § 1983 by acting under color of state law to deprive him of his constitutional rights to due process and to freedom from cruel and unusual punishment. Gignac seeks the imposition of supervisory liability upon Allen and Magnusson for their asserted roles in: (1) "double celling" him, or confining him with another inmate, in a single cell in the North Side of the prison's segregation unit, First Amended Complaint §§ 30-31, 33, (2) punishing him for his refusal to continue to be double-celled, *id.* §§ 30, 32-33, (3) imposing the punishment without notice or hearing, *id.* §§ 37-38 and (4) permitting allegedly inhumane conditions in Restraint Cell # 30, where the plaintiff was held in late March 1989, Plaintiff's Statement of Material Facts ("Plaintiff's Statement")<sup>2</sup>. Gignac requests compensatory and punitive damages, interest, costs and attorney fees. He also asks this court to enjoin the defendants from double-celling him in the prison's segregation unit and to require the defendants to afford him a hearing consistent with due process. For the reasons detailed below, I deny the motion of defendants Allen and Magnusson for summary judgment as to Gignac's restraint-cell claim and grant it as to all remaining claims.

## I. SUMMARY JUDGMENT STANDARDS

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<sup>2</sup> Defendants Allen and Magnusson objected to the plaintiff's use of his statement of material facts as a vehicle through which to assert a belated fourth claim regarding restraint-cell conditions. Reply to Plaintiff's Opposition to Defendants' Motion for Summary Judgment ("Defendants' Reply Memorandum") at 3-4. The defendants asked the court either to bar the claim or to permit them to respond via supplementary motions and documents. *Id.* at 4; Motion for Leave to Submit Supplementary Motion for Summary Judgment ("Motion for Leave"). The court granted the defendants leave to supplement their prior motion for summary judgment. Endorsement dated January 11, 1991 to Motion for Leave. The parties since have fully briefed the fourth claim.

Fed. R. Civ. P. 56(b) provides that "[a] party against whom a claim . . . is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Such motions must be granted if

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be drawn in its favor."

*Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). "Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id.* (citations omitted); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). A fact is "material" if it may affect the outcome of the case; a dispute is "genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

## II. FACTUAL CONTEXT

For purposes of this motion defendants Allen and Magnusson assume *arguendo* that defendant prison personnel John Struk, David George and Thomas Johnston engaged in the practices of which the plaintiff complains. See Statement of Material Facts ("Defendants' Statement") at 2-3. According to Gignac, on March 26, 1989, after his cellmate had been transferred, defendants Struk and George informed him that he was to be housed with a new inmate. First Amended Complaint & 16. Gignac refused to continue to be double-celled, whereupon he was taken to a shower room and told by George he "was to live there for awhile." *Id.* & 19. Sometime after 11 that evening Struk and George

took Gignac to a strip cell. *Id.* & 20. He remained there for about 15 hours, permitted to dress only in his underwear shorts. *Id.* & 21. At about 2 p.m. on March 27 the plaintiff asked defendant Johnston for a shower and an explanation for his confinement to the strip cell. *Id.* & 22. Johnston handcuffed the plaintiff and transferred him to the segregation unit's Restraint Cell # 30. *Id.* & 23. Gignac's underwear was taken from him, and he was left naked in the cell for approximately 48 hours. *Id.* & 23, 26. Gignac repeatedly asked for materials with which to clean his cell; the requests were refused. *Id.* & 25. In contravention of prison rules, Gignac was not allowed a shower or a period of recreation for six days. *Id.* & 27. Gignac was afforded neither notice of the charges against him, an opportunity to respond nor a hearing during or after his punishment. *Id.* & 28. On or about April 20, 1989 Gignac filed a grievance protesting the above treatment. *Id.* & 29. It was summarily denied without hearing or investigation. *Id.*

Allen and Magnusson aver -- and the plaintiff now concedes -- that they neither knew of nor participated in the actions allegedly taken by Struk, George and Johnston from March 26-29, 1989. Affidavit of Donald Allen ("Allen Affidavit") & 7; Affidavit of Martin Magnusson ("Magnusson Affidavit") & 7; Plaintiff's Statement at 1.

The defendants admit, for purposes of this motion, that Gignac was double-celled in the North Side of the segregation unit for 54 days in 1988 and 1989. Memorandum of Law in Support of Motion for Summary Judgment of Defendants Allen and Magnusson ("Defendants' Memorandum") at 6-7. Allen and Magnusson permitted double-celling in the segregation unit, if necessitated by overcrowding, during the time Gignac was double-celled. Allen Affidavit & 2; Magnusson Affidavit & 2. Both required that double-celling take place with prisoners' voluntary agreement if possible and that no prisoner be punished or threatened with punishment for refusing to agree. Allen Affidavit & 3; Magnusson Affidavit & 3. Inmates double-celled in segregation generally were confined to their cells for 23 hours a day. Defendants' Answer to First Amended Complaint & 18. Magnusson allowed

double-celling only in the North and South Side areas of segregation. Magnusson Affidavit & 3. From August 8, 1988 through March 26, 1989 living conditions in the North and South Side cells were identical except that cells on the North Side got less sun, had no electrical outlets and faced a smaller corridor. Allen Affidavit & 4; Magnusson Affidavit & 4. In addition, when there was double-celling, second bunks were installed in some cells sooner than in others. *Id.* As a result, some prisoners slept on a mattress on the floor of the cell until second bunks were installed. Allen Affidavit & 5; Magnusson Affidavit & 5. Installation of second bunks in North Side cells was completed by January 14, 1989. Affidavit of Ed Greenwood & 3 and exhibit thereto. Living conditions of prisoners in North and South Side segregation units from August 8, 1988 through March 26, 1989 were the same as those found constitutional by this court in *Lovell v. Brennan*, 566 F. Supp. 672 (D. Me. 1983), *aff'd*, 728 F.2d 560 (1st Cir. 1984), except for double-celling. Allen Affidavit & 5; Magnusson Affidavit & 5. On May 1, 1990, at Allen's order, the prison ceased the practice of double-celling in the segregation unit. Allen Affidavit & 6; Magnusson Affidavit & 6.

The plaintiff and the defendants disagree as to the condition of Restraint Cell # 30 during Gignac's confinement there in late March 1989. The defendants acknowledge that Gignac was held in the restraint cell for 47 hours at the end of March 1989. Supplementary Statement of Material Facts ("Defendants' Supplementary Statement") at 1. The plaintiff concedes that his restraint cell contained a flush toilet, a bed frame and a sink. Affidavit of Michael Gignac ("Gignac Affidavit") & 5. However, Magnusson avers that living conditions in the restraint cells in late March 1989 were substantially identical to those described by the *Lovell* court as existing in the Plank Side of segregation in 1983. Supplementary Affidavit of Martin Magnusson ("Supplementary Magnusson Affidavit") && 3-4. The only differences were that the restraint cells faced onto a corridor that did not have windows to the outside and that the light was in the vestibule instead of in the cell itself. *Id.* & 3. The ventilation system in the restraint cells was the same as that described in *Lovell* for the Plank Side as

the sole source of ventilation when the windows were closed. *Id.* & 4. Cells in the Plank Side in 1983 had no hot running water, with hot water available upon request from guards. *Lovell*, 566 F. Supp. at 679. Lights were controlled by switches outside of the cells, which lacked electrical outlets. *Id.* Nonetheless, Plank Side conditions were deemed constitutional because inmates were furnished "with reasonably adequate food, clothing, shelter, sanitation and medical care." *Id.* at 693.

Gignac avers that Restraint Cell # 30 was unheated and unventilated. Gignac Affidavit & 4. The sink provided cold but not hot water. *Id.* During most of the time Gignac was in the cell the water was turned off, and he was unable to flush the toilet. *Id.* His bed frame was barren of a mattress and his cell infested with "[n]umbers of small insects." *Id.* The light in the corridor shone continuously. *Id.*

### III. LEGAL ANALYSIS

Three of the claims asserted against Allen and Magnusson may be disposed of quickly: (1) suit against them in their official capacities, (2) asserted supervisory liability for the guards' punishment of Gignac and (3) alleged supervisory liability for punishment without due process. Gignac's remaining two claims, concerning the practice of double-celling and conditions in Restraint Cell # 30, merit more thorough analysis.

#### A. Official-Capacity Suits; Actions of March 26-29, 1989

Gignac sues Allen and Magnusson in their official as well as personal capacities. First Amended Complaint & 14. This he may not do. A state is not a suable person within the meaning of ' 1983. *Will v. Michigan Dep't of State Police*, 109 S.Ct. 2304, 2312 (1989) (to be reported at 491

U.S. 58). A ' 1983 plaintiff may not sue a state for damages indirectly through an official-capacity suit.<sup>3</sup>

*Id.* Allen and Magnusson may be sued for damages in their personal capacities only.

Gignac proffers no evidence linking Allen or Magnusson to the actions of Struk, George and Johnston. Indeed, he concedes that Allen and Magnusson neither knew of nor participated in those actions. Supervisors in ' 1983 cases may be held liable only on the basis of their own acts or omissions. *Gutierrez-Rodriguez v. Cartagena*, 882 F.2d 553, 562 (1st Cir. 1989). Allen and Magnusson accordingly may not be held liable for the punishment administered by Struk, George and Johnston or for their punishment of Gignac without due process.<sup>4</sup>

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<sup>3</sup> Official-capacity suits are in essence suits against the governmental entity. *Id.* at 2311.

<sup>4</sup> Allen and Magnusson are entitled to summary judgment as well on Gignac's claim for injunctive relief in the form of a court-ordered hearing.

## B. Practice of Double-Celling

The plaintiff and the defendants dispute no material fact underlying Gignac's claim that Allen and Magnusson permitted him to be unconstitutionally double-celled. Allen and Magnusson admit that they permitted such double-celling and that Gignac was double-celled on the North Side for 54 days in 1988 and 1989. Gignac does not controvert the defendants' evidence that the North Side cells were in substantially the same condition in March 1989 as they were in 1983, when this court upheld the constitutionality of those conditions. The parties' only genuine disagreement is legal in nature: whether the practice of double-celling rendered conditions in the North Side unconstitutional. I agree with Allen and Magnusson that, on this record, it did not.

The Supreme Court has held that double-celling does not *per se* amount to cruel and unusual punishment -- even as applied to inmates allowed out of their cells only two hours a week. *Rhodes v. Chapman*, 452 U.S. 337, 342 n.3, 349-50 n.15 (1981). The constitutionality of double-celling hinges on whether, either alone or in combination with other conditions, it "deprive[s] inmates of the minimal civilized measure of life's necessities." *Id.* at 347. The *Rhodes* inmates neither demonstrated deprivation of essentials such as food, sanitation and medical care nor presented evidence that double-celling had heightened the level of prison violence or created other intolerable conditions. *Id.* at 348. That conditions were "restrictive and even harsh" did not render them unconstitutional. *Id.* at 347. Gignac presents no evidence or argument that double-celling deprived him of life's necessities. Having failed to make his case, he cannot as a matter of law recover damages from or win an injunction against Allen and Magnusson on this claim.<sup>5</sup>

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<sup>5</sup> Allen and Magnusson place significant reliance on two unpublished decisions of this court, *Mank v. Magnusson*, No. 87-0257-B (D. Me. Oct. 19, 1988), and *Loring v. Magnusson*, No. 87-0289-B (D. Me. Oct. 20, 1988). Courts in this circuit may neither cite nor accord precedential value to unpublished decisions in unrelated cases. *See, e.g., Bachelder v. Communications Satellite Corp.*, 837 F.2d 519, 523 n.5 (1st Cir. 1988); *McKenney v. Sullivan*, 743 F. Supp. 53, 58 n.3 (D. Me. 1990).

### C. Condition of Restraint Cell

As a threshold matter, Allen and Magnusson challenge the admissibility of the Gignac Affidavit on the ground that it violates the "personal knowledge" requirement of Fed. R. Civ. P. 56(e). Reply to Plaintiff's Opposition to Defendants' Supplementary Motion for Summary Judgment ("Defendants' Supplementary Reply Memorandum") at 4. However, Gignac's statement that he bases his affidavit on "knowledge, information and belief," Gignac Affidavit at 3, does not invalidate it. A court may infer whether statements in an affidavit are based on personal knowledge. *Barthelemy v. Air Line Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990). I have no difficulty inferring that all statements in Gignac's affidavit are based on personal knowledge except for his estimate of the temperature in his cell. All other statements are admissible.

The parties' factual disagreements are genuine and material to the constitutionality of the conditions in Restraint Cell #30, precluding summary judgment. Allen and Magnusson admit that they permitted the housing of prisoners in restraint cells and profess knowledge of the condition of those cells. Memorandum of Law in Support of Supplementary Motion for Summary Judgment ("Defendants' Supplementary Memorandum") at 3-4. The plaintiff has conceded that Allen and Magnusson did not know of or participate in the acts of Struk, George and Johnston from March 26-29, 1989. Allen and Magnusson therefore could not have known that the plaintiff was left naked and denied a blanket.<sup>6</sup> Nonetheless, a genuine dispute exists at a minimum as to whether the cell was

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<sup>6</sup> Gignac also avers that the cell was bereft of a mattress and -- for most of his stay there -- lacking running water. Assuming *arguendo* the truth of these allegations, Allen and Magnusson contend they are immaterial because they were punishments directed at Gignac rather than cell conditions. Defendants' Supplementary Reply Memorandum at 3. It is not clear whether these particular allegations are more accurately characterized as isolated actions by the guards or general cell conditions of which Allen and Magnusson could be expected to have had knowledge. I am therefore reluctant to draw inferences in the plaintiff's favor and do not rest this summary-judgment decision on these two alleged deprivations.

unheated, unventilated<sup>7</sup> and infested with insects. Assuming *arguendo* the truth of the plaintiff's statements, I cannot deem the condition of Restraint Cell #30 in March 1989 constitutionally acceptable as a matter of law. The plaintiff paints a portrait of inhumane deprivation of basic necessities.

For the same reasons, I decline to grant the defendants qualified immunity. The Supreme Court has held that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Officials' conduct is judged by its objective reasonableness. *Id.* at 819. As the First Circuit has observed, "[o]n a motion for summary judgment based on a defense of qualified immunity, the relevant question is whether a reasonable official could have believed his actions were lawful in light of clearly established law and the information the official possessed at the time of his allegedly unlawful conduct." *McBride v. Taylor*, No. 90-1528 (1st Cir. Jan. 30, 1991) slip op. at 8 (to be reported at 924 F.2d 386) (citing *Anderson v. Creighton*, 483 U.S. 635, 639 (1987)). *Rhodes* was decided in 1981 and *Lovell* in 1983. A reasonable prison official in March 1989 should have known that a cell infested with insects and lacking heat and ventilation would deprive an inmate of "the minimal civilized measure of life's necessities." See, e.g., *Rhodes*, 452 U.S. at 347; *Lovell*, 566 F. Supp. at 695.

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<sup>7</sup> The defendants ascribe the restraint cell's alleged lack of heat and ventilation, as well, to isolated actions of the prison guards. Defendants' Supplementary Reply Memorandum at 3-4. Viewing the record in the light most favorable to the plaintiff, I think it a permissible inference that the cell's heating and ventilation were general cell conditions. Gignac avers that his restraint cell was unheated and unventilated throughout his stay there.

#### IV. CONCLUSION

For the foregoing reasons, the motion of defendants Allen and Magnusson for summary judgment is hereby **DENIED** as to the plaintiff's restraint-cell claim and **GRANTED** with respect to all remaining claims.

***Dated at Portland, Maine this 11th day of March, 1991.***

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***David M. Cohen***  
***United States Magistrate Judge***