

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

**signed 7/17/01**

MARIA KALUZYNSKI,  
Plaintiff

v.

GARFIELD HOLMES, PETER STEWART,  
LYNNE DOUCETTE, THE CRISIS AND  
COUNSELING CENTERS, INC., BARBARA  
KIM, and DR. NEAL COLAN,

Defendants

Civil No. 00-267-B-C

**ORDER AFFIRMING THE RECOMMENDED DECISION OF THE MAGISTRATE  
JUDGE WITH RESPECT TO DEFENDANTS HOLMES, STEWART, DOUCETTE, THE  
CRISIS AND COUNSELING CENTERS, INC., KIM, AND COLAN**

United States Magistrate Judge Kravchuk filed with the Court on May 16, 2001, with copies to counsel, her Recommended Decision herein (Docket No. 22). Plaintiff filed her objection thereto on June 4, 2001, (Docket No. 26), to which objection Defendants The Crisis and Counseling Centers, Inc., Barbara Kim, and Dr. Neal Colan filed their response on June 15, 2001 (Docket No. 30). Defendant Lynne Doucette filed her response to Plaintiff's objection to the Recommended Decision on June 18, 2001 (Docket No. 31). Defendants Garfield Holmes and Peter Stewart filed their response to Plaintiff's objections to the Recommended Decision on June 21, 2001 (Docket No. 34). This Court having reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record, and having made a *de novo* determination of all matters adjudicated by the Magistrate Judge's Recommended Decision as to Defendants Holmes, Stewart, Doucette, The Crisis and Counseling Center, Inc., Kim, and Colan,<sup>1</sup> and

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<sup>1</sup>The Court has filed this Order Affirming the Recommended Decision as to these Defendants separately from the Order Affirming the Recommended Decision as to Defendant Armstrong in order to unlink the disposition of these Defendants' Motions

concurring with the recommendations of the United States Magistrate Judge as to the claims against those Defendants for the reasons set forth in her Recommended Decision, it is **ORDERED** as follows:

- (1) Plaintiff's objection is hereby **DENIED** as to said Defendants;
- (2) The Recommended Decision of the Magistrate Judge is hereby **AFFIRMED** insofar as it relates to disposition of those Defendants' Motions to Dismiss;
- (3) Defendant Doucette's Motion to Dismiss (Docket No. 4) is hereby **GRANTED**, and Count I is hereby **DISMISSED** as to her;
- (4) The Motion to Dismiss of Defendants The Crisis and Counseling Center, Inc., Kim, and Colan (Docket No. 5) is hereby **GRANTED**, and Count I is hereby **DISMISSED** as to them;
- (5) The Motion to Dismiss of Defendants Holmes and Stewart (Docket No. 6) is hereby **GRANTED in part**, and Count I is hereby **DISMISSED** as to them;
- (6) The Maine State Police Defendants' Motion for Partial Summary Judgment (Docket No. 7) is hereby **DENIED**;
  
- (7) The remaining state law claims contained in the Complaint against those Defendants are hereby **DISMISSED without prejudice**.

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to Dismiss from that of Defendant Armstrong's motion. This is because, as to these Defendants, the proposed amendment to the Complaint suffers from the additional insufficiency as to these Defendants that it is futile, which may not be so in the case of Defendant Armstrong.

Here, it is clear that if the Court were to grant Plaintiff's Motion to Amend the Complaint, it would still not state a claim against these Defendants. The only person alleged in the proposed amended complaint to have used force against Mr. Sidor (in fact, in either version of the complaint) is Officer Armstrong. The officer's seizure of the sword after the shooting is specifically alleged by Plaintiff to be "because they claimed they thought she [Mrs. Sidor] might use it against them." Proposed Amended Complaint at ¶ 32. There is no allegation made in the proposed amended complaint that the officers had any improper motive in seizing and unsheathing the sword. There is no allegation disputing the alleged "claim" by the officers that it was seized for their own protection. There is no allegation that these Defendants in any way, before or after the shooting, conspired to the accomplishment of any improper purpose with Officer Armstrong or with each other. There is no claim, or suggestion of a claim, that these Defendants or, for that matter, Officer Armstrong attempted in any way to conceal the circumstances of the shooting.

The Court, in accomplishing a *de novo* review of these Defendants' Motions to Dismiss on the basis of the proposed amended complaint, would find, therefore, that the only Defendant whose exposure to liability could conceivably be affected by the changed allegations proposed by Plaintiff is State Police Officer Armstrong and would conclude that the claims against these Defendants in the proposed amended complaint should be dismissed.

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GENE CARTER  
District Judge

Dated at Portland, Maine this 17<sup>th</sup> day of July, 2001.

MARIA KALUZYNSKI, Individually      WILLIAM D. ROBITZEK  
and in her capacity as                      784-3576  
Personal Representative for      [COR LD NTC]  
the Estate of JERZY SIDOR              BERMAN & SIMMONS, P.A.  
    plaintiff                              P. O. BOX 961  
    LEWISTON, ME 04243-0961  
v.    784-3576

DON ARMSTRONG                              LEANNE ROBBIN, AAG  
defendant                                      [term 06/22/01]  
    [COR LD NTC]  
    MELISSA REYNOLDS O'DEA, ESQ.  
    [COR LD NTC]  
    ASSISTANT ATTORNEY GENERAL  
    STATE HOUSE STATION 6  
    AUGUSTA, ME 04333-0006  
    626-8800

GARFIELD HOLMES  
defendant

LEANNE ROBBIN, AAG  
[term 06/22/01]

(See above)

[COR LD NTC]

MELISSA REYNOLDS O'DEA, ESQ.

(See above)

[COR LD NTC]

PETER STEWART  
defendant

LEANNE ROBBIN, AAG  
[term 06/22/01]

(See above)

[COR LD NTC]

MELISSA REYNOLDS O'DEA, ESQ.

(See above)

[COR LD NTC]

LYNN DOUCETTE, Individually  
and in her official capacity  
as police officer with  
Monmouth Police Department  
defendant

EDWARD R. BENJAMIN, JR.

[COR LD NTC]

THOMPSON & BOWIE

3 CANAL PLAZA

P.O. BOX 4630

PORTLAND, ME 04112

774-2500

CRISIS AND COUNSELING CENTERS INC  
defendant

JON HADDOW, ESQ.

[COR LD NTC]

FARRELL, ROSENBLATT & RUSSELL

P.O. BOX 738

BANGOR, ME 04402-0738

(207) 990-3314

BARBARA KIM, Individually and  
in her official capacity as  
caseworker with The Crisis and  
Counseling Center  
defendant

JON HADDOW, ESQ.

(See above)

[COR LD NTC]

NEAL COLAN, DR, Individually  
and in his official capacity  
as Director of The Crisis and

JON HADDOW, ESQ.

(See above)

[COR LD NTC]

Counseling Center  
defendant