

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

DIANE STEWART, Personal)
Representative of the ESTATE OF)
JOHN STEWART,)
)
Plaintiff,)
)
v.)
)
WALDO COUNTY, SCOTT STOREY,)
WILLIAM COTE, JESSICA BLANEY,)
JOSEPH TRAVIS, ROBERT CARTIER,)
and JAMES PORTER,)
)
Defendants.)

Civil No. 04-24-B-W

**RECOMMENDED DECISION ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
AND ORDER ON DEFENDANTS' MOTION TO STRIKE**

Diane Stewart, personal representative of the Estate of John Stewart, claims that the defendants, Waldo County, members of the Waldo County Sheriff's Department and officers of the Waldo County Jail, violated her late husband's constitutional right to be afforded necessary care and supervision as a prison detainee and are therefore liable for his death by suicide. The defendants move the court to enter summary judgment against the suit, contending that the record does not support a finding of deliberate indifference to a known, unusually high risk of suicide. They also move for entry of summary judgment against the plaintiff's pendent, state law wrongful death claim. I recommend that the court **GRANT** the motion.

Facts

On July 7, 2002, Waldo County Sheriff's Deputy James Porter arrested John Stewart on charges of violating the terms of his probation. Deputy Porter was responding to a 9-1-1 call placed by Stewart's wife, Diana. (Def. Statement of Material Facts, Docket No. 13; Pl. Response to Def. Statement of Material Facts, Docket No. 14, hereinafter jointly referred to as "Initial Statements," ¶¶ 1-2, 6.) Deputy Porter brought Stewart to the Waldo County Jail, where they arrived at 5:30 p.m. (Id., ¶ 7.) Corrections officers Cote and Travis met Deputy Porter and Stewart at the jail's sally-port and escorted Stewart into the intake area of the jail. (Id., ¶ 8.) At some point between 5:30 p.m. and 5:38 p.m., Joseph Travis, a third corrections officer, began filling out the inmate booking form pertaining to Stewart. (Id., ¶ 9.) Travis wrote Stewart's name at the top of the form and made check marks on the form alongside the following four categories: (1) "appears to be under the influence of alcohol or drugs"; (2) "appear[s] to be despondent/depressed"; (3) "appears to be irrational/mentally ill"; and (4) "appears to be naive/unsophisticated." (Id., ¶¶ 10, 24-25.) According to Travis, his actual observations were that Stewart was unsteady on his feet, listened and did what he was told, and did not speak much. According to Travis, he placed a check mark in the despondent/depressed category because Stewart's passivity suggested he was "kind of despondent." (Id., ¶ 29; see also Travis Depo., Docket No. 14, Elec. Attach. No. 2, at 10, lines 17-21.) Travis maintains that he did not think Stewart appeared depressed. (Initial Statements, ¶ 29.) Travis asserts that he was unsure whether Stewart was mentally ill and/or naïve/unsophisticated or whether he simply appeared to be so because he was intoxicated.

(Id.) The defendants assert, and the plaintiff admits, that Travis never subjectively felt or believed that Stewart was potentially suicidal. (Id., ¶ 31.)

Stewart was a Vietnam Veteran suffering from depression, post-traumatic stress disorder, and alcoholism. (Pl. Statement of Additional Material Facts, Docket No. 15, and Def. Reply Statement, Docket No. 17, hereinafter jointly referred to as "Additional Statements," ¶ 1.) Stewart suffered from flashbacks and his medical records from Togus Veterans' Hospital indicate numerous admissions for mental illness and "suicidality." (Id., ¶ 3.) There is no indication that the defendants had any knowledge of these records or of Stewart's history of treatment at Togus. However, John Stewart was not unknown to at least some members of the Waldo County Sheriff's Department. (Id., ¶¶ 4-5.) After the destruction of the World Trade Center towers on September 11, 2001, Stewart called the Waldo County Sheriff's Department in a state of extreme distress and one of its deputy sheriffs, Matt Curtis, spent an entire afternoon with Stewart attempting to calm him down. (Id., ¶ 5.) According to the plaintiff's affidavit, Stewart was suicidal on that day. (Id.) The plaintiff's statements concerning Stewart's mental state on that occasion are based on her subsequent communications with Stewart, who informed her that he was having a nervous breakdown and crying and that Curtis transported him to a county hospital where he remained the night. (Id.; Diana Stewart Depo., Docket No. 20, at 44-45.) In addition to this incident, John Stewart was arrested April 24, 2002, six weeks prior to his admission on the night of his suicide. (Additional Statements, ¶ 6.) On that occasion, both the plaintiff and Stewart made it clear to jail personnel that Stewart suffered from mental illness, suicidal ideation, and alcoholism. (Id., ¶ 7.) The inmate intake and medical screening report from that incident recorded John Stewart as an

individual with alcohol and mental health problems including suicide attempts. It also recorded that Stewart stated he was not suicidal at the time (i.e., on April 24, 2002). (Id., ¶ 8; Initial Statements, ¶ 56.) At the time of Stewart's arrival and during his roughly hour and twenty-minute detention on the night of July 7, 2002, Officer Travis failed to review Stewart's prior arrest record. (Initial Statements, ¶ 23; Additional Statements, ¶ 23.) The summary judgment record is silent as to whether Deputy Porter reviewed Stewart's records prior to arresting him that evening.

Shortly after Travis began the intake process, Deputy Porter requested that Stewart be brought down to the breathalyzer room. (Initial Statements, ¶ 11.) Travis stopped filling out the intake form and escorted Stewart out of the intake area to the hallway that leads to the breathalyzer room. Travis then obtained a jail shirt for Stewart, who arrived at the jail shirtless, and gave it to Stewart to put on before taking the breathalyzer test. (Id., ¶¶ 12-13.) Although Travis sensed that Stewart was intoxicated, he observed that Stewart was able to walk without difficulty to the breathalyzer room. (Id., ¶ 14.) Sometime shortly before 5:38 p.m., Travis turned Stewart over to Deputy Porter in the breathalyzer room. (Id., ¶ 15.) Between 5:38 p.m. and 5:51 p.m., Deputy Porter administered the breathalyzer test to Stewart and the test registered Stewart's blood alcohol content as 0.19. (Id., ¶¶ 16-17.) Despite Stewart's high blood-alcohol content, he was functioning and coherent enough to understand directions and to walk unassisted. (Id., ¶ 32.) Travis decided to hold off on completing the intake interview until after Stewart sobered up. (Id., ¶ 23.) Travis escorted Stewart back to the intake area, provided Stewart with a pair of jail pants and instructed him to change into the pants. (Id., ¶ 18.) Travis retrieved Stewart's belt and his shoelaces, but left Stewart in possession of his

undergarments, including his socks. (Id., ¶ 19; Additional Statements, ¶ 15.) After Stewart changed into the jail uniform, he was placed in holding cell 17, where he survived for less than one hour. (Initial Statements, ¶¶ 20, 34.) During this time, staff members checked in on him approximately every fifteen minutes. (Id., ¶ 35.) In addition, one of the Waldo County correctional officers switched a video monitor to the camera for holding cell 17 so that Stewart might be monitored from the control room, assuming someone watched the monitor. (Id., ¶ 36.) The camera view of the cell is obstructed by two sets of bars that create a blind spot along the wall where Stewart hanged himself. (Id., ¶ 37.) The images captured by this camera and others are recorded on a VHS tape available in the record.

Jail personnel maintain a hand-written, chronological log of events occurring in the jail. (Id., ¶ 38.) According to the log for July 7, 2002, Stewart entered the jail at 5:30 pm, entered the breathalyzer room at 5:39 pm, and returned from the breathalyzer room to change into a jail uniform at 5:51 pm. Sometime between 5:51 and 6:08 pm, Stewart entered holding cell 17. During his stay in cell 17, Stewart was checked at 6:08 pm, 6:21 pm, 6:35 pm and 6:51 pm. Jessica Blaney, who performed the 6:51 check, discovered Stewart hanging from bars in his cell by means of a noose he had fashioned from his socks. (Id., ¶¶ 39, 41.) Blaney went to the control room and advised Officer Cartier of the situation and Cartier called a "code white." (Id., ¶ 42.) Corrections staff removed Stewart from the noose and administered CPR until an EMT team arrived at the jail. (Id., ¶ 43.)

Defendants Cote, Cartier, and Blaney had very little contact with Stewart on July 7, 2002. (Id., ¶ 46.) Officer Cote was present when Stewart arrived, assisted Stewart in

changing into his jail uniform, and performed checks on Post 2 where Stewart was housed. (Id., ¶ 47.) Cote did not think Stewart was "suicidal or at risk because of his level of intoxication." (Id., ¶ 48.) Officer Blaney observed Stewart on the video monitor when she was in the control room shortly before she found Stewart hanging, but other than this observation, she had no dealings with Stewart and did not know that he was suicidal or in any other way at risk. (Id., ¶ 49.) Officer Cartier had arrived early for his shift, which was scheduled to begin at 7:00 p.m. Cartier was present for about fifteen minutes before Stewart hanged himself. Although Cartier knew that Stewart was in the facility and was intoxicated, he did not have any knowledge that Stewart was suicidal. (Id., ¶ 50.)

According to the defendants, it is not the practice at the Waldo County Jail to "completely declothe" an intoxicated detainee and issue suicide-protective clothing, unless that detainee indicates suicidal ideation or jail staff observe something that otherwise suggests the possibility of a suicide attempt. (Id., ¶¶ 51, 54.) In Stewart's case, the defendants offer that Travis, "as a precautionary measure, removed Stewart's belt and shoelaces." (Id., ¶ 53.) The defendants also assert that neither Travis nor Porter subjectively believed that Stewart presented the risk of suicide, and the plaintiff admits the same. (Id., ¶¶ 54-55.)

The Department of Corrections maintains detention and correctional standards for counties and municipalities. (Additional Statements, ¶ 16.) The Department performed a review and made findings regarding Stewart's suicide. (Id., ¶ 17.) The relevant evidence introduced in this regard by the plaintiff is a "follow-up" letter dated September 29, 2003, written by Ralph E. Nichols, Director of Correctional Inspections,

and addressed to Waldo County Sheriff Scott Shorey.¹ (Id., ¶ 17.) Mr. Nichols's follow-up letter outlines numerous departures from both the jail's "minimum standards or . . . practices" and its "policy and procedure manual." (Id., ¶¶ 18, 19; see also Docket No. 14, Elec. Attach. No. 4, at 1-2.) Nichols writes the following in his letter:

[W]hen Mr. Stewart was admitted to your jail at 17:30 hours on July 7, 2002, he was clearly intoxicated based on an intoxilizer test conducted by your staff that found a b/a level of 1.9% [sic]. Additionally, the Inmate Medical Screening Report completed by the Admitting Officer (who was the Shift Supervisor) on Mr. Stewart found him to be under the influence of alcohol, despondent/depressed, and irrational/mentally ill, and naïve/unsophisticated. However, this officer did not document or implement practices required by your operational policy and procedure or Standards E.12e to treat Mr. Stewart as a special management inmate requiring close supervision to ensure Mr. Stewart's safety. In addition, Mr. Stewart had been admitted to your jail just two months earlier at which time Classification Interview Records identified him as being an alcohol abuser, having mental health problems and having suicide attempts.

(Additional Statements, ¶¶ 20-21; see also Docket No. 14, Elec. Attach. No. 4, at 1-2.)

According to Nichols, standard E.12e required that Stewart be place under continuous supervision "based on the results of screening of Mr. Stewart by [jail] staff at admissions." Nichols also observed that standard E.11 required a member of jail staff to be stationed so as to be able to "hear and respond promptly to problems in inmate occupied areas." According to Nichols, "At the time of Stewart's death, staff had been assigned to conduct inmate visits leaving the area unsupervised. In fact, Mr. Stewart was

¹ The defendant have moved to strike Nichols's letter report as hearsay pursuant to Rule 803(8) of the Federal Rules of Evidence, arguing that the plaintiff "submits Director Nichols'[s] letter without establishing that is it [sic] a public record" and that the plaintiff improperly focuses of Nichols's opinions rather than his finding of fact. (Def. Mot. to Strike, Docket No. 19, at 2.). The plaintiff responds that the letter report fall within hearsay exceptions (6) and (8) of Rule 803. (Pl. Obj. to Def. Mot. to Strike, Docket No. 23, at 1.) Neither party cites any case law. Because the plaintiff introduced the document without a supporting affidavit, its admissibility depends on it inherent characteristics. My assessment is that the document passes muster under Rule 803(8) because it is apparent that the letter is a report or statement of a public agency concerning its activities and contains "factual findings resulting from an investigation made pursuant to authority granted by law." The motion to strike is **DENIED**.

found as a result of a staff person [Blaney] on [her] wa[y] to escort an inmate to visits and was not a result of supervision of this area." (Additional Statements, ¶ 22, see also Docket No. 14, Elec. Attach. No. 4, at 1-2.) Finally, for purposes of the pending motion, Nichols reports that he found jail personnel to have violated a jail policy requiring that all items that might be used by a prisoner to harm himself be removed from a prisoner and his holding cell when the prisoner presents as either self-destructive or prone to suicide. (Id.)

The defendants indicate that since the Stewart incident, and a subsequent investigation by the Maine Department of Corrections, the county has reworded jail policy to provide for continuous observation of inmates who are intoxicated. (Initial Statements, ¶ 66.) According to the defendants, notwithstanding the change in the language of the policy, Waldo County Jail Administrator Raymond Porter has responded to the Department of Corrections and identified that continuous observation of intoxicated inmates in all cases would be impractical and that because of the state standard's lack of a definition,² Waldo County intends to implement its policy so that constant observation of intoxicated inmates is only utilized in circumstances where the inmate is at risk for passing out, choking on [his or her] vomit, out of control, or in some other way in danger because of the level of intoxication. (Id., ¶ 67.) Thus, the defendants maintain that despite any post-suicide revision in Waldo County jail policy, someone presenting exactly as Stewart did would be treated the same (i.e., not given continuous observation) because the "level of intoxication . . . was not identified to present an imminent risk of harm." (Id., ¶ 69.)

² This characterization ("state standard's lack of a definition") is not explained by the defendants.

The court will find in the record a VHS tape³ that records various camera feeds at the jail on the night in question. On the tape the court can view Stewart's initial arrival at the jail sally-port, his visit to the breathalyzer room, his stay in cell number 17, and the officer's discovery of his hanging body and their efforts to revive him. The parties have each offered words to describe Stewart's demeanor and behavior as it is depicted on the tape. The defendants offer an expert, Lindsay Hayes, who would opine that, although Stewart's behavior was unusual and presented a cause for concern, it did "not necessarily reflect suicidal behavior and certainly not high-risk suicidal behavior justifying constant observation." (Initial Statements, ¶ 58.)⁴ The plaintiff, for her part, describes Stewart as "highly distraught, disturbed, anxious, and tearful" in the video. (Additional Statements, ¶ 13.) I credit the plaintiff's statements because they are non-conclusory and could be viewed by a factfinder as accurate descriptions of what is depicted on the tape. The plaintiff also states that Stewart "jumped every time the intoxilyzer machine made a noise, and reacted as if he had heard a gunshot." (Id., ¶¶ 13, 25.) Although it may be only an issue of style, I would not, having viewed the tape, use that precise language to describe Stewart's behavior. In my view, a more objective characterization is that Stewart appeared to suffer from some physical impairment, presumably from alcohol

³ The plaintiff cites the videotape twice in her additional statement, at paragraphs 12 and 14.

⁴ The defendants offer several statements of fact concerning what I would call Hayes's "diagnosis" of the incident. These statements reflect that Hayes considers it to have been appropriate to treat Mr. Stewart as only requiring observation at fifteen-minute intervals. (Initial Statements, ¶ 59.) In Hayes's view, requiring constant supervision based "exclusively" or "solely" on evidence of intoxication is an unmanageable policy because approximately forty percent of jail inmates are intoxicated at the time of initial confinement. (Id., ¶¶ 60, 61.) Hayes asserts that national corrections standards suggested by the American Correctional Association and the National Commission on Correctional Health Care "imply" that continuous observation is justified for inmates assessed as being acutely suicidal or at the highest risk for suicide, either through a threat, recent attempt and/or engaging in high risk behavior. (Id., ¶ 62.) I have not credited any of these statements because a jury need not do so. Moreover, because many of Hayes's opinions appear to concern what would be appropriate supervision for inmates or pretrial detainees who are "exclusively" or "solely" intoxicated, whereas Stewart arguably presented other, more serious mental health concerns, it seems to me that the weight of Hayes's opinions is very much a question for the factfinder.

abuse the prior day,⁵ a seriously depressed emotional affect ("despondent" is an understatement), and mental health issues that interfered with his ability to understand or appreciate what was going on around him (I have in mind here his response to the breathalyzer's beeping). These aspects of Stewart's appearance and behavior appear to have been most apparent while Stewart was in the presence of Deputy Porter in the breathalyzer room. To paraphrase the plaintiff, a reasonable juror viewing the video could well conclude that Stewart was in "a highly emotional and volatile state." (Id.)

Waldo County is a named member of the Maine County Commissioners Association Self-Funded Risk Management Pool ("MCCA"), and coverage is provided through a coverage document issued to each of the member counties. The MCCA provides Waldo County with a separate Member Coverage Certificate covering the period extending from January 1, 2002, through December 31, 2002, which states the limits of liability under the coverage document with respect to causes of action seeking tort damages. This certificate includes affirmative language limiting the insurance-type coverage under the MCCA coverage document to those claims for which immunity is waived under the Maine Tort Claims Act. (Id., ¶ 70.) Other than the insurance-type coverage provided to Waldo County under the MCCA coverage document, Waldo County has procured no insurance against liability on any claim against the County or its employees for which immunity is not otherwise waived under the Maine Tort Claims Act. (Id., ¶ 71.)

⁵ Stewart reported to Deputy Porter that he consumed over 30 beers the previous day. (Additional Statements, ¶ 10.)

Discussion

The plaintiff's complaint recites five counts. Count I is a claim for deliberate indifference to Stewart's constitutional right⁶ to medical care and supervision while in state custody as a prison inmate. Count II is styled as a 42 U.S.C. § 1983 claim and is premised on the same constitutional deprivation. Count III recites a malicious and intentional violation and reiterates the deliberate indifference claim recited in count I. Count IV presents a state law wrongful death claim. Count V contains allegations of conscious pain and suffering, a specie of damages rather than an additional theory of liability. (Pl. Amend. Compl., Docket No. 8.) In other words, the plaintiff's suit presents only two claims: a § 1983 Fourteenth Amendment claim and a state wrongful death claim. The defendants' summary judgment motion is premised on the absence in the record of any evidence that the individual defendants had knowledge that Stewart posed a risk of suicide and the absence of any evidence that an unconstitutional custom or policy caused or contributed to Stewart's suicide. (Def. Mot. Summ. J., Docket No. 12, at 2, 9-11, 13-16.) In addition, the defendants argue that the failure to immediately and fully question Stewart about any suicidal tendencies during intake does not rise to the level of a constitutional violation. (Id. at 11.) In opposition, the plaintiff argues that Stewart's suicide is actionable as a constitutional violation because the various aspects of Stewart's behavior presented a substantial risk of suicide and the defendants ignored it. In support of a finding of the defendants' indifference to Stewart's potential danger to himself, the plaintiff refers the court to the intake record from Stewart's six-week earlier incarceration,

⁶ Plaintiff described her claim as an Eighth Amendment claim in her complaint, but the defendants and she now agree that the claim concerns the Fourteenth Amendment because of Stewart's status as a pretrial detainee. (Def. Mot. Summ. J., Docket No. 12, at 2, 7; Pl. Obj. to Def. Mot. Summ. J., Docket No. 16, at 6.)

his aberrant behavior during the breathalyzer test, and defendants' numerous violations of jail and Department of Corrections standards, policies and procedures—most notably the policy that calls for intoxicated inmates to be placed under close and continuous supervision. (Pl. Obj. to Def. Mot. Summ. J., Docket No. 16, at 9-11.) As for liability on the part of Waldo County, the plaintiff argues that the county failed to train jail personnel in proper intake procedure and inmate supervision. (Id. at 11-14.)

Summary judgment is warranted only 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 Court must view the summary judgment facts in the light most favorable to the nonmoving party and credit all favorable inferences that might reasonably be drawn from the facts without resort to speculation. Merchants Ins. Co. v. United States Fid. & Guar. Co., 143 F.3d 5, 7 (1st Cir. 1998). If such facts and inferences could support a favorable verdict for the nonmoving party, then there is a trial-worthy controversy and summary judgment must be denied. ATC Realty, LLC v. Town of Kingston, 303 F.3d 91, 94 (1st Cir. 2002).

1. Deliberate indifference to an unusually strong risk of suicide

"[T]o state a claim under § 1983, a plaintiff must allege (1) the violation of a right protected by the Constitution or laws of the United States and (2) that the perpetrator of the violation was acting under color of law." Cruz-Erazo v. Rivera-Montanez, 212 F.3d 617, 621 (1st Cir. 2000). There is no question in this case but that the individual defendants, as officers of Waldo County, were acting under color of state law. The only dispute is whether they violated a right protected by the Constitution or laws of the

United States. "[P]olice officers violate the fourteenth amendment due process rights of a detainee if they display a 'deliberate indifference' to the unusually strong risk that a detainee will commit suicide." Bowen v. City of Manchester, 966 F.2d 13, 16 (1st Cir. 1992). This shorthand statement of the claim is sometimes broken out into multiple elements. In Manarite v. Springfield, the Court of Appeals held that a plaintiff may establish deliberate indifference in a prison suicide case by showing:

(1) an unusually serious risk of harm (self-inflicted harm, in a suicide case), (2) defendant's actual knowledge of (or, at least, willful blindness to) that elevated risk, and (3) defendant's failure to take obvious steps to address that known, serious risk.

957 F.2d 953, 956 (1st Cir. 1992). Thus, "[t]he risk, the knowledge, and the failure to do the obvious, taken together, must show that the defendant is 'deliberately indifferent' to the harm that follows." Id. In other words, consideration of the deliberate indifference standard requires the court to consider, all at once, the nature of the circumstances presented to prison officials, their knowledge of the same, and the nature of their response. See, e.g., Calderon-Ortiz v. Laboy-Alvarado, 300 F.3d 60, 64 (1st Cir. 2002) ("[U]nder the second requirement of Farmer, plaintiffs must show: (1) the defendant knew of (2) a substantial risk (3) of serious harm and (4) disregarded that risk."). In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court dispelled something of a precedential haze that had come to obscure the "deliberate indifference" standard since its first appearance in an Eighth Amendment context in Estelle v. Gamble, 429 U.S. 97, 104 (1976). At issue in Farmer were whether the existence of deliberate indifference should be evaluated from a subjective or an objective perspective, and where on the culpability spectrum deliberate indifference rests. 511 U.S. at 836-37. The Court held that deliberate indifference is akin to criminal recklessness and set a subjective standard for

liability. Id. at 837-40. In the Court's words, "a prison official cannot be found liable . . . unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id. at 837. As a consequence, "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot . . . be condemned." Id. at 838. "Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knows of a substantial risk from the very fact that the risk was obvious." Id. at 842.

Viewing the available record in the light most favorable to the plaintiff, my assessment is that the facts and circumstances surrounding the suicide of John Stewart cannot establish deliberate indifference on the part of any of the defendants, as a matter of law. In drawing this conclusion, I am strongly influenced by the presence of certain admissions in the record, as well as by the general negligence flavor of the plaintiff's facts and arguments. As for admissions, I cite paragraphs 48-50 and 54-55 of the defendants' statement of material fact, all of which were admitted by the plaintiff:

48. There is nothing Officer Cote noticed about Stewart's behavior that led him to believe that Stewart was suicidal or at risk because of his level of intoxication.

49. Officer Blaney observed Stewart on the video monitor when she was in the control room shortly before she saw Stewart hanging, but other than this observation, as well as knowing Stewart was in the jail, she had no dealings with Stewart and did not know that he was suicidal or in any other way at risk.

50. Officer Cartier had arrived early for his shift, which was scheduled to begin at 7:00 p.m. on July 7, 2002. Cartier was only present for about

fifteen minutes before Stewart hung himself and was not officially on duty at the time it happened. Cartier knew that Stewart was in the facility and was intoxicated, but did not have any knowledge that Stewart was suicidal or at risk for any other reason.

* * * *

54. Had Stewart been considered a suicide risk, Travis would have removed Stewart's clothing in its entirety and provided him with what is called a suicide smock; however, Travis did not believe that Stewart presented the risk of suicide.

55. At no time during the process of arresting Stewart, transporting him to the Waldo County Jail, or giving him the intoxilyzer test did Deputy Porter believe that Stewart presented a risk of suicide.

(Initial Statements, Docket Nos. 13 & 14.) These statements account for all of the individual defendants (Blaney, Cartier, Cote, Porter and Travis), except for Sheriff Storey, who was neither present at the jail nor aware of Stewart's condition. With admissions of this kind on the record, it strikes me as a tall order for the plaintiff to be able to establish subjective indifference on the part of any of the defendants. Moreover, *even in the absence of these admissions of fact*, the plaintiff simply has not presented facts that could generate an *inference* of deliberate indifference on the order of criminal recklessness, despite what is certainly significant evidence in the record of general negligence in the administration of the Waldo County jail on the night of June 7, 2002, as reflected in Director Nichols's evaluation. Where the plaintiff has admitted that the defendants were not subjectively aware of an unusually strong risk of suicide, the fact that they might have become aware of a possible risk, had they promptly reviewed Stewart's records or questioned him on the issue,⁷ is simply not enough to support an

⁷ I am unconvinced by the defendants' suggestion that it was appropriate to defer intake questioning until Stewart had sobered up. Of course, there is no way to determine what a more complete intake interview might have revealed or whether Stewart's suicide might thereby have been averted. One can only hope that the events underlying this litigation have served as a lesson to officers at the Waldo County jail that protocols and procedures exist for a reason. Unfortunately, in some ways the defendants' stance on certain issues in this litigation is not promising. In particular, I am somewhat disturbed by the assertion (by

inference of deliberate indifference. See, e.g., Hasenfus v. LaJeunesse, 175 F.3d 68, 72 (1st Cir. 1999) ("[C]ourts have been very reluctant to find prison guards liable for failing to prevent suicides unless confronted with specific imminent threats."). The record in this case is devoid of any threats, let alone specific imminent threats.

2. *Municipal liability*

In the absence of an underlying constitutional violation by the individual state actors, there is no basis to impose liability on Waldo County or Sheriff Storey for supervisory concerns related to county policies and customs or deficiencies in its officer training programs. See Pittsley v. Warish, 927 F.2d 3, 9 n.4 (1st Cir. 1991) ("In order to have a viable § 1983 claim against a municipality, a state actor must first commit an underlying constitutional violation.") (citing Monell v. New York Dept. of Soc. Servs., 436 U.S. 658, 690-91 (1978)).

3. *Immunity under the Maine Tort Claims Act*

The defendants ask (Docket No. 12 at 16-20) that the court maintain pendent jurisdiction over the plaintiff's state law claim for wrongful death and enter summary judgment against it as well. According to the defendants, they all enjoy immunity under the Maine Tort Claims Act, 14 M.R.S.A. §§ 8111(1)(C) (affording discretionary function immunity for individual defendants), 8102-8103 (affording immunity from suit for all governmental entities), 8104-A (listing inapplicable exceptions), 8116 (concerning waiver of immunity through procurement of insurance for tort claims). (Docket No. 12 at 16-20.) See also Marr v. Schofield, 307 F. Supp. 2d 130, 135 (D. Me. 2004) (addressing

whatever county official is calling the shots in this litigation) that Director Nichols's critiques may not be heeded as well as by the litigation stance that Stewart presented nothing more than symptoms of intoxication. Among other problems, the former assertion, now of record, may prove problematic if similar litigation arises in the future. The latter assertion is, in my view of the evidence, simply incorrect.

question of pendent jurisdiction where federal claims have been dismissed); Danforth v. Gottardi, 667 A.2d 847, 848 (Me. 1995) (discussing Maine Tort Claims Act immunity provisions). In support of their position, the defendants have introduced evidence tending to establish the absence of any insurance for tort liability. Because the plaintiff fails to object to this aspect of the defendant's motion, I recommend that the court also enter judgment against the pendent state law claim.

Conclusion

For the reasons set forth herein, I **DENY** defendants' motion to strike (Docket No. 19) and **RECOMMEND** that the court **GRANT** the defendants' motion for summary judgment (Docket No. 12.)

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/Margaret J. Kravchuk
U.S. Magistrate Judge

Dated October 25, 2004

STEWART v. WALDO COUNTY et al

Assigned to: JUDGE JOHN A. WOODCOCK JR.

Referred to: MAG. JUDGE MARGARET J.

KRAVCHUK

Demand: \$

Lead Docket: None

Date Filed: 02/20/04

Jury Demand: Plaintiff

Nature of Suit: 550 Prisoner: Civil
Rights

Jurisdiction: Federal Question

Related Cases: None
Case in other court: None
Cause: 42:1983 Prisoner Civil Rights

Plaintiff

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V.

Defendant

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(See above for address)
ATTORNEY TO BE NOTICED

**JAMES PORTER, Individually
and in his official capacity as
Deputy Sheriff of Waldo County**

represented by **MICHAEL J. SCHMIDT**
(See above for address)
ATTORNEY TO BE NOTICED