

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PATRICIA DEEMER, Individually and : CIVIL ACTION  
Duly Appointed, Qualified, Acting Legal :  
Representative and as Administrator of the :  
Estate of Wade Evan Deemer :  
 :  
 :  
v. :  
 :  
 :  
COUNTY OF CHESTER (BOROUGH OF :  
WEST CHESTER), et al. : NO. 03-6536

ORDER AND OPINION

JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE

DATE: January 13, 2005

Patricia Deemer has brought this action, individually, and as a representative of the estate of her former husband, Wade Evan Deemer, who killed himself while in a holding cell at the West Chester County Police Station. Defendant, the Borough of West of West Chester (“West Chester”), has moved for summary judgment. For the reasons set forth below, I will grant its motion only with regard to Plaintiff’s state claims.

I. Factual and Procedural Background

On August 24, 2002, at about 10:15 a.m., Deemer was arrested by West Chester police in connection with a rape which was reported to have taken place earlier that morning. Report of Police Officer Michael Heidelbaugh, attached as Exhibit E to West Chester’s Motion. At the time of his arrest, Deemer, a resident of a local homeless shelter, was in the company of a woman identified as G.C. Report of Sgt. Louis DeShullo, attached as Exhibit F to West Chester’s Motion. She, too, was arrested, based on the existence of an outstanding warrant in another county. Id.

When Deemer and GC arrived at the West Chester Police Station, GC was confined in Holding Cell 1, and Deemer was taken to an office for questioning by Sgt. Yarnall, followed by an interview with Officer Heidelbaugh. Exhibit E, by Sgt. Yarnall. Exhibit E, supra; Exhibit F, supra; Affidavit of Sgt. Thomas Yarnall, attached as Exhibit G to West Chester's Motion.

As part of the interview process, Officer Heidelbaugh filled out a Prisoner Property Record form. Form, attached as Exhibit H to West Chester's Motion. One section of that form is entitled "Prisoner Condition." Id. Under "Mental Status", it asks: "Have you ever attempted suicide?" Officer Heidelbaugh circled the letter "Y" for yes. Id. The form then asks: "Do you intend to commit suicide now?" Officer Heidelbaugh circled "N." Id. However, in his contemporary narrative report, Officer Heidelbaugh wrote:

When I asked Deemer if he ever had attempted suicide Deemer paused and stated something to the effect that he had thought about it. I asked Deemer again if he ever actually attempted suicide and he stated "No", he just thought about it. I circled the Yes on the form after his response of thinking about it and before I asked him a second time if he had actually attempted suicide.

Exhibit E, supra, at pages 6-7.

In his affidavit, Officer Heidelbaugh stated that, if he had identified Deemer as a suicide risk, he would have notified his supervisor and followed the policy for suicidal prisoners, which requires that they be shackled to the lower cross bar of the holding cell. Affidavit, attached as Exhibit C to West Chester's Motion at ¶¶ 46-48. However, he observed Deemer to be "calm" and not "distraught, depressed or suicidal." Id. at ¶ 42. Therefore, he placed Deemer in Holding Cell 2, next door to G.C., after removing his belt and sneakers in accordance with police department procedures. Id. at ¶¶ 19 and 26.

The holding cells were under continuous surveillance by a live feed video system, which is monitored by the police dispatcher. Id. at ¶ 27. However, sound is not recorded.

Memorandum of Law in Support of West Chester's Motion, at 6, n. 5. According to West Chester, this is to avoid violating Pennsylvania wiretap laws. Id. The dispatcher, Officer Seal, later asserted that she looked at Deemer four or five times, and saw nothing amiss. Officer Seal Interview Notes, attached to Deemer's Response as Exhibit M.

At approximately 3:30 in the afternoon, Sgt. DeShullo reports that he entered the cell block to take Deemer to be interviewed again. Exhibit E, supra, at 6. He found Deemer dead, hanging from the cell door, secured around the neck by a thin piece of fabric torn from his shirt, which was tied at the other end to the cell door. Id.

G.C. informed Sgt. DeShullo that she and Deemer had agreed that they would both commit suicide. Id. She stated in an interview:

He said he lost everything. He lost his bed at Safe Harbor, and his job that he was going to start tomorrow. They were going to stop his Social Security Check. His name would be in the papers and his ex-wife and kids would see it. He didn't even do the crime, but they would believe the girl over him. I told him that he had me as a witness and other witnesses. He said they would still believe the girl over him. He was in despair.

G.C.'s Statement Form, attached to West Chester's Motion as Exhibit K.

## II. Legal Standard for Summary Judgment

Summary judgment is warranted where the pleadings and discovery, as well as any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pr. 56. The moving party has the burden of demonstrating the absence of any genuine issue of material fact. Celotex Corp. v. Catrett, 477

U.S. 317, 323 (1986). In response, the non-moving party must adduce more than a mere scintilla of evidence in its favor, and cannot simply reassert factually unsupported allegations contained in its pleadings. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986); Celotex Corp. v. Catrett, *supra* at 325; Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989).

When ruling on a summary judgment motion, the court must construe the evidence and any reasonable inferences drawn from it in favor of the non-moving party. Anderson v. Liberty Lobby, *supra* at 255; Tiggs Corp. v. Dow Corning Corp., 822 F.2d 358 , 361 (3d Cir. 1987). Nevertheless, Rule 56 “mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp. v. Catrett, *supra*, at 323.

### III. Discussion

#### A. Plaintiff’s § 1983 “Monell” Claim

When a municipality such as the Borough of West Chester is sued under § 1983, the plaintiff must show that his injuries were a result of an official City policy or custom. Monell v. New York City Department of Social Services, 436 U.S. 658 (1978).

Section 1983 allows recovery where a prisoner commits suicide after receiving inadequate attention based on his mental health condition, where it can be shown that (1) the detainee had a particular vulnerability to suicide; (2) the custodial officer or officers knew of that vulnerability; (3) the officers acted with reckless indifference to the detainee’s vulnerability. Farmer v. Brennan, 511 U.S. 825, 837-838 (1994); Colburn v. Upper Darby Township (“Colburn II”), 946 F.2d 1017, 1023 (3d Cir. 1990); Colburn v. Upper Darby Township, (“Colburn I”), 838

F.2d 663, 668-69 (3d Cir. 1988); Dimitris v. Lancaster County Prison Board, 2002 WL 32348283 (E.D. Pa. Jun. 7, 2002).

Deemer was a pre-trial detainee, and not a sentenced prisoner, so Plaintiff's remedy is under the Fourteenth Amendment of the United States Constitution, and not the Eighth Amendment. Falcon v. City of Philadelphia, 18 F. Supp. 2d 537, 540 (E.D. Pa. 1998), affirmed 185 F.3d 861 (Table) (3d Cir. 1999), cert. denied 529 U.S. 1093 (2000). However, courts analyzing cases involving pretrial detainees apply the Eighth Amendment standard. Id.

Here, questions of material fact exist as to whether these factors were shown. Although West Chester argues in its motion that there is no evidence that any police officer knew that Deemer had a particular vulnerability to suicide, (a) his statement that he had previously considered suicide, and (b) his residence in a homeless shelter which housed many mentally ill residents, if viewed in the light most favorable to Plaintiff, could support a factfinder's decision that one or more of the officers had such knowledge.

Moreover, if knowledge is proved, the facts surrounding Deemer's incarceration and monitoring – again, if viewed in a light most favorable to Plaintiff – could support the argument that West Chester acted with reckless indifference to his suicidal inclination. West Chester points out that the County Detectives who investigated Deemer's death concluded after viewing the videotape that the dispatcher could not have known what Deemer was doing, since his actions were very subtle, and since, after hanging himself, he appeared to be leaning against the cell door. Chester County Detectives Supplemental Report, attached to West Chester's Motion as Exhibit M. Nevertheless, the jury is entitled to view the videotape and make that factual decision.

As to the crucial Monell element of showing that a West Chester policy or custom caused Deemer's harm, I must agree with West Chester that the Williams v. West Chester and Robey v. Chester County cases, cited by Plaintiff, are irrelevant. Williams, 891 F.2d 458 (3d Cir. 1989); Robey, 946 F. Supp. 333 (E.D. Pa. 1996). Nevertheless, Plaintiff has come forward with expert testimony to the effect that West Chester's policies were inadequate. Although a hearing under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579(1993) is scheduled regarding Plaintiff's expert, and has not yet been held, I assume for the purposes of this motion that Plaintiff's expert testimony will prove admissible. Accordingly, I will not dismiss Plaintiff's § 1983 count.

B. Special Relationship

Plaintiff also argues that West Chester is liable under the theory that the custodial relationship between Deemer and West Chester gave rise to a "special relationship" creating an affirmative duty on the part of West Chester to protect the detainee. Morse v. Lower Merion School District, 132 F.3d 902, 907 (3d Cir. 1997); Commonwealth Bank & Trust Co., N.A. v. Russell, 823 F.2d 12, 16 (3d Cir. 1987).

In its motion, West Chester argues that it could not have been deliberately indifferent to Deemer's needs because no officer had actual knowledge that he was a suicide risk. However, as discussed above, the evidence presented could support a decision by the factfinder that one or more of the officers knew of Deemer's mental health condition. Thus, West Chester's motion is denied in this respect as well.

C. State-Created Danger

Plaintiff also has asserted that Deemer was harmed as a result of a state-created danger. Under this theory a state actor can be held liable for harm caused by a third party to the plaintiff

where:

(1) [T]he harm ultimately caused was foreseeable and fairly direct; (2) the state actor acted in willful disregard for the safety of the plaintiff; (3) there existed some relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity that otherwise would not have existed for the third party's crime to occur.

Schieber v. City of Philadelphia, 320 F.3d 409, 417 (3d Cir. 2003).

Despite the phrasing in Schieber, it is clear that a third-party is not necessary, since the state-created danger theory was originally applied in this Circuit where police detained and then released an obviously intoxicated woman, who froze to death on her way home. Kneipp v. Tedder, 95 F.3d 1199 (3d Cir. 1996).

West Chester argues that the evidence supports none of the necessary factors, except for the existence of a relationship between the parties. However, as I have discussed, there are material issues of unresolved fact as to both the foreseeability of Deemer's suicide, and the presence or absence of "willful disregard."

As to the final factor, West Chester maintains that, if Deemer was in as bad a mental condition as it is claimed, then he could have committed suicide at any time. West Chester argues, therefore, that Plaintiff cannot show that Deemer "was in a worse position after the police intervened than [he] would have been if they had not done so," as required. Kneipp, supra, at 95 F.3d at 1209.

It can hardly be questioned, however, that detention on a rape charge could place a suicidally-inclined individual in a worse position – i.e., a more vulnerable position – than he would have been if he had not been arrested for rape. As noted above, that is the essence of G.C.'s statement regarding Deemer's reason for killing himself. This portion of West Chester's motion will also be denied.

D. State Law Claims

Finally, West Chester argues that Deemer's state survival and wrongful death claims are barred by the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. § 8541, *et seq.* Plaintiff has not contested this in her response. Moreover, it appears that West Chester is correct. See 42 Pa. C.S.A. § 8542(b); Robey v. Chester County, 946 F. Supp. 333 (E.D. Pa. 1996). Therefore, I will dismiss Plaintiff's state claims.

For the reasons discussed above, I now enter the following Order:

ORDER

AND NOW, this 13th day of January, 2005, upon consideration of Defendant's Motion for Summary Judgment, docketed in this case as Document No. 22, and Plaintiff's Response thereto, and Defendant's subsequent Reply, it is hereby ORDERED that Defendant's Motion is GRANTED IN PART AND DENIED IN PART:

1. Defendant's Motion is GRANTED in that Plaintiff's state survival and wrongful death counts are DISMISSED WITH PREJUDICE;
2. The Motion is otherwise DENIED.

BY THE COURT:

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JACOB P. HART  
UNITED STATES MAGISTRATE JUDGE



