UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff,

v. C.A. No. 15-525

ROBERT F. STROM as the Finance Director Of the CITY OF CRANSTON, THE CITY OF CRANSTON, COL. MICHAEL J. WINQUIST, in his individual and in his official capacity as Chief of the CRANSTON POLICE DEPARTMENT, CAPT. RUSSELL HENRY, JR., in his individual and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT; MAJOR ROBERT QUIRK, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, SGT. BRANDON BARTH, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMEN, OFFICER JOHN MASTRATI, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, OFFICER WAYNE RUSSELL, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, OFFICER AUSTIN SMITH, in his individual capacity and in his official capacity as an officer of the CRANSTON POLICE DEPARTMENT, and JOHN And JANE DOES NOS 1-10, in their individual capacities and their official capacities as officers of the CRANSTON POLICE DEPARTMENT,
Defendants.

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR OBJECTION TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Procedural Background

The parties have filed cross motions for partial summary judgment. Plaintiff has moved for partial summary judgment with respect to Counts III (Fourth Amendment), IV (Due Process),

VI (Rhode Island Mental Health Law, and VII (Conversion) – as well as several of Defendants' affirmative defenses. Defendants submit this memorandum of law in response to Plaintiff's motion for partial summary judgment.[1]

II. Analysis

A. The Seizure of Plaintiff's Weapons Was Consistent With the Fourth Amendment.

In Count III of the Second Amended Complaint,[2] Plaintiff alleges that Defendants violated his rights under the Fourth Amendment and Article 1, Section 6 of the Rhode Island Constitution when they seized his guns and "require[ed] him to submit to a psychological evaluation without a court order."[3] See Docket #51, Second Amended Complaint at ¶ 78. In their motion for partial summary judgment, Defendants argued that the seizure of Plaintiff's guns was consistent with the community caretaking doctrine. See Docket #45.1, Defendants' Memorandum in Support of Their Motion for Partial Summary Judgment at 13-25. Defendants rely on that argument and do not repeat it here except to specifically respond to Plaintiff's arguments. Plaintiff first argues that the community caretaking doctrine does not apply because the Cranston Police Department ("CPD") was "initially engaged in a *potential* criminal investigation." See Docket #43.1, Plaintiff's Memorandum in Support of His Motion for Summary Judgment at 33 (emphasis added). The mere *potential* of a criminal investigation does not prohibit the application of the doctrine. Plaintiff's assertion is based on rank speculation and

[1] Defendants also rely upon the arguments made in its memorandum in support of summary judgment and incorporate those arguments by reference. Defendants will not repeat arguments adequately addressed in that memorandum.

[2] While the motion for summary judgment was pending, Plaintiff filed a second motion to amend his complaint. The motion to amend was granted by the Court. See January 18, 2019, Text Order. The second amended complaint includes additional Fourth Amendment and Due Process claims based on an alleged seizure of the Plaintiff's person. Plaintiff, however, moved for summary judgment on the bodily seizure claims even though they were not included in Plaintiff's First Amended Complaint. Consequently, Defendants now respond to Plaintiff's bodily seizure claims and also cross move for summary judgment on those additional claims.

[3] It is submitted that an analysis under the Fourth Amendment also disposes of the state constitutional claim under Article 1, Section 6. See State v. Foster, 842 A.2d 1047, 1050 n.3 (R.I. 2004) (noting that the Fourth Amendment is "substantively the same as article 1, section 6 of the Rhode Island Constitution").

is contradicted by Plaintiff's own assertions. Plaintiff concedes that this situation was not part of the criminal process. See Plaintiff's Statement of Undisputed Facts at 16, 112; see also Docket #46.1, Exhibit D to Defendants' Statement of Undisputed Facts. Moreover, Plaintiff also concedes that "[t]here was no crime and no criminal investigation" in this matter. See Docket at #43.1, Plaintiff's Memorandum in Support of His Motion for Summary Judgment at 18. This matter was "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." Mataloon v. Hynes, 806 F.3d 627, 634 (1st Cir. 2015). The undisputed facts reflect that the CPD responded to Plaintiff's home as a result of a "wellness check" requested by Mrs. Caniglia. Plaintiff's argument is without merit.

Plaintiff contends that neither the United States Supreme Court nor the Rhode Island Supreme Court has held that the community caretaking exception can justify the warrantless seizure of property from a person's home. See Docket #43.1 at 35. Defendants, however, have supplied the Court with decisions from other courts that have held that the doctrine has been applied to seizures. See Docket #45.1 at 13-25. In fact, more than 35 years ago, the Rhode Island Supreme Court recognized that the community caretaking function includes situations where a police officer acts "as a domestic-relations counselor in an attempt to reconcile two belligerent spouses who at some prior time had solemnly promised to love one another and honor each other . . . ." State v. Cook, 440 A.2d 137, 139 (R.I. 1982).[4]

"The policeman plays a rather special role in our society; in addition to being an enforcer of the criminal law, he is a 'jack-of-all-emergencies,' . . . expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." United States v. Rodriguez-

[4] There is an absence of case law from the Rhode Island Supreme Court on the community caretaking doctrine. Defense counsel could only identify *two* cases that discussed the doctrine.

Morales, 929 F.2d 780, 784-85 (1st Cir. 1991) (citation omitted). Police officers "are not only permitted, but expected to exercise . . . community caretaking functions." Winters v. Adams, 254 F.3d 758, 763 (8th Cir. 2001). "[I]n the course of exercising this noninvestigatory function, a police officer may have occasion to seize a person . . . in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity." Id. (citing United States v. Rideau, 949 F.2d 718, 720 (5th Cir. 1991), reversed on other grounds, 969 F.2d 1572 (5th Cir. 1992)). Another judge in this District has held that a "police officer's community caretaking function justifies the officer's seizure of an individual in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity." Mucci v. Town of North Providence, 815 F. Supp. 2d 541, 545 n.1 (D.R.I. 2011) (internal quotation marks omitted).[5] "An encounter is a function of community caretaking when an officer initiates it to check on an individual's well-being." People v. James, 851 N.E.2d 91, 96 (Ill. App. Ct. 2006). "As community caretakers, officers may enter a home without a warrant when the officer has a reasonable belief that an emergency exists requiring his or her attention." Graham v. Barnette, 17-cv-2920(JNE/SER), 2018 U.S. Dist. LEXIS 210791, at *12 (D. Minn. Dec. 14, 2018) (internal quotation marks omitted) (finding that community caretaking standard was appropriate since officers entered the home on a welfare check).

[5] Defendants submit that there are numerous cases holding that the community caretaking function justifies warrantless seizures outside of the automobile context in addition to those cases cited in its summary judgment memorandum. See e.g. United States v. Gilmore, 776 F.3d 765 (10th Cir. 2015) (community caretaking function allows police officers to seize intoxicated individuals); Samuelson v. City of New Ulm, 455 F.3d 871 (8th Cir. 2005) (police acted pursuant to the community caretaking function when they seized an individual not speaking in a coherent manner and hallucinating and transported him to the hospital); James, 851 N.E.2d 291 (community caretaking function allows seizure so long as it is reasonable under the circumstances); United States v. Bradley, 321 F.3d 1212, 1214 (9th Cir. 2003) (in an emergency situation, police officers are permitted warrantless entry into a house as part of their community caretaking function); Dane County v. Quisling, 2014 Wisc. App. LEXIS 855, 856 N.W.2d 346 (Wisc. Ct. App. 2014) (applying community caretaking function in seizure of individual who made threat of suicide).

CPD officers responded to Plaintiff's residence as a result of a telephone call from Mrs. Caniglia informing police that she and Plaintiff had engaged in a verbal fight and Plaintiff took out a gun and said "shoot me." See Docket #46.1 at 18. Mrs. Caniglia informed the CPD that Plaintiff was depressed. See Defendants' Statement of (Additional) Undisputed Facts at 51. In fact, Mrs. Caniglia hid the magazine because Plaintiff was depressed. Id. at 52. Mrs. Caniglia informed Officer Mastrati that she had an argument with Plaintiff and that during the argument Plaintiff took out a gun and magazine and asked Mrs. Caniglia to shoot him. Docket #46.1 at 21. Mrs. Caniglia specifically informed Officer Mastrati that she was worried that Plaintiff may commit suicide. Id. at 22. Plaintiff admitted to Officer Mastrati that he brought the gun out during the argument with Mrs. Caniglia. Id. at 26. Plaintiff told Officer Mastrati the same thing that Mrs. Caniglia told him. Plaintiff also informed Officer Mastrati that he was "sick of the arguments" and that he said that his wife should "just shoot" him because he "couldn't take it anymore." Id. at 29. At the residence Plaintiff was "very upset" and agitated. Id. at 34, see also Defendants' Statement of (Additional) Undisputed Facts at 61.

Defendants were presented with a situation where (1) Plaintiff and Mrs. Caniglia had engaged in a marital dispute where Plaintiff placed a gun in front of his wife and implored her to shoot him; (2) Mrs. Caniglia informed CPD that Plaintiff was depressed and that she was concerned he would harm himself; (3) Plaintiff had ready access to the gun and ammunition; (4) Plaintiff admitted to taking the gun out and imploring his wife to shoot him; (5) Plaintiff informed CPD that he was "sick of the arguments" and "couldn't take it anymore"; and, (6) Plaintiff was "very upset" and agitated. Defendants could not have known when Plaintiff would return to the residence, or whether he would use the guns to harm himself, or Mrs. Caniglia or

another individual. See generally Sutterfield v. City of Milwaukee, 751 F.3d 542, 570 (7th Cir. 2014); see also Docket #46.1 at 42.[6]

"Police officers providing assistance at the scene of a threatened suicide must concern themselves with more than simply the safety of the suicidal person. Protection of the physical safety of the police officers and other third parties is paramount." People v. Ovieda, 228 Cal. Rptr. 3d 67, 71 (Cal. Ct. App. 2018), petition for review granted, 231 Cal. Rptr. 3d 731 (Ca. 2018); see also United States v. Johnson, No. 4:18CR00151 ERW, 2018 U.S. Dist. LEXIS 190983 (E.D. Mo Nov. 8, 2018) (seizure of gun lawful under community caretaking function). The basis of the proper application of the community caretaking function revolves around reasonableness. See Matalon v. Hynes, 806 F.3d 627, 635 n.5 (1st Cir. 2015). Reasonableness does not depend on any particular factor but involves consideration of the various facts of the case. Lockart-Bembery v. Sauro, 498 F.3d 69, 75 (1st Cir. 2007). Moreover, reasonableness is determined from an objective standpoint. Damon v. Hukowicz, 964 F. Supp. 2d 120 (D. Mass. 2013). Under the *particular* circumstances faced by CPD, it was reasonable to *temporarily* remove the firearms from the house for safekeeping purposes pursuant to the "flexible" community caretaking function. See generally Lockhart-Bembery, 498 F.3d at 75; see also Sutterfield, 751 F.3d 542.

Plaintiff appears to argue that he denied having any suicidal tendencies and thus the CPD simply should have left his premises. Officer Mastrati, however, was not convinced by

[6] Defendants also contend that this matter involved a matter of exigency. See Richer v. Parmelee, 189 F. Supp. 3d 334, 342 n.8 (D.R.I. 2016); see also Ball v. United States, 185 A.3d 21, 25 (D.C. 2018) (noting that courts "have recognized three related doctrines pursuant to which the police have been authorized to enter dwellings without a warrant: the 'exigent circumstances' doctrine, the 'emergency aid' doctrine, and the 'community caretaker" doctrine, and the differences among these doctrines has not always been clear"); Olson v. State, 56 A.3d 576 (Md. App. Ct. 2009) (community caretaking doctrine is related to exigent circumstances and sometimes is used interchangeably). Defendants submit that there were exigent circumstances and a compelling "necessity for immediate action . . ." United States v. Caballero, No. 16-cr-30034-MGM, 2018 U.S. Dist. LEXIS 182505, at *16 (D. Mass. Oct. 24, 2018); Quisling, 2014 Wisc. App. LEXIS 855 at *5 (threat of suicide presents a public interest and exigency).

Plaintiff's denial. Docket #46.1 at 36. "Threats of suicide must be taken seriously, and the danger is not necessarily dissipated by the apparent subsidence of the threat – for example, such persons can and do paper over the problem by feigning calmness, only to return to that dangerous mindset when another stressor arises." Bloom v. Palos Heights Police Department, 840 F. Supp. 2d 1059, 1068 n.7 (N.D. Ill. 2012); see also Quisling, 2014 Wisc. App. LEXIS 855 at *9 (a suicidal individual denying he is suicidal "could be seen, given the totality of the circumstances, as just an effort to push off police officers so he could do something potentially fatal to himself and other people as well").

Plaintiff also argues that Defendants may not invoke the community caretaking doctrine because there is no specific CPD general order outlining the Doctrine. There is no legal requirement that a police department's policies and procedures must apply to every conceivable and foreseeable situation that a police officer may face. United States v. Rodriguez-Morales, 929 F.2d 780, 787 (1st Cir. 1991). Officer Mastrati testified that, as a result of his training, he believed that he had the legal authority to seize weapons from suicidal individuals but that he would contact a supervisor and he or she would make the final decision regarding seizure. Defendants' (Additional) Statement of Undisputed Facts at 55. Officer Smith echoed Officer Mastrati's testimony. Id. at 57. Officer Barth testified that he was familiar with the community caretaking doctrine. Id. at 58. He testified that the doctrine involved the "rights of police officers when it comes to public safety." Id. Officer Barth testified that he was not sure if the specific term "community caretaking" was ever used in training or whether it was in a particular policy, however, he was familiar with the theory behind the doctrine in so far as it concerns public safety and the police acting in non-criminal situations. Id. at 59. Officer Barth believed that police officers need to maintain public safety "whether it's an individual who wants to do

harm to themselves or do harm to others" and it's not a criminal matter and "it's up to the police department to maintain safety and order of the public." Id. at 60. Moreover, he noted that "sometimes there could be exceptions to search and seizure rules [with respect to] maintaining public safety." Id.

Captain Henry also testified that he was aware of the community caretaking doctrine and hears about it periodically. His understanding of the doctrine is that "courts recognize that law enforcement needs to take certain actions relative to the Fourth Amendment without a warrant that pertains to public safety functions or emergencies." Id. at 63. He testified that he believes that the community caretaking doctrine is synonymous with public safety. Id. at 65. Captain Henry may have learned about the community caretaking doctrine in formal education or from materials he has read because he tries to keep current on the topic by reading court cases. Id. at 66. Captain Henry testified that although the specific phrase "community caretaking" may not have come up in a specific training – the theory may have been discussed in training even though the particular phrase was not used. Id. at 67. The mental health training that the CPD receives encompassed the concept of the community caretaking doctrine. Id. at 68. The CPD has also been trained on the community caretaking doctrine as it relates to exceptions to the search warrant requirement. Id. at 69.[7] Both Mastrati and Smith testified that supervisors make the decision to seize firearms in instances of threats of suicide. It is undisputed that both Officers Barth and Henry were supervisors who were consulted about the seizure of Plaintiff's firearms. Both Officers Barth and Henry were adequately versed in the application of the community caretaking doctrine. The decision to seize was based on public safety.

[7] Plaintiff admits that CPD officers are aware of the doctrine's application in the automobile context. See Docket #43.1, Plaintiff's Memorandum in Support of His Motion for Summary Judgment at 42.

Moreover, the requirements of the Fourth Amendment are satisfied in connection with a police officer's performance of his or her community caretaking function "so long as the procedure employed (and its implementation) is reasonable." Rodriguez-Morales, 929 F.2d at 785. In community caretaking cases, however, a determination of what is reasonable "almost always involves" considering an officer's "exercise of discretion." Id. at 786. Because the need for police to function as community caretakers usually arises from unexpected circumstances that need to be dealt with promptly, the "police cannot sensibly be expected to have developed, in advance, standard protocols running the entire gamut of possible eventualities." Id. at 787. Police officers must be "free to follow 'sound police procedure'" – that is – "to choose freely among the available options, so long as the option chosen is within the universe of reasonable choices." Id. Where police have "solid, noninvestigatory reasons" for their community caretaking function "there is no need for them to show that they followed explicit criteria . . . as long as the decision was reasonable." Id. at 787. In the end, what governs the analysis is whether or not the exercise of the officer's community caretaking function was objectively reasonable under the circumstances. See generally id.

Plaintiff also argues that "simply as a dramatic gesture" he placed the gun in front of his wife and implored her to end his life. Docket #43.1, Plaintiff's Memorandum in Support of His Motion for Summary Judgment at 42. Plaintiff asserts that Defendants based their reaction on this "dramatic gesture" alone. Id. at 43. Not only does Plaintiff's argument confirm his refusal to acknowledge the seriousness of his actions, but it misstates Defendants' reasons for the response to the situation. Plaintiff's so-called "dramatic gesture" caused his wife to believe that he would end his life and compelled her to contact emergency responders to accompany her to her house because she was fearful of what she would find. Plaintiff's actions placed his wife in a

position where she did not feel comfortable returning to her own residence alone. It is submitted that that fact alone speaks volumes. Defendants' response was based on the totality of the circumstances, including, but not limited to: (1) Plaintiff and his wife had engaged in an argument, (2) Plaintiff had taken out a gun and implored his wife to shoot him, (3) Plaintiff's wife left the residence and stayed at a motel overnight, (4) Plaintiff's wife contacted police and expressed her concern that Plaintiff was depressed and that he would harm himself or commit suicide, (5) Plaintiff had ready access to a firearm and ammunition; and (6) Plaintiff was upset and agitated that his wife contacted police. It is submitted that the community caretaking function supports Defendants' seizure of Plaintiff's firearms.[8]

D. Plaintiff's Claim Alleging Unlawful Seizure of His Person Fails Because He Was Voluntarily Transported to the Hospital. However, Even if He Was Somehow "Required" to be Transported to the Hospital, the Claim Would Still Fail Because the Alleged Seizure Would be Consistent With the Fourth Amendment.

Plaintiff contends that Defendants violated the Fourth Amendment when they "require[ed] him to submit to a psychological evaluation without a court order. . . ." See Docket # 51, Second Amended Complaint at ¶ 78. First, it is Defendants' position that Plaintiff voluntarily agreed to be transported to the hospital and thus Plaintiff's claim fails. See Defendants' Statement of Disputed Facts at 100, 105. Even if, however, the undisputed facts supported the premise that Defendants required Plaintiff to be transported to the hospital, Plaintiff's Fourth Amendment claim would still fail.

[8] In this Court's decision in Richer v. Parmelee, 189 F. Supp. 3d 334 (D.R.I. 2016), a similar case to this matter, the Court held that when a police department is "summoned by a member of a household to diffuse a domestic dispute involving alleged suicidality, the [police department] has a critical interest in empowering its police officers to remove objects 'dangerous in themselves,' including firearms, from the premises. Richer, 189 F. Supp. 3d at 340 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 470 (1971)). Plaintiff now contends that "nothing on page 470 of Coolidge . . . nor in the rest of the decision supports that proposition of law." Docket #43.1, Plaintiff's Memorandum in Support of His Second Motion For Partial Summary Judgment at 17. Plaintiff is mistaken. The Court's premise and reference to objects "dangerous in themselves" is appropriately referred to in Coolidge. See Coolidge, 403 U.S. at 471.

The First Circuit has recognized that the Fourth Amendment's "safeguards against unreasonable seizures extend[s] to protective custody on mental health grounds." Alfano v. Lynch, 847 F.3d 71, 77 (1st Cir. 2017). A police officer must have probable cause to seize a person for mental health reasons. Ahern v. O'Donnell, 109 F.3d 809, 817 (1st Cir. 1997) (per curiam). Generally, probable cause exists if, the "facts and circumstances reasonably believed by the [CPD] officers indicated that [Plaintiff] presented a likely threat of serious harm to himself or others by reason" of his actions. Id. at 817; see also Ferreira v. City of East Providence, 568 F. Supp. 2d 197, 214 (D.R.I. 2008) (Fourth Amendment requires "an official seizing and detaining a person for a psychiatric evaluation to have probable cause to believe that the person is dangerous to himself or others").

Law "enforcement personnel render assistance to suicidal individuals at the scene, virtually always in response to emergency calls. They must take the individual and their environment as they find them." Ferreira, 568 F. Supp. 2d at 211. In evaluating probable cause, courts analyze "the objective facts, not . . . the actors' subjective intent." United States v. Sanchez, 612 F.3d 1, 6 (1st Cir. 2010). "Consequently, an officer's subjective belief that he or she lacked probable cause is not dispositive where the facts support an objective finding that the standard has been satisfied." United States v. Silva, 742 F.3d 1, 8 (1st Cir. 2014). "Probable cause only requires a probability of . . . activity, not a prima facie showing of such activity." United States v. Gilmore, 776 F.3d 765, 769 (10th Cir. 2015). A conclusion that probable cause exists "need not be ironclad, or even highly probable," it only need be *reasonable*. Toney v. Perrine, No. 06-cv-327-SM, 2007 U.S. Dist. LEXIS 67255, at *13 (D.N.H. Sept. 10, 2007). A showing of probable cause in the mental health seizure context requires only a "probability or substantial chance" of dangerous behavior, not an actual showing of such behavior. Monday v.

Oulette, 118 F.3d 1099, 1102 (6th Cir. 1997) (citing Illinois v. Gates, 462 U.S. 213, 245 n.13 (1983). "Particularly when the potential danger is death, a risk may be substantial even when there is some room for doubt." Estate of Hill v. Richards, 525 F. Supp. 2d 1076, 1087 (W.D. Wisc. 2007).

A police officer is "justified in relying upon a citizen's warning that another person has threatened suicide even it is later determined by mental health professionals that the person presents no such risk." Bayne v. Provost, 1:04-CV-44, 2005 U.S. Dist. LEXIS 40889, at *8 (N.D.N.Y. August 4, 2005) (emphasis added). In this instance CPD was informed that Plaintiff was depressed and suicidal by an individual who knew Plaintiff intimately, his wife of more than ten years. Furthermore, an officer need not explore every "theoretically plausible" defense before taking the person into custody for a mental health evaluation. Id. at *23; see also Matthews v. City of New York, No. 15-CV-2311 (ALC), 2016 U.S. Dist. LEXIS 136907 (S.D.N.Y. Sept. 30, 2016) (suicide threats naturally call for more reliance on the informant and less independent evaluation). Probable cause focuses on the collective knowledge of all officers *at the time of the event* and considers the totality of the circumstances. United States v. Acevedo-Vazquez, No. 16-642, 2018 U.S. Dist. LEXIS 168386 (D.P.R. Sept. 27, 2018).

In Bloom v. Palos Heights Police Department, 840 F. Supp. 2d 1059 (N.D. Ill. January 4, 2012), officers were dispatched to a residence as a result of a 911 call precipitated by two teenagers engaged in an argument with the parents of one of the teenagers. Id. at 1063. The parent of a male teenager reported to 911 that a female teenager had made comments about cutting herself. Id. The 911 caller advised the police that the female teenager "was contemplating suicide and had a knife to her throat." Id. at 1064. Officers entered the house without a warrant and found both teenagers sitting on the couch. Id. The officers did not find a

knife near the teenagers and the female teenager told officers that she was not trying to commit suicide. Id. The officers, however, removed the female teenager from her home against her will and transported her to the hospital. Id. The officers did not make an application for admission to the hospital pursuant to the applicable state statute. Id. The female teenager underwent a psychiatric evaluation and was eventually discharged from the hospital after several hours. Id.

The female teenager's mother brought suit alleging that the officers violated the teenager's Fourth Amendment rights when they purportedly "unlawfully seized" her to allow for the mental health evaluation. Id. at 1065. The plaintiff also argued that officers were required to complete an application to admit the teenager to the hospital pursuant to the applicable state statute providing for emergency admission into a mental health facility. Id. at 1066. The court first determined that the state emergency admission statutory scheme did not apply because the statute only applied when "immediate hospitalization is necessary" and the female teenager was not *admitted* to the hospital for treatment. Id. As a result, the court concluded that the officers were not "require[d] . . . to complete any paperwork." Id.

The court next turned to the Fourth Amendment question of whether the officers were legally justified in entering the house and seizing the female teenager. Id. at 1068. The court noted that legal justification existed if the officers "had a reasonable belief that [the female teenager] was going to harm herself." Id. The court noted that the male teenager's mother had contacted the police and informed police that the female teenager was contemplating suicide and had a knife to her throat. Id. The court found that that information was "surely enough for a reasonable officer to believe that [the female teenager] was in danger of harming herself." Id.

In dismissing the Fourth Amendment claim, the court held that *probable cause* was not eradicated because the female teenager never held a knife to her throat or because she informed

the officers that she had no intention of committing suicide. Id. The court held that the ultimate truth about these allegations was irrelevant – what was relevant – was whether a prudent officer, confronted with the statement concerning suicide and other facts and circumstances at the scene, could have believed that the female teenager constituted an immediate danger to herself. Id.; see also Monday, 118 F.3d at 1102-1103 (even if individual denied overdose attempt and advised officers he kept some pills with his ex-wife, and police confirmed this with his ex-wife, it would have been reasonable for officers to conclude that, given the great potential harm at issue, an unacceptable risk remained that the individual was deceiving officers in order to attain his goal of committing suicide).

The Bloom court found that the officers "did not completely" put their faith in either the male teenager's mother or the female teenager – "deferring instead to mental health professionals at the [h]ospital." Bloom, 840 F. Supp. 2d at 1068. The court found that deferring to mental health professionals was reasonable considering the female teenager's threat. Id. The court held that the officers

> had reason to believe that [the female teenager] had threatened to harm herself, and they were not required to stop investigating when [she] told them that nothing was amiss. They acted reasonably under the circumstances by turning to professionals, rather than forming their own lay opinions about [her] mental health. Consider for a moment the possible consequences of the [o]fficers acting solely on their own lay opinions and leaving the scene. Had [the female teenager] actually been suicidal, such conduct by the [o]fficers would have created a risk to her life. Briefly seizing her and bringing her for an expert evaluation was reasonable in light of the potential risk.

Id. at 1068-69; see also Hall v. Fremont, 520 F. App'x 609, 611 (9th Cir. 2013) ("[w]e are aware of no case that would preclude a reasonable officer from believing there was probable cause to detain a person who alluded to committing suicide"); Cantrell v. City of Murphy, 666 F.3d 911

(5th Cir. 2012) (suicidal statements could have given a reasonable police officer sufficient basis to believe that individual was a danger to herself).

The probable cause standard is a "relatively low threshold" and need not be "unquestionably accurate." Winfield v. Town of Andover, 305 F. Supp. 3d 286, 295 (D. Mass. 2018) (internal quotation marks omitted). The "existence of probable cause for mental health seizures is not easily reduced to bright line rules . . . ." Livington v. Kehagias, No. 5:16-cv-906-BO, 2018 U.S. Dist. LEXIS 116079, at *37 (E.DN.C. July 12, 2018). It is submitted that, even if Defendants "required" Plaintiff to be transported to the hospital, that decision surely passes the "low threshold" of probable cause. Winfield, 305 F. Supp. 3d 286, 295. CPD officers responded initially to Scrambler's Restaurant and then to Plaintiff's residence as a result of a wellness assistance call made by Mrs. Caniglia. Mrs. Caniglia informed CPD that (1) her husband was depressed; (2) she and Plaintiff had "gotten into a verbal fight;" (3) Plaintiff took a gun and said "shoot me;" (4) Plaintiff took the gun *and magazine* and threw it on the table; (5) she spent the night in a hotel; and (6) she "hid the gun" and put the magazine in a drawer. At Scramblers, Mrs. Caniglia informed Officer Mastrati that she had an argument with Plaintiff and that during the argument Plaintiff took out an unloaded firearm and a magazine and asked Mrs. Caniglia to use it on him. Mrs. Caniglia specifically informed Officer Mastrati that she was concerned that Plaintiff may commit suicide. Upon arriving at the residence, Plaintiff informed Officer Mastrati that he had taken out the gun during the argument and confirmed what Mrs. Caniglia had informed Mastrati. Plaintiff informed Officer Mastrati that he was sick of arguing with his wife, "couldn't take it anymore" and told his wife to "just shoot him." See Docket #46, Defendants' Statement of Undisputed Facts at 29. Plaintiff was also very upset that Mrs. Caniglia had contacted CPD. Moreover, when officers inquired about Plaintiff's mental health, he informed

them it was none of their business. See Docket #44, Plaintiff's Statement of Undisputed Facts at 82. In spite of Plaintiff's belief that the CPD officers and this Court should accept his denials over his wife's unequivocal concerns about suicide the NSPD requested that Plaintiff consider being transported to the hospital. Defendants had probable cause for a mental health seizure and did not violate the Fourth Amendment. See generally Morrison v. Board of Trustees, 529 F. Supp. 2d 807 (S.D. Ohio 2007) (officers had probable cause to seize an individual when they responded to a dispatch call that a suicide threat had been made by an individual and the individual admitted to police that she told her mother she should just kill herself).

In their memorandum supporting the motion for summary judgment, Defendants argued that the individual officers were entitled to qualified immunity with respect to the seizure of the weapons. See Defendants Memorandum in Support of Their Motion for Partial Summary Judgment at 25-29; Docket # 45.1. Defendants have not identified any case law in the First Circuit or in Rhode Island dealing with a warrantless seizure (of property or an individual) related to transporting an individual to a hospital as a result of a suicide threat. It is submitted that no reasonable officer would have understood whether seizing Plaintiff's guns and/or Plaintiff's person to transport him to the hospital, pursuant to the officers' community caretaking function, violated Plaintiff's constitutional rights. See generally Conlogue v. Hamilton, 906 F.3d 150 (1st Cir. 2018) (in a qualified immunity analysis an officer cannot be liable *unless plaintiff can show* that the right implicated was "clearly established" and an "objectively reasonable officer" would have known that his or her conduct violated the law); see also Graham, 2018 U.S. Dist. LEXIS 210791 at *14 (noting that "[b]ecause of the dearth of community caretaking cases, there are few bright lines and officers should not be faulted for guessing"); see generally

Escalera-Salgado v. United States, 911 F.3d 38 (1st Cir. 2018) (when defendant invokes qualified immunity, the burden is on the plaintiff to show that the defense is inapplicable).

In MacDonald v. Town of Eastham, 745 F.3d 8 (1st Cir. 2014), the First Circuit noted that Circuit Courts of Appeal are divided on the question of whether the community caretaking function applies to police activities in a person's home. Id. at 13. In addition, the Court also held that that question is a complicated one because "courts do not always draw fine lines between the community caretaking exception and other exceptions to the warrant requirement" and because courts juxtapose the community caretaking and emergency exceptions. Id. Notwithstanding this juxtaposition, the "same sort of disarray is evident in the manner in which courts have attempted to define the interface between the exigent circumstances exception to the warrant requirement and the community caretaking exception." Id. "Given the profusion of cases pointing in different directions, it is apparent that the scope and boundaries of the community caretaking exception are nebulous." Id. at 14.

Defense counsel has found no case from the First Circuit dealing with a warrantless seizure of an individual and property conducted in relation to a reported threat of suicide where the individual informed police he was not suicidal. In the absence of case law clearly establishing that right that Officers allegedly violated, Defendants submit that no reasonable officer would have understood whether seizing (the weapons and/or Plaintiff), under these particular circumstances, violated Plaintiff's constitutional rights.

E. Defendants Did Not Violate Plaintiff's Right To Due Process By Transporting Plaintiff to the Hospital or Seizing His Firearms Without Court Orders.

Plaintiff next argues that Defendants violated his right to due process under the Fourteenth Amendment and Art. I, Sec. 2 of the Rhode Island Constitution by requiring Plaintiff to have a mental health evaluation and seizing his firearms without court orders. Defendants first

note that despite moving to amend the complaint while the summary judgment motion was pending, Plaintiff's Second Amended Complaint only includes a due process claim concerning the seizure and retention of his weapons. See Docket # 51, Second Amended Complaint at ¶ ¶ 79-80. The Second Amended Complaint does not include a due process claim based on a purported seizure of Plaintiff. See generally id. Generally, courts do not entertain claims on summary judgment which do not appear in the complaint. Ruiz-Rivera v. Pfizer Pharms., LLC, 521 F.3d 76, 84 (1st Cir. 2008). "The fundamental purpose of our pleading rules is to protect a defendant's inalienable right to know in advance the nature of the cause of action being asserted against him." Id. (internal quotation marks omitted) (affirming summary judgment where claim was not sufficiently plead in amended complaint). Plaintiff's due process claim based on his alleged seizure related to the mental health evaluation should be dismissed as a matter of law because it is not plead in the complaint.[9]

Notwithstanding the complaint, however, both due process claims fail because they are properly Fourth Amendment claims. See Ahern v. O'Donnell, 109 F. 3d 809, 818-819 (1st Cir. 1997) (holding that the Fourth Amendment protection against unreasonable seizures "more specifically applies" to an alleged unlawful mental health seizure and thus defines what process is due). "[A]s long as a claim is properly brought under the Fourth Amendment, a plaintiff may not assert a substantive or procedural due process claim." Asten v. City of Boulder, 652 F. Supp. 2d 1188, 1206 (D. Colo. 2009). "[T]he Fourth Amendment's protection against unreasonable searches and seizures more specifically applies to [Plaintiff's] situation than the Fourteenth Amendment's general . . . procedural due process guarantees. In this context, procedural due process affords [Plaintiff] no more protection than [his] right to be free from unreasonable

[9] In the event that the Court accepts Plaintiff's unplead claim, Defendants now also cross move for summary judgment on the claim.

seizure." Pino v. Higgs, 75 F.3d 1461, 1469 (10th Cir. 1996). Plaintiff's due process seizure claims therefore fail as a matter of law because they are clearly Fourth Amendment claims.

The claims fail for other reasons. To ascertain the procedural protections to which Plaintiff was entitled to, the Court weighs three competing interests – the private interest that will be affected by the official action; the risk of erroneous deprivation of such interest through the procedures used and the probable value if any of additional or substitute procedural safeguards and last, the Government's interest. Richer, 189 F. Supp. 3d at 339.

Here, Plaintiff's alleged due process seizure of his person violation took place during the time between when Plaintiff was transported to the hospital and his time at the hospital. Plaintiff was not admitted to the hospital and left the hospital on the same day he was transported to the hospital. Thus, Plaintiffs deprivation is, at most, strikingly "slight." Ellison v. Hobbs, No. 3:17-cv-16-TCB, 2018 U.S. Dist. LEXIS 164857, at *34 (N.D. Ga. September 25, 2018). Thus, this weighs against a finding a procedural due process violation. Id. Moreover, the Government's interest is "hefty" when contrasted against the scale of Plaintiff's deprivation. Id. at *34-35. In transporting a suicidal individual to the hospital, the state's "police power and parens patriae interests are implicated." Id. Moreover, Plaintiff has at least one post deprivation remedy that he could have pursued – "state-tort-law causes of action against [his] alleged captors, which would in this instance satisfy due process." Id. at *36. In a procedural due process claim, the "unavailability of constitutionally-adequate remedies" under state law is "critically important." Rumford Pharmacy, Inc. v. City of East Providence, 970 F.2d 996, 999 (1st Cir. 1992). The constitutional deprivation under § 1983 is not complete "unless and until the State fails to provide due process." Id. State law tort causes of action are adequate to remedy Plaintiff's alleged deprivation. Plaintiff has not taken advantage of those remedies and found them

wanting. As a result, his claim fails. See generally id.; see also Ellison, 2018 U.S. Dist. LEXIS at *37 ("[i]f adequate state remedies were available but the plaintiff failed to take advantage of them, the plaintiff cannot rely on that failure to claim that the state deprived him of procedural due process").

It also appears that Plaintiff argues that Defendants violated due process by not affording him notice and an opportunity to be heard *before* the seizure of his guns. This Court disposed of a similar argument in Richer. In Richer, under similar circumstances concerning a seizure of guns from an individual who made suicidal threats, this Court held that (1) the seizure was necessary to secure an important government interest, (2) there was a special need for prompt action, and (3) the police department had sufficient information to determine if the seizure was justified. Richer, 189 F. Supp. 3d at 342 n.8 (noting that the plaintiff in Richer's "situation meets these requirements, and presents exigent circumstances that would have made a pre-deprivation hearing practically inconceivable"). Defendants submit that in this instance, like Richer, (1) the seizure was necessary to secure an important government interest, (2) there was a special need for prompt action, and (3) the police department had sufficient information to determine if the seizure was justified. See generally id. Moreover, exigency would have made a pre-deprivation hearing inconceivable. Richer, 189 F. Supp. 3d at 342 n.8.[10]

The public certainly has an interest in preventing suicide. See generally Quisling, 2014 Wisc. Appl LEXIS 855. The "temporary deprivation of firearms following a suicide intervention is not comparable to the kinds of government conduct that have required a predeprivation hearing . . . ." Wellman v. St. Louis County, 255 F. Supp. 3d 896, 905 (E.D. Mo. 2017), aff'd 732 F. App'x 493 (8th Cir. 2018) (per curiam). The CPD had a "substantial interest" in acting quickly to

[10] Considering the parties confusion concerning the motion with respect to Plaintiff's due process claim, Defendants now also cross move for summary judgment on this aspect of Plaintiff's due process claim.

remove the weapons and retaining them until they could ascertain that the danger had passed. Wellman, 255 F. Supp, 3d at 905. The CPD had reason to believe that Plaintiff posed a danger to himself and had reason to believe the Plaintiff's suicidality was caused by domestic difficulties. See generally id. "Though [Plaintiff] had left for the hospital when the police seized his firearms, the police did not know how quickly or in what condition he would return." Id. Like this Court, the Eastern District of Missouri held that "in these circumstances, [the police] had a critical interest in empowering its police officers to remove objects 'dangerous in themselves,' including lethal firearms, from the premises." Id. (quoting Richer, 189 F. Supp. 3d at 340). In this instance, the CPD seized Plaintiff's weapons because they had reason to believe he posed a danger to himself and/or others – "circumstances that prohibit[] or mak[e] impractical a reasonable predeprivation process." Wellman, 255 F. Supp. 3d at 907.

The Court, however, need not enter into this fray. Plaintiff has failed to avail himself to state law process – specifically a tort claim. See Rumford Pharmacy, 970 F.2d 996. Plaintiff has not taken advantage of that remedy and found it wanting. In fact, Plaintiff now brings a tort claim for the alleged seizure. Plaintiff's claim therefore fails as a matter of law. See generally id.

F. Defendants Did Not Violate the Rhode Island Mental Health Law.

Plaintiff contends that Defendants violated the Rhode Island Mental Health Law, R.I. Gen. Laws § 40.1-5-1 et seq. when they "require[d]" Plaintiff to submit to a mental health evaluation. Docket #43.1, Plaintiff's Memorandum In Support of His Motion for Summary Judgment at 30. Plaintiff argues that Defendants violated R.I. Gen. Laws § 40.1-5-7 by not obtaining emergency certification from a physician and § 40.1-5-8 by not filing a petition in district court. Even if the record reflected that Defendants required Plaintiff to submit to a

mental health violation, it is submitted that Defendants did not violate the Rhode Island Mental Health Law.

First, Defendants contend that Plaintiff voluntarily agreed to be transported to the hospital. Consequently, Plaintiff's claim fails from the start. Second, as noted in Defendants' memorandum in support of their motion for partial summary judgment, it is undisputed that (1) Defendants did not make an application for a medical certification; (2) Defendants did not request that Plaintiff be admitted into a facility; and (3) Plaintiff was not admitted into a facility. Section 40.1-5-7 provides that "[a]n application for certification . . . shall be in writing and filed with the facility to which admission is sought." Id. at (b) (2008) (emphasis added). Because Defendants did not seek admission into a facility and only transported Plaintiff to a physician who could evaluate Plaintiff, Defendants did not violate § 40.1-5-7. See also In re Briggs, No. P.M. 05-5598, 2010 R.I. Super. LEXIS 38, *46 (R.I. Super. Ct. Feb. 19, 2010) (§ 40.1-5-7 "makes provisions for emergency certification for admission into a suitable psychiatric in patient facility") (emphasis added), aff'd, 62 A.3d 1090 (R.I. 2013); see generally Bloom, 840 F. Supp. 2d 1059 (state law statutory scheme did not apply because the Plaintiff was not admitted into the hospital).

In addition, Defendants did not violate § 40.1-5-8 because that provision did not apply. Section 40.1-5-8 applies in "nonemergent" situations. Santana v. Rainbow Cleaners Inc., 969 A.2d 653, 662 (R.I. 2009). This was clearly an emergency as Plaintiff had put a handful of pills in him mouth and made at least one suicidal statement. Moreover, § 40.1-5-8 provides that the petition for certification may be filed in the district court by

> any person with whom the subject of the petition may reside; or at whose house he or she may be; or the father or mother, husband or wife, brother or sister, or the adult child of any such person; the nearest relative if none of the above are available; or his or her guardian; or the attorney general; or a local

> director of public welfare; or the director of the department of behavioral healthcare, developmental disabilities and hospitals; the director of the department of human services; or the director of the department of corrections; the director of the department of health; the warden of the adult correctional institutions; the superintendent of the boys training school for youth, or his or her designated agent; or the director of any facility, or his or her designated agent . . . .

Id. at (a) (2008). The statute does not require the police to file the petition.

Furthermore, Plaintiff brings his claim pursuant to R.I. Gen. Laws § 9-1-2. In order to recover under § 9-1-2 Plaintiff must show that he was injured as a result of a crime. Zarella v. Minn. Mutual Life Insurance Co., 824 A.2d 1249, 1261 (R.I. 2003). The statutory scheme does not provide for any specific penalties (criminal or otherwise) for a purported violation of R.I. Gen. Laws §§ 40.1-5-7 or 40.1-5-8. Consequently, Plaintiff cannot base his claim on any purported violation of these sections.[11]

G. Conversion

Plaintiff's conversion argument is mainly based on cases interpreting Massachusetts state law. Defendants rely upon arguments laid out in its memorandum in support of its motion for partial summary judgment and simply add that no Defendant can be held individually liable to a third party for any acts performed within the scope of their employment. Kennet v. Marquis, 798 A. 2d 416, 418 (R.I. 2002) ("[i]t has long been settled that an agent acting on behalf of a disclosed principal is not personally liable to a third party for acts performed within the scope of his authority").

[11] Moreover, even if it did, the City cannot commit a crime or be an offender. See Docket #45.1 at 8-11.

H. Affirmative Defenses[12]

Plaintiff argues that Defendants have no statutory or common law immunity. Notwithstanding Defendants' qualified immunity arguments, Defendants also submit that R.I. Gen. Laws § 9-31-3 applies to the claim. Plaintiff relies on L.A. Realty v. Town Council, 698 A.2d 202 (R.I. 1997) for the proposition that § 9-31-3 does not apply to § 1983 cases if it would cause Plaintiff's remedy to be inadequate. See Docket #43.1 at 48. Defendants submit that the statutory cap on damages in § 9-31-3 would not be inadequate considering Plaintiff's alleged damages. Moreover, a purported damages amount can only be determined once all claims are fully evaluated – either on summary judgment or at trial. Consequently, Defendants submit that Plaintiff's reliance on L.A. Realty is misplaced.

Plaintiff also argues that the public duty doctrine does not apply to this matter. Plaintiff contends that the public duty doctrine only applies to negligence actions and not intentional torts. A court in this District, however, has recently applied the public duty doctrine to the intentional tort of defamation. See Haptonstahal v. Pawtucket Police Department, No. 18-184 WES, 2018 U.S. Dist. LEXIS 186997 (D.R.I. Nov. 1, 2018). In Haptonstahal, the plaintiff brought a defamation action against Pawtucket Police Officers. Id. Pursuant to the public duty doctrine "Rhode Island Government entities . . . are shielded from tort liability when engaged in activities which could not and would not in the ordinary course of events be performed by a private person at all." Id. at *6 (internal quotation marks omitted). Those activities include "the exercise of the police power through officers authorized and empowered by the state to perform a police function." Id. at *7 (internal quotation marks omitted). Because Plaintiff's allegations concern

[12] Courts are generally disinclined to strike affirmative defenses. Bank of Am., N.A. v. Fay, No. PC-2016-1618, 2018 R.I. Super. LEXIS 64, at *5 n.5 (R.I. Super. Ct. June 29, 2018)

the behavior of NSPD officers while performing a police function, Plaintiff's conversion claim against the Town is barred. See generally id.

III. Conclusion

For the reasons outlined above, and for the reasons outlined in Defendants' memorandum in support of their motion for partial summary judgment, Plaintiff's motion for partial summary judgment should be denied.

Defendants,
By their attorneys,

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CERTIFICATION OF SERVICE

I hereby certify that the within document has been electronically filed with the Court on this 30th day of January 2019 and is available for viewing and downloading from the ECF system.

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