

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

v.

ROBERT F. STROM as the
Finance Director of
THE CITY OF CRANSTON, et al.
Defendants

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C.A. No. 15-525

DEFENDANTS' STATEMENT OF DISPUTED FACTS

1. Plaintiff Edward ("Ed") Caniglia is 68 years old. (Plaintiff's Answers to Defendant City of Cranston's Interrogatories at Answer No. 1, attached as Exhibit A). He has been married to Kim Caniglia since 1993. (E. Caniglia depo. at p. 11, excerpts attached as Exhibit Q). They have never filed for divorce. (*Id.* at pp. 67-68, 82-83).

Undisputed.

2. Col. Winquist joined the Rhode Island State Police in 1990 after attending the State Police Academy. (Winquist depo. pp. 10-11, excerpts attached as Exhibit B).

Undisputed.

3. Col. Winquist was told while with the State Police that he could require a person to submit to a mental health evaluation at a hospital emergency room without obtaining a court order if that person was in imminent danger of harming himself or someone else. (Exhibit B at pp. 18-20).

Objection. Any reference to the Rhode Island State Police ("R.I.S.P.") in Plaintiff's Statement of Undisputed Facts is irrelevant.¹ Disputed insofar as Colonel Winquist

¹ Defendants propound a continuing objection to any and all references to the Rhode Island State Police contained in Plaintiff's Statement of Undisputed Facts as being irrelevant.

testified that he was told by his superior officers at R.I.S.P. that “if somebody was in imminent danger of harming themselves or somebody else, then we could take them either voluntarily or involuntarily to the local emergency room at a hospital for the purpose of a mental health evaluation.” Exhibit 1; June 20, 2018 Deposition Transcript of Colonel Michael Winquist at 18-19.

4. Moreover, Col. Winquist was told he had the authority in those circumstances to seize firearms without a court order to protect the public. (Id. at p. 20).

Disputed insofar as Colonel Winquist testified that he was told by senior members of the RISP that members of the RISP have a “responsibility to be community caretakers, and that our role is to make sure that if somebody is in imminent danger, you can take a person to get evaluated, and you can seize property, such as firearms, to protect the public.” Exhibit 1 at 20.

5. Col. Winquist was told this was part of the community caretaking function. (Id. at p. 20).
The community caretaking function was not embodied in any written document nor was Col. Winquist taught any legal basis for the function. (Id. at pp. 21-22).

Disputed insofar that Colonel Winquist’s understanding of the community caretaking function is consistent with the disputed facts noted in 3 and 4 above. He testified that he did not “recall” if he ever saw any “written document that authorized the State Police to either require a psychiatric evaluation or to seize property.” Colonel Winquist testified that he “did not recall” if he was told the legal authority for the community caretaking function. Exhibit 1 at 21, 22.

6. Col. Winquist is not aware of any statute that embodies the community caretaking function. (Id. at p. 31). Prior to 2017, there was no statute that authorized police to require a person to

have a psychiatric evaluation. (Id.). Prior to 2018, there was no statute that authorized police to seize a person's firearms when that person was a danger to himself or others. (Id. at pp. 30-31).

Undisputed insofar as Colonel Winkvist testified as to his understanding.

7. There was no written policy or procedure that set forth the State Police's authority to seize firearms or to require persons to submit to psychiatric examinations without a court order. (Id. at pp. 22-23).

Disputed. Colonel Winkvist testified that he did not recall seeing a written policy or procedure that set forth the RISP's authority to require an individual to submit to a psychiatric evaluation or to seize property pursuant to the community caretaking function. Exhibit 1 at 22, 23.

8. Col. Winkvist was with the State Police until 2014 when he was hired to be the Colonel of the Cranston Police Department. (Id. at p. 13).

Undisputed.

9. The State Police eventually became accredited by the Commission for Accreditation of Law Enforcement ("CALEA"). (Id. at pp. 15, 21). Col. Winkvist was involved in the accreditation process. (Id.).

Undisputed.

10. None of the CALEA standards dealt with the community caretaking function or the authority of the State Police to require someone to submit to a psychiatric evaluation or to seize firearms without a court order. (Id. at p. 23; Henry depo. pp. 42-43, excerpts attached as Exhibit C).

Disputed. Colonel Winqvist testified that he did not recall if any CALEA standard dealt with the community caretaking function, or the authority of the R.I.S.P. to require someone to submit to a psychiatric evaluation or to seize firearms, without a court order. The reference to Officer Henry's deposition does not support the fact statement.

11. Col. Winqvist is the person who establishes policy for the Cranston Police Department.

(Exhibit B at p. 24).

Undisputed.

12. The Cranston Police Department first became accredited by CALEA in 2011 or 2012.

(Exhibit C at p. 41). CALEA establishes "best practices" for law enforcement agencies. (Id. at pp. 39-40).

Disputed insofar as Officer Henry testified he "believes" the Cranston Police Department was first accredited by CALEA in 2011 or 2012.

13. The Cranston Police Department has a manual of policies and procedures. (Exhibit B at p. 34). It includes General Orders ("GO"). (Id. at pp. 36-37). The GOs are based on CALEA standards. (Exhibit C at p. 41).

Undisputed.

14. The first GO, number 000.01, entitled "Introduction," states: "This manual is a complete catalog of department issued general orders, policies, procedures, rules and regulations. Revisions have been completed as needed." (Exhibit D). As of January 6, 2014, the manual was a complete catalog of the Department's policies and procedures. (Exhibit C at p. 44). The manual is "the bible for the Cranston Police Department." (Id. at p. 46).

Objection insofar as GO 000.01 speaks for itself.

15. The Manual has a GO 100.10 which sets forth the Cranston Police Departments “Limits of Authority” “during the execution of the criminal process.” (Exhibit E).

Objection insofar as GO 100.10 speaks for itself.

16. The situation involving Plaintiff was not part of the criminal process. Col. Winquist believes that Cranston Police Department does not have a GO which sets forth its limits of authority in situations such as those involving Plaintiff. (Exhibit B at pp. 38-39).

Undisputed.

17. The Cranston Police Department does have a GO 320.80 entitled “Civil Procedure” which provides guidelines while executing the police role in civil situations, including “keep the peace” situations. (Exhibit F). This GO provides that in “keep the peace” situations” “the officer must terminate the process if there's any resistance.” (Id.)

Objection insofar as GO 320.80 speaks for itself.

18. Col. Winquist does not believe that this GO applies to the situation involving Plaintiff. (Exhibit B at pp. 39-42).

Undisputed.

19. Col. Winquist does not believe that this GO limits the authority of the Cranston police to act pursuant to the community caretaking function when there is imminent harm to the public.

(Id. at pp. 42-43).

Undisputed.

20. Capt. Henry’s understanding is that there is no limit on the police authority under the community caretaking function so long as it is not used to collect evidence to prosecute a crime. (Exhibit C at pp. 54-55). He believes the function authorizes police to take whatever steps are reasonable based on the facts and circumstances at the time. (Id. at p. 55). What is

reasonable is “in the eye of the beholder.” (Id.). There are no written guidelines to help a police officer determine whether he has the authority to act pursuant to the community caretaking function. (Id. at pp. 55-56). Capt. Henry is not aware of any training for Cranston police officers on the scope of their authority under the community caretaking function. (Id. p. 56).

Disputed. Captain Henry testified that the “eye of the beholder” are the “eyes of the . . . person who is on scene collecting all the facts, all information they can” Exhibit 2; June 13, 2018 Deposition Transcript of Captain Russell C. Henry, Jr. at 55. Captain Henry also testified that there may have been training for Cranston Police Officers on the scope of their authority under the community caretaking function – he did not recall. Id. at 56.

21. GO 350.20, “Bureau of Criminal Identification,” addresses the return of firearms that have been seized for safekeeping. (Exhibit G; Exhibit B at pp. 45-48).

Objection insofar as GO 350.20 speaks for itself.

22. Col. Winkvist believes this GO authorizes the seizure of firearms based on a person’s “temporary state of mind.” (Exhibit B at p. 47).

Undisputed.

23. There is no specific time frame that the Cranston Police hold a firearm based on a person’s temporary state of mind. (Id. at pp. 53-54).

Disputed insofar as Colonel Winkvist testified he did not “think” there was any specific timeframe. Exhibit 1 at 53.

24. The Cranston Police do not keep statistics as to how often they seize firearms based on a person's temporary state of mind and Col. Winqvist has no idea how often it happens. (Id. at p. 55).

Undisputed.

25. Cranston Police Department GO 320.70 addresses "Public Mental Health," including voluntary and involuntary admissions to mental health facilities. (Exhibit H).

Objection insofar as GO 320.70 speaks for itself.

26. Col. Winqvist believes that if the Cranston police tell a person that they are going to seize his firearms unless he goes for a mental evaluation that that is a voluntary admission because the person can still say "no." (Exhibit B at p. 57-58).

Undisputed.

27. Conversely, Capt. Henry says the Cranston police should not coerce someone to have a mental examination by threatening to take away his firearms. (Exhibit C at pp. 85-86).

Undisputed.

28. GO 320.70 states that "officers are not in a position to diagnose mental illness but must be alert to common symptoms." (Exhibit H at § IV(a)(i)). Col. Winqvist agrees with this statement. (Exhibit B at pp. 74-75). Symptoms of mental illness include a person making a statement that they want to kill themselves, that they are despondent, that they have heavy use of drugs or alcohol. (Id. at p. 63).

Objection insofar as GO 320.70 speaks for itself. Objection insofar as Colonel Winqvist testified that symptoms of an emotional crisis are "making an outward statement that [an individual] wants to kill themselves" and if "somebody is despondent, heavy use of alcohol, narcotics, combination of many different factors most often." Exhibit 1 at 63

29. A person's behavior meets the criteria for an involuntary admission when a police officer believes that the person is in imminent harm of their safety or another person. (Id. at p. 59).

Undisputed.

30. The officer on the scene makes a determination as to whether there is imminent danger. (Id. at p. 43). The Cranston police are trained in learning the symptoms of someone who is in a mental health crisis. (Id. at pp. 43-44).

Undisputed.

31. Col. Winkvist has seized firearms for safekeeping many times. With respect to the criteria uses to do so, he says "it was an assessment made on the scene by myself and other troopers." (Id. at p. 62). He says police are not trained to diagnose someone but to be aware of symptoms of an emotional crisis. (Id. at pp. 62-63).

Objection insofar as Colonel Winkvist testified that he has seized firearms for safekeeping "ten or more" times. Exhibit 1 at 62.

32. Col. Winkvist says that a Cranston police officer's knowledge respecting mental illness would come from the officer's training and experience. (Id. at pp. 63-64).

Undisputed.

33. Col. Winkvist believes that a police officer's experience dealing with people who have attempted suicide provides training in diagnosing mental illness. (Id. at pp. 77-78). The decision to seize a person's firearms is up to the individual officer's discretion. (Id. at p. 78). The factors a police officer considers may not all be set forth in the Department's training. It may also be based on the officer's "instinct." (Id. at pp. 79-80).

Disputed. Police Officers do not diagnose mental illness. Exhibit 1 at 76. Disputed insofar as Colonel Winkvist testified that there are "so many different factors. There is

no way to predict... or assume every factor. We make judgment decisions every day based on our instinct, our training.” Id. at 80.

34. Defendants have produced three different PowerPoint training presentations on mental health, dated 2008, 2011, and 2013. (Exhibits I, J, and K respectively).

Undisputed.

35. The 2008 presentation references the Rhode Island Mental Health Law. (Exhibit I at p. 5). Col. Winkvist is not familiar with the Mental Health Law. (Exhibit I; Exhibit B at pp. 73-74). He has not seen this presentation. (Id. at p. 74). Col. Winkvist has not seen the 2011 presentation. (Id. at p. 74).

Objection insofar as the training presentations speak for themselves. Disputed insofar as Colonel Winkvist testified he was not aware of R.I. Gen. Laws § 40.1-5-8. Exhibit 1 at 74. Disputed insofar as Colonel Winkvist testified he had not seen the printout of the 2011 PowerPoint presentation. Id. at 74. Disputed. See Plaintiffs’ Undisputed Fact Statement 139 and Defendants’ Response.

36. The 2011 presentation states if a person does not want help, “Never threaten them with hospitalization.” (Exhibit J at p. 40).

Objection insofar as the presentation speaks for itself.

37. The 2011 presentation includes slides on “Risk Factors for Suicide.” (Id. at pp. 43, 44, 45). Capt. Henry says the only risk factor for suicide that applies to Mr. Caniglia is that he supposedly asked his wife to kill him. (Exhibit C at pp. 88-91).

Objection insofar as the presentation speaks for itself. Objection to use of term “supposedly.” Plaintiff admitted that he implored his wife to shoot him.

See Defendants’ Statement of Undisputed Facts 25-29. Disputed insofar as Captain

Henry testified “that was one of the factors.” Exhibit 2 at 89. He also testified that other signs of suicide were considered with respect to Plaintiff, including talking or writing about suicide – the conversation Plaintiff had with his wife, the fact the Plaintiff was agitated. Exhibit 2 at 90. He was not aware if Officers read the questions outlined in the presentation to Plaintiff. Id.

38. The 2013 presentation includes a slide on risk factors for suicide. (Exhibit K at p. 8). Capt. Henry does not know whether the officers on the scene considered any of these factors. (Exhibit C at p. 92).

Disputed insofar as the 2013 presentation speaks for itself.

39. In 2016, at Col. Winqvist’s request, the Rhode Island Attorney General’s office gave the Cranston Police a PowerPoint presentation on “Search and Seizure Law.” (Exhibit L; Exhibit B at pp. 82-83). Col. Winqvist is not aware of any prior presentations to the Cranston Police Department by the Rhode Island Attorney General’s office on search and seizure law. (Exhibit B at pp. 83, 84, 86).

Undisputed.

40. The Search and Seizure presentation covers the community caretaking function, including Rhode Island decisions. (Exhibit L at p. 32; Exhibit B at pp. 87-89). All of the decisions respecting the community caretaking function of which Col. Winqvist is aware involve motor vehicles. (Id. at p. 89).

Undisputed.

41. When the Cranston police seize a person’s firearm for “safekeeping” it is pursuant to the community caretaking function because they are “in a crisis or an imminent risk to themselves.” (Id. at pp. 94-95).

Undisputed.

42. To Col. Winquist's knowledge, neither the State Police nor the Cranston Police have used any studies, data, or reports to determine when it is appropriate to seize firearms for safekeeping pursuant to the community caretaking function. (Id. at p. 95).

Undisputed.

43. Col. Winquist is not aware of any statistics on what percentages of home with firearms have a suicide by firearm. (Id. at pp. 98-99). He does not think such statistics are relevant to the Cranston Police Department's policy of seizing firearms for safekeeping because "it's a judgment decision by that officer based on what's in front of him." (Id. at p. 99).

Undisputed.

44. The Cranston Police Department has a policy or procedure of obtaining written consents for searches. (Id. at p. 99).

Undisputed.

45. Before August 2015, neither Officer Mastrati nor any other Individual Defendant had never heard of Edward Caniglia nor had they had any contact with him or his wife. (Mastrati depo. at p. 49, excerpts attached as Exhibit M; Smith depo. at pp. 41-42, excerpts attached as Exhibit N; Russell depo. at pp. 41-42, excerpts attached as Exhibit O).

Undisputed.

46. Mr. Caniglia has never had any kind of restraining order entered against him. (Exhibit M at p. 49). He has never had any kind of criminal charges against him. (Id. at pp. 49-50). Mr. Caniglia has never been accused of domestic violence. (Id. at p. 50). He has no history of violence. (Id.). Mr. Caniglia has no history of violence or of threatening violence or of misusing firearms. (Id.). He has no history of threatening violence to himself. (Id.).

Undisputed.

47. Officer Mastrati is not aware of any legal reason why Mr. Caniglia cannot possess a firearm.

(Id. at pp. 51-52).

Undisputed.

48. Officer Mastrati understands that the only reason for which the police can take people into custody without arresting them is to interview them as a witness. (Id. at p. 14).

Disputed. Officer Mastrati testified that “it could be for interviews, witnesses.”

However, he also testified that he could not think of any other circumstances “right now.” Exhibit 3; May 31, 2018 Deposition Transcript of Officer John Mastrati at 14.

49. Officer Mastrati recalls being trained that property can be seized for “safekeeping” without a warrant. Safekeeping includes holding property until a person returns from the hospital. (Id. at pp. 14-15).

Undisputed.

50. Officer Mastrati has heard of the community caretaking function but does not understand what it is. (Id. at p. 15).

Undisputed.

51. Officer Smith does not know what the community caretaking function is. (Exhibit N at pp. 64-66). He has no idea whether it relates to the seizure of Mr. Caniglia’s firearms. (Id. at p. 66). He does not know whether the community caretaking function authorizes the Police Department to require people to talk to the Cranston rescue about their psychological condition. (Id. at pp. 66-67).

Undisputed.

52. Officers Mastrati and Smith have attended Cranston Police Department training about dealing with people with perceived mental health issues. Officer Smith recalls it was 2011. Officer Mastrati recalls training in 2013. (Exhibit 9 to Mastrati depo., attached here as Exhibit P; Exhibit M at pp. 116-17; Exhibit N at pp. 70-71).

Undisputed.

53. Officer Mastrati states he does not require a person to have a psychiatric evaluation. Rather, he calls the rescue and the rescue evaluates the person. (Exhibit M at pp. 17-18). Mastrati understands that he does not have the authority to require someone to have a psychiatric evaluation. (Id. at pp. 25-26). He understands that the rescue can require a person to go for a psychiatric evaluation. (Id. at p. 18).

Undisputed.

54. Officer Mastrati believes that he does have the authority to seize a person's firearms if he thinks they are suicidal. (Id. at pp. 26-27). When Officer Mastrati seizes a firearm because he believes the person is suicidal that comes under the category of "safekeeping." (Id. at p. 43).

Undisputed.

55. The policy or procedure of the Cranston Police Department is to have a supervisor make the decision whether to seize a person's firearms for safekeeping. (Id. at p. 28).

Undisputed.

56. Officer Mastrati is not aware of any court decision, or constitutional provision, or statute or police department policy or procedure that gives him the authority to seize a person's firearms to prevent that person from hurting himself or others. (Id. at pp. 37-38). The

Cranston Police Department does not have either a written or unwritten policy or procedure that deals with seizing firearms for “safekeeping.” (*Id.* at pp. 43-44).

Disputed. See Defendants’ Response to Fact Statement 55.

57. Officer Mastrati understands that the Cranston Police Department cannot take someone into custody if there is not a criminal process. (*Id.* at p. 97). There is no GO that sets forth any authority to seize property when there is not a criminal process. (*Id.* at pp. 97-98).

Disputed insofar as Officer Mastrati testified he was not aware of any general order.

Exhibit 3 at 98.

58. On August 20, 2015, Plaintiff and his wife Kim had an argument in their house. At one point during the argument, Mr. Caniglia retrieved a handgun that he keeps under the mattress of the bed, put it on the dining room table, and said “just shoot me now and get it over with.” (Exhibit Q at p. 24).

Defendants do not dispute the fact statement but note that the reference to the record does not support the full fact statement. See Defendants’ Statement of Undisputed Facts at 29, 30.

59. Kim and Ed agree that the magazine was not in the handgun and that the handgun was not loaded when Ed did this, although Kim did not know that at the time. (Exhibit Q at p. 82; K. Caniglia depo. at p. 17, excerpts attached as Exhibit R).

Undisputed.

60. Ed subsequently left the house and went for drive. Kim took the handgun, put it back under the bed, and she hid the magazine that was still under the bed. (Exhibit R at pp. 19-21).

Disputed. See Defendants’ Statement of Undisputed Facts at 10.

61. When Ed returned, the Caniglias argued some more. Kim decided to leave and went to stay at the Econo Lodge Motel on Reservoir Avenue. (Id. at pp. 24-25).

Undisputed.

62. The next morning Kim went to eat breakfast at the “Scramblers” restaurant on Reservoir Avenue. (Id. at p. 28). She tried to call Ed but he did not answer the phone. (Id. at p. 33). Ed was in the restroom and missed the call. (Exhibit Q at pp. 28-29).

Undisputed.

63. Kim became concerned that Ed may have committed suicide and called the Cranston Police because she wanted an officer to accompany her to the house to check on Ed. (Exhibit R at pp. 29-31, 72). She was not afraid that he would use the gun on himself. (Id.).

Disputed. Mrs. Caniglia testified that she was “afraid that [Plaintiff] would do something with the gun and the magazine.” Exhibit 9; June 27, 2018 Deposition Transcript of Kim Caniglia at 22.

64. The Cranston Police dispatched four squad cars in response to Mrs. Caniglia’s call. (Id. at pp. 33-34). She told the police officers she wanted an escort back to the house to check on Mr. Caniglia. (Id. at p. 35).

Undisputed.

65. Officer Mastrati spoke with Mrs. Caniglia in the parking lot of the “Scramblers” restaurant on Reservoir Avenue. (Exhibit M at pp. 52-53). The Incident Report says: “She stated that she was not scared for her own life, but more scared walking in and not knowing if Edward had committed suicide.” (Id. at pp. 75-76).

Undisputed.

66. Officer Mastrati called Ed from the parking lot. He said he wanted to come to the house to check on Ed's well-being. (Exhibit Q at pp. 33-34).

Undisputed.

67. Officer Mastrati told Mrs. Caniglia that Mr. Caniglia sounded fine. (Exhibit R at pp. 36-37). The Cranston Police officers told Mrs. Caniglia to follow them to the house but to remain in the car while they spoke with Mr. Caniglia. (Id. at pp. 37-38).

Undisputed.

68. Officers Mastrati, Russell, Smith, and Sergeant Barth went to the Caniglias' house. (Exhibit M at p. 77). Sgt. Barth was the officer in charge of the scene. (Id. at p. 79). There were four squad cars at the Caniglias' house. (Exhibit R at p. 39).

Undisputed.

69. The officers spoke with Mr. Caniglia on his back porch. (Exhibit Q at pp. 36-37). They were all near him when they spoke. (Id. at p. 38; Exhibit R at p. 43).

Undisputed.

70. Mr. Caniglia was "cooperative." He was not abrasive or aggressive. He said he was not suicidal. (Exhibit M at p. 80). Mr. Caniglia was "calm." (Id.).

Disputed. Officer Mastrati testified Plaintiff was calm "for the most part..." Exhibit 3 at 80. Officer Barth testified that Plaintiff was upset and agitated. Exhibit 7; July 19, 2018 Deposition Transcript of Sgt. Brandon Barth at 86, 124; see also Defendants' Statement of (Additional) Undisputed Facts at 61. Mrs. Caniglia testified that Plaintiff was very upset. See Defendants Statement of Undisputed Facts at 34. Moreover, when officers asked Mr. Caniglia about his mental health, he informed them it was none of their business. See Plaintiff's Statement of Undisputed Facts at 82.

71. Mr. Caniglia told Officer Mastrati that he had had a friend commit suicide and that he would never to do that to [his] family.” (Id. at p. 83).

Undisputed.

72. Mr. Caniglia did not feel depressed or suicidal. (Exhibit Q at pp. 57-58).

Disputed. Mrs. Caniglia testified that Plaintiff was depressed. Exhibit 9 at 22, 63. The hospital records reflect that Plaintiff was depressed. See Plaintiff’s Exhibit X. The reference to the record at “Exhibit Q at pp. 57-58” does not support a reference to suicide.

73. However, Officer Mastrati did not believe Mr. Caniglia. (Exhibit M at pp. 83-84).

Undisputed.

74. Officer Mastrati said “I can’t determine if someone is not suicidal. To me, I felt like he was a risk to himself.” (Id. at p. 81).

Disputed insofar as Officer Mastrati also testified “just from his actions in taking out a weapon.” Exhibit 3 at 81.

75. Officer Mastrati based this opinion on the fact that Mr. Caniglia had put his handgun and, supposedly, the magazine on the counter and “ask[ed] his wife to end his life.” (Id. at pp. 82, 106-07).

Objection to the term “supposedly.” See Defendants’ Statement of Undisputed Facts at 10, 18. Officer Mastrati also based it on his training. Exhibit 3 at 82.

76. Officer Mastrati had no other reason to disbelieve Mr. Caniglia’s statement that he was not suicidal. (Id. at p. 84).

Undisputed.

77. Officer Mastrati has heard people say “shoot me now” but he doesn’t know if they really mean it. (Id. at pp. 82-83).

Disputed. Officer Mastrati testified he didn’t “know if they don’t mean it.” Exhibit 3 at 82, 83.

78. Mr. Caniglia never made any threat to use his firearm on himself. (Id. at p. 54).

Disputed. Officer Mastrati testified he did “not recall exactly.” Exhibit 3 at 54.

79. Officer Mastrati has received training on assessing people for risk of suicide. (Exhibit 10 to Mastrati depo., attached here as Exhibit S; Exhibit M at pp. 116). None of the factors set forth in that training applied to Mr. Caniglia when Officer Mastrati spoke with him. (Exhibit M at pp. 117-120).

Disputed. Officer Mastrati testified that a factor that applied to Plaintiff was that Plaintiff behaved in an unusual way that drew the attention of others. In addition, Officer Mastrati was worried about the firearms that Plaintiff had. Exhibit 3 at 117-120.

80. Officer Mastrati acknowledges that Mr. Caniglia seemed “normal” when they spoke.

(Incident Report, attached as Exhibit T; Exhibit M at p. 122).

Undisputed.

81. Officer Russell said that Mr. Caniglia seemed “nice,” “very polite,” and “welcoming.”

(Exhibit O at p. 43-44). He does not remember that Mr. Caniglia said anything that indicated that he wanted to harm himself. (Id. at p. 46). He said Mr. Caniglia did not seem suicidal. (Id. at p. 49).

Disputed. Officer Russell thought Plaintiff presented Mrs. Caniglia with a gun and may have said “if you want me gone” or “you want to end this” to Mrs. Caniglia.

Exhibit 4; July 20, 2018 Deposition Transcript of Officer Wayne Russell at 46 and 48.

82. The police officers asked about Mr. Caniglia’s mental health. He told them that was none of their business. (Exhibit Q at pp. 85-86).

Undisputed.

83. One of the officers said that in these situations the Cranston Police confiscate firearms. (Id. at p. 38).

Disputed. Mr. Caniglia testified that the officer “suggested” confiscation. **Exhibit 10; June 29, 2018 Deposition Transcript of Edward A. Caniglia at 38.**

84. Mr. Caniglia responded: “You’re not confiscating anything.” (Id.).

Undisputed.

85. The police officers told Mr. Caniglia that if he submitted to a psychiatric evaluation at Kent Hospital his firearms would not be removed from the house. (Id. at p. 66). Mr. Caniglia only agreed to the go to the hospital to prevent the confiscation of his firearms. (Id. at p. 83).

Disputed. Officer Russell did not speak to Mr. Caniglia. **Exhibit 4 at 44, 46. Officer Barth does not recall any such conversation. Exhibit 7 at 127. Officer Mastrati does not recall if he spoke to Plaintiff about the firearms. Exhibit 3 at 56. Officer Smith does not believe he spoke to Mr. Caniglia. Exhibit 8; June 1, 2018 Deposition Transcript of Austin Smith at 45.**

86. One of the police officers told Mrs. Caniglia that Ed “needed to have a psych eval” and that if he did that “we won’t have to take the firearm.” (Exhibit R at pp. 41-42, 44).

Disputed. See Defendants’ Response to Fact Statement 85.

87. Captain Henry made the decision to seize Mr. Caniglia's firearms. (Incident Report, Exhibit T; Exhibit M at pp. 53-54). Capt. Henry assumes he got a phone call from the officers at the scene. (Exhibit C at p. 107). He does not remember any reasons for the seizure apart from what is set forth in the Incident Report. (Id. at p. 119). He says the officers on the scene felt it was reasonable to do so based on Mr. Caniglia's state of mind. (Id. at p. 62).

Undisputed.

88. Capt. Henry graduated from the Rhode Island Municipal Police Training Academy in 1992. (Id. at pp. 16-17). He does not recall any classes on when it is appropriate to hold or detain a person without arresting them. He does not recall any classes on when it is appropriate to seize property without a warrant or a court order. (Id. at pp. 17-18). Capt. Henry does not recall any classes on when, if ever, it is appropriate to seize weapons for safekeeping. (Id. at p. 19). He does not recall any classes on the community caretaking function. (Id.). Capt. Henry remembers he received training on dealing with people with mental health issues but he does not recall specifics. (Id. at pp. 19-20).

Disputed insofar as Captain Henry testified there may have been classes, but he did not specifically recall. Exhibit 2 at 17-19.

89. Capt. Henry thinks that the community caretaking function has been discussed during "in-service" training at the Cranston Police Department on mental health. (Id. at p. 28).

Undisputed.

90. The Cranston Police Department seizes firearms for "safekeeping" "if we feel that the circumstances that exist at the time create a danger relative to the firearms, create a danger to the public, or to any member of the public..." (Id. at p. 29). The authority to do this arises under the community caretaking function. (Id.).

Undisputed.

91. With respect to the community caretaking function, Capt. Henry says: “My understanding is that the courts recognize that law enforcement needs to take certain actions relative to the Fourth Amendment without a warrant that pertain to public safety functions or emergencies.” (Id. at p. 24).

Undisputed.

92. Capt. Henry thinks the public safety function includes a person with a firearm who is thinking of harming themselves. (Id. at pp. 24-25).

Undisputed.

93. Capt. Henry agrees with GO 320.70 that “[o]fficers are not in a position to diagnose mental illness.” (Exhibit H; Exhibit C at p. 68).

Undisputed.

94. The court decisions of which Capt. Henry is aware respecting the community caretaking function deal with motor vehicles. (Id. at p. 97). He is not aware of any court decision authorizing police to seize property, including firearms, from a home pursuant to the community caretaking function. (Id. at p. 34).

Undisputed.

95. Capt. Henry thinks the community caretaking function authorizes the Cranston police to require a person to go to a hospital where a mental examination can be performed. However, the community caretaking function does not permit the Cranston police to require a person to submit to a psychological evaluation. (Id. at pp. 31-32, 69-70). He is not aware that any Cranston police officer has ever required a person to do that. (Id. at p. 32).

Undisputed.

96. Capt. Henry understands that the decision that Mr. Caniglia was “imminently dangerous” was based on his statements and actions the night before Cranston police spoke with him. Mr. Caniglia did not say anything to Cranston police that indicated he was “imminently dangerous.” (Id. at pp. 74-75).

Undisputed insofar as Captain Henry testified that Plaintiff did not say anything to police the morning after he told his wife to shoot him that indicated he was imminently dangerous. Exhibit 2 at 75. Disputed insofar as Plaintiff was upset and agitated and refused to answer questions concerning his mental health. See Defendants’ Response to Fact Statement 70; see also Plaintiff’s Fact Statement 82.

97. Capt. Henry says that in the circumstances the Cranston police would have made the decision to take Mr. Caniglia to the hospital regardless of whether he objected. (Id. at p. 157-58).

Undisputed.

98. The Cranston police have not received any formal training on whether someone is imminently dangerous. (Id. at p. 77).

Disputed. Captain Henry testified “not that he kn[e]w of.” Exhibit 2 at 77.

99. Whether someone is “imminently dangerous” would be a subjective decision based on an individual officer’s experience. Two different police officers in the same situation could come to two different conclusions. (Id. at pp. 77-78)

Disputed insofar as Captain Henry testified it’s a “case-by-case basis based on the facts that a reasonable person is presented with.” Exhibit 2 at 77.

100. Officer Mastrati did not hear the conversation between Mr. Caniglia and the Cranston Rescue. (Exhibit M at p. 55). He does not know whether Mr. Caniglia agreed to go for an evaluation. (Id.).

Disputed. Officer Mastrati testified that Plaintiff voluntarily went to the hospital.

Exhibit 3 at 85, 103, 104, 105.

101. Richard Greene is a rescue lieutenant with the Cranston Fire Department rescue service. (Greene depo. p. 18, excerpts attached as Exhibit U). He responded to the call to the Caniglia's house. (Id. at pp. 39-40). He was on the scene for approximately 8 minutes. (Id. at pp. 53-55).

Undisputed.

102. Officer Greene identified thirteen risk factors that are part of the State of Rhode Island protocol that he recognizes as relevant to determining whether a person is suicidal. (Exhibit 43 to Greene depo., attached here as Exhibit V; Exhibit U at pp. 35-36). All the factors are important. (Id. p. 38).

Lt. Green testified that the factors "could be one of the reasons, one of them." Exhibit 6; July 26, 2018 Deposition Transcript of Richard Greene at 37.

103. Lt. Greene specifically remembers very little about the incident beyond what is set forth in the Cranston rescue report. (Exhibit 42 to Greene depo., attached here as Exhibit W; Exhibit U at pp. 39-42). He does not recall whether he asked Mr. Caniglia about any of the risk factors. (Exhibit U at p. 44). He does not know if Mr. Caniglia met any of the risk factors he identified. (Id. at pp. 45-47).

Disputed. Lt. Greene testified that the Cranston Police Department informed him that they recovered a gun and told him that Plaintiff wanted his wife to shoot him with his own gun. Exhibit 6 at 42. Lt. Greene testified he considered the factor that Plaintiff wanted his wife to shoot him. Id. at 44. Officer Greene also testified that Plaintiff was

upset. Id. at 46. He also testified that he did not remember whether he asked about the other factors. Id. at 44-47.

104. The rescue report states, inter alia: “pt stated he was not looking to hurt himself.”
(Exhibit W).

Objection insofar as the rescue report speaks for itself.

105. Officer Greene told Mr. Caniglia that they were taking him to the hospital. (Exhibit U at p. 48). He said the Cranston police made the decision that Mr. Caniglia was going to the hospital. (Id.).

Disputed. Plaintiff went to the hospital voluntarily. See Exhibit 3 at 85, 103, 104, 105; Exhibit 6 at 49; see also Defendants’ Statement of (Additional) Undisputed Facts at 70.

106. Officer Greene says that the decision to take Mr. Caniglia to the hospital was based on Mr. Caniglia telling his wife to shoot him and that that statement provided the authority to take Mr. Caniglia to the hospital. (Id. at pp. 49-50). Officer Greene did not consider any other factors besides the fact that Mr. Caniglia had a gun. (Id. at pp. 73-74).

Disputed. Lt. Greene also testified that Plaintiff was upset. Exhibit 6 at 46.

107. Officer Greene says that if someone says to another person “just shoot me now,” he assumes that they actually want the other person to shoot them. (Id. at pp. 67-68). He made no determination as to whether Mr. Caniglia actually wanted his wife to shoot him. (Id. at p. 68).

Undisputed.

108. Col. Winquist believes, based on the Incident Report, that Mr. Caniglia was at imminent risk of harm when the Defendants seized his firearms and sent him for a mental evaluation. (Exhibit B at pp. 59-61).

Disputed insofar as Plaintiff went to the hospital voluntarily. See Defendants' Response to Fact Statements 100, 105.

109. Mr. Caniglia never threatened to use his firearms or any other weapons on himself.

(Exhibit B at p. 110).

Disputed. Colonel Winkist testified that he was not aware of a threat by Plaintiff to use a firearm on himself. Exhibit 1 at 110.

110. Officer Mastrati understood that the firearms in the house belong to Mr. Caniglia.

(Exhibit M at p. 89). He did not ask Mr. Caniglia if he could seize the firearms. (Id.).

Undisputed.

111. The Defendants did not obtain a written consent to search the house. (Exhibit B at p. 99).

Mr. Caniglia did not give verbal consent for a search. (Id. at p. 100).

Undisputed.

112. Officer Mastrati said there was no crime involved with respect to the incident at the Caniglia's house. (Exhibit M at p. 59).

Undisputed.

113. After Mr. Caniglia left in the Cranston rescue, one of the police officers told Mrs.

Caniglia that Ed had given him permission to seize the firearms. (Exhibit R at p. 47, 49-51).

Mrs. Caniglia never said she wanted the guns out of the house. (Id. at p. 51). The officer told Mrs. Caniglia that she could retrieve the guns by going to the Police Department and they would be returned to her. (Id. at p. 65).

Disputed. Mrs. Caniglia informed Officer Mastrati that she did not want the guns in the house and informed Mastrati that she wanted the Cranston Police Department to

take the guns “mostly” for Plaintiff’s well-being. Exhibit 3 at 56, 92. Mrs. Caniglia “pointed out” the weapon under the bed and in the garage. Id. at 89, 56.

114. Defendants believe that Mrs. Caniglia consented to a search of the house. However, she did not consent to seizure of the firearms. (Exhibit B at p. 117).

Disputed. Mrs. Caniglia consented to the seizure of the guns. Exhibit 3 at 56, 89, 92.

115. Officer Mastrati seized five items from the Caniglia residence including two handguns, clips for the handguns, and ammunition. (Exhibit M at p. 66).

Undisputed.

116. The guns belong to Mr. Caniglia. (Exhibit R at p. 10).

Undisputed.

117. Officer Mastrati found one firearm under the Caniglia’s bed. (Exhibit M at p. 89). The second firearm was in a box behind a workbench in the garage. (Id. at p. 90).

Undisputed.

118. Officer Mastrati wrote in the Incident Report: “It should be noted that in further speaking with Kim she stated that she was not in fear for her own life from Edward but was more worried about Edward taking his own life.” (Id. at pp. 91-92).

Undisputed.

119. Mrs. Caniglia never indicated that Edward had ever threatened to take his own life with a firearm. (Id. at p. 92).

Disputed. See Defendants’ Response to Fact Statement 63.

120. Officer Mastrati is not aware of any statute that requires a court order before a person can be compelled to go to a hospital or mental health facility. (Id. at p. 107).

Undisputed.

121. Mr. Caniglia went in the Cranston rescue to Kent Hospital, was evaluated by a social worker, and discharged. (Exhibit X).

Disputed insofar as the hospital records reflect Plaintiff was also examined by a physician and a nurse.

122. On Monday, August 24, 2015, Kim Caniglia went to the Cranston Police Department to retrieve Ed's firearms. (Exhibit R at p. 65). She was told she would have to request a copy of the police report, that it would take 3-5 business days, and that it would cost 35 cents a page. (Id. at pp. 66-68). She was told she would have to wait for a captain to review the request. (Id.).

Undisputed.

123. On August 24, 2015, Mrs. Caniglia returned to the Cranston Police Department and received a copy of the report. (Id. at 68-69). She was told the captain had not reviewed the request yet. (Id.). A few days later, the Police Department called the Caniglias and said that the guns would not be returned and they would have to get a court order. (Id.)

Undisputed.

124. The Cranston Police Department has a record which indicates that on September 1, 2015, a captain of the Department denied a request to return the firearms. (Exhibit 25 to Henry depo., attached here as Exhibit Y). That captain's signature is not identified. (Quirk depo. at p. 34, excerpts attached as Exhibit Z).

Undisputed.

125. During the second week of September 2015, Mr. Caniglia went to the Cranston Police Department to obtain his firearms. He was told they were not going to release the firearms. (Exhibit Q at pp. 73-74).

Undisputed.

126. On October 1, 2015, Mr. Caniglia's attorney, Nicholas Lambros wrote a letter to Chief Winquist requesting the return of Mr. Caniglia's firearms. (Exhibit 28 to Winquist depo., attached here as Exhibit AA).

Undisputed insofar as the letter speaks for itself.

127. Major Quirk was not involved in seizure of Mr. Caniglia's firearms. He was involved in the return of Mr. Caniglia's firearms after the receipt of Mr. Lambros' letter. (Exhibit Z at pp. 22-23).

Undisputed.

128. When Col. Winquist received Attorney Nicholas Lambros' letter, dated October 1, 2015, about the return of Mr. Caniglia's firearms he initially instructed Major Quirk to tell Attorney Lambros to get a court order because he mistakenly believed that the situation involved a domestic assault. (Exhibit B at p. 49-50). When Major Quirk told him it did not, Col. Winquist says he instructed Major Quirk to return the firearms. (Id. at p. 50).

Undisputed insofar as the reference to the record (id. at 50) does not specifically support the fact statement that Major Quirk told Colonel Winquist that the matter did not involve domestic assault.

129. However, Major Quirk recalls the events differently. He testified that he reviewed the Incident Report, that he spoke with Col. Winquist about the incident, and that he called Mr. Lambros to tell him he would have to get a court order for the return of the firearms. (Exhibit Z at pp. 24-25, 29-30). He reported this conversation to Col. Winquist. (Id. at p. 31).

Undisputed.

130. Major Quirk does not know whether Col. Winkvist and he consulted with any of the Cranston Police Department's policies or procedures. (Id. at p. 25). He does not believe that he spoke with any of the officers involved in the seizure of Mr. Caniglia's firearms before making this decision. (Id. at p. 43).

Undisputed insofar as "this decision" refers to a decision about returning the firearms.

131. This decision was consistent with the custom and practice of the Cranston Police Department. (Id. at p. 27). That custom and practice is not reflected in any written document. (Id.). Major Quirk is not aware of any legal authority for this custom and practice. (Id. at pp. 28-29).

Undisputed insofar as "this decision" refers to a decision about returning the firearms.

132. Major Quirk recalls that there was some other event that prompted Col. Winkvist to instruct him to return Mr. Caniglia's firearms but he does not recall what it was. (Id. at pp. 31-32).

Undisputed.

133. On December 11, 2015, Plaintiff filed this lawsuit.

Undisputed.

134. On December 22, 2015, Defendants returned Mr. Caniglia's firearms, magazine and ammunition to him without a court order. (Exhibit Y).

Undisputed.

135. Col. Winkvist does not know why it took until December 22, 2015 to release Mr. Caniglia's firearms. (Exhibit B at p. 118).

Undisputed.

136. Mr. Caniglia has retained Lanny Berman, Ph.D., a psychologist specializing in suicidology, as an expert witness. His expert report is attached as Exhibits BB). In sum, Dr. Berman opines to a reasonable degree of scientific, psychological and professional certainty based on 47 years of experience that:

- a. Mr. Caniglia was neither at acute nor imminent risk of suicide on August 20 and 21, 2016. (Id. at p. 6).
- b. Mr. Caniglia's actions and statements on the evening of August 20, 2015 did not constitute a suicidal communication, nor did they communicate any suicidal intent. Further, at no other time and especially on the morning of August 21, 2015 did Mr. Caniglia express or communicate in words or actions anything that could possibly be construed as indicating he was at imminent risk of suicide. (Id. at p. 9);
- c. No independent evaluation of Mr. Caniglia's risk for suicide was made based on both his current mental status and associated risk factors as the Cranston Police Department officers were trained to observe and a sole reliance on Mr. Caniglia's statement and action on the night before to document any level of concern for imminent risk of harm was inappropriate and a breach of the standards to which these officers were trained. (Id. at pp. 9-10); and
- d. Officers of the Cranston Police Department did not apply or rely upon appropriate criteria or reasonable and standard police procedures in determining Mr. Caniglia was in imminent danger of suicide and in determining that his firearms needed to be confiscated on August 21, 2015. (Id. at pp. 10-13).

Objection.

1. Mr. Berman's report is inadmissible hearsay. Casillas v. Vida, No. 16-2564 (PAD), 2018 U.S. Dist. LEXIS 144729 (D.P.R. Aug. 23, 2018); Prudential Ins. Co. v. Textron Aviation Inc., No. 16-2380-DDC-JPO, 2018 U.S. Dist. LEXIS 71019 (D. Kansas April 27, 2018) (same).

2. The report is irrelevant. The opinion of a trained psychologist of Plaintiff's mental state (after the fact and after consideration of facts that the officers were not privy to) is not relevant to whether non-psychologist police officers on the scene had sufficient information on Plaintiff's mental state to reach a conclusion. Mr. Berman's opinion is irrelevant to whether a police officer has probable cause to seize an individual for a mental health evaluation. Gargano v. Belmont Police Department, 476 F. Supp. 2d 39 (D. Mass. 2007) (probable cause is not vitiated by when the basis of which police officer is shown after the fact to have been erroneous – probable cause is determined at the moment of the seizure); United States v. Acevedo-Vazquez, No. 16-642, 2018 U.S. Dist. LEXIS 168386 (D.P.R. Sept. 27, 2018) (probable cause focuses on the collective knowledge of all officers *at the time of the event* and considers the totality of the circumstances). The existence of probable cause is ultimately a question of law to be decided by the court. Zinicola v. Mott MacDonald, LLC, No. 16-cv-542-JL, 2018 U.S. Dist. LEXIS 64366 (D.N.H. April 17, 2018). Furthermore, Mr. Berman's conclusion that the officers were not adequately trained does little to prove a Fourth Amendment violation. City of Canton v. Harris, 489 U.S. 378 (1989).

3. Lack of foundation. Mr. Berman's CV does not reflect any experience with a police officer's or a police department's response to allegedly suicidal individuals or any familiarity or exposure to police department training, tactics, policies or procedures.

The application of the Community Caretaking Doctrine in this matter turns on whether Defendant police officers acted reasonably under the totality of the circumstances.

United States v. Davis, 909 F.3d 9 (1st Cir. 2018).

Disputed. See Defendants' Statement of Undisputed Facts at 10-12, 16-18, 20-22, 26-29, 34-38, 42; see also Defendants' Statement of Disputed Facts 37, 63, 70, 72, 75, 79, 81; Defendants' Statement of (Additional) Undisputed Facts at 51-53, 55-69.

137. The Cranston Police Department is aware of the Second Amendment, the Fourth Amendment, the Due Process Clause of the Fourteenth Amendment and the corresponding provisions of the Rhode Island Constitution. (Exhibit B at pp. 113-14).

Undisputed.

138. Col. Winkist is not aware of the Rhode Island Firearms Act. He does not know whether other members of the Cranston Police Department are aware of that Act. (Id. at p. 114-15).

Disputed. Colonel Winkist is aware of the Rhode Island Firearms Act. He testified that he is aware that the Act provides for the circumstances under which a person can be deprived of their firearms. Exhibit 1 at 113, 114, 115.

139. Col. Winkist and the Cranston Police Department are generally aware of the Rhode Island Mental Health Law. (Id. at p. 115).

Undisputed.

140. Other than the community caretaking function, Col. Winkist is not aware of any authority for the Cranston police to seize Mr. Caniglia's firearms and to transport him for a psychological evaluation. (Id. at p. 116).

Undisputed.

141. Col. Winkvist believes that the community caretaking function gives the Cranston police the authority to seize Mr. Caniglia's firearms even if he objected and the authority to require him to have a psychiatric evaluation even if he objected. (Id. at p. 126).

Undisputed.

142. Defendants' actions were not at all what Kim Caniglia had in mind when she called the CPD and she was very angry with them. (Exhibit R at pp. 71-72). "I thought that I would have an officer go with me to the house, he would knock on the door, Ed would answer the door, I would know he was okay, that we would talk, and if things were fine, the officer would leave." (Id. at p. 72).

Undisputed.

143. Mr. Caniglia incurred approximately \$1000 in costs for the Cranston rescue taking him to the hospital. (Exhibit Q at p. 83).

Undisputed.

144. Officer Russell became a Cranston Police officer in 2013 (Exhibit O at p. 21). He estimates he has been involved in a "couple dozen" situations in which the Cranston Police Department seized firearms for "safekeeping." (Id. at p. 40). He has been involved in approximately fifty situations in which the Cranston Police Department had someone transported for a psychological evaluation. (Id. at p. 41).

Undisputed.

145. Defendants have produced a nine-page inventory of seized weapons dated 2017. (Exhibit CC). It contains approximately 475 weapons, mostly all firearms. It does not set forth why individual weapons were seized.

Undisputed insofar as the report includes weapons in the possession of Defendants as a result of seizure and voluntary actions of the listed individuals.

146. Defendants have also produced a fifty-one page inventory entitled “Firearms Destruction Log” listing approximately 900 weapons between 2006 and 2016, mostly firearms. (Exhibit DD).

Undisputed.

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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