

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

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C.A. No. 15-525

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

PLAINTIFF'S STATEMENT OF DISPUTED AND UNDISPUTED FACTS

Pursuant to LR. 56, Plaintiff hereby responds to Defendants' Statement of Undisputed Facts as follows:

1. On August 20, 2015, Plaintiff and his wife, Kim Caniglia ("Mrs. Caniglia") had an argument over a coffee mug at their residence in Cranston, Rhode Island. Exhibit A, Kim Caniglia June 27, 2018, Deposition Transcript at 11.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

2. During the argument, Plaintiff told Mrs. Caniglia that her "family wasn't all that great," that she "liked [her] brothers better than" Plaintiff and that she should "go live with" them. Exhibit A at 12-13.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

3. Mrs. Caniglia asked Plaintiff "what's wrong? Why aren't you happy? I can't make you happy, you have to do that yourself. And that's when [Plaintiff] walked into the bedroom . . . [and] he came out with a gun, threw it on the table, and said why don't you just shoot me and get me out of my misery." Exhibit A at 16.

RESPONSE: Not disputed that, as a dramatic gesture, Plaintiff brought out an unloaded gun and threw it on the table, and made the comment. (SUF 59).

4. After Plaintiff told his wife to “shoot” him, Mrs. Caniglia asked him “[w]hat are you thinking?” Exhibit A at 19.

RESPONSE: Not disputed that, as a dramatic gesture, Plaintiff brought out an unloaded gun and threw it on the table, and the Caniglias made those comments. (SUF 59).

5. Mrs. Caniglia told Plaintiff that she was going to contact 911 because she wanted Plaintiff to know that by bringing out the gun “he brought [the argument] to a different level.” Exhibit A at 19, 23.

RESPONSE: Disputed that Mrs. Caniglia told Mr. Caniglia “he brought it to a different level.” It is not disputed that that was Mrs. Caniglia’s perspective.

6. Mrs. Caniglia thought Plaintiff’s behavior was “shocking.” Exhibit A at 19.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

7. Shortly after Mrs. Caniglia informed Plaintiff that she was going to contact 911, Plaintiff left the residence. Mrs. Caniglia, however, did not contact 911. Exhibit A at 19, 23.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

8. After Plaintiff left the residence, Mrs. Caniglia put the gun “between the mattress and the box spring” in their bedroom. Exhibit A at 20.

RESPONSE: Not disputed that Mrs. Caniglia put the gun back between the mattress and box spring which was where Mr. Caniglia kept it. (SUF 58).

9. At her deposition, Mrs. Caniglia testified that it was at this point she discovered that the magazine was not in the gun. She testified that she took the magazine “out from underneath the bed and . . . hid it in a drawer” in the bedroom. Exhibit A at 20.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

10. In an affidavit executed before her deposition, however, Mrs. Caniglia averred that, during the argument, Plaintiff brought an unloaded gun *and a magazine* to her and implored her to “shoot me now and get it over with.” Exhibit B, Affidavit of Kim Caniglia at ¶ 5.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment except that the affidavit does not state that Plaintiff “implored” her. The affidavit speaks for itself.

11. Mrs. Caniglia hid the gun and the magazine because she was worried about Plaintiff’s “state of mind.” Exhibit A at 22.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

12. Plaintiff was “depressed”, and Mrs. Caniglia was afraid that Plaintiff “was going to do something with the gun and the magazine” and “hurt himself” or “take[] his own life.” Exhibit A at 22-23; ‘Exhibit C, John Mastrati May 31, 2018 Deposition Transcript at 75, 91; Exhibit D, Cranston Police Department Incident Report at 3, 4.

RESPONSE: Plaintiff denies that Mrs. Caniglia told Officer Mastrati or any police officer that she was afraid that Plaintiff would harm himself or others with the handgun. To the contrary, the Incident Report states that Mrs. Caniglia made clear that she did not

fear for her own safety. (SUF 118). Moreover, she testified at her deposition that she was not concerned that Mr. Caniglia would use the gun to commit suicide. (SUF 63). Finally, Plaintiff disputes that he was “depressed.” (SUF 72). To the contrary, Plaintiff was subsequently diagnosed with lung cancer and was informed by his physician that some symptoms of lung cancer mimic depression. (Kim Caniglia’s deposition pp. 72-73, excerpts attached as Exhibit 1).

13. Before Plaintiff returned to the residence, Mrs. Caniglia thought it best to “pack a bag” and “go to a hotel for a night.” Exhibit A at 24.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

14. When Plaintiff returned to the residence, he informed Mrs. Caniglia that the argument was “all [her] fault” After that comment, Mrs. Caniglia left the residence and went to the Econo Lodge on Reservoir Avenue in Cranston. Exhibit A at 25.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

15. At some point that evening, Mrs. Caniglia spoke to Plaintiff by telephone. Plaintiff asked Mrs. Caniglia to come home but she refused because she thought they needed time to “chill.” Plaintiff was upset and angry. Exhibit A at 26.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

16. At some point the following morning, Mrs. Caniglia contacted the CPD and “requested an officer to do a well call.” Exhibit A at 29.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

17. Mrs. Caniglia was "incredibly worried" that Plaintiff was going to harm himself or commit suicide. Exhibit A at 30.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

18. During the telephone call to the Cumberland Police Department ("CPD"), Mrs. Caniglia requested an escort to her residence because she was a "little afraid" of Plaintiff. Mrs. Caniglia also informed the CPD that (1) she and Plaintiff had "gotten into a verbal fight;" (2) Plaintiff took a gun and said "shoot me;" (3) Plaintiff took the gun *and magazine* and threw it on the table; (4) she spent the night in a hotel and was now in the parking lot of Scramblers Restaurant, and (5) she "hid the gun" and put the magazine in a drawer. Exhibit E; CD of Digitally Recorded Telephone Call From Kim Caniglia to Cranston Police Department August 21, 2015.¹

RESPONSE: Denied that Mrs. Caniglia was afraid of Mr. Caniglia. To the contrary, as reflected in the Incident Report, she told Officer Mastrati, that she did not fear for her own safety. (SUF 118). She testified the same at her deposition. (SUF 118).

19. As a result of Mrs. Caniglia's telephone call to the CPD, Cranston Police Officers John Mastrati ("Mastrati"), Austin Smith ("Smith") and Sgt. Brandon Barth ("Sgt. Barth") were dispatched to Scrambler's Restaurant. Exhibit C at 65, Exhibit F, Sgt. Brandon Barth July 19, 2018, Deposition Transcript at 29, 31.

¹ Defendants have filed the digital recording of the telephone call under seal because it contains personally identifiable information.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment, except that CPD Officer Russell also responded. (SUF 68).

20. At Scramblers, Mrs. Caniglia informed a CPD officer "about the gun, about the words [Plaintiff] said and what [she] did with the gun" and magazine. Exhibit A at 35.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

21. 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. Exhibit C at 52-54, Exhibit D at 3; Exhibit F at 30.

RESPONSE: Disputed. Mrs. Caniglia told the Cranston police officer that her husband took out an unloaded handgun and said "just shoot me now and get it over with." (SUF 58-59).

22. Mrs. Caniglia stated that she was concerned about what she would find when she returned home, that she was concerned about Plaintiff's safety; specifically informing Mastrati that she was worried about Plaintiff committing suicide. Exhibit A at 36, Exhibit C at 75-76; Exhibit D at 3-4; Exhibit F at 91.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

23. Officer Mastrati contacted Plaintiff by telephone from Scramblers. Plaintiff agreed to speak to Mastrati at Plaintiff's residence. Exhibit C at 76-77.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment, except that Officer Mastrati told Mrs. Caniglia that Mr. Caniglia sounded fine. (SUF 66-67).

24. CPD officers informed Mrs. Caniglia to follow them to the Caniglia residence but to stay in her car when they arrived at the residence. Exhibit A at 37-38.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment, except that Officer Mastrati told Mrs. Caniglia that Plaintiff was "fine." (SUF 67).

25. Upon arrival at the residence, Officer Mastrati spoke to Plaintiff outside of the house, near or about the porch/deck area of the property. Exhibit C at 77-78. Sgt. Barth and Officer Smith and Officer Wayne Russell were also on scene, in or about the same area. Exhibit F at 35.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

26. Plaintiff told Mastrati that he brought the gun out during the argument with Mrs. Caniglia. Exhibit C at 119-120.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

27. Plaintiff "pretty much told [Mastrati] the same story that [Mrs. Caniglia] told" him. Exhibit C at 53.

RESPONSE: Disputed. Officer Mastrati testified that the Incident Report sets forth "everything" that both Caniglias told him. (Mastrati depo. p. 57, excerpt attached as Exhibit 2). The Caniglias dispute much that is set forth in the Incident Report. (E. Caniglia depo., pp. 63-66, 82-83, excerpts attached as Exhibit 3; Exhibit 1 at pp. 56-58).

28. Plaintiff corroborated what Mrs. Caniglia had informed Cranston Police Officers about the argument, the gun, and that Mrs. Caniglia should shoot him. Exhibit F at 38, 39.

RESPONSE: Disputed. Plaintiff was not asked to corroborate what Mrs. Caniglia may have said. To the contrary, he told CPD officers that he was not suicidal or depressed. (SUF 70-72, 80). Moreover, he did not actually ask his wife to end his life. (Exhibit 3 at p. 69).

29. Plaintiff admitted to Mastrati that he and Mrs. Caniglia had had an argument over a coffee mug and he was “sick of the arguments” and he took out his unloaded handgun and told his wife to “just shoot me” because he “couldn’t take it anymore.” Exhibit G Edward A. Caniglia June 29, 2018 Deposition Transcript at 67-68; Exhibit D at 3.

RESPONSE: Admitted that Plaintiff and his wife had an argument over a coffee mug, that Plaintiff said he was “sick of the arguments,” that he took out his unloaded handgun, and said to his wife “just shoot me.” (Exhibit 3 at pp. 67-69).

30. Plaintiff also admitted to a Kent Hospital employee that, during the argument with Mrs. Caniglia, he retrieved an unloaded gun and told Mrs. Caniglia that “she should just shoot him and put him out of his misery.” Exhibit G at 54; see also id. at 24 (admitting he said “shoot me now and get it over with”).

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

31. At some point after Mrs. Caniglia arrived at the residence, an officer approached her car and told her she could come to the residence. Exhibit A at 39-40.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

32. When she arrived at the residence, Plaintiff asked her why she contacted the CPD. Exhibit A at 40.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

33. Mrs. Caniglia informed Plaintiff that she was worried about him. Exhibit A at 40.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

34. Plaintiff was "very upset" because Mrs. Caniglia contacted the CPD so she went back to the car. Exhibit B at ¶ 14.

RESPONSE: Disputed. Plaintiff admits that he was "at a loss" that his wife called the CPD. (Exhibit 3 at pp. 49-50).

35. While at the residence, Mrs. Caniglia overheard Plaintiff inform a CPD officer that he had an argument with Mrs. Caniglia about a coffee mug and that he "did bring out a gun and set in on the table and told [Mrs. Caniglia] to just go ahead and shoot him and put him out of his misery." Exhibit A at 41.

RESPONSE: Not disputed that Mrs. Caniglia so testified, however, both Caniglia's knew at that time that the handgun was unloaded. (SUF 59).

36. Although Plaintiff informed Mastrati that he was not suicidal, Mastrati was not convinced because a "normal person would [not] take out a gun and ask his wife to end his life . . ." Exhibit C at 82.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment, that Mastrati so testified. Plaintiff disputes that Mastrati could reasonably have concluded he was suicidal. (SUF 28, 31, 74, 93, 136).

37. Mastrati believed that Plaintiff was a danger to himself. Exhibit C at 106-107.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment, that Mastrati so testified. Plaintiff disputes that Mastrati could reasonably have believed that Plaintiff was a danger to himself. (SUF 28, 31, 74, 93, 136).

38. Sgt. Barth considered Plaintiff's statement to his wife to shoot him to be a suicidal statement. Exhibit F at 84-85.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment that Sgt. Barth so testified. Plaintiff disputes that Barth could reasonably have believed that Plaintiff was suicidal. (SUF 28, 31, 74, 93, 136).

39. The CPD seized two guns and ammunition from the Caniglia residence for safekeeping. Exhibit D at 2.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

40. Mrs. Caniglia showed police the location of the guns and magazines. The guns and ammunition were seized from the bedroom and the garage. Exhibit A at 51; Exhibit D at 4.

RESPONSE: Not disputed that Mrs. Caniglia showed the police the locations of the guns and magazines, after Defendants told her that Plaintiff had authorized the seizure, which statement was false. (SUF 84, 85, 111, 113).

41. Sgt. Barth made the decision to seize the guns, however, that decision was approved by Captain Russell Henry ("Captain Henry"). Exhibit F at 44; Exhibit H Cpt. Russell C. Henry, Jr. June 13, 2018, Deposition Transcript at 119.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

42. Captain Henry believed that if the CPD had left Plaintiff “there with the firearms, potentially, he’s in danger, [Mrs. Caniglia] could be in danger, the neighbors could be in danger, any person that comes in contact with Mr. Caniglia could be in danger.” Exhibit H at 79.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment that Capt. Henry so testified. Plaintiff disputes that Capt. Henry could reasonably have believed Plaintiff was a danger to himself or to Mrs. Caniglia or to any other person. (SUF 28, 31, 74, 93, 136).

43. Plaintiff was eventually transported to Kent County Hospital for a medical evaluation. Exhibit G at 44; Exhibit B at ¶ 17.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

44. Plaintiff was evaluated at the hospital but was not admitted. Amended Complaint Exhibit B; Exhibit B at ¶ 20.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

45. Plaintiff was not charged with any crime with respect to the incident. Answer to ¶ 50 of Amended Complaint.

RESPONSE: Not disputed for purposes of the Parties’ Cross Motions for Summary Judgment.

46. The CPD did not prevent Plaintiff from obtaining any firearms after the August 21, 2015 incident. Answer to ¶ 47 of Amended Complaint.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

47. On or about October 1, 2015, Plaintiff's attorney sent Colonel Winkvist a letter requesting the return of his guns. Answer to ¶ 41 of Amended Complaint.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

48. Plaintiff's guns were returned to him in late December 2015. Exhibit H at 132.

RESPONSE: Not disputed that Plaintiff's guns were returned to him in late December 2015, after Defendants had rejected several attempts to obtain a return of the firearms and after Plaintiff filed this lawsuit. (SUF 122-126, 128-129, 133-134).

49. At his deposition Plaintiff testified that he believes that his life is "wonderful and great" and denied any "potential thoughts of suicide in the future." Exhibit G at 58-59.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

50. Colonel Michael Winkvist and Major Robert Quirk were not at the scene nor were they consulted by officers at the scene. Exhibit I Colonel Michael Winkvist June 20, 2018 Deposition Transcript at 44; Exhibit J Major Robert Quirk July 13, 2018 Deposition Transcript at 22; Exhibit D.

RESPONSE: Not disputed for purposes of the Parties' Cross Motions for Summary Judgment.

Plaintiff also adopts his Statement of Undisputed Facts (Doc. 44) as a Statement of Additional Undisputed Facts.

EDWARD CANIGLIA

By his attorneys,

/s/ Thomas W. Lyons

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CERTIFICATION

I hereby certify that on January 30, 2019, a copy of the foregoing was filed and served electronically on all registered CM/ECF users through the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

/s/ Thomas W. Lyons