United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Frederick J. Kapala	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 50075	DATE	11/8/2011
CASE TITLE	Brantley vs. DeKalb County, et al.		

DOCKET ENTRY TEXT:

Defendants' motion for summary judgment [28] is granted in part and denied in part. Defendants are granted summary judgment on the federal claims brought against them in Counts I, IV, VII, X, XIII, XVI, XIX, and XXII. In addition, defendants are granted summary judgment on the state-law claims brought against Lt. Klein and Officer Smith in Counts XVII, XVIII, XXIII, and XXIV. The court declines to exercise supplemental jurisdiction over the remaining state law claims which are dismissed without prejudice to plaintiff proceeding with them in state court. This case is closed.

■[For further details see text below.]

Docketing to mail notices.

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Plaintiff, David Brantley, as Special Administrator of the Estate of Brandi L. Brantley, deceased, filed a 24-count complaint alleging that defendants, County of DeKalb, DeKalb County Sheriff's Department, Sheriff Roger Scott, Lieutenant Joyce Klein, Sergeant Kathy Christensen, and Correctional Officers Misty Lawton-Odom, Kelly King, Jason Personette, and Timothy Smith, violated Brandi's constitutional rights and committed various state law torts in connection with Brandi's suicide at the DeKalb County Jail. Before the court is defendants' motion for summary judgment. For the reasons that follow, the motion is granted as to all federal claims and the state-law claims brought against Lt. Klein and Officer Smith. The court declines to exercise supplemental jurisdiction over the remaining state-law claims. Consequently, the balance of the defendants' motion for summary judgment is denied as moot.

I. FACTUAL BACKGROUND[1]

On April 3, 2009, Brandi was remanded from DeKalb County Drug Court to the custody of the Sheriff to await placement in a residential drug rehabilitation facility. Brandi arrived at the jail with a copy of the drug court's order at approximately 12:10 p.m. and was met by Officer Odom. Brandi looked like she may have been crying earlier and also appeared upset, annoyed, and possibly embarrassed to be in jail. Odom considered Brandi compliant and responsive. Nothing about her behavior struck Odom as out of the ordinary because it was not unusual for jail admitees to be upset. When Sergeant Christensen saw Brandi, she joked with Brandi and both women laughed. Christensen was aware that Brandi admitted to being a heroin user during her most recent booking on March 25, 2009, and that this time she had been remanded from drug court. Christensen told Brandi that she was glad Brandi was going to treatment and Brandi responded positively.

Prior to April 3, 2009, Brandi had been booked into the jail multiple times. During a March 19, 2007

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booking, Brandi stated that she had been treated two years earlier for "suicidal tendencies." During a February 17, 2009 booking, Brandi stated that she had been treated years earlier for "suicidal thoughts." On the other occasions that Brandi was booked into the jail, she did not disclose her past suicidal tendencies or thoughts. During all previous bookings, Brandi expressly denied any prior suicide attempts or any current suicidal thoughts.

Prior to being formally booked, and because all of the holding cells were full, Brandi initially was detained in the attorneys' room where Sergeant Christensen visually observed her at approximately 12:30 p.m. The parties dispute whether Brandi was crying or appeared emotionally upset while being held in the attorneys' room. At approximately 1:13 p.m., Officer Personette escorted Brandi from the attorneys' room to the adjacent visitation room because an inmate needed to meet with his attorney. Brandi's confinement was captured on videotape by a security camera.[2] The camera was trained such that it provided footage through the attorneys' room and into the visitation room, both of which have glass walls. There is a full length glass door on the right-hand side, as shown on the video footage, so that passers-by can look into the visitation room, which contains four metal stools bolted to the floor, a waist-high counter that runs the length of the room, and four telephones fixed above the counter between each stool.

After entering the visitation room, Brandi asked Officer Personette for a blanket and shoes, which he provided to her at approximately 1:18 p.m. Brandi asked Personette how long she would have to remain at the jail before being transferred to a rehabilitation facility remarking that she was looking forward to treatment.[3] Personette considered Brandi calm, polite, and relaxed and she did not appear to be agitated, anxious, or hopeless. The video footage shows that at 1:46 p.m., Brandi appears to be touching the first telephone while sitting on the first stool with the blanket draped over her shoulders. At 1:59 p.m., Brandi appears to be holding the telephone cord and examining it. Officer Odom visually observed Brandi in the visitation room at approximately 2:00 p.m. At that time, the video footage shows Brandi sitting on the first stool with the blanket draped on her shoulders.

At 2:01 p.m., the video footage shows Brandi stand up, put the blanket over her head, turn her back to the camera and face the counter while standing between the first and second stools. Sergeant Christensen visually observed Brandi in the visitation room at approximately 2:02 p.m. for about 5 seconds. During her deposition, Christensen testified that she could not recall if Brandi had a blanket over her head or what position she was in. At that time, the video footage shows Brandi standing between the first and second stools with her back to the camera and the blanket over her head. At 2:02:38 p.m., the video footage shows the top of Brandi's blanket lower but remain above counter height. By 2:04:21 p.m., the blanket is still over Barndi's head and body but it shifts momentarily revealing that she is sitting on the floor because the line made by the contrast between her blue shirt and darker colored pants is near the floor. At 2:05:35 p.m., Brandi's right arm emerges from the left side of the blanket indicating that she is sitting on the floor facing the camera and her back is to the wall beneath the counter. At 2:05:59 p.m., Brandi's right arm, still exposed, is reaching up above the counter. Brandi's right arm remains visible until 2:14:51 p.m. Brandi stays in the same general position with the blanket moving around periodically until approximately 2:24:45 p.m., when Brandi's right arm and shoulder come into view momentarily. By 2:27 p.m., there is little, if any, movement and Brandi is sitting on the floor in the same position covered with the blanket except for her right arm and shoulder which are still partially exposed.

Officer Odom visually observed Brandi in the visitation room at 2:30 p.m. During her deposition, Odom testified that, at that time, Brandi was sitting with a blanket on and did not appear to be under any distress. Odom testified further that Brandi had been incarcerated at the jail prior to the date in question and that she had frequently seen Brandi with a blanket over her head. Sergeant Christensen also visually observed Brandi in the visitation room at approximately 2:30 p.m. During her deposition, Christensen testified that Brandi was covered with a blanket in a seated position between the first and second stool. Christensen noticed that all the phones' receivers were on the hooks. At 2:30 p.m., the video footage shows Brandi sitting on the visitation room floor between the first and second stools with her back to the counter and a blanket over her head and body. An officer is seen walking past the glass visitation room door to Brandi's left at 2:30:09, and again at 2:30:39 escorting an

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inmate past the visitation room door. Christensen was aware at the time that Brandi had not yet been booked or been suicide screened. Christensen also testified that during a previous 30-day incarceration at the jail, she observed Brandi on her bunk or on the floor covered with a blanket.

According to Odom, at approximately 2:46 p.m., she opened the door to the visitation room and observed Brandi completely covered with a blanket sitting on the floor in between two stools with her back to the telephone. Odom asked Brandi if she was ready to be processed and Brandi did not respond. Odom asked Brandi a second time if she was ready to be processed and, after Brandi did not respond the second time, Odom lifted the blanket off of Brandi's head and observed that she was unresponsive, a telephone cord was wrapped around her neck, and the telephone receiver was on its hook. Odom called for help over the jail radio and Officer King called for an ambulance. Lieutenant Klein, Sergeant Christensen, Officer Personette, and Deputy Smith immediately went to the visitation room where Klein and Smith lifted Brandi's body up while Personette removed the telephone cord from Brandi's neck. Klein, Christensen and Personette performed cardiopulmonary resuscitation (CPR) on Brandi until paramedics arrived.

Paramedics arrived and took over performing CPR before transporting Brandi to the hospital. According to paramedic Wheeler, when he removed Brandi's shirt to connect her to the cardiac monitor, he noticed scar tissue on her neck. Wheeler asked an officer what the scar tissue was from and "[t]hey said it was from a previous incident that the patient had had." Wheeler did not know which officer said this or even if that officer was male or female. When asked to describe the scar tissue, Wheeler said "[i]t was almost like a braided type of rash on her neck." When asked whether he knew if the officer was referring to what had just happened, Wheeler said "we were not under the impression that it had just occurred" because they said it was from a previous incident. Wheeler agreed, however, that he did not know if the officer was referring to what had just occurred or to something that occurred in the past, and that he was not sure if what he observed on Brandi's neck was consistent with her hanging herself with the telephone cord. Wheeler testified that the officers did not tell them that the patient had hung herself with the telephone cord, only that she had a history of drug abuse. Wheeler did not learn that Brandi hung herself until he was leaving the hospital. Brandi died as a result of hanging herself in the visitation room.

On more than one occasion during her prior incarcerations, Officer Personette observed Brandi completely covered with a blanket. He related that one time Brandi came to get her lunch tray completely covered with a blanket from head to toe with just her face showing and other times she would be sitting on the bed completely covered with a blanket from head to toe with just her face showing or completely covered head to toe as she slept. Personette added that prior to the date in question he had routinely observed other inmates using their blankets in similar fashion and that seeing this behavior was not an unusual occurrence.

Officer King was assigned to the jail's control room on April 3, 2009, and she intermittently observed Brandi on the video surveillance monitor in the course of performing her other duties. DeKalb County "Corrections Order 07-1, control room memos" mandates that "video monitors will be monitored continually. Any unusual occurrences or suspicious activity is to be reported to corrections deputies immediately using the phone or radio." King could not remember how many times she monitored Brandi through video surveillance but testified that she did observe Brandi in the visitation room with a blanket covering her head and body, and she believed Brandi was sleeping and not in any distress. King said that she previously had seen Brandi under a blanket at the jail and that inmates are frequently under blankets. On the date in question, King was aware that Brandi had been remanded from drug court but was not aware that Brandi was a heroin user or of any attempts by Brandi to kill herself. King was aware that Brandi had not been booked or suicide screened at the time Brandi was in the visitation room.

DeKalb County Corrections Order 90-2 requires that "[t]he suicide screening form is to be completed as soon as possible once the arrestee has been brought onto the jail floor." Illinois County Jail Standard Section

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701.130(a)(2) mandates that DeKalb County corrections officers "provide personal observation, not including observation by a monitoring device, at least once every thirty minutes." Illinois County Jail Standard Section 701.130(b) mandates that "[a] written record book, or log, with entries in ink or a time clock type record shall be maintained by each jail officer assigned to cell block duty on each shift. Entries shall show the time of each visit by the jail officer, his or her signature, and any relevant remarks such as incidents and activities occurring on the shift." The inmate inspection log for the 8:00 a.m. to 4:00 p.m. shift has various omissions in it, including unrecorded rounds and missing records of the movement of other inmates.

Sergeant Christensen was the assigned "Sheriff Representative" to the drug court, but did not attend the April 3, 2009 drug court meeting. The Drug Court Team meeting received Dr. Amy Jakobsen's "Drug Court Substance Abuse Assessment" which indicated that Brandi denied current suicidal and homicidal thoughts but that her Personality Assessment Inventory (PAI) results indicated the possibility of a pattern of recurrent suicidal ideation and that she should be closely monitored for symptoms of depression. The Sheriff's office had no policy or procedure to disseminate psychiatric evaluations and Drug Court Substance Abuse Assessments from the Drug Court Team meeting if Sergeant Christensen did not attend.

Brandi's death was the first suicide in the jail in thirteen years and the second suicide in the jail in the past twenty-five years. No one had ever attempted suicide in the visitation room prior to Brandi's suicide and no one had ever attempted suicide in the jail while covered by a blanket. Sheriff Scott sets jail policy, which requires correctional officers accepting new inmates to scrutinize the physical and mental condition of the prisoner. Correctional officers receive yearly training by mental health professionals on mental health and suicide prevention.

Plaintiff has filed a 24-count complaint against defendants alleging deliberate indifference in violation of the Eighth and Fourteenth Amendments against each defendant pursuant to 42 U.S.C. § 1983 (Counts I, IV, VII, X, XIII, XVI XIX, and XXII); and state law wrongful death and survival claims (Counts II, III, V, VI, VIII, IX, XI, XII, XIV, XV, XVII, XVIII, XX, XXI, XXIII, and XXIV).

II. ANALYSIS

Summary judgment is proper when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of material fact exists and summary judgment is inappropriate if there is sufficient evidence for a jury to return a verdict for the nonmoving party. Springer v. Durflinger, 518 F.3d 479, 483 (7th Cir. 2008). This assertion must be supported by materials in the record, including depositions, documents, electronically stored information, affidavits, declarations, interrogatories and other materials. Fed. R. Civ. P. 56(c)(1)(A). Summary judgment is mandated "after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). For the purposes of a motion for summary judgment, the court must look at the evidence in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). To avoid summary judgment, the opposing party must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." Id. at 250 (quotation marks omitted).

A. Individual Capacity § 1983 Claims

Defendants' first contention is that Sheriff Scott, Lieutenant Klein, and Officer Smith are entitled to summary judgment on plaintiff's § 1983 claims because they had no personal involvement in Brandi's detention. In response, plaintiff abandons his claim against Scott individually and all claims against Klein and Smith. Consequently, Scott is granted summary judgment on the individual claims asserted against him in Count IV. Klein and Smith are granted summary judgment on all claims asserted against them and counts XVI - XVIII and XXII - XXIV are dismissed with prejudice.

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Defendants' next contention is that Sergeant Christensen, and Officers Odom, Personette, and King are entitled to summary judgment on the individual § 1983 claims asserted against them because there is no evidence that they had any subjective knowledge that Brandi was an imminent suicide risk. In response, plaintiff maintains that there is evidence raising a material issue of fact on this issue.

The parties agree that in order to sustain his Fourteenth Amendment deliberate indifference claims,[4] plaintiff must identify evidence sufficient to support a jury determination that the individual defendants subjectively knew that Brandi was at substantial risk of committing suicide and that they intentionally disregarded that risk. See Minix v. Canarecci, 597 F.3d 824, 831 (7th Cir. 2010). With regard to the subjective knowledge requirement, "it is not enough that there was a danger of which a prison official should have been aware, rather, the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Collins v. Seeman, 462 F.3d 757, 761 (7th Cir. 2006) (quotation marks omitted). This is because deliberate indifference "comprehends more than mere negligence but less than the purposeful or knowing infliction of harm." Estate of Novack v. Cnty. of Wood, 226 F.3d 525, 529 (7th Cir. 2000). "Mere negligence or even gross negligence does not constitute deliberate indifference." Snipes v. DeTella, 95 F.3d 586, 590 (7th Cir. 1996). Rather, "the defendant must be cognizant of the significant likelihood that an inmate may imminently seek to take his own life." Collins, 462 F.3d at 761.

Plaintiff identifies four categories of evidence which he maintains are sufficient to support a jury determination that defendants had subjective knowledge that Brandi was at a substantial risk of imminent suicide: (1) Brandi's suicidal behavior portrayed on the jail's surveillance video; (2) defendants' failure to follow policies and procedures; (3) defendants' own records; and (4) defendants' admissions to paramedics that they were aware of Brandi's "previous hanging attempt." In response, defendants argue that this evidence fails to establish sufficient evidence of their subjective knowledge.

1. Video Footage

Plaintiff acknowledges defendants' deposition testimony indicating that they observed no suicidal behavior by Brandi before it was discovered that she had hung herself, but argues that a genuine issue of material fact exists as to whether the testimony is believable in light of what the video footage shows and all the facts known to defendants. The court has carefully reviewed the video footage paying particular attention to the time periods around 2 p.m. and 2:30 p.m., when both Christensen and Odom visually observed plaintiff. At 2:00 p.m., the video footage shows Brandi sitting on the first stool in the visitation room with a blanket draped over her shoulders before she stands up between the first and second stools with her back to the camera and puts the blanket over her head. At 2:30 p.m., the video footage shows Brandi sitting on the visitation room floor between the first and second stools with her back to the counter and a blanket over her head and body. There is testimony in the record from various defendants that an inmate putting a blanket over her head and body is a normal occurrence at the jail and several testified that they had seen Brandi engage in that behavior at the jail in the past.

Most importantly, however, plaintiff has not identified any behavior on Brandi's part shown on the video footage that indicates that she was at a substantial risk of committing suicide, much less any such behavior that a defendant actually observed, either directly or by video surveillance. Plaintiff maintains that at 2:01 p.m., the video footage shows Brandi stand up, put the blanket over her head, place a telephone cord around her neck, and begin to hang herself until 2:45 p.m. Defendants dispute this, and maintain that the video footage does not allow the viewer to conclude when Brandi put the telephone cord around her neck or when she actually hanged herself.

While at the summary judgment stage the court must look at the evidence in the light most favorable to the nonmoving party, Liberty Lobby, 477 U.S. at 255, it must only do so "if there is a 'genuine' dispute as to those facts," Scott v. Harris, 550 U.S. 372, 380 (2007). In this case, the video speaks for itself. See id. at 378 n.5. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling

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on a motion for summary judgment." Id. at 380. This is true where a "videotape capturing the events in question . . . quite clearly contradicts the version of the story told by [one of the parties]." Id. at 378.

The court agrees that because she was completely covered with a blanket, the video footage in this case contradicts plaintiff's assertion that the footage shows Brandi wrap the telephone cord around her neck and hang herself. While hindsight demonstrates that these events occurred, the video footage would not permit a jury to conclude that an officer observing Brandi in the visitation room on the date in question, either by video or visually, would have known that Brandi was hurting herself. See Collignon v. Milwaukee Cnty., 163 F.3d 982, 989 (7th Cir. 1998) (noting that hindsight is not the measure of a defendant's conduct in a claim for deliberate indifference); see also Myers v. Cnty. of Lake, 30 F.3d 847, 850 (7th Cir. 1994) ("Clever inmates can commit suicide no matter what the staff does to curtail their opportunities."). In fact, the video footage in this case shows that when Officer Odom opened the door to the visitation room, she was only steps from where Brandi was sitting with the blanket over her. At that point, and from that close vantage point, Odom asked Brandi two times if she was ready to be processed before pulling the blanket off of her and discovering what had occurred. Even at that close proximity, nothing appeared amiss to Odom until she removed the blanket from Brandi.

Although tragic, defendants' failure to recognize that Brandi was hurting herself in the visitation room, and any incompetence in failing to monitor the video surveillance equipment in the control room, shows at most negligence, which is insufficient for plaintiff to avoid summary judgment on his deliberate indifference claims. As noted above, this is because "it is not enough that there was a danger of which a prison official should have been aware, rather, the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." See Collins, 462 F.3d at 761 (quotation marks omitted); see also Matos v. O'Sullivan, 335 F.3d 553, 557 (7th Cir. 2003). The fact that the defendants simultaneously knew that Brandi was a drug user, was upset about being in jail, and knew that Brandi had not yet been suicide screened when she was placed in the visitation room does not change this conclusion. See Matos, 335 F.3d at 558 ("[N]ot every prisoner who shows signs of depression or exhibits strange behavior can or should be put on suicide watch."); Estate of Novack, 226 F.3d at 530 ("[S]trange behavior alone, without indications that that behavior has a substantial likelihood of taking a suicidal turn, is not sufficient to impute subjective knowledge of a high suicide risk to jail personnel.").

In sum, a jury could not reasonably infer from the video footage that defendants were subjectively aware that Brandi was an imminent suicide risk. Estate of Cole v. Fromm, 94 F.3d 254, 260 (7th Cir. 1996). Consequently, the video footage is not evidence upon which a jury could conclude that defendants actually recognized that Brandi might be in the process of hurting herself and chose to do nothing about it. Therefore, the court cannot conclude that the video footage is sufficient to support a jury finding that defendants were subjectively aware that Brandi posed a high risk of suicide and they were deliberately indifferent to that risk.

2. Failure to Follow Policies and Procedures

Second, plaintiff argues that there is evidence that, contrary to various Sheriff's Department orders and Illinois jail standards, defendants failed to (1) conduct a suicide screening, (2) monitor the jail video surveillance for suspicious activity, (3) personally observe Brandi every 30 minutes and (4) keep an accurate log of the observations. In State Bank of St. Charles v. Camic, the Seventh Circuit held that:

> Even if the defendants disregarded one or more of their established procedures, such as checking the cells every hour or effectively monitoring by visual or auditory systems the activities of prisoners incarcerated at a distance from the main booking room, the actions of the defendants do not constitute deliberate disregard for the possibility that [decedent] would take his own life.

712 F.2d 1140, 1146 (7th Cir. 1983). The evidence that defendants failed to follow policies and procedures in this case establishes negligence at most. Estate of Novack, 226 F.3d at 532 (stating that § 1983 provides no

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remedy for an injury resulting from defendants' failure to follow Illinois law or policy in and of itself); see also Wells v. Bureau County, 723 F. Supp. 2d 1061, 1079 (C.D. Ill. 2010) ("The failure of the officers to conduct cell checks at 30 minute intervals as required by state policy, much less make any observation of [decedent] at any time between 10 PM lockdown and 6:45 AM is incomprehensible. However, § 1983 provides no remedy for failure to meet state law requirements in and of themselves."). Moreover, in this case, there is no evidence that had defendants acted in strict accordance with these orders and standards they would have become subjectively aware that Brandi was imminently at risk of committing suicide. Thus, the evidence of defendants' failures to follow policies or procedures does not directly or by inference show that defendants were "cognizant of the significant likelihood that [Brandi] may imminently seek to take h[er] own life." Collins, 462 F.3d at 761.

3. Records

Third, plaintiff argues that the jail's own records indicate that Brandi was a suicide risk. However, plaintiff has failed to identify any evidence showing that any defendant was aware of those records at the pertinent time. The medical screenings of March 19, 2007 and February 17, 2009, indicating that Brandi related that she had been treated in the past for suicidal thoughts or tendencies, were performed by jail personnel other than defendants. Defendants cannot intentionally disregard a risk of which they are not aware. See Collins, 462 F.3d at 761 n.2 (noting that prison officials lacked knowledge of medical records that indicated the inmate's suicidal tendencies). Even assuming that defendants were deficient in failing to discover these records, the fact that they "should have been aware" of the reports is insufficient to show the required, actual knowledge of "the significant likelihood that [Brandi] may imminently seek to take h[er] own life." Collins, 462 F.3d at 761 (quotation marks omitted). Any incompetence in failing to discover these records shows, at most, negligence, which is insufficient for plaintiff to avoid summary judgment on his deliberate indifference claims. See Matos, 335 F.3d at 557.

Plaintiff's contention that Hall v. Ryan, 957 F.2d 402 (7th Cir. 1992), stands for the proposition that deliberate indifference may be shown by a failure to consult an available file which would have shown prior mental health problems is overstated. In Hall, the Seventh Circuit held that a genuine issue of material fact as to defendants' knowledge that decedent was a suicide risk was raised, noting (1) decedent's bizarre behavior, (2) decedent's past encounters with the police department, (3) a well-publicized suicide threat nine months earlier resulting in decedent's arrest, (4) that defendant's brother and stepfather were involved in the suicide threat incident, and (5) that the arrest report from the suicide threat incident contained a notation that decedent had attempted suicide several times in the past. Id. at 405. The court then held that there was "a genuine issue of material fact whether the defendants . . . knew of [decedent's] suicidal history, or were recklessly indifferent in failing to consult [decedent's file] after observing his wild behavior." Id. Hall clearly does not hold that failure to consult a file that would have shown suicidal tendencies, in and of itself, is sufficient to demonstrate a genuine issue of material fact as to defendants' subjective knowledge of a substantial risk of suicide. This is imminently clear in light of the Seventh Circuit's more recent statement that a failure to consult available records "by itself is insufficient; [plaintiff] must also come forward with evidence that the defendants named in this suit were aware of the information contained in those records." Collins, 462 F.3d at 761 n.2. Therefore, the jail's records are not evidence that defendants were "cognizant of the significant likelihood that [Brandi] may imminently seek to take [her] own life." Collins, 462 F.3d at 761.

4. Alerting Paramedics to Brandi's "Previous Hanging Attempt"

Plaintiff argues that the paramedic report of April 3, 2009, states that Sergeant Christensen and Officers King, Personette, and Odom were in the visitation room at the time the paramedics arrived and provided a history to the paramedics that Brandi had a "previous hanging attempt." The patient care report of the Sycamore Fire Department prepared by paramedic Ian Wheeler states in pertinent part that "[p]olice deputies on scene stated patient had a previous hanging attempt." At his deposition, Wheeler explained that when he asked an officer

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what the braided scar tissue around Brandi's neck was from, "[t]hey said it was from a previous incident that the patient had had."

Defendants argue that Wheeler's report and testimony do not create a genuine issue of material fact as to defendants' subjective knowledge that Brandi was a suicide risk because Wheeler misunderstood the unidentified officer. According to defendants, that officer, in using the words "previous incident," was actually referring to Brandi hanging herself just prior to the paramedics' arrival. This is consistent with Wheeler's concession at his deposition that the officer may have been referring to what had just happened and in consideration of the fact that there is no other evidence that Brandi had attempted suicide at the jail or anywhere else prior to her successful suicide on April 3, 2009. Significantly, there is no record of any prior suicide attempt in the medical and suicide screenings previously performed on Brandi at the jail and, during all previous bookings, Brandi expressly denied any prior suicide attempts. There is also no affidavit or testimony from any family member or friend describing a prior suicide attempt by Brandi. Further, there is no indication of any prior suicide attempts in the Drug Court Substance Abuse Assessment of Brandi. Consequently, because there is no evidence of any prior suicide attempt, it is unlikely that an officer on the scene had knowledge of a prior suicide attempt by Brandi and was referring to it when he or she spoke to paramedic Wheeler. As noted above, it is more likely that the officer was referring to the events that had just occurred. Nevertheless, these are factual determinations that would require weighing of the evidence and making a finding of fact which the court cannot do in ruling on a motion for summary judgment. See Costello v. Grundon, 651 F.3d 614, 636 (7th Cir. 2011) ("On summary judgment, a court may not weigh the evidence or decide which inferences should be drawn from the facts."). Defendants also argue, however, that neither Wheeler's testimony nor his report identifies the officers who made the purported "previous incident statement," such that even if this is some evidence of the statement maker's subjective knowledge that Brandi was a suicide risk, it is not evidence that any named defendant had that subjective knowledge. This argument is well-taken.

Plaintiff is contending that there is evidence in the record that defendants had subjective knowledge that Brandi was a suicide risk based on Wheeler's testimony that an unidentified officer in the visitation room said that the braided scarring around Brandi's neck was from a previous incident. However, at his deposition, Wheeler could not identify the officer who made the statement or even say whether the officer was male or female. There is no evidence that King or Odom were in the visitation room when the paramedics arrived. Defendants concede that Lieutenant Klein, Sergeant Christensen, and Officers Personette and Smith were present in the visitation room when the paramedics arrived. However, of these individuals, only Personette and Christensen remain as defendants in this case and plaintiff has no evidence establishing that either of them made the statement. Thus, viewed in a light most favorable to plaintiff, this evidence establishes that one of the four officers in the room made the previous hanging incident statement. However, this evidence does not warrant the inference that all the officers in the room had knowledge of the purported previous hanging incident, much less that either Personette or Christensen had such knowledge. See Whiting v. Marathon Cnty Sheriff's Dept., 382 F.3d 700, 704 (7th Cir. 2004) (explaining that because defendant-official must have actual knowledge of the risk, imputed knowledge cannot be a basis for an Eighth Amendment deliberate indifference claim); Burnette v. Taylor, 533 F.3d 1325, 1331 (11th Cir. 2008) ("imputed or collective knowledge cannot serve as the basis for a claim of deliberate indifference"); Gray v. City of Detroit, 399 F.3d 612, 616 (6th Cir. 2005) (noting that for purposes of evaluating evidence of the subjective prong of the deliberate indifference inquiry courts do not consider the collective knowledge of the officers and impute that knowledge to individual defendants). Consequently, the court cannot impute the statement to Personette or Christensen, or any individual defendant, in the absence of factual support.

In addition, evidence submitted at summary judgment must be admissible at trial under the Federal Rules of Evidence. Woods v. City of Chi., 234 F.3d 979, 988 (7th Cir. 2000). Because there is no adequate foundation for this statement, it is inadmissible for summary judgment purposes. See Fed. R. Evid. 602; Kemper/Prime

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Indus. Partners v. Montgomery Watson Americas, Inc., No. 97 C 4278, 1998 WL 704049, at *4 (N.D. Ill. Sept. 30, 1998) ("For foundational purposes, statements that refer to conversations should include information regarding when and where the conversation occurred, who was present during the conversation and who said what to whom." (emphasis added)). For these reasons, the purported "previous incident" statement made by an unidentified officer is insufficient to support a jury determination that any named defendant had subjective knowledge that Brandi was at substantial risk of committing suicide.

In sum, plaintiff has not identified evidence from which a jury could conclude that Sergeant Christensen or Officers Odom, Personette, or King had actual knowledge of "the significant likelihood that [Brandi] may imminently seek to take h[er] own life" or even facts that would promote the inference of subjective awareness of such a substantial risk. See Collins, 462 F.3d at 761; Estate of Cole, 94 F.3d at 260. While plaintiff has advanced evidence suggesting that defendants should have been made aware that Brandi was at risk for suicide –whether as a result of their failure to immediately screen her, review jail or court records, or monitor her more carefully– the fact that they "should have been aware" of that risk establishes negligence at most and "is not enough to show the required, actual knowledge of serious harm." Minix, 597 F.3d at 831-32. Consequently, the court grants summary judgment to defendants on Counts VII, X, XIII, and XIX of the complaint.

B. Official Capacity § 1983 Claims Against DeKalb County and the Sheriff

In Counts I and IV, plaintiff brings official capacity claims against DeKalb County and Sheriff Scott pursuant to Monell v. Department of Social Services, 436 U.S. 658 (1978), alleging that violations of Brandi's constitutional rights were caused by a failure to have appropriate policies and procedures and inadequate training. However, there is no need for this court to reach the Monell issues if it determines that no underlying constitutional violation has occurred.

In this case, because the court has concluded that plaintiff has failed to present sufficient evidence to create a genuine issue of material fact as to whether the individual defendants were deliberately indifferent, the alleged practice of failing to have appropriate policies and procedures and inadequate training could not have caused any constitutional deprivation. See City of L.A. v. Heller, 475 U.S. 796, 799 (1986) ("If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the department regulations might have authorized the use of constitutionally excessive force is quite beside the point."); Jenkins v. Bartlett, 487 F.3d 482, 492 (7th Cir. 2007) ("[T]here can be no liability under Monell for failure to train when there has been no violation of the plaintiff's constitutional rights."); Moberg v. City of W. Chi., No. 00 C 2504, 2003 WL 255229, at *8 (N.D. Ill. Feb. 4, 2003) ("[T]he essential bedrock of any Monell claim is a violation of the plaintiff's constitutional rights and that absent any such violation there can be no Monell claim."). Consequently, summary judgment for defendants on the official capacity claims alleged in Counts I and IV is also appropriate.[5]

III. CONCLUSION

Because plaintiff has not established a triable issue of fact as to his federal claims, defendants' motion for summary judgment is granted as to all federal claims. The court will relinquish jurisdiction over the remaining supplemental state law claims rather than resolve them on the merits. See 28 U.S.C. § 1367(c)(3); Williams v. Rodriguez, 509 F.3d 392, 404 (7th Cir. 2007). The court expresses no opinion as to the merit of plaintiff's state law claims and they are dismissed without prejudice to plaintiff proceeding with them in state court. As a result, the balance of defendants' motion for summary judgment is denied as moot.

1. Where certain background facts did not appear in the parties' Rule 56.1 statements, they are gathered from evidence submitted by the parties. All facts are construed in favor of the plaintiff, as this court must on a motion for summary judgment. Hemsworth v. Quotesmith.Com, Inc., 476 F.3d

487, 490 (7th Cir. 2007).

2. The court has carefully reviewed this footage which has been provided on 5 DVDs. The court notes that the time stamp on the video is in military time and is apparently off by one hour due to a failure to adjust the time stamp for daylight savings time. Consequently, when referring to the video footage, the court will use conventional time and adjust it accordingly.

3. Plaintiff disputes this and other statements purportedly made by Brandi, as related in the deposition testimony of various defendants, maintaining that the testimony is inadmissible hearsay. The apparent purpose of this evidence, however, is to show the knowledge that defendants gained about Brandi based on the statements, not to prove the truth of the assertions in the statements she made. Thus, Brandi's statements offered for this purpose do not constitute inadmissible hearsay. See Fed. R. Evid. 801(c).

4. Section 1983 deliberate indifference claims by or on behalf of pretrial detainees arise under the Fourteenth Amendment, but are analyzed under the Eighth Amendment deliberate indifference standard. Minix v. Canarecci, 597 F.3d 824, 831 (7th Cir. 2010).

5. The court notes parenthetically that even if there were evidence of an underlying constitutional violation, plaintiff simply has not shown that there was a pattern of suicides at the jail from which the inference could be drawn that Sheriff Scott was aware that the jail's policies or training were inadequate and chose to do nothing to protect those in his custody like Brandi in the face of this knowledge. Thus, Sheriff Scott and DeKalb County would entitled to summary judgment on the official capacity claims alleged in Counts I and IV on this basis as well.