APPENDICES

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 23-1036

Anne Francisco, parents; Thurman Francisco, parents; Tyler Francisco, son of Joshua Francisco, deceased

Plaintiffs – Appellants

v.

Corizon Health, Inc.; Corizon, LLC

Defendants

Tom Villmer; Gregory Rhodes; Kimberly Scallion; Jason England; Michael Griffin

Defendants – Appellees

Lisa Sanderson; Moses Ambilichu; Marion McIntyre; Rajendra Gupta; Does, 1-30

Defendants

Appeal from United States District Court for the Eastern District of Missouri – St. Louis

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Submitted: November 14, 2023
Filed: July 26, 2024

Before LOKEN, ERICKSON, and GRASZ, Circuit Judges.

ERICKSON, Circuit Judge.

The parents and child of Joshua Francisco (the "Family") appeal the district court's[1] grant of summary judgment in favor of Thomas Villmer, Gregory Rhodes, Kimberly Scallion, Jason England, and Michael Griffin in this 42 U.S.C. § 1983 action alleging a violation of the Eighth Amendment. We affirm.

I. BACKGROUND

On July 22, 2014, Joshua Francisco was placed at the Farmington Correctional Center ("FCC") to serve his sentence for aggravated stalking. At that time, Rhodes, England, Griffin, and Scallion were correctional officers at FCC. Rhodes was a Functional Unit Manager, England was a sergeant, Griffin was a Corrections Officer I, and Scallion was a case manager. Villmer was the warden.

Francisco suffered from mental illness, and FCC provided him with treatment. The Missouri Department of Corrections contracted with Corizon to provide professional mental health services to Francisco and other inmates at FCC.

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[1] The Honorable Henry E. Autrey, United States District Judge for the Eastern District of Missouri.

During Francisco's 93 days at FCC, correctional officers placed him on suicide watch four times when his statements or actions indicated that he might be a danger to himself. Corizon mental health professionals performed an evaluation of Francisco before they determined he was well enough to leave suicide watch each time. When Francisco refused to take the prescribed medication for his schizoaffective disorder, bipolar type, mental health professionals held an involuntary medication hearing to ensure Francisco took his medication.

At Francisco's request, on October 2, 2014, FCC placed him in protective custody. On October 8, 2014, the Admissions/Discharge committee determined Francisco was eligible for the Social Rehabilitation Unit ("SRU"), which would provide him with more frequent contact with mental health professionals. When the time came for Francisco to move to SRU, he refused.

On October 21, 2014, a mental health professional performed rounds in the administrative segregation unit. Francisco denied having any mental health concerns or complaints, and the doctor observed him to be "functioning adequately."

On the morning of October 22, 2014, Francisco's cellmate told England that Francisco was suicidal and that there was a noose in their cell. Francisco repeatedly told England and Griffin that he was not suicidal. England ordered a cell search and a strip search of Francisco and his cellmate. Neither search produced a noose.

Scallion separately interviewed Francisco on October 22, and Francisco also told her that he was

not suicidal and had no intention of hurting himself. Despite Francisco's repeated statements to correctional officers that he was not suicidal, a correctional officer found Francisco hanging from a light fixture at approximately 9:20 that night.

II. **DISCUSSION**

Our review of the district court's grant of summary judgment is *de novo. Corwin v. City of Independence*, 829 F.3d 695, 698 (8th Cir. 2016). "Whether a given set of facts entitles the official to summary judgment on qualified immunity grounds is a question of law. But if there is a genuine dispute concerning predicate facts material to the qualified immunity issue, there can be no summary judgment." *Olson v. Bloomberg*, 339 F.3d 730, 735 (8th Cir. 2003) (quoting *Greiner v. City of Champlin*, 27 F.3d 1346, 1352 (8th Cir. 1994)).

A. Deliberate Indifference

A government official is protected by qualified immunity "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton,* 483 U.S. 635, 638 (1987). To defeat the protection of qualified immunity, the plaintiff must (1) assert a violation of a constitutional or statutory right, (2) that was "clearly established" at the time of the violation, and (3) that a "reasonable official would have known that the alleged action indeed violated that right." *Liebe v. Norton*, 157 F.3d 574, 577 (8th Cir. 1998).

The Family have met the first two steps of this inquiry. It is clearly established that the Eighth

Amendment's prohibition on cruel and unusual punishment applies to protecting prisoners from deliberate indifference to serious medical needs and that a risk of suicide by an inmate is a serious medical need. *Gregoire v. Class*, 236 F.3d 413, 417 (8th Cir. 2000). To overcome qualified immunity then, the Family must present a genuine dispute about a predicate material fact regarding the third step of the inquiry.

Whether a reasonable official would have known that his actions violated an established right involves both an objective and subjective component. *Liebe*, 157 F.3d at 577. The objective component concerns whether a serious deprivation occurred. *Id.* The subjective component examines the official's state of mind to determine whether he acted with deliberate indifference. *Id.*

Deliberate indifference is more than negligence or gross negligence. *See Gibson v. Weber*, 433 F.3d 642, 646 (8th Cir. 2006) (gross negligence is insufficient to establish deliberate indifference); *Lambert v. City of Dumas*, 187 F.3d 931, 937 (8th Cir. 1999) (negligence is insufficient to establish deliberate indifference). Deliberate indifference must rise to the level of criminal recklessness. *Gregoire*, 236 F.3d at 417. There must be a "strong likelihood" that the inmate would harm himself. *Lambert*, 187 F.3d at 937 (citations omitted). Even when an official knows of the strong likelihood of risk of suicide by an inmate, the official is not liable for a subsequent injury if he responded reasonably. *Gregoire*, 236 F.3d at 418.

The Family alleges that several correctional officers failed to follow the FCC's written suicide

intervention policy, which they argue creates a dispute of material fact. Regardless of whether any officer failed to follow a written policy, the "[f]ailure to follow written procedures does not constitute *per se* deliberate indifference." *Luckert v. Dodge County*, 684 F.3d 808, 819 (8th Cir. 2012). The relevant inquiry is whether the official's acts violated Francisco's constitutional rights. We turn now to address each official's conduct.

1. England

On October 22, correctional officer Joseph Gooch notified England that Francisco's cellmate claimed Francisco was suicidal and had a noose. England did not ignore the allegation. Instead, England immediately performed an investigation.

England interviewed Francisco, who repeatedly told England that he was not suicidal. This was England's first and only interaction with Francisco, and England had no knowledge of Francisco's suicide watch history at that time.

In an attempt to create a dispute of material fact against England, the Family claims that Darrell Wagganer wrote in his suicide investigation report that England did not talk to Francisco. A review of the report reveals the opposite. Wagganer noted multiple times that England spoke to Francisco and that Francisco repeatedly told England that he was not suicidal. Wagganer also wrote that he interviewed Gooch, who was a witness to England's conversation with Francisco, and he corroborated England's statements that Francisco repeatedly stated he was not suicidal. Therefore, it is undisputed that England

talked to Francisco who told England he was not suicidal.

In addition to Francisco's statements to England, it is undisputed that England ordered two searches, and neither produced a noose. Cellmate claims about the condition of a fellow inmate are insufficient to put guards on actual notice of an excessive risk to an inmate's safety. *Yellow Horse v. Pennington County*, 225 F.3d 923, 928 (8th Cir. 2000). In this case, the cellmate's statements were especially unreliable when it turned out his claim about the presence of a noose was revealed to be false following the searches. England's actions do not rise to the level of criminal recklessness required for deliberate indifference. *Gregoire*, 236 F.3d at 417.

2. Griffin

In response to Gooch's radio call for England, Griffin arrived at Francisco's cell shortly after England started his investigation. Griffin heard the cellmate state that Francisco was "driving me nuts and he's suicidal." From previous experience, Griffin knew that inmates had falsely claimed that their cellmate was suicidal because they didn't like the cellmate and wanted a new one.

Griffin was aware that Francisco had previously been on suicide watch, but he heard Francisco adamantly tell England at least twice on October 22 that he was not suicidal. On October 21, the same day the mental health professional determined Francisco was not at risk of self-harm, Francisco also told Griffin that he was not suicidal. Because England was his superior, Griffin left the decision to him on whether to remove Francisco from his cell. Griffin did not act with

deliberate indifference. *See Yellow Horse,* 225 F.3d at 928 (finding no disregard for an excessive risk to the inmate's health or safety).

3. *Scallion*

Scallion also interviewed Francisco on October 22. Francisco told her that he was not suicidal. She was also aware that no noose was discovered during the cell search and strip search.

Scallion had a history with Francisco that included talking with him on a daily basis, and she believed she had developed a rapport with him. In the past, when Francisco felt suicidal, he told Scallion. Scallion knew Francisco's suicide watch history. However, an inmate's previous suicidal tendencies do not require officials to regard him as indefinitely suicidal. *See id.* (finding no deliberate indifference when the inmate was placed on, and removed from, suicide watch twice in the span of five days); *see also Brabbit as Tr. for Bild v. Capra,* 59 F.4th 349, 354 (8th Cir. 2023) (per curiam) (finding no deliberate indifference when officials removed inmate from the highest level of supervision after inmate stated he was no longer suicidal).

On October 21, Francisco's cellmate told Scallion that "something bad was going to happen." Scallion talked to Francisco, and he stated that he was not suicidal. A mental health professional also met with and evaluated Francisco on October 21 and determined that Francisco was not suicidal.

Scallion observed a gradual improvement in Francisco's behavior prior to his death. Based on

Scallion's previous history with Francisco when he would admit he was suicidal, and his statements to

her on October 22 that he was not suicidal, Scallion's decision[2] to take no further action does not rise to the level of criminal recklessness. *Gregoire,* 236 F.3d at 417.

4. Rhodes

Rhodes did not talk to Francisco on October 22. He talked to Scallion and two other case managers about Francisco. In addition, Rhodes reviewed the video recording of the searches involving Francisco which corroborated the correctional officers' statements that there was no noose.

While Rhodes knew that Francisco had previously been on suicide watch, prior suicide watch history alone is insufficient to establish that Francisco was suicidal on October 22. *See Yellow Horse*, 225 F.3d at 928 (finding no deliberate indifference when the inmate was removed from suicide watch following improvement in his mental condition). Rhodes knew that there was an allegation of a noose in the cell and proof that the allegation was false. He relied on the information provided by Scallion and two other case

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[2] The Family cites Scallion's testimony where, after she learned of Francisco's death, she wished she would have put him on suicide watch. Hindsight is not the test for deliberate indifference. *Gregoire*, 236 F.3d at 419. Instead, we must evaluate the official's actions based upon the information she knew prior to the death. *Id.*

managers regarding Francisco's state of mind that day. Rhodes' conduct fails to constitute deliberate indifference. *Id.*

5. Villmer

Villmer was neither aware of the cellmate's allegations nor participated in the decisions made regarding Francisco on October 22. It is undisputed that he was not aware of the events until after they occurred. Therefore, the district court properly granted summary judgment to Villmer on the deliberate indifference claim.

B. Monell Liability

The remaining claim against Villmer is for an unconstitutional custom, practice, or policy. Liability for an unconstitutional custom, practice, or policy under 42 U.S.C. § 1983 rests with the responsible governmental entity. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978); *see also Corwin*, 829 F.3d at 700 (discussing a municipality's liability for a policy or custom). Because Villmer is not a governmental entity, he is not a proper party for this claim.

The Family next conflates *Monell* liability with a claim for failure to properly supervise or train. The Family did not allege a claim for failure to supervise or train against Villmer in their Complaint, so this claim is not properly before us. *See Pulczinski v. Trinity Structural Towers, Inc.*, 691 F.3d 996, 1006 (8th Cir. 2012) (stating that a court must refuse to consider claims not alleged in the complaint).

Finally, the Family returns to the deliberate indifference standard to argue that Villmer is liable

for an unconstitutional custom or practice. In the context of a custom or practice, there must be personal involvement by the supervisor in "creating, applying, or interpreting a policy …." *Jackson v. Nixon*, 747 F.3d 537, 543 (8th Cir. 2014).

The alleged custom or practice is that an inmate must say the "magic words" that he is suicidal before he will be placed on suicide watch and no other words or indicia of intent to harm oneself will suffice. It is undisputed that Villmer did not make such a policy. It is also undisputed that Corizon, not Villmer, was responsible for training FCC staff on suicide prevention. Because there was no personal involvement by Villmer in the alleged "magic words" custom or practice, this claim also fails. *Id.*

Finally, on the topic of a "magic words" policy, to the extent any correctional facility has a policy or custom that requires placing an inmate on suicide watch only when the inmate tells a guard he is suicidal, such a policy is unacceptable. If correctional officials have sufficient other indicators from the inmate of intent to harm oneself or credible testimony to that effect, then staff should attempt[3] to protect the inmate from himself. For example, at one point, Francisco used a piece of glass to make superficial cuts on his skin, and a correctional officer placed him

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[3] "Jails are neither required to provide suicide-proof institutions, nor must they ensure against suicide ever happening." *Brabbit as Tr. for Bild,* 59 F.4th at 353 (citations omitted).

on suicide watch in the absence of Francisco stating **h**e was going to harm himself. A correctional facility's policy should contain language that requires action under similar circumstances.

III. **CONCLUSION**

For the foregoing reasons, the judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1036

Anne Francisco, parents, et al.
Appellants

v.

Corizon Health, Inc. and Corizon, LLC
Tom Villmer, et al.
Appellees
Lisa Sanderson, et al.

Appeal from U.S. District Court for the Eastern District of Missouri-St. Louis
(4:17-cv-01455-HEA)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ANNE FRANCISCO, et al.,	)	
Plaintiff,	)	
v.	)	**Case No. 4:17CV1455-HEA**
CORIZON HEALTH, INC., et al.,	)	
Defendants.	)	

OPINION, MEMORANDUM AND ORDER

The Defendants Rhodes, England, Griffin, and Scallion's have filed their Motion for Summary Judgment [Doc. No. 94]. The Plaintiffs have filed their response in opposition. The Court has considered the filings and all applicable law. For the reasons set forth below, the Motion will be granted.

Background

On May 6, 2017, Plaintiffs filed this action pursuant to 42 U.S.C. §1983 alleging violations of the Eighth Amendment. The Plaintiffs assert claims that Defendants were deliberately indifferent to Plaintiffs' decedent, Joshua Francisco in violation of Joshua's Eighth Amendment right to be free from cruel and unusual punishment. The claims against the moving Defendants are brought against them in their individual capacities.

Summary Judgment Standard

"Summary judgment is proper where the evidence, when viewed in a light most favorable to the non-moving party, indicates that no genuine [dispute] of material fact exists and the moving party is entitled to judgment as a matter of law." *Davison v. City of Minneapolis, Minn.,* 490 F.3d 648, 654 (8th Cir. 2007); Fed. R. Civ. P. 56(a). Summary judgment is not appropriate if there are factual disputes that may affect the outcome of the case under the applicable substantive law. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). A dispute of material fact is genuine if the evidence would allow a reasonable jury to return a verdict for the non-moving party. *Id.* "The basic inquiry is whether it is so one-sided that one party must prevail as a matter of law." *Diesel Machinery, Inc. v. B.R. Lee Industries, Inc.,* 418 F.3d 820, 832 (8th Cir. 2005) (internal quotation marks and citation omitted). The moving party has the initial burden of demonstrating the absence of a genuine

issue of material fact. *Torgerson v. City of Rochester,* 643 F.3d 1031, 1042 (8th Cir. 2011) (citation omitted). Once the moving party has met its burden, "[t]he nonmovant must do more than simply show that there is some metaphysical doubt as to the material facts and must come forward with specific facts showing that there is a genuine issue for trial." *Id.* (internal quotation marks and citation omitted).

To survive a motion for summary judgment, the "nonmoving party must 'substantiate his allegations with sufficient probative evidence [that] would permit a finding in [his] favor based on more than mere speculation, conjecture, or fantasy.' " *Putman v. Unity Health System,* 348 F.3d 732, 733-34 (8th Cir. 2003) (quoting *Wilson v. Int'l Bus. Machs. Corp.,* 62 F.3d 237, 241 (8th Cir. 1995)). The nonmoving party may not merely point to unsupported self-serving allegations but must substantiate allegations with sufficient probative evidence that would permit a finding in his or her favor. *Wilson,* 62 F.3d 237, 241 (8th Cir. 1995). "The mere existence of a scintilla of evidence in support of the [nonmoving party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant]." *Anderson,* 477 U.S. 242 at 252; *Davidson & Associates v. Jung,* 422 F.3d 630, 638 (8th Cir. 2005). "Simply referencing the complaint, or alleging that a fact is otherwise, is insufficient to show there is a genuine issue for trial." *Kountze ex rel. Hitchcock Foundation v. Gaines,* 2008 WL 2609197 at *3 (8th Cir. 2008).

Facts and Background

Joshua David Francisco ("Francisco") committed suicide on October 22, 2014 while an incarcerate at Farmington Correctional Center.

Corizon is the contracted medical provider responsible for providing medical care and treatment to the MDOC inmates. Corizon employed qualified mental health professionals (QMHP) at FCC. The QMHPs carried a caseload of mental health chronic care clients. The offenders' mental health issues were assessed and treated and the QMHPs also conducted weekly group meetings and did the rounds once a week in the segregation unit.

On October 21, 2014, the day before Mr. Francisco committed suicide, he denied to mental health staff that he was having any mental health concerns or complaints and was deemed by mental health staff to be functioning adequately.

On October 21 in the morning, Dr. McIntyre did an Ad Seg "round" which was a couple of minutes at the cell door. She did not assess Joshua's willingness to go to SRU. The complete note states: "Offender denied any mental health concerns or complaints at this time. Appears to be functioning adequately in segregation." Ms. Skaggs had an appointment scheduled with Francisco for 3 days later, on October 24, 2014.

October 22, 2014, Jason England was working as a sergeant at Farmington Correctional Center. On October 22, 2014, England worked from 7:30 a.m. to 3:30 p.m. As a sergeant, his duties in housing unit 5 were to "[m]aintain safety and security for all offenders as well as staff." England had contact with

Mr. Francisco only on October 22, 2014. England went to the cell to talk to Francisco because there was a report that Francisco's cellmate had said Francisco was suicidal. England went to Francisco's cell door and Francisco said he was worried that England was going to take the cellmate's word that he (Francisco) was suicidal and put Francisco on suicide watch. Francisco told England that he was not suicidal and that he had no reason to kill himself and that he was okay. England admitted he could see Joshua "had been crying a little bit …," had "a sad look … worried …," and heard Joshua's voice "breaking up … he was very upset … I did see a tear in his eye. He was tearing up …" England admitted the cellmate told England a string had been found in the cell by a prior shift of officers. England had Francisco and his cellmate restrained behind their backs with handcuffs by other officers so that a cell search could be conducted. Other officers brought Francisco and his cellmate out of the cell and searched the cell.

Sometimes inmates will make up things to try to get the other offender out of the cell. Francisco and his cellmate were also strip searched, their clothes were checked and nothing was found. The officers conducting the search "could not find any string, any noose, anything to back up the cellmate's story that Francisco was suicidal. While Francisco was standing outside the cell, England spoke with him for about five minutes. England described Francisco's demeanor as just normal as could be. Francisco told England four of five times that he was not suicidal and England believed that he was fine, so Francisco was placed back in the cell.

England testified that if Francisco had said he was suicidal or led England to believe he was suicidal, he would have placed Francisco in the suicide cell. England received no training by Corizon instructing him that if the cellmate of an offender said the offender was suicidal, that he should take the word of the cellmate and put the offender on suicide watch.

In 2014, Correctional Officer I Griffin worked in the Administrative Segregation Unit, C Wing, as a wing officer. Griffin's duties included making walks twice an hour to check on the well-being of the offenders in the C wing. Corrections Officer I Joseph Gooch was responsible for the offenders in the D wing where Francisco was housed. On October 22, 2014, Griffin was in Sergeant England's office preparing paperwork for the 11:15 a.m. custody count when the sergeant received a call from officer Gooch. Sergeant England left the office to go to D wing. Griffin went over to D wing too because when an officer calls for a sergeant, it may indicate there is a problem and the sergeant may need assistance.

When Griffin arrived, he saw England speaking with Francisco at the cell door. Griffin heard Francisco's cellmate say that he wanted Francisco out of the cell because "he's driving me nuts and he's suicidal." Griffin spoke with Francisco, and he asked him if he was suicidal. Francisco denied being suicidal, so Griffin did not place him on suicide watch. Griffin recalled that Francisco was aggravated because Francisco had been asked more than once whether he was having any thought of self-harm. "If Francisco had given any indication that he was having

thought of self-harm, he would have been placed on watch immediately."

On October 22, 2014, Griffin did not see Francisco crying and did not see unusual behavior by Francisco. With regard to training, in a situation where an inmate says his cellmate is suicidal, Griffin understood his training to require him to not take the cellmate's word but to talk directly with the offender and to ask the offender whether he was suicidal. Griffin recalled that Corizon provides follow-up training after the original training and it was his understanding of that training that if an inmate's cellmate said the inmate was suicidal, that alone was not sufficient to place the inmate on suicide watch. The inmate needed to exhibit signs of being suicidal.

Kim Scallion was the Correctional Case Manager II ("CCM") with FCC. As a CCM, Scallion made rounds at least once a day and spoke to each offender to see if they needed anything. In 2014, Scallion worked from 7:00 a.m. to 3:30 p.m.

Mental Health staff made their rounds in Administrative Segregation at least once a week. As a CCM, Scallion could not perform mental health evaluations.

On October 22, 2014, Francisco's cellmate Earnest told Scallion that Francisco was suicidal. In response, Scallion went to speak with Francisco. Francisco promised her that he was not going to hurt himself. Cellmate Earnest did not say anything when Francisco told Scallion "I'll be fine." Francisco never said to Scallion that he was going to harm himself and he did not show any signs that his mood had changed

drastically. In the time that Scallion had seen Francisco at FCC, she observed gradual improvements in Francisco's behavior. The only time she saw agitation was the day he did not want to go to 9-house (SRU). Scallion recalled that Francisco told her he did not want to go the SRU unit. He told her the reason that he did not want to go to SRU was because he didn't feel secure on his medication.

Scallion understood her role as a CCM was to ask the offender if he is suicidal and to look for signs of suicidal behavior. She first testified: "Q. … based on your understanding of the policies and your training did you believe it was your role as a correctional case manager to determine whether or not somebody should go on suicide watch? A. No." She also testified: "Q. So it was your role as a correctional case manager you believed based on your training and the policies you understood to make an investigation? A. Not really".

Francisco could have requested a Medical Services Request (MSR) every night during medications pass to request to be seen by mental health staff. Scallion recalled that Francisco's cellmate Earnest said something about a noose being found. Scallion never saw a noose or anything that looked like a noose taken from the cell that Earnest and Francisco were in. Scallion's Supervisor Functional Unit Manager Greg Rhodes reviewed the video of the cell search and saw that nothing was found that resembled a noose. Scallion and Rhodes decided not to remove Francisco from the cell because by policy he did not say he was going to harm himself. Scallion knew that offenders will say things that are not true about their cellmates

to get their current cellmate moved out of the cell. Scallion believed that Francisco's cellmate Earnst was being manipulative when he said Francisco was suicidal. Scallion believed that there was not a threat of suicide because Francisco denied it. Scallion's understanding of the policy was that if the offender said he was suicidal or you believed the offender to be suicidal, you would move him out of the cell. Scallion did not understand the suicide intervention policy to require that if an offender said another offender was suicidal that she should call mental health.

In 2014 Greg Rhodes was working as a Functional Unit Manager at FCC. On October 22, 2014, he worked from 7:30 to 4:00 p.m. Rhodes had contact with Francisco during a hearing when it was decided that Francisco would be released from protective custody. During the hearing, Rhodes recalled that Francisco was calm and "real polite."

The committee that Rhodes was on recommended Francisco be transferred to the SRU Social rehabilitation unit for his mental health needs.

On October 22, 2014, the decision not to place Francisco on suicide watch came after Rhodes checked with the other case managers and Scallion. Rhodes believed that Scallion would have placed Mr. Francisco on suicide watch if she had any inkling at all that he was suicidal because she knew the offender really well. Rhodes did not believe that Mr. Francisco was going to commit suicide. Rhodes reviewed the video of the cell search with Miss White. Rhodes and Miss White watch the video with him so they could both make sure that they did not see anything coming out of the cell. "I didn't want to miss anything." No

noose was seen in the cell and no staff reported seeing a noose in Francisco's cell. Rhodes concluded after talking with the two case managers that all they had was a false report of a noose being taken out of the cell. Rhodes asked Kim Scallion if she had anything else and she did not. Rhodes believed that the statement by Francisco's cellmate that Francisco was suicidal was a ploy to get Francisco out of the cell or get the cellmate out of the cell. Rhodes believed that the cellmate "just wanted to get rid of his cellmate." Rhodes believed that staff had checked on Mr. Francisco and didn't see anything wrong with Francisco. Rhodes believed that an offender made a false statement to get another offender moved.

Discussion

Plaintiffs assert that the Defendants' conduct amounted to deliberate indifference to Francisco's serious medical needs in violation of the Eighth Amendment. Defendants argue that they are entitled to qualified immunity because no evidence exists to support the claim that they were deliberately indifferent. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' " *Pearson v. Callahan,* 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)). "To prevail against a claim of qualified immunity, a plaintiff must show (1) that the facts alleged or shown by the plaintiff make out a constitutional violation, and (2) that the constitutional right allegedly violated was 'clearly established.' "

Swearingen v. Judd, 930 F.3d 983, 987 (8th Cir. 2019) (quoting *Pearson,* 555 U.S. at 232). The Court may address either question first. *Pearson,* 555 U.S. at 236.

The Eighth Amendment requires prison officials to provide inmates with medical care. *Laughlin v. Schriro,* 430 F.3d 927, 928 (8th Cir. 2005) (citing *Estelle v. Gamble,* 429 U.S. 97, 103 (1976)). "[D]eliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Estelle,* 429 U.S. at 104 (internal citations and quotations omitted).

"A plaintiff claiming deliberate indifference must establish objective and subjective components." *Thompson v. King,* 730 F.3d 742, 746 (8th Cir. 2013) (citing *McRaven v. Sanders,* 577 F.3d 974, 980 (8th Cir. 2009)). "The objective component requires a plaintiff to demonstrate an objectively serious medical need," while "[t]he subjective component requires a plaintiff to show that the defendant actually knew of, but deliberately disregarded, such need." *Id. (*citing *McRaven,* 577 F.3d at 980). "Deliberate indifference is 'akin to criminal recklessness,' something more than mere negligence; a plaintiff must show that a prison official 'actually knew that the inmate faced a substantial risk of serious harm' and did not respond reasonably to that risk." *A.H. v. St. Louis County,* 891 F.3d 721, 726 (8th Cir. 2018) (quoting *Drake ex rel. Cotton v. Koss,* 445 F.3d 1038, 1042 (8th Cir. 2006)).

The Eighth Circuit has recognized that a risk of suicide by an inmate is a serious medical need. *See Gregoire v. Class,* 236 F.3d 413, 417 (8th Cir. 2000) (citing *Rellergert v. Cape Girardeau County,* 924 F.2d

794 (8th Cir.1991)). Defendants do not dispute that risk of suicide is a serious medical need. To establish the subjective component of his deliberate-indifference claim, Plaintiffs must demonstrate that the Defendants " 'actually knew that [Joshua] faced a substantial risk of serious harm' and did not respond reasonably to that risk." *See A.H.,* 891 F.3d at 726 (quoting *Drake,* 445 F.3d at 1042); *cf. Luckert v. Dodge County,* 684 F.3d 808, 817 (8th Cir. 2012) ("In the jail suicide context, qualified immunity is appropriate when a plaintiff 'has failed to show … that his jailers have acted in deliberate indifference to the risk of his suicide.' " (quoting *Rellergert,* 924 F.2d at 796)).

"[W]here suicidal tendencies are discovered and preventive measures taken, the question is only whether the measures taken were so inadequate as to be deliberately indifferent to the risk." *A.H.,* 891 F.3d at 727 (quoting *Rellergert,* 924 F.2d at 796). The Court "must objectively 'consider[ ] the measures taken in light of the practical limitations on jailers to prevent inmate suicides.' " *Luckert,* 684 F.3d at 818 (alterations in original) (quoting *Rellergert,* 924 F.2d at 796).

Deliberate indifference is a rigorous standard, "akin to criminal recklessness, something more than mere negligence; a plaintiff must show that a prison official actually knew that the inmate faced a substantial risk of serious harm and did not respond reasonably to that risk." *A.H.,* 891 F.3d at 726. It requires "a showing that the official was subjectively aware of the risk." *Perry v. Adams,* 993 F.3d 584, 587 (8th Cir. 2021), citing *Farmer v. Brennan,* 511 U.S. 825, 829 (1994).

> When the claim is that "jailers fail[ed] to discover the decedent's suicidal tendencies," as in this case, the issue is whether defendant "possess[ed] the level of knowledge that would alert him to a strong likelihood that [the decedent] would attempt as in this case, the issue is whether a defendant "possess[ed] the level of suicide." *Bell v. Stigers,* 937 F.2d 1340, 1343-44 (8th Cir. 1991) (cleaned up), overruled on other grounds by *Farmer,* 511 U.S. at 829, 114 S.Ct.1970. A showing of negligence is insufficient. See *Lambert v. City of Dumas,* 187 F.3d 931, 937 (8th Cir. 1999). "[A]n official's failure to alleviate a significant risk that he should have perceived but did not, while no cause for commendation, cannot under our cases be condemned as the infliction of punishment." *Farmer,* 511 U.S. at 838, 114 S.Ct. 1970.

Leftwich Trustee of Statutory Class of Next of Kin to Leftwich v. Cnty. of Dakota, 9 F.4th 966, 972-73 (8th Cir. 2021).

The evidence in the record establishes that Defendants did not merely ignore the notification by Francisco's cellmate that he "was suicidal." They proceeded to inquire from Francisco to ascertain whether the cellmate's claim was not merely an attempt to have Francisco removed from the cell. Francisco was questioned by Defendants, and it appeared to them that he was not at that time contemplating suicide. The cell was searched, and the video of the search was reviewed by not only Defendant Rhodes, but another facility employee to

make sure nothing was missed. None of the defendants actually knew

No reasonable jury could find that Defendants knew or must have known that there was a substantial risk. Each Defendant took steps they believed were proper to ascertain whether a risk existed. There is absolutely no evidence that any defendant was aware of Francisco's intent to commit suicide and thereafter deliberately did nothing to prevent it. Indeed, the medical staff ascertained Francisco should not be placed on suicide watch. "Prison officials lacking medical expertise are entitled to rely on the opinions of medical staff regarding inmate diagnosis…" *Holden v. Hirner,* 663 F.3d 336, 343 (8th Cir. 2011).

Conclusion

Based on the foregoing analysis, Defendants are entitled to qualified immunity on the claims against them, and therefore, summary judgment is proper.

Accordingly,

IT IS HEREBY ORDERED that Defendants Rhodes, England, Griffin, and Scallion's Motion for Summary Judgment [Doc. No. 94], is **Granted.** A separate judgment in accordance with this Opinion, Memorandum and Order is entered this same date.

Dated this 27th day of December, 2022.

s/ Henry Edward Autrey
HENRY EDWARD AUTRY
UNITED STATES DISTRICT JUDGE