

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

PLAINTIFF'S ADDITIONAL STATEMENT
OF DISPUTED AND UNDISPUTED FACTS

Pursuant to LR 56, Plaintiff Edward Caniglia hereby responds to Defendants' Statement of Additional Undisputed Facts as follows:¹

51. When she called the Cranston Police Department, Mrs. Caniglia believes that she informed the Cranston Police Department that she and Mr. Caniglia had had an argument and that Mr. Caniglia had been depressed. Exhibit K; June 27, 2018 Deposition Transcript of Kim Caniglia at 31-32.

RESPONSE: Undisputed for purposes of the Parties' Cross Motions for Summary Judgment.

52. Mrs. Caniglia hid the magazine because Plaintiff was depressed. Id. at 22.

RESPONSE: Undisputed for purposes of the Parties' Cross Motions for Summary Judgment that Mrs. Caniglia hid the magazine because she thought Plaintiff was depressed. However, as it

¹ Plaintiff incorporates by reference the summary of the facts set forth in his motion for summary judgment as well as his Statement of Undisputed Facts filed in support of that motion and the Statement of Additional Undisputed Facts filed in opposition to Defendants' motion for summary judgment. Plaintiff will refer to those specific facts here and throughout this Objection as SUF ____.

turned out, Plaintiff was not depressed. Rather, he had lung cancer. (Plaintiff's Statement of Disputed and Undisputed Facts, # 12).

53. Mrs. Caniglia hoped that Plaintiff could get some help at the hospital. Id. at 63. She was concerned about Plaintiff's depression. Id.

RESPONSE: Disputed because Mrs. Caniglia testified that the statement in the Kent Hospital records was taken out of context and she never made that statement to Defendants. (K. Caniglia, pp. 63-64, excerpts attached as Exhibit 1).

54. Mrs. Caniglia did not know why she was not worried that Plaintiff would use the gun on himself. Id. at 30.

RESPONSE: Undisputed for purposes of the Parties' Cross Motions for Summary Judgment.

55. Officer Mastrati testified that, as a police officer, he has the legal authority to seize a weapon from an individual who he thought was suicidal. Exhibit L; May 31, 2018 Deposition Transcript of John Mastrati at 27. Under these circumstances, he would notify a supervisor and the supervisor would make the decision. Id. He was aware of this as a result of training. Id. at 27, 36-37. Seizing the weapons would be for the safety of the person and the public. Id. at 36-37, 38

RESPONSE: Undisputed that Officer Mastrati so testified. However, Officer Mastrati could not identify any Supreme Court case, constitutional provision, court decision, Rhode Island statute, or Cranston Police Department ("CPD") written policy, procedure or general order that gives him that authority. (Mastrati depo., pp. 37-39, excerpts attached as Exhibit 2). Further, he could not identify any formal training he had received that provided that authority. (SUF 56).

56. Officer Mastrati believed that Plaintiff was in a clear and imminent danger of harming himself as a result of the statements he made to his wife and the presentation of a firearm. Id. at 107.

RESPONSE: Disputed because Officer Mastrati could not reasonably have believed that Plaintiff was in clear and imminent danger of harming himself. To the contrary, Officer Mastrati testified that he could not subjectively rule out the possibility that Plaintiff might be suicidal. (SUF 28, 74-76, 93). His subjective belief was contrary to CPD general orders, CPD training, as well as Rhode Island's and other risk factors for suicide. (SUF 17, 25, 27-28, 34-38, 52-53, 57, 102-106, 136).

57. Officer Smith testified that the Cranston Police Department can seize a firearm for safekeeping in non-criminal situations where a supervisor makes a decision that an individual who has a firearm may cause harm to himself or a member of the public. Exhibit M; June 1, 2018 Deposition Transcript of Austin Smith at 34.

RESPONSE: Undisputed that Officer Smith so testified. However, Officer Smith's subjective belief does not establish this authority. He testified that he does not recall any training he received on that topic (Smith depo. at pp. 17, 23, 26, excerpts attached as Exhibit 5); he is not aware of any CPD general order or written policy that sets forth this authority or any written criteria used to make this decision, (Id. at pp. 24, 31, 38); he is not aware of the CPD's basis for this purported authority, (Id. at p. 32); he does not know whether a CPD Powerpoint presentation on "Search and Seizure," (SUF 39), sets forth the CPD's authority to seize Mr. Caniglia's firearms, including under the community caretaking function. (Exhibit 5 at pp. 63-66).

58. Officer Barth was familiar with the Community Caretaking Doctrine. Exhibit N; July 19, 2018 Deposition Transcript of Brandon Barth at 9. Officer Barth testified that the Community Caretaking Doctrine involved the "rights of police officers when it comes to public safety." Id. at 12. He practices this type of public safety daily. Id.

RESPONSE: Undisputed that at the time of his deposition, Officer Barth was familiar with the “Community Caretaking Doctrine.” However, he testified that he heard about it in preparation for his deposition and he learned about it on Wikipedia in preparation for his deposition. (SUF 149). Officer Barth could not say whether he knew about it before 2015. (SUF 150).

59. Officer Barth is not sure if the specific term “Community Caretaking” was ever used in training or whether it was on a particular policy. He was, however, familiar with the theory behind the doctrine in so far as it concerns public safety and police acting in non-criminal situations. Id. at 12, 79.

RESPONSE: Undisputed that at the time of his deposition, Officer Barth was familiar with the “Community Caretaking Doctrine.” However, he testified that he heard about it in preparation for his deposition and he learned about it on Wikipedia in preparation for his deposition. (SUF 149). Officer Barth could not say whether he knew about it before 2015 (SUF 150) and he could not recall having received any prior education or training on the issue of dealing with public safety outside the criminal context. (SUF 151-53).

60. Officer Barth testified 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 12. Moreover, he noted that “sometimes there could be exceptions to search and seizure rules [with respect to] maintaining public safety.” Id. at 15.

RESPONSE: Undisputed that Officer Barth so testified.

61. Officer Barth testified that Plaintiff was “upset” and “agitated.” Id. at 41, 86, 124.

RESPONSE: Undisputed that Officer Barth testified that Plaintiff was upset and agitated that the police had gotten involved in the dispute with his wife. (Barth depo., pp. 88-89, excerpts

attached as Exhibit 3). Disputed in that other CPD officers testified that Plaintiff was “calm,” “normal,” and not suicidal. (SUF 70, 80).

62. Officer Barth considered the totality of the circumstances in dealing with the situation, including, but not limited to, (1) Mrs. Caniglia decided to leave the residence, (2) Mrs. Caniglia wanted a police escort back to her house; (3) Mr. Caniglia had corroborated what Mrs. Caniglia had informed the Cranston Police; (4) the fact that Mr. Caniglia brandished a gun and asked Mrs. Caniglia to shoot him; (5) Mr. Caniglia was agitated and upset. *Id.* at 41, 56, 82-83, 86-89, 102, 124.

RESPONSE: Undisputed that at different points in his deposition, Officer Barth said he considered those points among the “totality of the circumstances,” however, he considered virtually none of the risk factors for suicide that he had been trained to consider in 2011 and 2013. (SUF 163-164 and SUF Exhibit FF at pp. 108-118).

63. Captain Henry is 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.” Exhibit O; June 13, 2018, Deposition Transcript of Russell Henry at 24, 26.

RESPONSE: Undisputed that Capt. Henry so testified. Disputed in that he could not identify any specific training that the CPD had received on the community caretaking doctrine, except possibly with respect to mental health topics and that that training would have covered the police’s authority under the doctrine. (SUF at Exhibit C, p. 28). He testified that CPD does not have the authority the police to require a person to take a psychological evaluation. (*Id.* at pp. 31-32). He could not recall any training he had on seizing weapons for safekeeping, (SUF 88),

nor could he recall any court decisions that authorized the seizure of firearms for safekeeping pursuant to the community caretaking doctrine. (SUF 94).

64. Captain Henry testified that Courts recognize that the police may take “reasonable action to prevent [a] person from killing themselves. A person has a firearm that’s thinking of harming themselves or others, I think the courts recognize police have to take whatever action is necessary to prevent that.” Id. at 25.

RESPONSE: Undisputed that Capt. Henry so testified. Disputed in that he could not identify a single court decision that had authorized the seizure of firearms for safekeeping. (SUF 94).

65. Captain Henry testified that he believes the Community Caretaking Doctrine is synonymous with public safety. Id. at 26.

RESPONSE: Undisputed that Capt. Henry so testified. Disputed in that Capt. Henry testified that the community caretaking doctrine does not permit the CPD to require a person to submit to a psychological evaluation. (SUF 95).

66. Captain Henry may have learned about the Community Caretaking Doctrine in formal education or from materials he has read. Id. at 26. He tries to keep current on the topic by reading current court cases. Id.

RESPONSE: Undisputed that Capt. Henry so testified. Disputed in that Capt. Henry had no recollection of whether he learned about the community caretaking function at the police training academy, (Henry depo. at p. 19, excerpts attached as Exhibit 4); or at any other formal police training, (Id. at pp. 21-22); or where specifically he may have heard about it. (Id. at p. 26). He did not think he or any other CPD officer had heard about it from any CPD in-service training. (Id. at pp. 27-28). He did not know whether the CPD had any written materials on the community caretaking function. (Id. at pp. 29-30). He was not aware of any specific statute,

regulation, CPD GO, or court decision that set forth the CPD's authority pursuant to the community caretaking function. (Id. at pp. 32-34). He was not aware of any court decision that said the community caretaking function authorized the police to seize a person's firearms from his residence or to require the person to have a psychological evaluation. (Id.).

67. Captain Henry testified that although the specific phrase "Community Caretaking" may not have come up in training – the theory of community caretaking may have been discussed in training even though the particular phrase was not used. Id. at 31.

RESPONSE: Undisputed that Capt. Henry so testified. Disputed in that Capt. Henry had no recollection of whether he learned about the community caretaking function at the police training academy, (Exhibit 4 at p. 19); or at any other formal police training, (Id. at pp. 21-22); or where specifically he may have heard about it. (Id. at p. 26). He did not think he or any other CPD officer had heard about it from any CPD in-service training. (Id. at pp. 27-28). He did not know whether the CPD had any written materials on the community caretaking function. (Id. at pp. 29-30). He was not aware of any specific statute, regulation, CPD GO, or court decision that set forth the CPD's authority pursuant to the community caretaking function. (Id. at pp. 32-34). He was not aware of any court decision that said the community caretaking function authorized the police to seize a person's firearms from his residence or to require the person to have a psychological evaluation. (Id.).

68. Captain Henry testified that the mental health training that Cranston Police Officers receive encompassed the concept of the Community Caretaking Doctrine. Id. at 35.

RESPONSE: Undisputed that Capt. Henry testified that the community caretaking doctrine may have come up in training with respect to mental health topics and that that training would have covered the police's authority under the doctrine. (SUF Exhibit C at p. 28).

69. Captain Henry testified that Cranston Police have also been trained on the Community Caretaking Doctrine related to exceptions to the Search Warrant Requirement. *Id.* at 94-95.

RESPONSE: Not disputed that Capt. Henry testified that this was an exception set forth in a Powerpoint presentation dated January 2016 and that he was not aware of any Rhode Island decisions respecting the community caretaking doctrine that did not involve motor vehicles. (Exhibit 4 at. pp. 94-98).

70. An individual associated with the Cranston Rescue informed Plaintiff that they were “going to Kent Hospital” and Plaintiff replied “[f]ine.” Exhibit P, June 29, 2018 Deposition Transcript of Edward Caniglia at 44.

RESPONSE: Undisputed that Plaintiff reached an understanding with Defendants that he would have a psychological evaluation so that they would not seize his firearms. (SUF 85). Defendant did not willing agree to a psychological evaluation. (SUF 85).

71. Officers Russell, Smith, Barth, Henry, and Mastrati are not involved in the return of seized property. Exhibit N at 58; Exhibit O at 58-59, 63; Exhibit M at 57; Exhibit L at 100; Exhibit Q; Office Wayne Russell’s Answer to Plaintiff’s Interrogatory 7.

RESPONSE: Undisputed.

EDWARD CANIGLIA

By his attorneys,

/s/ Thomas W. Lyons

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CERTIFICATION

I hereby certify that on February 6, 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