E-FILED
Tuesday, 21 March, 2017 10:00:43 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

DAJUAN KEY, Plaintiff, vs. JOHN JUERGENSS, et.al, Defendants.	))))))))	Case No. 14-2279

SUMMARY JUDGMENT ORDER

This cause is before the Court for consideration of the Defendants' motions for summary judgment. [62, 65, 82, 83].

I. BACKGROUND

The Plaintiff, a pro se prisoner, alleges his constitutional rights were violated at the Jerome Combs Detention Center from October 6, 2014 to October 15, 2014. Specifically, Plaintiff claims Officers John Juergens and Todd Schloendorf violated his rights based on his living conditions in a suicide watch cell; and Defendants Juergens, Schloendorf and Mental Health Worker Aimee Orr failed to provide mental health services during this time. *See* November 21, 2014 Merit Review Order.

On October 21, 2016, the Court vacated its ruling on the initial motions for summary judgment [62, 65] and allowed the parties time to supplement their briefing. *See* October 21, 2016 Minute Entry. The Defendants have now responded. [82, 83]. In addition, Plaintiff indicated there was a video recording he wanted the Court to review,

and a copy has now been provided. *See* October 21, 2016 Minute Entry; November 16, 2016 Remark.

Plaintiff has also notified the Court he has another pending case in the Central District of Illinois which is very closely related to the case before the Court. (Plain. Resp. [85], p. 28). In fact, Plaintiff filed *Key v. Brown*, Case No. 14-2286, just eleven days after the case at bar.[1] Plaintiff initially alleging several individuals at JCDC including Defendants Orr and Juergens were deliberately indifferent to his serious mental health condition.[2] However, Plaintiff's surviving claim does not include any remaining allegations against Defendants Orr or Juergens. Instead, Plaintiff alleges Physician's Assistant Brent Huffines and various correctional officers were deliberately indifferent to his serious mental health condition when they discontinued his medication. The Seventh Circuit noted "October 31, 2014… is a key date" in *Key v. Brown*, Case No. 14-2286, because Plaintiff claims his medication was stopped on this day resulting in

[1] Plaintiff did not use a standard complaint form. Therefore, he did not list his litigation history and he did not mention filing the case at bar eleven days prior to *Key v Brown*, Case No. 14-2286.

[2] *Key v. Brown*, Case No. 14-2286, was dismissed after initial screening, but the Seventh Circuit Court of Appeals vacated the judgment and remanded for further proceedings on November 9, 2015. There is currently a pending motion to dismiss alleging Plaintiff refused to participate in his deposition stating he had not received proper notice.[40]. Plaintiff filed one other lawsuit in the Central District against other JCDC staff members on July 6, 2015. In *Key v Most*, Case No. 15-2151, Plaintiff alleged several claims revolving around an incident on December 26, 2014, including deliberate indifference to his mental health condition. Plaintiff again did not use a standard complaint form and consequently he made no mention of his other lawsuits. The case was dismissed on July 12, 2016 when the Court granted Defendants' motion for sanctions after Defendants provided evidence that Plaintiff had begun masturbating during his deposition. *See* July 12, 2016 Case Management Order.

subsequent incidents of self-harm. See *Key v. Brown*, Case No. 14-2286,[23], p. 4. Therefore, the Plaintiff's claims before this Court are limited to his time on suicide watch from October 6, 2014 to October 15, 2014.

II. FACTS

The following facts are taken from all the motions for summary judgment and Plaintiff's various responses.

Plaintiff entered the Jerome Combs Detention Center (JCDC) on May 15, 2014 and remained at the facility until July 29, 2015. (Def. Mot. [62], Plain. Depo., p. 32; Def. Mot. [65], Sch. Aff., p. 1). Defendant Todd Schloendorf is a sergeant at JCDC who is responsible for supervising other officers and maintaining order and security at the facility. (Def. Mot. [65], Sch. Aff., p. 1). Schloendorf says he generally works in Booking, but he also goes to other areas of the jail as needed. Defendant John Juergens was a Correctional Officer at JCDC and the Kankakee County Detention Center (KCDC).

A supervising officer or medical staff can put an inmate on suicide watch at JCDC "if the inmate behaves in a manner or speaks in a manner indicating there is concern that the inmate may harm him/herself." (Def. Memo. [83], Sch. Aff., p. 1). An inmate on suicide watch is placed in a blue, suicide smock and secured in a segregated cell where officers perform checks at intervals no greater than every 15 minutes. The inmate's property bins are stored at the officer's desk while they are on suicide watch so the inmate does not have access to property when they are alone in their cells. Instead, the inmates are allowed access to their bins during the hour inmates are allowed out of their cells in the segregated unit. (Def. Memo. [83], Sch. Aff., p. 1). Only a doctor,

Physician's Assistant, nurse or mental health worker can remove an inmate from suicide watch.

Pursuant to a contract with the Kankakee County Sheriff's Department, the Helen Wheeler Center for Community Mental Health provides mental health and psychiatric services to JCDC inmates. In October of 2014, Defendant Aimee Orr was the only mental health therapist at the facility. Orr has a professional counseling degree and worked under the supervision of a licensed clinical worker. Orr says she was authorized to do mental health evaluations and to diagnose mental health conditions at JCDC, but she had no authority or control over an inmate's medications. (Def. Memo. [83], Orr Aff., p. 2, 3).

Instead, Defendant Orr was responsible for individual and group therapy, crisis work when needed, assisting in removing inmates from a suicide smock, or keeping the inmate in a smock if they display dangerous behavior. (Def. Memo. [83], Orr Aff., p. 1). Orr says she also did mental health screening if an inmate was referred by the Physician's Assistant. A mental health screen is a short evaluation which involves "information gathering to learn about specific mental health treatments and hospitalizations in an inmate's history…" (Def. Memo. [83], Orr Aff., p. 2). Defendant Orr had mental health contacts with the Plaintiff on July 15, 2014; September 12, 2014; September 16, 2014; October 6, 2014; October 15, 2014; and October 31, 2014. (Def. Memo. [83], Orr Aff., p. 2). Off says her records also indicate she had contact with the Plaintiff on June 18, 2014, but Plaintiff denies this visit.

Brent Huffines is a licensed Physician's Assistant (PA) at JCDC. His duties and responsibilities include providing medical care and treatment to JCDC inmates and maintaining inmate medical records. (Def. Memo. [83], Huff. Aff., p. 1). Huffines provided care to the Plaintiff at the JCDC Medical Clinic on May 27, 2014; July 10, 2014; July 28, 2014; August 19, 2014; October 31, 2014; and December 4, 2014. (Def. Memo. [83], Huff. Aff., p. 2).

On May 27, 2014, Huffines saw the Plaintiff after he complained of feeling depressed. Huffines noted Plaintiff was alert and oriented, his recent and remote memory were intact, his judgment and insights were within normal lights, and he denied feeling suicidal or homicidal. (Def. Memo. [83], Huff. Aff., p. 2.). The Plaintiff did not show signs of anxiety, depression, or agitation, other than his general report of feeling "down." (Def. Memo. [83], Huff. Aff., p. 2). Huffines prescribed an antidepressant, referred him to Mental Health Worker Orr, and scheduled a follow-up in two months. (Def. Memo. [83], Huff. Aff., p. 2).

PA Huffines next saw the Plaintiff on July 10, 2014. Plaintiff requested a different antidepressant stating the Citalopram was not helping, but Seroquel had helped him in the past. Plaintiff again denied any suicidal or homicidal thoughts. Huffines noted Plaintiff was alert, well-groomed, oriented, his recent and remote memory were intact, and judgment and insights were within normal limits. No signs of depression or anxiety were noted. Since Huffines was unable to verify any past use of Seroquel, he "did not think it was appropriate to prescribe to (Plaintiff) at that time." (Def. Memo. [83], Huff. Aff., p. 2). Huffines noted the medical record included a recent

visit with Orr on June 18, 2014, but the Plaintiff denied it took place. The Plaintiff "then walked out of the visit when he was informed he would not be getting Seroquel." (Def. Memo. [83], Huff. Aff., p. 2).

On July 15, 2014, Defendant Orr met with Plaintiff for his initial mental health screening. While Plaintiff did not claim he had any psychiatric history, he told Orr he cut himself at a jail in Cook County and he was hospitalized for mental health issues. Plaintiff also said he had been on Seroquel, but he could not remember the dosage. Orr observed no cuts and there was no record of Seroquel at the Cook County facility. (Def. Memo. [83], Orr Aff., Ex. A). Defendant Orr observed Plaintiff had appropriate eye contact, thought, judgment, intellectual thinking and memory. However, his attitude was "irritable." (Def. Memo. [83], Orr Aff., Ex. A).

> Client did not have any symptoms to report at all he merely demanded "where is my Seroquel that I was taking at MCC!" I stated to him why were you on that medication? He stated "I cut myself up at that jail." I stated "I have no information about this medication you are saying you took." He stated "well, I'm a FED." I stated to him if you are a FED then I am surprised that you say you got Seroquel as it is not covered by the FEDS. He did not say much else. I have no record of him on this medication and He has no discharge papers from his claimed hospital stay. (Def. Memo. [83], Orr Aff., Ex. A).

On July 25, 2014, PA Huffines sent Plaintiff to the hospital after he "complained of an inability to catheterize his uretha. He complained that it felt like a blockage and was painful." (Def. Memo. [83], Huff. Aff., p. 2). In his deposition, Plaintiff stated he has used a catheter since March of 2014. (Def. Mot. [62], Plain. Depo., p. 21).

PA Huffines saw the Plaintiff again on July 28, 2014 and ordered a urology appointment as a follow-up to the recent hospital visit. Plaintiff again stated the

Citalopram was not working, so he wanted Seroquel. While Plaintiff denied suicidal or homicidal thoughts, Plaintiff complained of racing thoughts and a difficult time relaxing his mind. The PA agreed to prescribe Seroquel. (Def. Memo. [83], Huff. Aff., p. 3). Huffines says Seroquel is used to treat depression, bipolar disorder and schizophrenia, but he prescribed a low dosage to treat Plaintiff's complaints of depression. (Def. Memo. [83], Huff. Aff., p. 3).

PA Huffines next saw Plaintiff at the clinic on August 19, 2014 for treatment of a rash on his feet. During the visit, Plaintiff complained the Seroquel dosage was lower than what he had received in the past. Huffines noted Plaintiff was well groomed, oriented, his memory was intact, and his judgment and insight were normal. Huffines did not note any signs of depression, anxiety or agitation. Nonetheless, PA Huffines increased the dosage of Seroquel to 100 milligrams, and prescribed an antifungal cream for Plaintiff's feet. (Def. Memo. [83], Huff. Aff., p. 3). The Seroquel prescription was renewed on September 5, 2014.

On September 12, 2014, Defendant Orr saw Plaintiff while he was on suicide watch and in a suicide smock. She asked Plaintiff what happened, and he denied any suicidal thoughts. Instead, Plaintiff stated he had been unfairly moved from his POD, and "he did not like that so he told the officers he was suicidal." (Def. Memo. [83], Orr Aff., Ex. B). He told Orr he wanted to go to his original POD, but she told him his placement was not up to her. He was removed from the suicide smock, appeared stable and made good eye contact. Defendant Orr told Plaintiff to submit another request form if he wanted to talk with her. (Def. Memo. [83], Orr Aff., Ex. B).

Defendant Orr again saw the Plaintiff on September 16, 2014. Shortly after the suicide smock was removed, officers told Plaintiff he would be moved to "MAX." (Def. Memo. [83], Orr Aff., Ex. C). Plaintiff did not want to move so he said he was "suicidal again." (Def. Memo. [83], Orr Aff., Ex. C). Plaintiff again told Orr he wanted to go back to his old housing unit, and he could not be celled with another inmate because he had to catheter himself. Orr removed Plaintiff's smock and agreed to investigate his complaints. A Nurse confirmed Plaintiff could be housed in any area of the jail, but Plaintiff would need to be single-celled due to his use of the catheter. Classification officers told Orr they would get him properly placed and "[t]hey were aware as well that he is using smock for manipulative purposes because he does not want to go to another POD." (Def. Memo. [83], Orr Aff., Ex. C).

As noted, Plaintiff's claims before this Court are limited to October 6, 2014 to October 15, 2015. (Comp.; Def. Mot. [62], Plain. Depo., p. 41). Defendant Schloendorf made the decision to place Plaintiff on suicide watch on October 6, 2014. At first, Defendant Schloendorf was told to move Plaintiff to Max Unit B in segregation, because Plaintiff had an altercation with another inmate. (Def. Mot. [65], Sch. Aff., p. 2). Schloendorf say typically before an inmate is moved, the new cell is checked for contraband or any damage to the cell. To his knowledge, Schloendorf says staff checked Plaintiff's new cell before he was transferred. Plaintiff agrees suicide cells are inspected before a new inmate is moved. (Def. Mot. [62], Plain. Depo., p. 51).

Once Plaintiff was inside Cell #4 of Max Unit B and his handcuffs were removed, Plaintiff began to beat his head against his cell window. (Def. Mot. [65], Sch.

Aff., p. 2). Therefore, Defendant Schloendorf placed Plaintiff on suicide watch. Plaintiff was placed in the smock, his property bin was moved to the officers' desk and the regular 15 minute watches began. Defendant Schloendorf remembers Plaintiff asking to see Defendant Orr after he was moved to his new cell on October 6, 2014. Schloendorf phoned Orr to let her know about the request. (Def. Memo. [83], Sch. Aff., p. 3).

However, when Plaintiff was ordered to sit on his bunk so staff could deliver lunch, he again began to bang his head on the cell window. At this point, Plaintiff was taken to the medical department, where he was seen by medical staff and Defendant Orr. (Def. Mot. [65], Sch. Aff., p. 2). Plaintiff claims he was taken to the medical department because he refused to use the catheter when he was placed in the restraint chair.(Def. Mot. [62], Plain. Depo., p. 39). The Plaintiff met with a nurse, but he still refused to cooperate. Plaintiff admits he spoke with Defendant Orr while he was in the Health Care Unit, and she also tried unsuccessfully to convince him to use the catheter on his own. (Def. Mot. [62], Plain. Depo., p. 39-40).

Defendant Orr's notes confirm Plaintiff "was refusing to catheter himself which can be an issue as he can get an infection." (Def. Memo. [83], Orr Aff., Ex. D). Plaintiff threatened to continue to hit his head and Orr heard an officer tell Plaintiff they would have to put him in a restraint chair until he calmed down because it was their "job to make sure you are protected." (Def. Memo. [83], Orr Aff., Ex. D). Orr said she asked Plaintiff what got him upset in the first place, but he instead said people wanted to keep him locked up. When Orr asked who, Plaintiff said the "chiefs of the jail." (Def. Memo. [83], Orr Aff., Ex. D). Orr told Plaintiff it was his own actions which got him into

trouble. Plaintiff refused to talk anymore and refused to catheter himself. Instead, Plaintiff said, "I want to go to the chair!" (Def. Memo. [83], Orr Aff., Ex. D). Orr noted Plaintiff refused to cooperate with any staff and she planned to get an update from the nurse the next day. Orr told Plaintiff to submit a request slip if he wanted to talk to her.

Plaintiff remained on suicide watch in Max Unit B, Cell #4 for ten days. (Def. Mot. [62], Plain. Depo., p. 40-41). Max B is a maximum security unit where each inmate is housed in his own cell with a bed, toilet and sink. (Def. Mot. [65], Sch. Aff., p. 1). Every morning the inmates are offered the opportunity to clean their own cells. If an inmate chooses to clean, they are allowed out of their cells to obtain cleaning supplies including a mop, broom, dustpan, squirt bottle of cleaning solution and a toilet cleaning solution. (Def. Mot. [65], Sch. Aff., p.1-2). Once the cleaning is completed, the inmate is secured in his cell and the next inmate is offered the opportunity to clean his cell. (Def. Mot. [65], Sch. Aff., p. 2).

Each inmate is also allowed one hour out of his cell each day to use the phone, take a shower or watch television. If an inmate is on suicide watch, they are given their property bins at this time which include soap, towels, washcloths and other hygiene items. (Def. Mot. [65], Sch. Aff., p. 2).

Plaintiff says when he first moved into the cell, he informed Defendant Schloendorf his toilet was "malfunctioning." (Def. Mot. [62], Plain. Depo., p. 40-41; Plain. Resp. [68], p. 2). Based on Plaintiff's description, his toilet would flush, but it would not properly flush feces. (Def. Mot. [62], Plain. Depo., p. 42-43). Plaintiff does not allege his toilet overflowed on its own, but instead "the feces stuck inside of his toilet."

(Plain. Resp. [68], p. 2). Plaintiff does not describe any other issues related to his malfunctioning toilet such as odor or bugs in any of his responses or deposition.(67, 68, 69, 74, 84, 85; Def. Mot. [62], Plain. Depo.). Plaintiff states he complained to Defendant Schloendorf about his toilet when he moved in, but Plaintiff admits he did not see Defendant Juergens. (Def. Mot. [62], Plain. Depo., p. 46).

On October 7, 2014, JCDC Officers Christopher Larsen and Tyrone Campbell say Plaintiff was offered a chance to clean his cell, but he refused. (Def. Mot.,[65], Camp. Aff., p. 1; Lar. Aff., p. 1). Plaintiff states he did not see Defendant Schloendorf or Juergens on this day. (Def. Mot. [62], Plain. Depo., p. 47).

On October 8, 2014, Plaintiff admits he spread feces on his cell door because he wanted to be moved to a new cell with a fully functioning toilet. (Def. Mot. [62], Plain. Depo., p. 52). Plaintiff asked Correctional Officer Tyler Fox if he would clean off Plaintiff's door. Officer Fox and Michael Georgelos confirm Plaintiff was given a bottle of cleaning solution and paper towels to clean off his door. Plaintiff cleaned a small portion of his cell, took a shower and then used his phone. (Def. Mot.,[65], Fox Aff., p. 1). Correctional Officers twice ordered Plaintiff to finish cleaning his cell before he used his phone. Plaintiff then picked up the bottle of cleaning solution, removed the cap and appeared to drink the solution. (Def. Mot.,[65], Fox Aff., p. 1). Officers called Booking to notify a supervisor while Plaintiff took the cleaning bottled to his cell and locked himself in. When back-up officers arrived, Plaintiff was ordered to put the cleaning bottle outside of his door. Plaintiff complied. Schloendorf ordered correctional officers to have an inmate trustee clean Plaintiff's cell instead of providing Plaintiff with any

additional cleaning solution. (Def. Mot. [65], Sch. Aff., p. 3). The Medical Department was notified of the incident, but staff noted the small amount of solution consumed would not harm Plaintiff. (Def. Mot.,[65], Fox Aff., p. 1). Plaintiff says he did not have personal contact with Defendant Schloendorf or Juergens on October 8, 2014. (Def. Mot. [62], Plain. Depo., p. 48).

Officer Campbell says Plaintiff was moved to the gym on October 10, 2014, while Correctional a trustee came to Plaintiff's cell. After it was cleaned, Plaintiff was returned to his cell. (Def. Mot.,[65], Camp. Aff., p. 1).

On October 11, 2014, Plaintiff put feces on his food tray and handed it to an officer because he still wanted to move to a different cell. (Def. Mot. [62], Plain. Depo., p. 57-58).

On October 13, 2014, Plaintiff flooded his cell and the entire first floor of Max B. Plaintiff says he flooded his cell because he wanted to be moved. (Def. Mot. [62], Plain. Depo., p. 64-65). Correctional Officer Georgelos called Booking to notify a supervisor. Both Defendants Juergens and Schloendorf responded. Officers turned off the water to Plaintiff's cell to prevent any additional flooding. (Def. Mot.,[65], Jur. Aff., p. 1). Inmate workers were assigned to clean up Max B, but Plaintiff says no one cleaned water from his cell.

A recording of the cell block has been provided to the Court, but neither side has provided any explanation of its contents. *See* November 16, 2016 Remark. The camera angle shows the floor area outside of the cells. Water is visible on this floor, but there is no debris or feces visible. Inmate workers clean the area with a vacuum and later with

mops and a bucket. The door to a Cell marked #4 opens later and an inmate exits. This inmate briefly uses a mop on the floor in the cell. However, neither side clarifies whether this was the Plaintiff.

On October 14, 2014, Plaintiff took advantage of his hour out of his cell between 5:50 and 6:50 p.m. (Def. Mot. [65], Geor. Aff., p. 1). Plaintiff therefore could have access to his property bin and potential cleaning supplies, but chose to make phone calls. Also on the 14th, Plaintiff claims staff worked on his toilet without success. (Def. Mot.[65], Plain. Depo., p. 86).

Defendant Orr met with Plaintiff on October 15, 2014. Plaintiff said he was tired of wearing a suicide smock and he had stopped banging his head against the wall. Plaintiff said he wanted a new cell because his toilet had overflowed flooding his cell and there were now feces covering the floor. (Def. Memo. [83], Orr Aff., Ex. E). Orr looked around Plaintiff' cell. The floor was wet, but no feces were visible. Orr asked the "officers if he could be moved and they stated that they were getting ready to do that just before I had come to talk with the inmate." (Def. Memo. [83], Orr Aff., Ex. E). As Orr continued to talk to Plaintiff, another officer asked a trustee to come clean Plaintiff's cell. Plaintiff "stated he was not suicidal he just wanted some things and it is clear to him that he will not be getting anything he wants." (Def. Memo. [83], Orr Aff., Ex. E). Orr agreed to have the suicide smock removed. She was told Plaintiff's cell would be cleaned and he would be moved to a new, clean cell. Plaintiff says Orr also removed him from suicide watch. (Def. Mot. [62], Plain. Depo., p. 4).

Correctional Officers Juergens, Larsen, Fox, Campbell, Georgelos and Georgeff say they do not remember the Plaintiff making any specific complaints about his toilet during the relevant 10 day period. (Def. Mot.,[65], Lar. Aff., p. 1; Geo. Aff., p. 1; Camp. Aff., p. 1). Each maintains if Plaintiff had complained, they would have notified maintenance to fix the problem. Correctional Officer Larsen adds when Plaintiff was removed from suicide watch and inmate trustee was assigned to clean Plaintiff's cell, the toilet flushed without any difficulty at that time.(Def. Mot.,[65], Lar. Aff., p. 1-2).

PA Huffines and Mental Health Worker Orr saw Plaintiff again on October 31, 2014. Orr says the Plaintiff asked to talk to her due to some dreams he was having about drowning in water and feces in his cell. (Def. Memo. [83], Orr Aff., Ex. F). However, Orr says Plaintiff's primary concern was his medication. (Def. Memo. [83], Orr Aff., p. 3). Plaintiff admitted he had gotten Seroquel from another inmate and he was hoarding the medication because he did not get the dosage he wanted. Plaintiff was receiving a 100 milligram dose, but stated he should receive 500 milligrams. Orr noted the only record she could find was ten years prior when Plaintiff was 19 years old and he did received 500 milligrams of Seroquel at that time. However, there were no other medical records verifying any continuing prescription. (Def. Memo. [83], Orr Aff., Ex. F). Orr noted Plaintiff was started at 100 milligrams, but he was still under evaluation for any potential increase in the dosage when he began hoarding pills. Huffines "reminded him, as he was told before, that if he was caught hoarding medications, the medication would be stopped and not restarted." (Def. Memo. [83], Huff. Aff., p. 3).

> Plaintiff "became agitated during the visit and threatened to make a judge order us to give him Seroquel. He then walked out of the exam room and stated that he did not want to talk to me anymore." (Def. Memo. [83], Huff. Aff., p. 3-4).

Defendant Orr confirms Plaintiff "refused to listen to any more of the conversation" and left the room. (Def. Memo. [83], Orr Aff., Ex. F). Nonetheless, Orr's medical record noted Plaintiff was stable and his thoughts were organized during the visit.

PA Huffines next saw the Plaintiff on December 4, 2014 when he complained of intermittent pain and tingling in his left forearm. Huffines noted Plaintiff was well-groomed, awake, alert, oriented and in no pain or distress.

Defendant Orr says it is her understanding medical staff visited the Plaintiff daily while he was on suicide watch to dispense medications. (Def. Mot. [62], Orr Aff., p. 1). During his ten days on suicide watch in October of 2014, Plaintiff agrees he saw nursing staff when his medication was dispensed, but claims it was sporadic. In his deposition, Plaintiff says he saw a nurse on October 6; twice on October 7, possibly October 8; October 11; and October 14, 2014. (Def. Mot. [62], Plain. Depo., p. 47, 90-94).

Schloendorf says throughout Plaintiff's incarceration at JCDC Plaintiff would ask to speak to Defendant Orr on different occasions. Each time, Schloendorf either informed Orr directly or notified the Medical Department. (Def. Mot. [65], Sch. Aff., p. 3). Defendant Schloendorf does not remember the dates of any specific requests except October 6, 2014, when Plaintiff was taken to the Health Care Department after repeatedly banging his head. Defendant Juergens also says whenever Plaintiff told him he wanted to speak with Orr, he would either tell her directly or notify the health

department. (Def. Mot. [65]; Jur. Aff., p. 2). Juergens does not remember the dates of any specific requests from Plaintiff. However, Defendant Orr says she did not receive any request or information from any staff member asking her to visit Plaintiff from October 6, 2014 until October 15, 2014.(Def. Mot. [62], Orr Aff. p. 9). Plaintiff claims he could not submit a written request because he had no property or writing utensils to submit a written request to see mental health staff while he was on suicide watch. Nonetheless, Plaintiff claim she told various correctional officers and nurses in his housing unit.

Defendants Schloendorf and Juergens say they were not working in Plaintiff's housing unit during his entire time the Plaintiff was on suicide watch. Defendant Schloendorf's work records indicate he did not work on October 9, 10, or 15, 2014. In addition, while Schloendorf did work on October 11 through October 14 of 2014, he was assigned to Booking. (Def. Mot. [65], Sch. Aff., p. 1). Juergens' work records confirm he was not working on October 6, 7, 11 or 12 of 2014. On October 9 and 10 of 2014, Juergens worked as a "rover" which means he worked throughout the facility as needed. (Def. Mot.,[65], Jur. Aff., p. 1). The officer says he does not recall seeing the Plaintiff on either day. Plaintiff claims he thinks he saw Juergens walk past his cell on one occasion during this time. (Def. Mot. [62], Plain. Depo. p. 53-54). Juergens was assigned to Plaintiff's housing unit on October 13, 2014, but he was assigned to different areas of the facility on October 8, 14 and 15 and he did not have contact with MAX unit inmates.

PA Huffines says based on his examinations and contact with the Plaintiff, he does not believe the Plaintiff suffers from any psychosis.

> (Plaintiff) did not have any medical or psychological illness which would have caused him to engage in scatolia (fecal smearing). At no time while at JCDC did (Plaintiff) present with a medical or mental health condition which would have caused him to flood his cell. In my professional opinion, based on my examination and contact with (Plaintiff) and my review of his medical records, during his stay at JCDC, (Plaintiff) was capable of caring for himself and keeping his cell clean. (Plaintiff) did not exhibit any medical or mental illness which would have prevented him from cleaning his cell or himself. (Def. Memo. [83], Huff. Aff., p. 4).

Defendant Orr says based on her encounters with the Plaintiff, it is her opinion Plaintiff did not have any serious mental health issues that would have necessitated more encounters with a mental health professional than he received at JCDC. Orr says it is her professional opinion Plaintiff was capable of caring for himself. In addition, Defendant Orr says Plaintiff was "lucid and well aware of, and in control of" his actions during and after the period of October 6, 2014 to October 15, 2014. (Def. Memo. [83], Orr Aff., p. 3).

Plaintiff says he suffers from a serious mental health condition. Throughout his deposition, Plaintiff testified he suffered from "borderline personality disorder." (Def. Mot. [62], Plain. Depo. p. 34, 171). However, Plaintiff has attached medical records to his most recent responses. Three are dated prior to his incarceration at JCDC and one is dated after the relevant time frame. For instance, Plaintiff has provided a copy of a medical record from his hospitalization at Mendota Mental Health Institute in 2004. At that time, it was noted a psychiatrist was to determine whether Plaintiff was competent to stand trial. Although the record notes a history of psychosis, it does not appear this

was the current diagnosis and Plaintiff was found competent to stand trial. (Plain. Resp. [85], p. 14). This appears to be the record Orr referred to which occurred ten years prior to her meeting with the Plaintiff in 2014.

The next record is dated March 21, 2014 from Thorek Memorial Hospital in Chicago, Illinois. (Plain. Resp. [85], p. 16). Plaintiff had attempted suicide by taking an overdose of Tylenol. The assessment listed includes "acute psychosis, schizoaffective disorder and bipolar disorder." (Plain. Resp. [85], p.16-17). The third record is dated May 5, 2014 from a hospital in Geneva, Illinois. Plaintiff had taken an overdose of medication. No other information is provided. (Plain. Resp. [85], p. 19).

Defendant Orr has previously noted when she attempted to obtain a mental health history from Plaintiff, he "did not report any psych history at all" and did not have any recent discharge papers. (Def. Mot. [83], Ex. A). Therefore, it appears the March 21, 2014 and May 5, 2014 medical reports provided by Plaintiff were obtained during the discovery process of one of his pending lawsuits, but neither side has clarified. (Plain. Resp. [85], p. 15, 18).

The final record is from a meeting with a psychiatrist at Helen Wheeler Center for Community Mental Health during Plaintiff's incarceration at JCDC. However, the report is dated February 13, 2015 which is four months after the relevant time period in the case before the Court and therefore the information in the report would not be available to the Defendants. (Plain. Resp. [85], p. 21-23).

II. LEGAL STANDARD

The Court shall grant summary judgment if 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 movant may demonstrate the absence of a material dispute through specific cites to admissible evidence, or by showing that the nonmovant "cannot produce admissible evidence to support the [material] fact." Fed. R. Civ. P. 56(c)(B). If the movant clears this hurdle, the nonmovant may not simply rest on his or her allegations in the complaint, but instead must point to admissible evidence in the record to show that a genuine dispute exists. *Id.; Harvey v. Town of Merrillville*, 649 F.3d 526, 529 (7th Cir. 2011). "In a §1983 case, the plaintiff bears the burden of proof on the constitutional deprivation that underlies the claim, and thus must come forward with sufficient evidence to create genuine issues of material fact to avoid summary judgment." *McAllister v. Price*, 615 F.3d 877, 881 (7th Cir. 2010).

At the summary judgment stage, evidence is viewed in the light most favorable to the nonmovant, with material factual disputes resolved in the nonmovant's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine dispute of material fact exists when a reasonable juror could find for the nonmovant. *Id.*

III. ANAYLSIS

Defendants Juergens, Schloendorf and Orr argue Plaintiff cannot demonstrate a constitutional violation based on a failure to provide mental health care. The Court first notes Plaintiff was a pretrial detainee at the time of his allegations, so his claims arise under the Fourteenth Amendment. However, the Seventh Circuit has found it is "convenient and entirely appropriate to apply the same standard to claims arising

under the Fourteenth Amendment (detainees) and the Eighth Amendment (convicted prisoners) without differentiation." *See Board v. Farnham*, 394 F.3d 469, 478 (7th Cir. 2005) (internal citation omitted).

To demonstrate a constitutional violation, Plaintiff must show he suffered from a serious medical need and Defendants were each deliberately indifferent to that need. *See Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976); *Hayes v. Snyder*, 546 F.3d 516, 522 (7th Cir. 2008). "A 'serious' medical need is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Jackson v. Illinois Medi–Car, Inc.*, 300 F.3d 760, 765 (7th Cir.2002) *quoting Gutierrez v. Peters,* 111 F.3d 1364, 1371 (7th Cir.1997); *see also Foelker v. Outagamie County,* 394 F.3d 510, 512–13 (7th Cir. 2005). The Seventh Circuit has noted the "need for a mental illness to be treated could certainly be considered a serious medical need." *Sanville v. McCaughtry*, 266 F.3d 724, 734 (7th Cir. 2001).

For the purposes of the dispositive motion, the Defendants do not dispute Plaintiff suffered from a serious mental health condition. However, the Defendants maintain there is no evidence to demonstrate deliberate indifference. Plaintiff says he first asked to see a mental health worker on October 6, 2014, and Plaintiff admits he was able to speak with Defendant Orr on this day.

Plaintiff admits he did not have personal contact with Defendants Schloendorf or Juergens the next two days, October 7 and October 8, 2014. Defendant Schloendorf did not work on October 9, 2014 or October 10, 2014; and Defendant Juergens worked as a

rover. On October 11 and 12 of 2014, Defendant Schloendorf worked in booking and Defendant Juergens had the days off. Therefore, the next clear opportunity Plaintiff had to ask either Defendant Juergens or Schloendorf for mental health care was the day he flooded his cell, October 13, 2014. Plaintiff admits he saw Defendant Orr two days later on October 15, 2014.

In response to the motion for summary judgment, Plaintiff now says he told both Juerens and Schloendorf he wanted mental health care every day of his suicide watch from October 6, 2014 to October 15, 2014. Nonetheless, Plaintiff has not presented any evidence to dispute the Defendants' work records, and Plaintiff may not contradict his prior deposition testimony for purposes of creating a genuine issue of material fact on a motion for summary judgment. *See United States v. Funds in the Amount of Thirty Thousand Six Hundred Seventy Dollars,* 403 F.3d 448, 466 (7th Cir.2005) ("We have long followed the rule that parties cannot thwart the purposes of Rule 56 by creating 'sham' issues of fact with affidavits that contradict their prior depositions."); *see also Russell v. Acme–Evans Co.,* 51 F.3d 64, 67 (7th Cir.1995) (noting this court "ha[s] been highly critical of efforts to patch up a party's deposition with his own subsequent affidavit").

Defendants Juergens and Schloendorf admit seeing Plaintiff on October 13, 2014, but both were assigned to different areas of the jail on October 14 and 15, 2014. Neither Defendant has any specific memory of Plaintiff asking to speak to Orr on October 13, 2014, nor are there any notations in the medical record. Nonetheless, all parties agree Orr did meet with the Plaintiff two days later on October 15, 2014. Therefore, Plaintiff's claims against Defendants Schloendorf and Juergens are limited to the delay between

October 13, 2014 when Plaintiff alleges he personally told the officers he wanted to speak to Orr, and October 15, 2014 when Orr came to his cell.

"An inmate who complains that a delay in medical treatment arose to a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of delay in medical treatment to succeed." *Langston v. Peters*, 100 F.3d 1235, 1240 (7th Cir. 1996). However, "a non-trivial delay in treating serious pain can be actionable even without expert medical testimony showing that the delay aggravated the underlying condition." *Berry v. Peterman,* 604 F.3d 435, 441 (7th Cir. 2010) *citing Grieveson v Anderson*, 538 F.3d 763, 779 (7th Cir. 2008)(reversing summary judgment for defendants where plaintiff did not receive treatment for painful broken nose for nearly two days).

In this case, Plaintiff admitted he flooded his cell on October 13, 2014 not to obtain mental health treatment, but because he wanted a new cell with a working toilet. (Def. Mot. [65], Plain. Depo. p. 66; Plain. Resp, [85], p. 5). The Plaintiff was currently on suicide watch, so he did not have access to property he could use to harm himself, and he was on 15 minute watches. In addition, medical staff came through the housing unit daily to hand out medications. Plaintiff has also admitted a history at JCDC of making suicide threats because he was not happy with his housing.

When Plaintiff was asked in his deposition what care he needed, Plaintiff first stated if Defendant Orr had shown up earlier, she could have addressed the problems with his toilet. (Def. Mot. [65], Plain. Depo. p. 187-188). Plaintiff later clarified and stating Orr should have provided him therapy. "[T]he harm is she never came to see

me from the beginning," and therefore Plaintiff his mental instability increased. (Def. Mot. [65], Plain. Depo. p. 192). However, Plaintiff has not provided any specific information showing his mental condition deteriorated between October 13, 2014 to October 15, 2014, or that he suffered with any new condition as a result. Plaintiff admits he took advantage of the hour out of his cell on October 14, 2014 and he made calls to family. He also admits he was taken off suicide watch the very next day. In fact, when Plaintiff did see Defendant Orr he told her "he was not suicidal he just wanted some things and it is clear to him that he will not be getting anything he wants." (Def. Memo. [83], Orr Aff., Ex. E).

Plaintiff now attempts to claim the denial of care lead to later incidents in which he cut himself. However, these incidents are related to his second lawsuit which concerns the medication which was canceled on October 31, 2014. *See Key v Brown,* Case No. 14-2286. Plaintiff has failed to provide evidence from which the Court could infer the two day delay in the time from when Plaintiff told the Defendants he wanted to speak with Orr to the day he saw Orr led to a deterioration in his mental health condition. Therefore, Defendants Schloendorf and Juergens' motion for summary judgment on this claim is granted.

Plaintiff also says he told various other correctional officers and medical staff members that he wanted to speak with Defendant Orr, but there is no evidence before the Court that any of these messages were noted in the medical record or in any other way relayed to Defendant Orr. Therefore, Plaintiff has also failed to demonstrate Defendant Orr had any personal involvement in the delay in meeting with him.

The Court notes when Plaintiff was first asked in his deposition why he sued Defendant Orr, Plaintiff stated because she was required by law to come visit him every 48 hours and she did not. (Def. Mot. [65], p. 185-186). Defendant Orr says she is unaware of any such legal requirement and Plaintiff has offered no corroborating evidence. Instead, as the only mental health worker at the jail, Orr depended on nursing staff and the correctional staff who performed the 15 minute checks on Plaintiff to inform her if an inmate on suicide watch wished to speak with her. In addition, she was not the only individual who could approve the termination of suicide watch or meet with the Plaintiff to address his mental or medical concerns.

It is unclear from the record what medical or mental health follow-up is provided to inmates on suicide watch. Unfortunately, there does not appear to be in specific procedure, but there is no evidence Defendant Orr is responsible for the procedures or solely responsible for providing care. There is no evidence Orr would have any reason to know Plaintiff was not seen every 15 minutes by staff, and at least daily by medical staff when dispensing medication. In addition, throughout Defendant Orr's previous contacts with Plaintiff, he repeatedly admitted using suicide watch as a way to avoid housing, not because he was feeling suicidal. Based on the record, the Court cannot infer Defendant Orr knew Plaintiff wanted to speak to her on any occasions besides October 6, 2014 and October 15, 2014, and she met with Plaintiff on both days. Therefore, there is no evidence of deliberate indifference and Defendant Orr's motion for summary judgment is granted.

Defendants Juergens and Schloendorf also argue they are entitled to summary judgment on Plaintiff's claim concerning his living conditions on suicide watch. The conditions of an inmate's confinement can violate the constitution "when (1) there is a deprivation that is, from an objective standpoint, sufficiently serious that it results in the denial of 'the minimal civilized measure of life's necessities,' and (2) where prison officials are deliberately indifferent to this state of affairs." *Gray v. Hardy*, 2016 WL 3457647, at *2 (7th Cir. June 24, 2016) *quoting Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

In this case, Plaintiff alleges he was confined in a cell without a working toilet, no property, standing water and smeared feces on the wall. *See Vinning–El v. Long,* 482 F.3d 923, 924 (7th Cir.2007) (denial of mattress, bedding, hygiene supplies in cell with standing water, non-working sink and toilet, and smeared blood and feces on walls); *Johnson v. Pelker,* 891 F.2d 136, 139–40 (7th Cir. 1989) (prisoner held for three days in segregation cell allegedly smeared with human feces and having no running water); *DeSpain v. Uphoff,* 264 F.3d 965, 974 (10th Cir. 2001) (concluding that exposure to human waste, even for 36 hours, would constitute sufficiently serious deprivation to violate Eighth Amendment). However, Plaintiff's claim is limited to Defendants Schloendorf and Juergens, and his contact was limited with both Defendants during his October 6, 2014 to October 15, 2014 stay on suicide watch.

Plaintiff saw only Defendant Schloendorf on October 6, 2014. Both agree the cell was checked prior to Plaintiff moving in. Nonetheless, at some unspecified point, Plaintiff says he told Defendant Schloendorf his toilet was malfunctioning. Based on Plaintiff's description, there was no water or feces anywhere outside of his toilet at this

time. Instead, his toilet was not completely flushing. Plaintiff does not allege an accumulation of feces, or a problem with bugs or odor. If the Court assumes Plaintiff did complain on this day, he has failed to allege the denial of "'the minimal civilized measure of life's necessities." *Farmer,* 511 U.S. at 834

The only feces in Plaintiff's cell occurred on October 8, 2014 when Plaintiff admits he smeared feces on his window himself because he wanted a fully functioning toilet. The Defendants argue the Seventh Circuit has specifically noted "an inmate who causes filthy conditions to exist may not have a cruel and unusual leg to stand on." *Isby v. Clark*, 100 F.3d 502, 506 (7th Cir. 1996)(case remanded for "more precise findings on contested issues about allegedly inhumane conditions."). However, the Defendants also acknowledge they "have an obligation to intervene when they know a prisoner suffers from self-destructive tendencies." *Rice ex rel. Rice v. Correctional Medical Services*, 675 F.3d 650, 665 (7th Cir. 2012). In other words, if Plaintiff was incapable of caring for himself due to his mental illness, and Defendants were aware of this fact, it is possible to conclude Plaintiff was not responsible for the conditions of his cell. *Id.*

While the Plaintiff clearly suffered from some mental health issues, there evidence before the Court does not suggest Plaintiff was incapable of caring for himself from October 6, 2014 to October 15, 2016. Plaintiff was given an opportunity to clean up his own cell, but chose not to finish. Plaintiff himself does not allege he was incapable of cleaning his own cell. Instead, Plaintiff denies he was given cleaning supplies. However, his claim is belied by his admission that he drank some of the cleaning fluid on October 8, 2014.

More important, there is no evidence Plaintiff had direct contact with either Defendant on this day. After Plaintiff drank the fluid, officers contacted Defendant Schloendorf who was working in the booking area. He ordered the officers to have someone else clean Plaintiff's cell rather than giving him more cleaning fluid. As previously noted, Plaintiff stated in his deposition that he did not see Schloendorf on October 8, 2014. Therefore, there is no evidence the Defendant was personally involved in supervising the cleaning of Plaintiff's cell. In addition, there is no evidence of personal contact with either Defendant again until October 13, 2014, when the feces had been removed from his door.

In his response to the summary judgment motion, Plaintiff again says he complained to the Defendants on a daily basis about his toilet. Once again, Plaintiff cannot contradict his previous deposition testimony to try and created a disputed issue of material fact, and he has not provided any evidence to rebut the Defendant's work schedules. *Janky v. Lake County Convention & Visitors Bureau*, 576 F.3d 356, 362 (7th Cir.2009); *Ineichen v. Ameritech*, 410 F.3d 956, 963 (7th Cir.2005); *Essick v. Yellow Freight Systems, Inc.*, 965 F.2d 334, 335 (7th Cir.1992).

Therefore, the only cell condition relevant to Defendants Schloendorf and Juergens was Plaintiff's flooded cell on October 13, 2014. Plaintiff claims his cell was covered in water and feces, but the video recording shows only water in the area outside his cell, and Defendant Orr states she observed only water. Nonetheless, even if there was some feces in the water, Plaintiff again admits he flooded his cell because he wanted a new cell. While Plaintiff claims other inmates did not clean his cell, he does

not adequately explain why he chose not to clean the floor himself. The video shows his cell was open and an inmate, with a mop, moves in and out of the cell which is marked #4. In addition, Plaintiff admits he was allowed out of his cell every day, and a mop and bucket if visible in the recording. Furthermore, Plaintiff does not allege he was physically or mentally incapable of moping his cell, nor has he presented evidence from which the Court could infer he was incapable of cleaning out his cell.

However, what is most important is the involvement of Defendants Juergens and Schloendorf in Plaintiff's claim. Both sides admit the officers responded when Plaintiff first flooded his cell. Other inmates were directed to clean the area outside Plaintiff's cell, but there is no indication Defendant Schloendorf stayed in Plaintiff's housing unit. In addition, while Defendant Juergens was assigned to this unit, it is not clear from the record that this Defendant was involved in supervising the cleaning of the area. In his deposition, Plaintiff says he only talked to Defendant Juergens before he flooded his cell. (Def. Mot. [65], Plain. Depo. p. 62). In addition, neither Defendant was in Plaintiff's housing unit the next two days, October 14, 2014 or October 15, 2014.

Based on the record, Plaintiff created the conditions in his cell, he had obvious opportunity and ability to clean his cell, but he chose not to. In addition, there is no evidence to suggest Defendant Juergens or Schloendorf oversaw the cleaning of the area, or had any knowledge of any remaining water. The motion for summary judgment on Plaintiff's conditions of confinement claim is granted.

IT IS THEREFORE ORDERED:

1) Defendants' motions for summary judgment are granted pursuant to Federal Rule of Civil Procedure 56. [62, 65, 82, 83]. The Clerk of the Court is directed to enter judgment in favor of Defendants and against Plaintiff. This case is terminated, with the parties to bear their own costs.

2) If Plaintiff wishes to appeal this judgment, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a)(4). A motion for leave to appeal in forma pauperis MUST identify the issues the Plaintiff will present on appeal to assist the court in determining whether the appeal is taken in good faith. *See* Fed. R. App. P. 24(a)(1)(c); *See also Celske v Edwards*, 164 F.3d 396, 398 (7th Cir. 1999)(an appellant should be given an opportunity to submit a statement of his grounds for appealing so that the district judge "can make a reasonable assessment of the issue of good faith."); *Walker v O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000)(providing that a good faith appeal is an appeal that "a reasonable person could suppose…has some merit" from a legal perspective). If Plaintiff does choose to appeal, he will be liable for the $505.00 appellate filing fee regardless of the outcome of the appeal.

Entered this 21st day of March, 2017.

s/ James E. Shadid

JAMES E. SHADID
UNITED STATES DISTRICT JUDGE