

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 REPLY RESPECTING HIS MOTION FOR SUMMARY JUDGMENT

Defendants’ objection to Plaintiff’s motion for summary judgment boils down to two legally and factually indefensible arguments: first, that once they receive any report of any supposedly suicidal statement their subsequent actions are justified regardless of the objective facts or their own training and written procedures; and second, that they are entitled to violate plaintiff’s rights of privacy in his own home without a court order or a doctor’s certification despite controlling Supreme Court and Rhode Island law to the contrary.

FACTS¹

These are the essential facts:

- Defendants had specific General Orders (“GOs”) and training on how to deal with persons who had mental health issues, including supposedly suicidal persons, but they failed to apply those GOs and that training. (SUF 34-38, 52, 79, 134, 136).
- Defendants had no formal training or written materials respecting the community caretaking function and could not identify any legal authority that authorized the seizure

¹ Defendants served a Statement of Additional Undisputed Facts with their Objection. Plaintiff has served a Response to that Statement which disputes, in whole or part, the following additional facts: 52, 53, 55-59, 61-64, 66, 67, 69-70.

of Plaintiff and his firearms from his home pursuant to that function. (SUF 5-7, 10, 20, 94, 151-52, 165).

- Sgt. Barth, who made the decision to seize Plaintiff and require him to have a psychological evaluation, (SUF 158-59), learned about the community caretaking function from Wikipedia in preparation for his deposition. (SUF 149).
- During an argument with his wife, Plaintiff made a dramatic gesture by placing an unloaded handgun on the table in front of her and saying “shoot me now.” (SUF 58-59).
- The next morning, his wife called the Cranston Police Department (“CPD”) because she wanted an officer to accompany her to their house to be sure Plaintiff was okay. (SUF 63, 142).
- Officer Mastrati called Plaintiff, spoke with Plaintiff, and told Plaintiff’s wife that Plaintiff was “fine.” (SUF 67).
- Nonetheless, Defendants insisted on going to Plaintiff’s house and speaking to him without Plaintiff’s wife being present. (SUF 67).
- During Defendants’ conversation with Plaintiff he was “calm,” “normal,” and not suicidal. (SUF 70).
- Plaintiff met virtually none of any of the objective criteria of a person who was suicidal. (SUF 79, 136).
- Nonetheless, Defendants seized Plaintiff and his handguns from his home without a court order or a doctor’s certification, and required Plaintiff to have a psychological evaluation. (SUF 85-87, 96, 108, 111-16, 158).

- Defendants justify their actions because they claim they could not subjectively rule out the possibility that Plaintiff might be suicidal, (SUF 28, 74-76, 93), and the community caretaking function supposedly authorized their actions. (SUF 95, 140-41).

ARGUMENT

The crux of this case is whether Defendants can violate Plaintiff's right to privacy under the Fourth Amendment, under Art. 1, Sec. 6 of the Rhode Island Constitution, and under Rhode Island statutes, by seizing him and his firearms from his home on the flimsy basis that Defendants could not subjectively rule out the possibility that he might be suicidal, or that his spouse is concerned about him, despite the abundance of objective criteria indicating he was not suicidal.

In 2006, the United States Supreme Court made clear that one spouse cannot consent to a search of the family residence and a seizure of property if the other spouse is present and objects.

Georgia v. Randolph, 547 U.S. 103, 122 (2006). The Supreme Court said:

The want of any recognized superior authority among disagreeing tenants is also reflected in the law's response when the disagreements cannot be resolved. The law does not ask who has the better side of the conflict; it simply provides a right to any co-tenant, even the most unreasonable, to obtain a decree partitioning the property...and terminating the relationship. [citation omitted]...In sum, there is no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another, whether the issue is the color of the curtains or invitations to outsiders.

Id. at 114. Similarly, here, the Defendants cannot take sides in a purely domestic dispute over whether Plaintiff should see a doctor because he is supposedly "depressed" or whether he should have legally-owned guns in the house.

Although the Rhode Island Supreme Court has not addressed this issue with respect to Art. 1, Sec. 6 of the Rhode Island Constitution, it has held that that provision provides at least as much protection as the Fourth Amendment. Pimental v. Department of Transportation, 561 A.2d

1348, 1352-53 (R.I. 1989); State v. von Bulow, 475 A.2d 995, 1019 (R.I. 1984); State v. Maloof, 114 R.I. 380, 333 A.2d 676, 681 (1975). Thus, under Rhode Island law, as well, one spouse cannot waive the other spouse's rights of privacy in the home if the other spouse asserts those rights. Here, it undisputed that Plaintiff objected to the seizure of his firearms. (SUF 84-86). The only reason he agreed to go for a psychological evaluation was to prevent the seizure. (SUF 85).² Accordingly, contrary to Defendants' arguments, it is legally irrelevant whether Mrs. Caniglia wanted Plaintiff's guns seized.

Similarly, Plaintiff's spouse cannot waive Plaintiff's protections against a compulsory psychological evaluation. It is well-established that "The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." Morales v. Chadbourne, 996 F.Supp.2d 19, 28 (D.R.I. 2014), quoting United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975). Further, Defendants cannot seize Plaintiff just to investigate whether they have probable cause. Id. at 29, citing Arizona v. United States, 132 S.Ct. 2492, 2509 (2012). The United States Supreme Court has also recognized that "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." Addington v. Texas, 441 U.S. 418, 425 (1979) (holding that "the individual's interest in the outcome of a civil commitment proceeding is of such weight and gravity that due process requires the state to justify commitment by proof more substantial than a mere preponderance of the evidence."); McCabe v. Life-Line Ambulance Service, Inc., 77 F.3d 540, 544 (1st Cir. 1996) ("Included among the civil proceedings in which the Fourth Amendment applies are involuntary commitment proceedings for dangerous persons suffering from mental

² In any event, the only reason Plaintiff's wife agreed to the seizure of his firearms was because Defendants falsely represented that Plaintiff had agreed. (SUF 113).

illness.”); Almonte v. Kurl, 46 A.3d 1, 26 (R.I. 2012) (“[C]ommitment for any purpose constitutes a significant deprivation that requires due process protection.”). Hence, persons seeking to compel a psychological evaluation must have probable cause to do so. They cannot compel a psychological evaluation merely because they cannot subjectively rule out the possibility that a person might be suicidal. That amounts to a seizure to determine whether there is probable cause.

Accordingly, the Rhode Island General Assembly provided in the Rhode Island Mental Health Law (“RIMHL”) for specific procedures by which such an evaluation can be compelled. The Rhode Island Supreme Court has commented that “[c]onsistent with our state’s public policy, the [RIHML] makes commitment of a mentally disabled individual a very difficult undertaking.” Santana v. Rainbow Cleaners, 969 A.2d 653, 661 (R.I. 2009). Justice Weisberger, speaking for the Rhode Island Supreme Court, has said: “[RIMHL] was carefully crafted in order to guarantee that the liberty of an individual patient would be scrupulously protected and that this liberty would be impaired only in the event of findings of stringent necessity...” In re Doe, 440 A.2d 712, 714 (R.I. 1982). The Rhode Island Supreme Court has emphasized that diagnosis of whether a person is suicidal requires expertise. Almonte v. Kurl, 46 A.3d at 18-19 (R.I. 2012).

A person seeking the psychological evaluation of another person must obtain at least a physician’s certification, R.I.Gen.L. § 40.1-5-7(a), and, usually, a court order. R.I.Gen.L. § 40.1-5-8. In 2015, the police could make the certification only if “no physician is available,” and if the police certify in writing that the person is “in need of immediate care and treatment” and his “continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental disability.” R.I.Gen.L. § 40.1-5-7(a) and (b). Moreover, the

police cannot utilize this procedure unless the person was given an “appropriate opportunity” for voluntary admission. R.I.Gen.L. § 40.1-5-7(f).

Thus, it is also irrelevant whether Plaintiff’s spouse wanted Plaintiff to be seen by a psychologist at the hospital because he might be depressed.³ As Dr. Berman states, the mere fact that a person may be “depressed” does not indicate that he is suicidal. (SUF 136, Exhibit BB, p. 6). Mrs. Caniglia did not attempt to comply with RIMHL. Without that compliance, she cannot utilize the CPD to seize Plaintiff and take him to a hospital over his objections. Georgia v. Randolph, *supra*; Addington v. Texas, *supra*.⁴

Further, it is undisputed that Defendants did not seek to consult with a physician about a certification. (SUF 159). Moreover, Defendants agree that they are not qualified to diagnose mental illness. (SUF 28, 93). Accordingly, they cannot certify (in writing or otherwise), as required by the RIMHL, that Plaintiff was in need of immediate care and treatment and that his continued unsupervised presence in the community would create an imminent likelihood of serious harm by reason of mental instability. R.I.Gen.L. § 40.1-5-7(a). To the contrary, Plaintiff presented virtually none of the risk factors for suicide, (SUF 37, 79, 106, 136), and the only medical professionals involved in this case agree that he was not at imminent or acute risk of suicide. (SUF 106, 121, 136). Dr. Berman states that it was inappropriate for Defendants to seize Plaintiff, to require him to have a psychological evaluation, and to seize his firearms. (SUF

³ As it turned out, Plaintiff was not depressed; he had lung cancer. (Plaintiff’s Statement of Disputed and Undisputed Facts, #12).

⁴ To be clear, Plaintiff’s position is that Mrs. Caniglia merely wanted a CPD officer to accompany her to the house to be sure Plaintiff was okay. (SUF 63, 142). Once that was determined, (SUF 67), Defendants’ authority ended. Defendants argue, instead, that once Mrs. Caniglia called them, they were authorized to take any steps they determined were appropriate, regardless of whether or not Plaintiff or his wife consented. (Defendants’ Statement of Additional Undisputed Facts (ECF No. 58) at Exhibit N, p. 41).

136). Defendants failed to comply with their own training. (SUF 36-38, 79, 103, 134, 136).

Defendants present no expert opinions substantiating their actions. In short, Defendants lacked the requisite probable cause for such seizures.

The cases upon which Defendants rely are either from other jurisdictions, or irrelevant, or actually support Plaintiff's argument. The first point is critical because Plaintiff has identified extensive Rhode Island law, whether contained in statutes, court decisions, or Defendants' own GOs (not to mention, their training), that support his claims. Plaintiff has also identified First Circuit decisions that support his claims. Defendants rely on court decisions from other jurisdictions that do not accurately reflect Rhode Island law. Rhode Island law determines the scope of the community caretaker function ("CCF") and Defendants' own GOs demonstrate "sound police procedure," or the lack thereof. Cady v. Dombrowski, 413 U.S. 433, 447 (1973).

Rhode Island substantive law also determines whether qualified immunity applies (at least with respect to claims arising under state law). A defendant can only qualify for qualified immunity if he has the discretionary authority to take the actions for which he is sued. Estate of Cummings v. Davenport, 906 F.3d 934, 940 (11th Cir. 2018) ("Cummings"); Jenkins v. City of New York, 478 F.3d 77, 88 (2nd Cir. 2007) (whether police officers had qualified immunity depended on state law respecting false arrest and probable cause). In Cummings, the Eighth Circuit held that a defendant prison warden lacked the discretionary authority under state law to order a hospital to enter a "do not resuscitate" order for an injured inmate. 906 F.3d at 942-43. Accordingly, the warden could not get qualified immunity. Here, under both the RIMHL and the Rhode Island Firearms Act, Defendants lacked the discretionary authority to seize Plaintiff for a psychological evaluation and to seize his firearms where they did not comply with the applicable

statutes. (Summary Judgment Motion Memorandum at pp. 28-31, 39-41; Plaintiff's Objection to Defendants' Summary Judgment Motion at pp. 5-11, 28-32).

Moreover, as this Court has said: "[O]utrageous conduct will obviously be unconstitutional' without regard to precedent because 'the easiest cases don't even arise.'" Morales v. Chadbourne, 235 F.Supp.3d 388, 400 (D.R.I. 2017), quoting Safford United School District No. 1 v. Redding, 557 U.S. 364, 377 (2009). Here, Defendants robotically applied their practice that "in these situations we seize the firearms" regardless of the complete lack of objective indications that Plaintiff was actually suicidal. (SUF 83). Then, they told Plaintiff that they would not seize his firearms if he agreed to a psychological evaluation. (SUF 85). Finally, they told Plaintiff's wife that Plaintiff had agreed to the seizure of the firearms. (SUF 113).⁵ They did all this because they could not subjectively rule out the possibility that Plaintiff might be suicidal. (SUF 74). Essentially, Defendants cast the burden on Plaintiff to prove that he was not suicidal to avoid a violation of his rights. Then, they lied to him and his wife about seizing the firearms. That is outrageous.

Further, with respect to the federal claims, Supreme Court, First Circuit and District of Rhode Island decisions control, rather than decisions from other circuits, though, precedent from other circuits might be relevant. El Dia, Inc. v. Governor Rossello, 165 F.3d 106, 110 n. 3 (1st Cir. 1999); Mason v. Massachusetts Dept. of Environmental Protection, 774 F.Supp.2d 349, 371 (D.Mass. 2011) ("Mason") ("The Individual Defendants provide no First Circuit case law to support the application of qualified immunity here."). In El Dia, the First Circuit said that the factors relevant to whether the law of other jurisdictions determines if a law is clearly established

⁵ Defendants apparently contend that Mrs. Caniglia wanted Plaintiff's guns "out of the house," which she denies. However, even if it was true, Defendants' cannot seize Plaintiff's firearms over his objection without a court order.

include the location and level of the precedent, its date, its persuasive force, and its level of factual similarity to facts in the subject case. 165 F.3d at 110, n. 3.

Here, Defendants provide no reasons why the case law they cite from distant jurisdictions should apply. In particular, Defendants rely on that case law to argue that the governmental interest in preventing suicide outweighs the individual's interest in privacy and that the probable cause required for the government to assert that interest is low. (Defendants' Objection, pp. 19-20). However, Defendants fail to show that those jurisdictions have constitutional provisions, statutes, or case law similar to Rhode Island's. Plaintiff submits that Rhode Island places a high value on an individual's right of privacy in his home, the right to possess firearms in his home, as well as his right to be free from a compelled psychological evaluation. (Summary Judgment Motion Memorandum at pp. 10-19; Plaintiff's Objection to Defendants' Summary Judgment Motion at pp. 23-27).

Further, it is clear that compliance or failure to comply with pertinent statutes or procedures is relevant evidence with respect to qualified immunity. Cf., Mason, 774 F.Supp.2d at 373 (Defendants' failure to comply with the Family Medical Leave Act is grounds to deny them qualified immunity); and, Wojcik v. Town of North Smithfield, 874 F.Supp. 508, 519 (D.R.I. 1995) (noting defendants' compliance with state statutes). Here, Defendants failed to comply with state statutes, their GOs, and their training. (SUF 17, 28, 34-38, 44, 74-76, 79, 99, 136, 153-59).

Moreover, to the extent Defendants' claim of qualified immunity depends on the scope of the community caretaking function ("CCF"), that also depends on state law. Cady v. Dombroski, 413 U.S. at 447. Qualified immunity protects the Individual Defendants from liability if their conduct does not violate clearly established statutory or constitutional rights of which a

reasonable person should have known. Estrada v. Rhode Island, 594 F.3d 56, 62 (1st Cir. 2010).

However, qualified immunity does not protect those who are incompetent or who knowingly break the law. Kraczorowski v. Town of North Smithfield, 974 F.Supp.2d 110, 117-18 (D.R.I. 2013). Here, Defendants knowingly violated their own GOs and training. (SUF 17, 28, 34-38, 44, 74-76, 79, 99, 136, 153-59). The only Rhode Island cases of which they were aware respecting the CCF involve motor vehicles. (SUF 40, 94). They could cite no law that supported their authority to seize Plaintiff and his firearms in these circumstances. (SUF 56, 131, 140).

Further, qualified immunity cannot mean that the police officer is not liable if his attorney subsequently finds some case law somewhere of which the police officer was unaware that provides an *ex post facto* justification for what the police officer did. If so, then qualified immunity would depend on the research abilities of the police officer's counsel and not on the reasonableness of the police officer's attempt to comply the local law of which he should know. Here, Defendants were not aware of any relevant law that supported their actions. (SUF 56, 131, 140). To the contrary, the only Rhode Island (or other) decisions applying the CCF of which Defendants were aware applied to automobiles. (SUF 40, 94). Defendants were not aware of any CCF decision or law that authorized the seizure of a person and his property from his home. Thus, they could not have been reasonably relying on that function when they seized Plaintiff and his firearms. Accordingly, qualified immunity should not apply.

In any event, qualified immunity does not protect the municipality from liability. Kaczorowski v. Town of North Smithfield, 974 F.Supp.2d 110, 118 (D.R.I. 2013). A municipality may be liable under § 1983 when a custom or practice is so “well-settled and widespread that the policymaking officials of the municipality can be said to have either actual or constructive knowledge of it yet did nothing to end the practice.” *Id.* quoting, Bisbal-Ramos

v. City of Mayaguez, 467 F.3d 16, 23-24 (1st Cir. 2006). Here, Col. Winkquist, the chief of the CPD and its policymaker (SUF 11). Major Quirk, the third-ranking officer in the CPD, testified that Defendants' actions in seizing Plaintiff and his property were the CPD's custom and practice. (SUF 130-31). Moreover, another person had made substantially similar claims in this Court against the City in 2012, which claims were settled. (Machado v. City of Cranston, et al., C.A. No. 12-445). Accordingly, the City's policymaking officials were well-aware of the customs and practices at issue.

Moreover, the CPD's failure to have written procedures properly setting forth the CPD's legal ability to seize persons and property in these circumstances constitutes a constitutional violation. Monell v. Department of Social Services of City of New York, 436 U.S. 658, 690-91 (1978); Howie v. City of Providence, C.A. No. 17-604, 2019 WL 320497 at *3 (D.R.I. Jan. 24, 2019) ("A plaintiff generally must show that a municipality knew there was a risk of unlawful behavior by its employees and that they did not act to mitigate this risk despite that knowledge."); see also Russo v. City of Hartford, 341 F.Supp.2d 85, 107 (D.Conn. 2004) ("A plaintiff may establish municipal liability by showing that a municipal policy or custom existed as a result of the municipality's deliberate indifference to the violation of constitutional rights, either by inadequate training or supervision."); Murvin v. Jennings, 259 F.Supp.2d 180, 187 (D.Conn. 2003) (a municipality can be liable for failure to have a policy that prevents constitutional violations by police); Garrison v. City of Texarkana, Texas, 910 F.Supp. 1196, 1205 (E.D.Tex. 1995) (same); Warren v. Briggs, No.08-1172, 2009 WL 174996 at *5 (C.D.Ill. 2009).

Here, Defendants claim that their seizures of Plaintiff and his property are pursuant to Cranston's custom and practice. (SUF 131). Sgt. Barth states he has required more people than

he can count to have psychological evaluations. (SUF 157). The City has seized hundreds of firearms, (SUF 145-146), many for “safekeeping.” (SUF Exhibit CC). It has previously been sued for these very practices. (Machado v. City of Cranston, et al., C.A. No. 12-445). However, it has no GO or other written policy or procedure setting forth the CPD’s authority and process for seizing people and property pursuant to the community caretaking doctrine. (SUF 5, 20). That omission constitutes unconstitutional indifference to Plaintiff’s rights.

Defendants’ rely on numerous decisions that do not support their arguments. Defendants quote from State v. Cook, 440 A.2d 137, 139 (R.I. 1982) (Defendants’ Objection, p. 3), but the case actually involved a defendant who punched an East Providence police officer while the officer was sitting in his patrol car on South Main Street in Providence (which is clearly a crime). Much of the decision is colorful dictum, including a quote from “The Pirates of Penzance.” Nothing in the decision supports the proposition that police officers can seize a person and his property from his home because they have a purely subjective concern that he might be suicidal.

Defendants frequently cite U.S. v. Rodriguez-Morales, 929 F.2d 780 (1st Cir. 1991) (Defendants’ Objection, pp. 3-4, 7, 9), however, that case involved the application of the CCF to the actions of the Rhode Island State Police in stopping two cars whose occupants were arguing on Interstate 95 and then impounding those cars. The First Circuit said that action fell within the scope of the function. That is a classic application of the CCF. It does not support Defendants’ argument that Rhode Island law would approve the use of the function to seize a person and his property from his home in these circumstances.

Defendants’ citation to Mucci v. Town of North Providence, 815 F.Supp.2d 541 (D.R.I. 2011) (Defendants’ Objection, p. 4), is puzzling. In a footnote, the Court says the CCF does not apply because the plaintiff was challenging his arrest, not his pre-arrest detention supposedly

pursuant to the function. Id. n. 1. The Town's police officers Tasered plaintiff when they thought he was lunging at them with a knife. He sued alleging excessive force. That is not this case.

Defendants rely heavily on Bloom v. Palos Heights Police Department, 840 F.Supp.2d 1059 (N.D.Ill. 2012) (Defendants' Objection, pp. 7, 12, 14, 22). However, that case was very different than this one. It involves a minor whom an adult reported had made a suicide threat. An Illinois statute permitted the police to take a minor into custody and transport the minor to a mental health facility when, "as a result of his personal observation," the police officer "has reasonable grounds to believe that the minor is eligible for admission" and "is in a condition that immediate hospitalization is necessary in order to protect the minor or others from physical harm." 405 ILCS 5/3-504. The police arrived on the scene, observed the minor, forcibly took the minor into custody, and transported her to a hospital where she underwent a mental evaluation and was released.

Here, there is no minor involved. Plaintiff is an adult and he denied being suicidal. Plaintiff was "calm," "normal," and not suicidal when Defendants spoke with him. (SUF 70, 80). Defendants based their decisions on Plaintiff's reported actions of the prior night. (SUF 96, 106). None of the relevant, objective, applicable criteria indicated that Plaintiff was actually suicidal. (SUF 37, 79, 106, 136). The relevant statute requires that police either consult with a doctor, if available, or obtain a court order. R.I.Gen.L. §§ 40.1-5-7, 40.1-5-8. Defendants made no effort to consult with a doctor and did not obtain a court order. They did not certify in writing that his continued presence in the community presented an imminent likelihood of serious harm, nor could they, because they are not qualified to do so. (SUF 28, 93).

Finally, the Bloom decision is just plain wrong. It makes a host of assumptions or decisions about whether the police officers' actions were reasonable without reference to any objective standards or criteria upon which to judge that reasonableness. There is no mention of the defendants' written police procedures or training. There is no reference to specific risk factors for suicide. There is no expert testimony about whether the minor was actually at risk of suicide or whether the police officers acted appropriately in the circumstances. Instead, the court plucked "reasonableness" out of the thin air.

Here, the Defendants' own GOs and training show they acted unreasonably. Virtually none of the appropriate risk factors for suicide applied to Plaintiff. (SUF 37, 79, 106, 136). Plaintiff's expert, Dr. Berman, says Plaintiff was not at acute or imminent risk of suicide and that Defendants failed to apply their own GOs and training. (SUF 136). Defendants present no countervailing opinions, other than their own, even though their own GO says they are not qualified to diagnose mental illness. (SUF 28, 93). Indeed, Plaintiffs do not actually say Plaintiff was suicidal. They say they could not tell that he was not suicidal, essentially requiring Plaintiff to disprove a negative to protect his rights against unreasonable searches and seizures in his home. (SUF 28, 74-76, 93).

Defendants cite Bayne v. Provost, No. 1:04 CV 44, 2005 WL 1871182 (N.D.Ill. Aug. 4, 2005), for the proposition that: "[l]ike in the criminal context, a police officer is justified in relying upon a citizen's warning that another person has threatened suicide even if it is later determined by mental health professionals that the person presents no such risk." Id. at *8. However, that proposition of law is simply not correct. Bailey v. Kennedy, 349 F.3d 731, 740 (4th Cir. 2003); see also Thompson v. Louisiana, 469 U.S. 17, 22 (1984); Kerman v. City of New York, 261 F.3d 229, 235-36 (2nd Cir. 2001). Moreover, the decision is distinguishable for the

same reasons as Bloom, i.e., again, the court finds reasonableness without reference to any objective standards, other than a layperson's report to the police. Here, there were abundant objective standards that Plaintiff was not suicidal when Defendants seized him.

Defendants cite to Ferreira v. City of East Providence, 568 F.Supp.2d 197 (D.R.I. 2008) (Defendants' Objection, p. 11), but that case actually supports Plaintiff's claims. In that case, the police were familiar with plaintiff's decedent, Patricia Ferreira, because of her "frequent altercations" with her boyfriend. Her brother and her mother went to police headquarters with Patricia's son to inform them that they would be taking the son to their house because Patricia and her boyfriend were again arguing. Police officers went to the residence of Patricia and her boyfriend. Patricia agreed to move out of the residence and police left. Subsequently, while moving out of the residence, Patricia sat in her car, pointed her gun at her own chest and threatened to commit suicide. When the police arrived, again, Patricia refused to put her gun down and leave her car, sometimes placing the barrel of the gun in her mouth or pointing it at her chest. She told the police that she would rather die than be placed in a "mental institution." She told the police officers who were speaking with her to return to their vehicles. Then, she turned up the radio, blessed herself with the sign of the cross and closed her eyes. Defendants rushed the car but Plaintiff shot herself and died.

Patricia's brother sued alleging a violation of Patricia's Fourth Amendment rights. The Court found that Defendants' attempt to seize Patricia was reasonable because:

[T]he officers were specifically aware that she was armed, suicidal, mentally unstable, and potentially dangerous to everyone present, including herself, the officers and the gathering bystanders. Despite requests from the police to put the gun down and exit the car voluntarily, Patricia remained in her vehicle, sometimes placing the barrel of the gun in her mouth.

Id. at 209.

Here, by contrast, Plaintiff was not in his car with a gun; he was sitting on his back porch minding his own business. (SUF 69). He had no prior history of mental instability or of relevant contact with Defendants. (SUF 46). He was not placing a handgun in his mouth nor was he even near a handgun when Defendants spoke with him. (SUF 69). Plaintiff did not make suicidal statements when defendants spoke with him. (SUF 70, 72). To the contrary, he denied being suicidal and said he would not commit suicide. (SUF 70-72). No one contends that Plaintiff actually threatened to commit suicide. (SUF 46, 78, 109, 119). Defendants themselves said Plaintiff seemed calm, normal and not suicidal. (SUF 70-72, 80). Plaintiff had virtually none of the risk factors for suicide, including the factors that Defendants had been trained to apply. (SUF 37, 79, 106, 136). Defendants violated their own GOs. (SUF 17, 28, 34-38, 44, 74-76, 79, 99, 136, 153-59, 164). All the medical professionals, including Dr. Berman, agree that Plaintiff was not at acute or imminent risk of suicide. (SUF 106, 121, 136). No expert has said Defendants acted appropriately. Defendants violated Plaintiff's privacy rights, including his right to be free of unreasonable searches and seizures.

Finally, Defendants cite Haptonstahal v. Pawtucket Police Department, C.A. No. 18-184, 2018 WL 5722248 (D.R.I. Nov. 1, 2018), for the argument that this court has applied the public duty doctrine to the "intentional" tort of defamation. (Defendants' Objection, p. 24). There are two important distinctions. First, plaintiff in that case was not a public official or public figure, so the relevant standard of care was negligence, not malice, as the court noted in its opinion. Id. at *3. Moreover, plaintiff was pro se so it is entirely unclear how well she argued the application of the public duty doctrine.

CONCLUSION

For the reasons set forth, the Court should grant Plaintiff's motion for summary judgment.

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