No. 17-872

In The
Supreme Court of the United States

BRUCE WALKER,

Petitioner,

v.

ESTATE OF RYAN L. CLARK,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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February 14, 2018

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QUESTIONS PRESENTED

The Seventh Circuit affirmed the denial of qualified immunity to a Green Lake County jail correctional officer who, respondent alleged, violated Ryan Clark's constitutional right to be free from deliberate indifference to a substantial risk of suicide after the officer learned during the jail's computerized intake assessment that Clark was a maximum suicide risk. The court of appeals relied on evidence capable of supporting findings that the officer knew of the substantial risk and did nothing to address it, and held that there was, at the time at issue, a clear right to be free from deliberate indifference to a substantial risk of suicide.

The petition presents these questions:

(1) Whether the court of appeals properly defined the constitutional right in question.

(2) Whether the court of appeals correctly held that *Johnson v. Jones*, 515 U.S. 304 (1995), precluded review of the district court's factual determinations on petitioner's appeal from the denial of qualified immunity.

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INTRODUCTION

This jail-suicide case, brought against Correctional Officer Bruce Walker, turns upon two crucial issues of fact: whether Walker knew that new jail inmate Ryan Clark presented a substantial risk of committing suicide, and whether he did anything to address that risk. Based on the parties' summary judgment submissions, the district court decided that a reasonable trier of fact could find that Walker knew that Clark presented a substantial suicide risk, because the suicide risk assessment instrument Walker administered as part of his routine intake procedure rated Clark as a maximum suicide risk. The court also found evidence that Walker had done nothing to address that risk because he had taken the exact same steps after assessing Clark that he took with every other non-suicidal inmate – he left him in a holding cell in the booking area and said nothing to anyone about Clark's risk of suicide. The Court of Appeals affirmed both findings.

Walker's petition does not argue that the law was unclear that, once he knew that Clark presented a substantial suicide risk, he was constitutionally obliged to take some action to address that risk. No court has held to the contrary. Rather, Walker asks the Court to find that Walker reasonably believed Clark's risk to be so minimal that doing nothing more than he would have done with any other non-suicidal inmate was constitutionally permissible.

But this sort of reargument of the facts is exactly what, under *Johnson v. Jones*, 515 U.S. 304 (1995), reviewing courts may not entertain on an interlocutory appeal from a denial of qualified immunity. Whether Walker knew of a substantial risk, and whether he did precisely nothing about it, are issues of fact. While jailers, who learn of a substantial risk of suicide, and take real but ineffective action to reduce it may find themselves, at some point, in a gray area where reasonable persons can debate the constitutional adequacy of their efforts, there is no room for debate where the jailer with knowledge of such a risk chooses to take no action at all. That is a clear case of deliberate indifference.

The petition does not suggest that this case implicates any conflict among the circuits. It questions only the Seventh Circuit's clearly established law. Because Seventh Circuit law is clear, the petition should be denied.

STATEMENT OF THE CASE

Ryan Clark struggled for years with alcoholism and depression. From 2009 to 2011, he was admitted to the Green Lake County Jail eight times, each time intoxicated. He received regular medical treatment for depression while in custody, and his jail record stated that he experienced anxiety attacks when he did not receive this medication. Jail records also documented his serious risk of suicide, including instances of

self-harm and a suicide attempt in 2011. He had been placed on "Special Watch Observation" multiple times to prevent suicide. (Pet. App. 4.)

On May 23, 2012, Mr. Clark was admitted once more to the Green Lake County Jail, this time with a blood alcohol level more than three times the legal limit for driving. Petitioner Walker performed the intake process. Walked administered a suicide risk assessment, which calculated Clark as a "maximum" suicide risk. Walker later testified that he thought the assessment produced a maximum suicide rating for all inmates intoxicated at the time of the test (*id*. at 4-5), but he admitted that he did not know how the test was scored (dkt. #46-11,[1] Walker dep., 21:22-25; 22:1-9).

The jail had a suicide prevention protocol which, among other things, required a check of jail records to determine if the inmate had a history of suicidal behavior, required that Clark be placed in a suicide prevention cell, and would have initiated monitoring of Clark and his referral to a mental health provider. Rather than implementing any of these protective measures, Walker simply placed Clark in a regular holding cell to wait for a nurse to perform a routine medical intake, as was done for all inmates. Four nights later, Clark committed suicide. The officers on duty then were unaware that Clark posed a suicide risk. (*Id*. at 5-6.) One looked into his cell while his

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[1] References to the district court record will be shown by docket number, dkt. #___. Walker's petition cites to the district court record as R ___. (Petition, 3, n. 1.)

preparations to hang himself were underway, but assumed there was a benign reason for what she could see (dkt. #46-12, Pflum dep., 43-44), and the officer with the ability to monitor the video feed from Clark's cell did not do so because he had not been alerted to Clark's risk of suicide (Pet. App. 44).

Clark's estate brought suit under 42 U.S.C. § 1983, alleging deliberate indifference to Clark's risk of suicide. Denying Walker's motion for summary judgment based on qualified immunity, the district court recited evidence it held would be sufficient to allow a jury to find that Walker had acted with deliberate indifference to Clark's known risk. The court also concluded that it was clearly established in the Seventh Circuit that deliberate indifference to an inmate's serious risk of suicide violates the Eighth Amendment.

The Seventh Circuit affirmed, holding that a substantial risk of suicide is a serious medical condition requiring action, and that a jury could find that Walker's failure to take action amounted to deliberate indifference. The Seventh Circuit likewise affirmed the holding that the right was clearly established. Pet. App. 13 (citing *Cavalieri v. Shepard*, 321 F.3d 616, 623 (7th Cir. 2003) (the right to be free from deliberate indifference to suicide is clearly established); *Hall v. Ryan*, 957 F.2d 402, 404-05 (7th Cir. 1992) (same)).

The petition's Statement of the Case mischaracterizes the Plaintiff's claim as asserting a "right to suicide prevention protocols." (Petition, 2.) The Plaintiff has never asserted a right enforceable against the

Petitioner, a nonsupervisory correctional officer, to suicide prevention protocols. The only claim against him, from the beginning of the case, has been that when he learned, in the course of his jail-intake screening of new inmate Ryan Clark, that Clark presented a maximum risk of committing suicide, Walker violated Clark's right to be free from deliberate indifference to a serious medical need when he did absolutely nothing to address that risk.

On several key points, the petition's Statement of the Case also fails to recite the facts in the light most favorable to the Plaintiff Estate. The appellate court rejected Petitioner's arguments in part because of Petitioner's reliance on disputed facts, and its continued reliance on those disputed facts is a significant reason why the petition should be denied.

REASONS FOR DENYING THE WRIT

I. The petition should be denied because Officer Walker has misstated the facts upon which the denial of qualified immunity was based.

This case is brought to the Court by a corrections officer who is alleged to have been deliberately indifferent to an inmate's serious medical need, a substantial risk of committing suicide. The district court denied the officer's motion for summary judgment based on qualified immunity.

It is axiomatic that when a court considers a motion for summary judgment, it must consider the evidence presented in the light most favorable to the nonmoving party, here, the Plaintiff, Estate of Ryan Clark. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255 (1986). The qualified immunity analysis itself also requires that the facts be taken in the light most favorable to the Plaintiff Estate: whether a defendant receives qualified immunity turns on (1) whether the facts alleged, taken in the light most favorable to the party asserting the injury, show that the officer's conduct violated a constitutional right and (2) if so, whether the right was clearly established at the time of its alleged violation. *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

To establish a deliberate indifference claim, a plaintiff must show that the defendant was subjectively aware of a substantial risk of serious harm to the plaintiff and that he did not respond reasonably to the risk. *Farmer v. Brennan*, 511 U.S. 825, 828, 844 (1994). The many Seventh Circuit cases holding that a correctional officer is constitutionally prohibited from ignoring an inmate's imminent risk of suicide adhere to *Farmer* by focusing on two distinct issues: (1) whether the officer knew that the inmate was at risk; and (2) whether the response to the known risk was reasonable. *See*, *e.g.*, *Estate of Novack ex rel. Turbin v. County of Wood*, 226 F.3d 525, 529 (7th Cir. 2000) (to be liable, a defendant must be aware of the significant likelihood that an inmate may imminently seek to take his own

life and must fail to take reasonable steps to prevent the inmate from performing the act).

In his effort to evade liability, Officer Walker misstates facts material to both of these key issues. In regard to whether he knew that Ryan Clark presented an imminent risk of committing suicide, Officer Walker asserts in his petition:

> In Walker's experience with the Spillman Assessment, whenever an inmate answered that he or she had been drinking alcohol, the computer program always rated the inmate a maximum suicide risk. R.46-11 at 22-24. With that in mind, and based upon Clark's answers to his questions, his interactions with Clark, and his knowledge of Clark, *Walker did not believe that Clark was a suicide risk*. *Id.* at 59-60.

(Petition, 6-7 (emphasis supplied).)

Given that the Spillman Suicide Risk Assessment that Officer Walker administered rated Ryan Clark as a "max" suicide risk, the facts taken in the light most favorable to the Estate establish that Walker *did* know of the risk. As the Court of Appeals held:

> Accepting the facts described by the district court, Clark's estate has offered sufficient evidence for a jury to find that Walker actually knew about Clark's serious risk of suicide. (Recall that Clark's score on the suicide risk screening tool indicated a maximum risk of suicide.) Walker should have taken action

> based on this knowledge, yet he chose to do nothing.

(Pet. App. 15-16.)

In his petition, instead of citing to facts that were found by the district court, Walker improperly cites to assertions of fact that the district judge considered and rejected, and he omits the findings of fact that the court actually made on this issue, like these:

> Taken in the light most favorable to the plaintiff, there is sufficient evidence that Walker knew that Clark was a suicide risk after conducting the health assessment, security assessment, and suicide assessment on May 23, 2012. Thus, even though Walker testified that he did not believe that Clark was suicidal, Clark told Walker he was not contemplating suicide, and Clark gave no indications that he would commit suicide, *the facts, when taken in the light most favorable to the plaintiff, establish that Walker was aware that Clark was a risk.*

(Pet. App. 42-43, dkt. #111, Order on Motions for Summary Judgment, at 25 (emphasis added).)

In his effort to establish that his response to Clark's risk of suicide was a reasonable one – a challenging task for a defendant simultaneously contending that he never believed there was a risk of suicide – Walker also makes reference to purported facts that he submitted in support of his motion for summary judgment, without acknowledging that those facts were explicitly refuted by the Estate's evidence, and were not

accepted by either the trial court or the court of appeals.

For example, as he argued in support of his motion for summary judgment, and again on appeal, Officer Walker here asserts that in-depth suicide screening was not his responsibility as the intake officer, but was the duty of the jail's contracted nurse. (Petition, 5.)

The petition states: "Walker placed Clark in a holding cell in the booking area of the jail until the in-depth suicide screening (per the Suicide Prevention Policy) could be conducted by medical staff. R.43 ¶ 27." (Petition, 7.) The document which Walker cites as the basis for this assertion, which he cites as "R.43," is the Defendants' Proposed Findings of Fact submitted in support of Walker's motion for summary judgment.[2]

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[2] Officer Walker also cites to the affidavit of his attorney, to which were attached exhibits and deposition transcripts as the evidentiary basis for the facts on which he hopes to hang his hat, without noting that these assertions were disputed:

> Walker understood that, while the intake officer conducted the initial suicide screening, jail medical staff would be responsible for the in-depth suicide screening. *Id*. [R.46-8] ¶ 29. This was the understanding of other jail staff as well. R.46-12 at 21.

(Petition, 5.)

R.46-8 is the "Green Lake County Sheriff's Office Policy – Corrections Division: Suicide Prevention," but as the trial court noted in its decision denying summary judgment, these policies governed the actions of correctional staff, not the contracted health care provider's nurse, who was contractually exempted from any mental health responsibilities, and "the Jail Administrator testified that the correctional officer is required to conduct an in-depth suicide screening." (Pet. App. 44, dkt. #111 at 26.)

Walker fails to mention that, in response to his proposed findings, the Estate presented facts that disputed Walker's assertion:

> Plaintiff's Response to DPFOF #27:
>
> > Agree and disagree. Agree that Walker placed Clark in a holding cell and did nothing more. Disagree that this conduct was "per the Suicide Policy." *See also* Plaintiff's Response #20 and PPFOF #35.
>
> Plaintiff's Response to DPFOF #20:
>
> > Agree in part and disagree in part. Agree that the Suicide Prevention Policy states that "i[f] basic intake indicates that a new inmate may be a suicide risk, an in-depth suicide screening shall be completed to obtain more detailed information about the inmate's situation and to better assess his/her degree of risk."
> >
> > Disagree that "[i]n-depth suicide screening is conducted by trained medical personnel in the Jail." The Suicide Prevention Policy (dkt. #46-8) does not say that the in-depth suicide screening is to be conducted by trained medical personnel in the jail. Further, this is contrary to the evidence given by Jail Administrator De Anna Lueptow, who testified that the intake officer is the one who conducted the in-depth suicide screening. (Lueptow dep. [dkt. #83]: p. 100, lines 5-20) *See* PPFOF #35.

(Dkt. #57, ¶¶ 20, 27.)

The Estate's Proposed Findings of Fact, submitted in opposition to Officer Walker's motion for summary judgment, asserted:

> PPFOF No. 35. If an in-depth suicide screening is required, it is the intake correctional officer who is supposed to conduct it, according to County [suicide prevention] policy. (Lueptow dep. [dkt. #83]: p. 100, lines 15-20.)

(Dkt. #60, ¶ 35.)

Most importantly, Walker fails to acknowledge the factual determinations of the trial court. Officer Walker's assertions notwithstanding, the trial court found:

> Walker appears to shift responsibility for Clark's placement or care to [contract nurse] Kuehn; however, Jail policy refers to the actions of correctional staff, and the Jail Administrator testified that the correctional officer is required to conduct an in-depth suicide screening. Moreover, paragraph 1.11 of the Green Lake contract for medical care of inmates provides that HPL shall not be responsible for the provision or cost of any mental health services and that the county shall be responsible for mental health services.

(Pet. App. 43-44, dkt. #111 at 26.)

Walker also asserts that it was the medical staff, not the intake officer, who had the ultimate authority to determine Clark's housing assignment and to place

Clark on suicide watch. (Petition, 7.) Yet the trial court found:

> [T]his practice is not in compliance with the Jail's Suicide Prevention Policy which requires the *Intake Officer* "to determine the appropriate actions to take to ensure the inmate's safety," and requires that an inmate who has been assessed as a suicide risk "shall be placed on 'Special Watch' status in a Special Needs Cell."

(Pet. App. 29, dkt. #111, 12.) (emphasis added.)

A case in which the facts have been misstated in order to give the impression that critical facts are not in dispute is not a felicitous vehicle for this Court's further explication of qualified immunity doctrine.

II. Both the district court and the court of appeals scrupulously adhered to this Court's precepts.

Walker attempts to portray the Seventh Circuit Court of Appeals as a rogue circuit that is blatantly defying this Court's instructions regarding the level of specificity needed in a qualified immunity analysis. That effort is based on the above-described misstatements of fact and a skewed interpretation of the decision below.

For a constitutional right to be clearly established, its contours "must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Hope v. Pelzer*, 536 U.S. 730, 739

(2002). In several cases going back more than a decade, the Seventh Circuit has denied qualified immunity in inmate suicide cases where the defendant's conduct shows deliberate indifference to the risk. The Eighth Amendment right to be free from deliberate indifference to a known risk of suicide thus has been clearly established in that circuit for many years. *See, e.g.*, *Sanville v. McCaughtry*, 266 F.3d 724, 740-741 (7th Cir. 2001) (stating that it was "clearly established, long before 1998, that prison officials will be liable under Section 1983 for a pretrial detainee's suicide if they were deliberately indifferent to a substantial suicide risk"); *Cavalieri v. Shepard*, 321 F.3d 616, 623-624 (7th Cir. 2003) ("The rule that officials . . . will be liable under section 1983 for a pre-trial detainee's suicide if they were deliberately indifferent to a substantial suicide risk, was clearly established prior to 1998."). *See also Borello v. Allison*, 446 F.3d 742, 747 (7th Cir. 2006); *Estate of Cole by Pardue v. Fromm*, 94 F.3d 254, 258 (7th Cir. 1996); *Hall v. Ryan*, 957 F.2d 402, 405 (7th Cir. 1992). Further, an imminent risk of committing suicide is a serious medical condition, and under the holding of *Farmer*, 511 U.S. at 828, 844, once a corrections officer is aware of the risk, he cannot ignore it, any more than he can ignore a case of pneumonia or a broken arm.

In its decision, the Seventh Circuit acknowledged that it may not define clearly established law at so high level of generality as to be useless to the government official whose conduct is at issue. (Pet. App. 15

(citing *City & Cty. of San Francisco v. Sheehan*, 575 U.S. ___, 135 S. Ct. 1765 (2015)):

> Courts may not define clearly established law at too high a level of generality, see *Sheehan*, 575 U.S. at ___, 135 S. Ct. at 1775-76, but there is no such problem here. The Supreme Court has long held that prisoners have an Eighth Amendment right to treatment for their "serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). For purposes of qualified immunity, that legal duty need not be litigated and then established disease by disease or injury by injury. Risk of suicide is a serious medical need, of course. See *Sanville v. McCaughtry*, 266 F.3d 724, 733 (7th Cir. 2001) ("It goes without saying that suicide is a serious harm.") (quotation omitted). Accepting the facts described by the district court, Clark's estate has offered sufficient evidence for a jury to find that Walker actually knew about Clark's serious risk of suicide. (Recall that Clark's score on the suicide risk screening tool indicated a maximum risk of suicide.) Walker should have taken action based on this knowledge, yet he chose to do nothing. Our precedent establishes that "particular conduct" such as this violates clearly established law. See *Mullenix v. Luna*, 577 U.S. ___, ___, 136 S. Ct. 305, 308 (2015) (per curiam) (emphasis omitted), citing *al-Kidd*, 563 U.S. at 742.

(Pet. App. 15.)

The court of appeals acknowledged that the defendant preferred to frame the right at issue with extreme specificity.

> Walker urges us to consider Clark's rights at a very high level of specificity: whether a jail inmate had a right "to be placed immediately on a special watch in a suicide cell despite no outward signs of suicidal ideation during an initial intake assessment, when the intake officer knew that trained medical personnel would conduct a follow-up assessment and ultimately determine the inmate's proper observation and housing status."

(*Id.*)

As Walker would frame the right, its description would fit only this case, and only Walker's disputed view of the facts: The Estate could recover in this case only if an appropriate court had previously decided:

- a jail inmate had a right "to be placed immediately on a special watch in a suicide cell" – a right the Estate never claimed in this case;
- "despite no outward signs of suicidal ideation during an initial intake assessment" – meaning that, whatever other indications of elevated risk there might have been, the inmate did not say he intended to kill himself;
- "when the intake officer knew that trained medical personnel would conduct a follow-up assessment and ultimately

> determine the inmate's proper observation and housing status" – facts which are intensely disputed in this case.

(Quoted language from Pet. App. 15, quoting in turn from Walker's appellate brief.)

The court below properly rejected that approach for a number of sound reasons, one being its reliance on disputed facts and another being that the court appreciated it need not rule on what specific actions would have constituted a constitutionally adequate response to Walker's awareness of Clark's risk of suicide. The Seventh Circuit has been clear that the Constitution requires only that an officer take reasonable steps to prevent an inmate's suicide. *Sanville v. McCaughtry*, 266 F.3d 724, 737 (7th Cir. 2001). Walker faults the Seventh Circuit for not spelling out the required reasonable response in its qualified immunity analysis. Because, however, Walker took *no* steps to prevent Clark's suicide, the court of appeals had no need to set forth what steps would have been reasonable.

The jail's suicide prevention policy outlined what an officer in Walker's position should do under the policy: Place the inmate on special watch status in a special needs cell, refer the inmate to mental health, and document in the jail log that the inmate is at risk of suicide. (Dkt. #46-8 at 3-4.) But the Estate did not argue, and the courts below did not hold, that Clark was constitutionally entitled to those specific responses. Actions other than those listed in the policy potentially might have been a constitutionally adequate response

on Walker's part. But the fact is, after assessing Clark as a maximum suicide risk, Walker did absolutely nothing other than to place Clark in a holding cell, as he does with every other inmate who is booked into the jail, and leave him there. (Dkt. #46-11 at 55-56.) Walker, *having taken no protective action whatsoever* to try to prevent Clark from committing suicide, after rating him at maximum risk, cannot argue that his actions were reasonable under the policy or despite the policy. The inexorable zero admits of no comparisons.

Walker also attempts to conflate the elements of his *awareness* of the risk with his *response* to that awareness. His reference to Clark displaying "no outward signs of suicidal ideation," meaning that Clark did not say he was planning to kill himself, has no place in the qualified immunity discussion, where Walker must accept as fact, because the jury could reasonably find that he *knew* Clark was at a maximum risk of committing suicide. Although some claims of deliberate indifference founder on the question of whether an officer was aware of the risk of suicide, that question is not an issue here. Clark's assessment rating of "maximum risk" of suicide could not be clearer.

One case upon which Walker's petition relies heavily, *Taylor v. Barkes*, 135 S.Ct. 2042 (2015), would support a defense of qualified immunity if the Plaintiff's claim, like that of Barkes, were against jail policymakers and asserted that the substantial danger that Clark would commit suicide was unknown to Walker because the policy-makers had failed to implement an adequate suicide risk assessment as part of the jail

intake procedure. This is not the Estate's claim. It is the Estate's theory that there *was* an assessment adequate to apprise Walker that Clark presented, not just a substantial risk of suicide, but a maximum risk of suicide, and Walker ignored it and did nothing to protect Clark. The court below understood this distinction. (Pet. App. 14-15: "*Taylor* is readily distinguishable from this case. First, Clark's estate is not suing supervisory officials who did not know about Clark's risk. The estate contends that Walker and Kuehn actually knew Clark's risk and disregarded it.")

III. The Seventh Circuit correctly analyzed the limitations of its appellate jurisdiction under *Johnson v. Jones*.

This Court reiterated in *Johnson v. Jones* that 28 U.S.C. § 1291 gives appellate courts jurisdiction to hear appeals only from "final decisions" of district courts, and that, therefore, interlocutory appeals "are the exception, not the rule." *Johnson v. Jones*, 515 U.S. 304, 309 (1995). A district court's order denying a defendant's motion for summary judgment is such an exception "where (1) the defendant was a public official asserting a defense of 'qualified immunity,' and (2) the issue appealed concerned, not which facts the parties might be able to prove, but, rather, whether or not certain given facts showed a violation of 'clearly established' law." *Id*. at 311 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985)).

The decision also stressed that "it follows from the recognition that qualified immunity is in part an entitlement not to be forced to litigate the consequences of official conduct that a claim of immunity is *conceptually distinct* from the merits of the plaintiff's claim that his rights have been violated." *Id*. at 312 (emphasis in original). Thus, while a defendant may pursue an interlocutory appeal on the issue of whether his conduct violated clearly established law, the exception to 28 U.S.C. § 1291 does not confer appellate jurisdiction to review the decision of the trial court denying qualified immunity based on sufficiency of the evidence. *See Johnson*, 515 U.S. at 313.

Given these constraints, the district court and the court of appeals had to terminate their factual analysis once they concluded that a reasonable jury could find that Walker knew of Clark's substantial risk and consciously decided to take no action.[3]

[3] The Seventh Circuit has been particularly insistent that whether a defendant had knowledge sufficient to trigger a duty to

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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February 14, 2018

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act is an issue for the jury. *Hall v. Ryan*, 957 F.2d 402, 404-05 (7th Cir. 1992) (Issue of fact as to whether defendants knew of inmate's suicidal history, or were deliberately indifferent in failing to consult his jail medical records after observing suspicious behavior – cursing, throwing shoes, urinating in cell, and repeatedly flushing the toilet); *Cavalieri v. Shephard*, 321 F.3d 616 (7th Cir. 2003) (Official's knowledge of risk is for jury when guard claims he did not know of risk, but there is evidence from which one could infer that guard knew – such as a family member testifying that they told the guard that inmate was a suicide risk); *Sanville v. McCaughtry*, 266 F.3d 724, 728-41 (7th Cir. 2001) ("If the circumstances suggest that the defendant-official being sued had been exposed to information concerning the risk and thus 'must have known' about it, then such evidence could be sufficient to permit a trier of fact to find that the defendant-official had actual knowledge of the risk."); *Estate of Miller, ex rel. Bertram v. Tobiasz*, 680 F.3d 984, 987-91 (7th Cir. 2012) (if official is exposed to information concerning risk, then jury could find official had actual knowledge).