UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENYA WILSON, as personal representative of the estate of Alvin Wilson, Jr., deceased,

Plaintiff,

vs. Case No. 00-CV73637

GENESSE COUNTY, et. al, HON. AVERN COHN

Defendants.
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MEMORANDUM AND ORDER

I. Introduction

This is a jail suicide case under 42 U.S.C. § 1983 with pendant state law claims. Plaintiff Kenya Wilson, personal representative of the estate of Alvin Wilson, Jr. (Wilson), is suing the following defendants for their actions regarding Wilson's suicide at the Genesee County Jail: (1) Genesee County, the Genesee County Sheriff's Department, and Genesee County Sheriff Robert J. Pickell, in his official capacity, claiming that they failed to adequately train their employees and/or provide adequate emergency procedures for suicide prevention, and Genesee County Deputies Tina Bardwell and Tamika Taylor,[1] in their individual capacities, on the grounds that they were deliberately indifferent to Wilson's serious medical need, i.e. that he was a suicide risk, (collectively "the Genesee County defendants"), (2) the City of Flint, the City of Flint

[1]Deputy Tamika Taylor is not named in the case caption, but is included as a defendant in the complaint; the Genesee County defendants have filed a motion for summary judgment on her behalf.

Police Department, and Chief of Police Trevor Hampton, in his official capacity (collectively "the Flint defendants"), also claiming that they failed to adequately train their employees and/or have adequate policies regarding suicide prevention and (3) Sergeant Allen L. Edwards, Officer Keith Roberts, Officer Alfred Fowlkes, and Officer John Smith, all of the City of Flint police department, in their individual capacities (the "individual police officers"), also claiming that they were deliberately indifferent to Wilson's serious medical need.

Before the Court are motions for summary judgment filed separately by (1) the Genesee County defendants, (2) the Flint defendants, and (3) the individual police officers, essentially arguing that plaintiff has failed to show a violation of Wilson's constitutional rights and/or defendants are entitled to qualified immunity. Plaintiff has filed a combined response to defendants' motions, arguing that there are genuine issues of material fact as to all claims against all defendants.

For the reasons which follow, the individual defendants' motion will be granted in part and denied in part. The Flint defendants' motion will be denied. The Genesee County defendants' motion will be granted in part and denied in part.

II. Background

The material facts as gleaned from the parties' papers follow.[2]

Kenya Wilson ("Kenya") is Wilson's wife and personal representative of Wilson's

[2]The individual police officers and the Flint defendants followed the Court's motion practice guidelines regarding a statement of material facts not in dispute. However, the statements of material facts and the cited portions of the record do not always match. Thus, it is very difficult to discern the precise chain of events leading up to Wilson's suicide, which as indicated infra, is problematic. Neither the Genesee County defendants nor plaintiff followed the guidelines.

estate and the mother of Wilson's daughter, who was one-year old at the time of the incident.

A. Events leading to Wilson's arrest

During the early morning hours of Saturday, January 8, 2000, Kenya and Wilson got into a fight when Kenya discovered Wilson's girlfriend, Dana Brown ("Brown") in Wilson's bed. Kenya and Wilson were estranged at the time. Wilson was living with his best friend, Ted Ruth ("Ruth") at Ruth's home in Flint, Michigan. Also present in Ruth's home at the time were Ruth's girlfriend Euletta Walker ("Walker") and Wilson's daughter. At some point during the fight, Wilson got a gun, apparently intending to shoot Kenya. Ruth intervened, apparently trying to stop Wilson from shooting Kenya, and Wilson shot him in the stomach. Thereafter, someone, it is not clear from the record who, called the police and informed them that Wilson had a gun and two hostages, his daughter and Ruth.

Several City of Flint police officers arrived on the scene at about 4:11 am, including defendant police officers John Smith ("Smith") and his partner, Alfred Fowlkes ("Fowlkes"). Wilson appeared on the front porch with a gun. Smith asked him to drop the gun. Wilson refused and instead put the gun to his head and pulled the trigger several times; however the gun did not discharge. Wilson also told the police to shoot him.

At approximately 4:38 am, Wilson brought his daughter out onto the porch, where she was taken by police officers without incident. At 4:45 am, Wilson brought Ruth, whose body was limp and bleeding, out onto the porch, where he also was retrieved by police officers without incident and transported to a hospital were he later died.

About that same time police hostage negotiators from the City of Flint were called. According to the transcript of the phone conversations between Wilson and the negotiators, which has not been submitted in full, Wilson first talked to a City of Flint police officer Birch, not a defendant in this case. Wilson repeatedly said that he was not coming out of the house, that the police would have to shoot him and have him take him "in a body bag." He also said the he had one bullet left and would not put the gun down. During the course of their conversations, Wilson accused Birch of lying to him.

At around 5:20 am, defendant City of Flint police officer and hostage negotiator Keith Roberts ("Roberts") began talking to Wilson. Wilson continued to say that he was not leaving the house except "in a body bag" and that he did not want to live anymore. Alan Edwards ("Edwards"), a defendant and hostage negotiator for the City of Flint, was Roberts' backup and overheard Robert's conversations with Wilson.

Both Edwards and Roberts testified in their depositions that they did not know that Wilson had previously put a gun to his head and pulled the trigger. They were not on the scene, but rather located at a remote 911 station. Similarly, neither Smith nor Fowlkes knew what Wilson said to the hostage negotiators.

Eventually, Roberts was able to convince Wilson to end the stand-off, discussing what charges he might face; Wilson was concerned about going back to jail. Wilson at some point in time destroyed a flash grenade, without injury to himself, and apparently hid the gun he had. He also asked Roberts to promise not to search the house, and to verify that the police would not shoot him if he came out onto the porch.

Wilson surrendered to the City of Flint police at 9:30am and was taken into custody by Roberts, who appeared on the scene to assist in the arrest because Wilson

trusted him.

B. Events at the City of Flint Police Station/Lock-up[3]

Smith and Fowlkes took Wilson to the City of Flint police station for booking. While their reports of the incident, which both stated that Wilson put a gun to his head and pulled the trigger, say that they "left their reports," it is not clear with who or where they left them. However, it does not appear that they verbally informed any one at the police station of what was in their reports. Indeed, they testified that they did not believe Wilson was suicidal and if they did, they would have told someone at the police station. At some point, Roberts and Edwards also arrived at the police station.

Wilson was then taken to the lock-up area of the police station where Jail Security Guard Kevin Ross ("Ross"), not a defendant, performed what the Flint defendants call "standard intake procedures," which included the removal of Wilson's belt, shoelaces, his hooded sweatshirt, and a container of Visine. Ross then asked Wilson a series of questions, recording the information on a Flint Police Jail System Lodging Information form. Ross states in his affidavit that Wilson appeared "calm and displayed no behavior that would suggest he was unhappy, depressed, agitated, emotional or suicidal." However, Ross also states that Wilson was placed on suicide watch, explaining:

> At the time Wilson was lodged in the City lock-up, the lock-up facility had only been open for approximately one month. He was the first murder suspect lodged there and attracted a significant amount of notoriety among the jail guards. For those reasons, he was placed on suicide watch during the entire period he was lodged in the City of Flint

[3]The lock-up is located at the City of Flint police station. The terms "police station" and "lock-up" are used interchangeably.

lock-up.

Wilson was placed on suicide watch for reasons unrelated to his behavior during the stand-off.

At some point after being placed in the lock-up, Wilson was interviewed by sergeant Scott Eddy ("Eddy"), not a defendant, the officer in charge of the investigation. Eddy testified that he told Wilson that Ruth had died and that he was being held on a charge of open murder and other felony charges. Eddy testified that Wilson showed no reaction after being told of Ruth's death.

In his affidavit, Edwards states that he told Eddy that Wilson "was on the porch waving a gun and threatening people, and that he threatened himself." However, there is no evidence that Edwards told Eddy that Wilson was suicidal and in fact Edwards testified that he did not believe Wilson was suicidal. Also at the time Edwards informed Eddy about Wilson, Roberts was "within hearing range." Roberts, like Edwards, also testified and stated in an affidavit that he did not believe Wilson was suicidal at the time of his surrender to police. Eddy also testified that he did not believe Wilson was not a suicide risk.

Later that day, January 8, 2000, Wilson's father and sister visited him in the lock-up. Both testified that they saw no indication that Wilson was suicidal.

On January 9, 2000, Cheryl Wyms ("Wyms"), not a defendant, an investigator for the Genesee County Central Intake, conducted a pre-bail interview with Wilson in the lock-up. The form completed by Wyms reports no physical or mental problems.

C. Events at Genesee County Jail

On January 9, 2000 Wilson was transported, along with other pre-trial detainees,

by unknown Flint police officers to the Genesee County Jail ("GCJ") for arraignment and detention. Wilson was later arraigned, pled guilty to outstanding misdemeanor charges and stood mute on the felony charges. The district court remanded him to the custody of the Genesee County Sheriff without bond.

Later that day, Wilson was officially received into the custody of Genesee County by defendant Tina Bardwell ("Bardwell"), the receiving officer at the GCJ. According to Bardwell's deposition testimony, when the City of Flint police officers, whose names she did not know, handed Wilson over from the custody of the City of Flint to the custody of Genesee County, they did not tell her anything about Wilson being on suicide watch or that they believed he was suicidal, nor did she ask them about Wilson's mental state. She also testified that it was not her responsibility to assess whether Wilson was suicidal - that was the responsibility of the "CRT[4]" officer. She further testified that Wilson did not show any signs of distress and that she knew of him from previous jail detentions.

Thereafter, deputy Andrea Williams ("Williams"), not a defendant, apparently a "CRT" booking officer, conducted the initial processing for Wilson in the intake area of the GCJ. Williams's report reflects no indication that Wilson was suicidal and because Williams did not find him to be a suicide risk, Wilson was assigned to the Intake Housing Unit (IHU).

While in the IHU, Wilson met a friend, Demetrice Johnson ("Johnson"). Later that day, January 9, Wilson and Johnson were caught with marijuana. Both were charged

[4]The record is unclear as to for what CRT stands.

with violating jail rules and sent to Restricted Housing Unit (RHU).

The next day, January 10, 2000, defendant deputy Tamika Taylor ("Taylor") interviewed Wilson as part of her job to classify him. She asked him if he had any mental problems or any suicidal thoughts; he said no. Taylor testified that she had no reason to believe Wilson was suicidal.

On January 11, Wilson was temporarily released from the RHU to attend a pre-trial hearing. Wilson was returned to the RHU later that day. According to a deputy's sheriff's notes, Wilson displayed no abnormal behavior at any time during this day.

On January 12, a deputy sheriff's notes from the first shift reveal that Wilson displayed no abnormal behavior. The second shift started at approximately 3:00 pm, during which a deputy Dillard ("Dillard"), not a defendant, regularly checked Wilson and the other inmates. At approximately 10:02 pm, Dillard found Wilson hanging in his cell from the air vent with a shoelace tied around his neck. Dillard had completed a floor check at 9:25 pm, noting that Wilson was reading a book. Around 9:50 pm, Dillard performed another check, and it was apparently during this check of the cell block when Dillard discovered Wilson. After calling a Code Blue and receiving assistance from other officers and EMS, Wilson was taken to the hospital where he was pronounced dead.

III. Summary Judgment

Summary judgment will be granted when the moving party demonstrates 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). There is no genuine issue of material fact when "the record taken as a whole could not lead a rational trier of fact to

find for the non-moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The Court must decide "whether the evidence presents a sufficient disagreement to require submission to a trier of fact or whether it is so one-sided that one party must prevail as a matter of law." In re Dollar Corp., 25 F.3d 1320, 1323 (6th Cir. 1994) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986)). The Court "must view the evidence in the light most favorable to the non-moving party." Employers Ins. of Wausau v. Petroleum Specialties, Inc., 69 F.3d 98, 101 (6th Cir. 1995). Only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law may summary judgment be granted. Thompson v. Ashe, 250 F.3d 399, 405 (6th Cir. 2001).

IV. Analysis

A. **FEDERAL CLAIMS**

1. **Individual Liability under § 1983**

To make out a claim under 42 U.S.C. §1983, a plaintiff must demonstrate: (1) deprivation of a right secured by the Constitution or laws of the United States, (2) caused by a person acting under color of state law, (3) occurring without due process of law. O'Brien v. City of Grand Rapids, 23 F.3d 990, 995 (6th Cir. 1994).

A government official performing discretionary functions is entitled to qualified immunity in their individual capacity if their conduct does not violate constitutional standards in light of clearly established law at the time of the alleged violation. Barber v. City of Salem, Ohio, 953 F.2d 232, 236 (6th Cir. 1992). The right claimed must be

more than merely a generalized right; it must be clearly established in a particularized sense so that a reasonable official in the defendant's position knows that their actions violate that right. In short, the illegality of the challenged conduct must be apparent. Danese v. Asman, 875 F.2d 1239, 1242 (6th Cir. 1989).

a. **Qualified Immunity**

In evaluating whether an official is entitled to qualified immunity under section 1983, it must first be determined whether a constitutional violation occurred and only then determined whether the right violated was clearly established such that a reasonable person would know of it. Anderson v. Creighton, 483 U.S. 635, 638(1987); Williams v. Mehra, 186 F.3d 685, 691 (6th Cir. 1999) (en banc).

Qualified immunity requires application of a two-part analysis. First, the court must determine whether the plaintiff has alleged facts which, taken in the light most favorable, show that defendant's conduct violated a constitutionally protected right. If the answer is yes, then the court must determine whether that right was clearly established such that a reasonable official, at the time the act was committed, would have understood that their behavior violated that right. Saucier v. Katz, 121 S. Ct. 2151 (2001). Therefore, the contours of the substantive right allegedly violated must be identified. County of Sacramento v. Lewis, 523 U.S. 833, 842 n. 5 (1998).

b. **The Right at Issue**

When police officer or a jailer acts with deliberate indifference to the serious medical needs of a person in their custody so that they inflict unnecessary pain or suffering, their actions violate the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97,

104 (1976); Horn v. Madison County Fiscal Court, 22 F.3d 653, 660 (6th Cir. 1994). A pretrial detainee, like Wilson, enjoys analogous protection under the Fourteenth Amendment's Due Process Clause. Bell v. Wolfish, 441 U.S. 520 (1979); Horn, 22 F.3d at 660.

In the Sixth Circuit, a psychological need manifesting itself in a suicidal tendency is a serious medical needs for purposes of the due process analysis. Horn, 22 F.3d at 660; Barber, 953 F.2d at 239-40 (identifying the proper inquiry in suicide cases as "whether the decedent showed a strong likelihood that he would attempt to take his own life in such a manner that failure to take adequate precautions amounted to deliberate indifference to the decedent's serious medical needs"); Molton v. City of Cleveland, 839 F.2d 240, 243 (6th Cir.1988). While the right to medical care for serious medical needs does not encompass the right "to be screened correctly for suicidal tendencies, the Sixth Circuit has “long held that prison officials who have been alerted to a prisoner's serious medical needs are under an obligation to offer medical care to such a prisoner. Danese, 875 F.2d 1239, 1244 (6th Cir. 1989), cert. denied, 494 U.S. 1027 (1990), (noting that "[i]f a prisoner asks for and needs medical care, it must be supplied"); see also Yellow Horse v. Pennington Cty., 225 F.3d 923, 927 (8th Cir.2000) (holding that prisoner "had a clearly established constitutional right to be protected from the known risks of suicide and to have his serious medical needs attended to"); Waldrop v. Evans, 871 F.2d 1030, 1033 (11th Cir.1989) (noting that prison inmate has Eighth Amendment right be free from deliberate indifference to serious psychiatric needs).

However, there is no general right of a pretrial detainee to be correctly screened for suicidal tendencies. Danese, 875 F.2d at 1244. Nor has the Sixth Circuit

recognized a generalized right of a prisoner to be protected against committing suicide. Rich v. City of Mayfield Heights, 955 F.2d 1092, 1096-97 (6th Cir.1992). Thus, **the right at issue here is Wilson's right to reasonable protection against taking his own life if he demonstrated a strong likelihood that he would commit suicide**.

To establish a violation of this right, plaintiff must demonstrate that the Wilson demonstrated a strong likelihood of taking his own life and that defendant(s) acted with deliberate indifference to that threat. Because the facts are construed in the light most favorable to the nonmoving party for purposes of summary judgment, the Court must assume, that a jury could reasonably find that Wilson's statements and behavior demonstrated a strong likelihood of suicide. As noted above, to satisfy the objective component of the Eighth Amendment claim, plaintiff must allege that the medical need at issue is "sufficiently serious." Farmer, 511 U.S. at 834. And because a prisoner's "psychological needs may constitute serious medical needs, especially when they result in suicidal tendencies" plaintiff's allegation that defendants were indifferent to Wilson's psychological needs, namely his suicidal tendency, plaintiff easily satisfies the objective component of plaintiff's constitutional claim.

Therefore, at issue here is **whether plaintiff has presented evidence from which a jury could reasonably find that the government officials responded to Wilson's needs with deliberate indifference**.

c. **Deliberate Indifference**

In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court explained the deliberate indifference standard in the context of an Eighth Amendment claim. The term

describes a state of mind more blameworthy than negligence and requires more than an ordinary lack of due care, but can be satisfied with less than acts or omissions with knowledge that harm will result. Id. at 835, 114 S.Ct. 1970. In Farmer, the Sixth Court adopted a subjective standard for determining whether an official acted or failed to act with deliberate indifference: "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. This standard requires conscious disregard for a substantial risk of serious harm. Id. at 839; Brooks v. Celeste, 39 F.3d 125, 128 (6th Cir.1994).

Whether a police officer or jailer acted with deliberate indifference to the serious medical needs of presents a mixed question of law and fact. Williams, 186 F.3d at 690. Plaintiff must therefore allege facts which, if true, would show that the police officer or jailer being sued subjectively perceived facts from which to infer substantial risk to the prisoner, that they did in fact draw the inference, and that he then disregarded that risk. Farmer, 511 U.S. at 837. Emphasizing the subjective nature of this inquiry, the Supreme Court has noted that "an official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." Id. at 838 (emphasis added). The requirement that the police officer or jailer would have subjectively perceived a risk of harm and then disregarded it is meant to prevent the constitutionalization of medical malpractice claims; thus, plaintiff must show more than negligence or the misdiagnosis of an ailment in order to establish deliberate indifference. See Estelle, 429 U.S. at 106 ("[A] complaint that a physician has been negligent in diagnosing or treating a medical

condition does not state a valid claim of medical mistreatment under the Eighth Amendment."); Farmer, 511 U.S. at 835 (noting that deliberate indifference "describes a state of mind more blameworthy than negligence").

On the other hand, plaintiff need not show that the police officer or jailer acted "for the very purpose of causing harm or with knowledge that harm will result." Farmer, 511 U.S. at 835; see also Horn, 22 F.3d at 660 ("Officials may be shown to be deliberately indifferent to such serious needs without evidence of conscious intent to inflict pain."). Instead, "deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk." Farmer, 511 U.S. at 836.

Although plaintiff bears the onerous burden of proving the police officer's or jailer's subjective knowledge, this element is subject to proof by "the usual ways." Farmer, 511 U.S. at 842. Thus, the Supreme Court noted that it was permissible for reviewing courts to infer from circumstantial evidence that an official had the requisite knowledge. Id. at 842. Moreover, the Supreme Court warned, an official may "not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist." Id. at 843 n. 8.

d. **Application to the Individual Defendants**

1) **Smith & Fowlkes - Flint Police Officers**

Plaintiff argues that Smith and Fowlkes as the arresting officers, were deliberately indifferent to Wilson's suicidal tendencies because having observed Wilson try to kill himself by putting a gun to his head and pulling the trigger, his statements that

he was not leaving but in a body bag, they both should have known of Wilson's risk of suicide. Also, because Smith and Fowlkes transported Wilson to the police station without informing anyone as to what they observed during the stand-off, amounts to deliberate indifference. In support of her argument, plaintiff offers the affidavit and entire deposition testimony of William Katsaris ("Katsaris"), a proffered expert on law enforcement and corrections and in particular on suicide prevention.[5] Katsaris says that in his "preliminary opinion," both Smith and Fowlkes were deliberately indifferent for the reasons stated above and because both Smith and Fowlkes lacked training by the City of Flint Police Department in regards to suicide prevention.

Both Smith and Fowlkes testified in deposition that they did not believe Wilson posed a suicide risk after he was taken into custody. Smith testified that if he had believed Wilson was a suicide risk, he would have verbally notified police officers at the lock-up. Smith and Fowlkes also say that they were not deliberately indifferent because they left their reports, which contained Wilson's statements about killing himself, at the police station.

Smith's and Fowlkes's perceptions of Wilson's suicidal tendencies later proved to be wrong. From the record as it currently stands, a reasonable juror could find that Smith's and Fowlkes's observations of Wilson during the stand-off and failure to communicate the events of Wilson's arrest to officers at lock-up beyond simply leaving

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[5]In an effort to discredit Katsaris' opinion, defendants have noted that Katsaris has been disqualified as an expert in courts in other contexts including as an accident reconstructions and as an expert in hostage situations. Katsaris' credibility and the weight to be given his opinion are issues for a jury, not the Court on summary judgment, particularly where there has been no formal action taken to disqualify his opinion.

their reports demonstrated deliberate indifference because they should have known that Wilson was a suicide risk and should have so informed the officers at the lock-up or made sure that they would be so informed.

2) **Edwards - Flint police officer and hostage negotiator**

Edwards' involvement presents a more difficult question. While Edwards testified that he did not believe Wilson was suicidal, and an that individual in a stand-off situation often threatens suicide, it appears that Edwards, in Roberts' presence, communicated to Eddy that Wilson had put a gun to his head. From the record, it appears that Edwards was at best simply negligent in his perception of Wilson. Thus, Edwards is entitled to summary judgment based on qualified immunity and he will be dismissed from the case.

3) **Roberts - Flint police officer and hostage negotiator**

Roberts, as the main hostage negotiator, was in the best position to evaluate Wilson's mental state. Although he testified he did not think Wilson was suicidal, as stated above, a reasonable juror could find otherwise. And because Roberts did not relay any information about Wilson's arrest to officers at the lock-up, a reasonable juror could find that he was deliberately indifferent in this regard. As such, he is not entitled to qualified immunity.

4) **Bardwell - Genesee County Deputy Sheriff**

Bardwell took Wilson from the custody of the City of Flint into the custody of Genesee County. She testified that it was not part of her duties to screen inmates for suicide risks or inquire of the transporting officers as to whether he was suicidal. While

plaintiff's expert says she is supposed to ask the transporting officers these questions, this goes to municipal liability based on a failure to train and/or inadequate policies and procedures, not individual liability. As it was, Bardwell, unlike Smith, Fowlkes, Edwards and Roberts, did not know of the events surrounding Wilson's arrest. Thus, she had no knowledge of Wilson's needs to which she could be deliberately indifferent. Based on these facts, there is no genuine issue of whether Bardwell was deliberately indifferent and she is therefore entitled to summary judgment on the grounds of qualified immunity and will be dismissed from the case.

5) **Taylor - Genesee County Deputy Sheriff**

The same is true of plaintiff's claim against Taylor. She simply did not have any specific information about Wilson. She did nothing more than perform her screening according to established procedures, however minimal these were. Thus, there is no basis to impose liability on Taylor and she is also entitled to summary judgment on the grounds of qualified immunity and will be dismissed from the case.

2. **Municipal Liability under § 1983 - Failure to Train**

A political subdivision is liable under section 1983 if its official policies or informal customs are the proximate cause of a constitutional violation to an individual. Heflin v. Stewart County, Tennessee, 958 F.2d 709, 716 (6th Cir.1992). Significantly, a governmental entity may have liability for the same actions for which an official of the entity enjoys qualified immunity. Barber, 953 F.2d at 237-38. In City of Canton, Ohio v. Harris, 489 U.S. 378 (1989), the Supreme Court addressed municipal liability based on a failure to train under § 1983. In Harris, the Supreme Court first stated the holding of

Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978): "[A] municipality can be found liable under § 1983 only where the municipality itself causes the constitutional violation at issue. Respondent superior or vicarious liability will not attach under § 1983." Harris, 489 U.S. at 385. The Supreme Court then held that inadequate training can serve as a basis for municipal liability under section 1983 but only if the failure to train amounts to deliberate indifference to the rights of persons with whom the police came into contact. See id. at 389. Additionally, the Supreme Court stated:

> That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city, for the officer's shortcomings may have resulted from factors other than a faulty training program. It may be, for example, that an otherwise sound program has occasionally been negligently administered. Neither will it suffice to prove that an injury or accident could have been avoided if an officer had better or more training, sufficient to equip him to avoid the particular injury-causing conduct. Such a claim could be made about almost any encounter resulting in injury, yet not condemn the adequacy of the program to enable officers to respond properly to the usual and recurring situations with which they must deal.

Id. at 390-91 (citations omitted).

In Russo v. City of Cincinnati, 953 F.2d 1036 (6th Cir. 1992), the Court of Appeals for the Sixth Circuit applied the Harris test and held that a plaintiff must establish: (1) that the training program was inadequate for the tasks that officers must perform, (2) that the inadequacy was the result of the city's deliberate indifference, and (3) that the inadequacy was "closely related to" or "actually caused the ... injury." Id. at 1046 (citing Hill v. McIntyre, 884 F.2d 271, 275 (6th Cir. 1989) and Harris); See Berry v. City of Detroit, 25 F.3d 1342, 1346 (6th Cir. 1994) (same).

a. **The City of Flint and City of Flint Police Department and Chief of Police Trevor**

Hampton, in his official capacity[6]

The City of Flint and the City of Flint Police Department are a single entity for purposes of § 1983 liability, with the City of Flint the defendant. "A suit against a city police department in Michigan is one against the city itself, because the city is the real party in interest." Haverstick Enterprises v. Financial Federal Credit, 32 F.3d 989, 992 Fn. 1 (6th Cir. 1994); McPherson v. Fitzpatrick, 63 Mich. App. 461, 463-64 (1974) ("police department is not liable in a tort action directed solely against said department"). Thus, plaintiff's claims against the City of Flint Police Department must be dismissed under Fed. R. Civ. P. 12(b)(6). Moreover, plaintiff's claim against Chief of Police Trevor Hampton in his official capacity is treated as a suit against the City itself. See Brandon v. Holt, 469 U.S. 464, 471-72 (1985).

Plaintiff claims that the City of Flint has a policy or practice of failing to train its police officers in the proper handling of potentially suicidal individuals taken into custody. In support, plaintiff relies on Katsaris' opinion that, as evidenced by the individual police officers' testimony, the City of Flint has no formal policy or procedure for its police officers to notify personnel at the lock-up as to whether or not an individual is suicidal. Moreover, in Katsaris' opinion, the City of Flint police officers are not adequately trained to assess an individual's suicide risk. Finally, Katsaris opines that the City of Flint's failure to have any policies in place for informing a transferring facility that an individual is on suicide watch, shows deliberate indifference.

The City of Flint, however, has proffered various police department manuals,

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[6] On September 14, 2001, a stipulated order of dismissal was entered as to Chief of Police Trevor Hampton in his individual capacity.

including a videotape, which detail the procedures and training that the City of Flint provides to its police officers. Notably, the Flint Police Lockup Policy and Procedure manual (Flint Policy Manual) states that with respect to an individual's suicidal tendencies, that prior to leaving an individual at the lock-up, "the arresting/transporting officer shall verbally inform Lockup personnel any observations regarding injuries the prisoner may have or any threats, suspicious or suicidal comments made by the prisoner." Thus, the City of Flint's policy, is based on verbal communication between its police officers. Although both Smith and Fowlkes testified in their depositions that they were not aware of any policies in this regard, Smith's testimony that he would have verbally informed personnel at the lock-up of Wilson's actions was in fact the policy of the City of Flint. Katsaris opines that this "informal" policy is inadequate.

Moreover, inexplicably, Wilson was placed on suicide watch while in custody at the lock-up, but apparently not for any reason associated with Wilson's behavior during the stand-off. However, it does not appear that the fact that Wilson was placed on suicide watch was ever memorialized in the City of Flint's records. However, the Flint Policy Manual states that any "caution comments," including "suicidal" shall be placed on the arrest/lodging card. Why this was not done is unclear.

As to the City of Flint's policy regarding transferring prisoners from one facility to another, the Flint Policy Manual again states that "if a prisoner has 'caution comments' and is transferred to the custody of another agency verbal notification to the arresting officers or facility shall also be made." Again, why this was not done is unclear.

Based on the above, a reasonable juror could find that the City of Flint's policy of verbally communicating an individual's suicide risk s inadequate and/or that the City of

Flint does not adequately train its police officers regarding its policy, that this failure was the result of the City of Flint's deliberate indifference to Wilson's right to be reasonably protected against taking his own life, and that the inadequacies were closely related to Wilson's eventual suicide.

b. **Genesee County and Genesee County Sheriff Department, and Genesee County Sheriff Robert Pickell**

1)

As with the City of Flint, plaintiff's claims against Genesee County, the Genesee County Sheriff's Department[7] and Genesee County Sheriff Robert Pickell in his official capacity are treated as against Genesee County only. Plaintiff's claim against Genesee County tends to mirror the allegations regarding a failure to train and/or lack of policies stated above as to the City of Flint. Plaintiff primarily argues, again relying on Katsaris' opinion, that Genesee County's liability lies in the failure to properly train its jail staff to specifically ask whether an individual entering GCJ was previously placed on suicide watch and/or to properly assess an individual's suicide risk. Notably, Bardwell and Taylor both testified in their depositions that had they been aware of the events of Wilson's arrest and that he was on suicide watch at the Flint lock-up, they would have placed him on suicide watch at the GCJ. However, they are apparently not trained to ask these questions of either the prisoner or the transporting officer(s).

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[7]Regardless of whether a county sheriff's department is a separate entity from the county itself, in this case, it is clear that plaintiff's claims lie with a single entity - Genesee County, and the Genesee County defendants have treated it as such. Moreover, to the extent that plaintiff is suing Genesee County Sheriff Robert Pickell in his individual capacity, there is no evidence in the record to establish individual liability on Sheriff Pickell.

Genesee County argues that its suicide screening procedures are adequate. pointing out that the GCJ had only one suicide from 1995 to 1999. Genesee County also submits a 1999 Technical Assistance Report on Jail Suicide Prevention Practices Within Genesee County Sheriff's Department, completed by Lindsey M. Hayes (the Hayes Report) as indicating the Genesee County has a "solid program of suicide detection, prevention and rescue." A review of the Hayes Report, however, reveals a different conclusion. Hayes notes in her recommendations that although Genesee County "has suicide prevention protocols scattered in various directives and memorandums, there does *not* appear to be a single document that adequately addresses the facility's suicide prevention program." The Hayes Report also notes that GCJ does not have an "automatic mechanism utilized by booking officers at intake to determine whether the arresting/transporting officer believes that the newly arrived detainee is at risk for suicide." Hayes also "strongly recommend[ed]" that the Genesee County Jail revise its "Receiving Screening Form" order to allow for adequate inquiry of potentially suicidal behavior," which would include asking the following question: "Does the arresting and/or transporting officer have any information that indicates the inmate is a medical, mental health or suicide risk?"

For the same reasons that a reasonable jury could find the City of Flint liable to Wilson based on a failure to train and/or providing inadequate training which resulted in deliberate indifference to Wilson's suicide risk, a reasonable jury could find Genesee County liable. As such, Genesee County is not entitled to summary judgment.

2)

Plaintiff also says that Genesee County did not have adequate emergency

procedures in place at the time Wilson committed suicide. Specifically, plaintiff again relies on Katsaris' opinion, which states that in as early as 1987, air vents were identified as a risk and that most jails confiscate shoelaces (as the City of Flint did) as a matter of course. Katsaris also opines that GCJ was ill-equipped because it did not have "Ambu bags" and other emergency equipment in strategic locations for performing CPR. Katsaris also noted that the jail staff appeared to all testify that they were "running all over" after discovering Wilson, thus showing Genesee County's lack of adequate training as to what equipment was available and where to find it.

Genesee County asserts that it has adequate emergency procedures and equipment. However, as to air vents, the Hayes Report, notes that although most of Genesee County' jails housing areas "are safe and do not contain many of the obvious protrusions that facilitate suicide attempts by hanging," notes that many of the cells have large gauge air vents which are potentially dangerous and recommends that the facilities be improved in this regard.

Aside from the presence of air vents, as to the emergency equipment and practices following a suicide attempt, the Hayes Report found that Genesee County had "very good practices of intervention following a suicide," including the existence of staff trained in CPR and the presence of emergency equipment.

It is also noted that Genesee County has also submitted a document entitled "Assessment of *Wilson v. Genesee County, et al*," which was prepared by Hayes, in which Hayes essentially concludes that neither Genesee County nor Genesee County staff were deliberately indifferent to Wilson's serious medical need and also states that it would be unreasonable for Genesee County to have reviewed her findings and

recommendations in her 1999 report prior to Wilson's death.

Overall, given that the record contains conflicting opinions on whether or not Genesee County's level of emergency procedures and equipment were adequate in the circumstances, the Court is constrained to find that a genuine issue of material fact exists on this issue as well.

B. **STATE LAW CLAIMS**

1. **Michigan Constitution**

All of the defendants are correct that plaintiff cannot maintain a claim for damages against them under the Michigan constitution. See Jones v. Powell, 462 Mich. 329, 335-337 (2000). Thus, this claim is dismissed.

2. **State Tort Claims**

All of the defendants argue that they are immune from liability.

a. **Immunity of the City of Flint and Genesee County**

Tort immunity is broadly granted to government agencies pursuant to M.C.L. § 691.1407(1), which provides:

> Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.
>
> A "governmental function" is an activity "expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f).

When there is some constitutional, statutory or other legal basis for the activity in which the agency was engaged, tort liability may be imposed only if the agency was engaged

in an ultra vires activity. Hyde v University of Michigan Bd of Regents, 426 Mich. 223, 252-253; 393 NW2d 847 (1986); Adam v. Sylvan Glynn Golf Course, 197 Mich.App 95, 97; 494 NW2d 791 (1992). The determination whether an activity was a governmental function must focus on the general activity, not the specific conduct involved at the time of the tort. Pardon v. Finkel, 213 Mich. App 643, 649; 540 NW2d 774 (1995), citing Smith v. Dep't of Public Health, 428 Mich. 540; 410 NW2d 749 (1987).

Here, it is clear that the City of Flint and Genesee County were performing governmental functions, and as such they are immune from state tort liability.

b. **Immunity of the individual defendants**

Employees of a governmental agency may be immune from tort liability for injury or damage caused during the course of their employment. M.C.L. § 691.1407(2). However, individual employees' intentional torts are not shielded by the governmental immunity statute. Sudul v. Hamtramck, 221 Mich.App 455, 458; 562 NW2d 478 (1997); see M.C.L. § 691.1407(3). A police officer may be liable if their conduct amounts to gross negligence that is the proximate cause of the injury or damage, which is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." M.C.L. § 691.1407(2)(c).

Here, plaintiff's claims against Edwards, Bardwell and Taylor must be dismissed for the same reasons as plaintiff's § 1983 claims against them must be dismissed. Likewise, plaintiff's claims against Roberts, Fowlkes and Smith must continue.

C. **WHAT THIS CASE IS REALLY ALL ABOUT**

In essence, this case is about a failure to communicate and/or to have policies in

place for adequately accessing and communicating an individual's suicide risk at all levels, and especially when transporting an individual from one facility to another. The evidence of record is sufficient to have this issue submitted to a jury to determine whether the individual defendant's actions, and the City of Flint and Genesee County's policies and training amounted to deliberate indifference to Wilson's serious medical need to be adequately screened for suicidal tendencies and to be protected against taking his own life.

V. Conclusion

The individual defendants' motion is GRANTED IN PART and DENIED IN PART. Plaintiff's claims against Edwards are DISMISSED. Plaintiff's claims against Smith, Fowlkes, and Roberts continue.

The Flint defendants' motion is DENIED. The City of Flint continues as a defendant.

The Genesee County defendants' motion is GRANTED IN PART and DENIED IN PART. Plaintiff's claims against Bardwell and Taylor are DISMISSED. Genesee County continues as a defendant.

Plaintiff's claim under the Michigan Constitution is DISMISSED.

SO ORDERED.

_____/s/_____
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated March 26, 2002
Detroit, Michigan