UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-7545-CIV-ZLOCH

RICHARD COTTONE, as Personal Representative of the Estate of PETER ANTONY COTTONE, JR., and PETER COTTONE, SR.,

Plaintiffs,

vs.

O R D E R

KENNETH C. JENNE, II, individually and in his official capacity as Sheriff of Broward County, Florida, et al.,

Defendants.
_____/

THIS MATTER is before the Court upon the Defendants, Kenneth C. Jenne, II, Patrick Tighe, Barbara Law, Joseph D'Elia, George Williams, Dwight St. Claire, and Delores Watson's Motion To Dismiss Amended Complaint (DE 111). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

The Court notes that the Plaintiffs filed an Amended Complaint (DE 83) seeking damages pursuant to 42 U.S.C. § 1983 for alleged violations of State and Federal law. Specifically, the Plaintiffs allege that the Defendants, in various ways, were deliberately indifferent to a substantial risk of serious harm that resulted in the death of Peter J. Cottone, Jr. (hereinafter "Cottone") while Cottone was being held as a pretrial detainee at the North Broward

126

Detention Center. The Court has jurisdiction pursuant to 28 U.S.C §§ 1331, 1343, and 1367.

In the instant Motion, the Defendants argue that the Amended Complaint must be dismissed because: (1) the Plaintiffs have failed to state a claim for a constitutional violation against any of the Defendants; (2) the Defendants sued in their individual capacities are entitled to qualified immunity; (3) the Plaintiffs fail to state a claim for supervisory liability; and (4) the Plaintiffs fail to state a claim for municipal liability. The Plaintiffs dispute each of these arguments.

I. Discussion

At the outset, the Court notes that only a generalized statement of facts needs to be set out to comply with Rule 8(a)(2) of the Federal Rules of Civil Procedure. A classic formulation of the test often applied to determine the sufficiency of a complaint was set forth by the United States Supreme Court in Conley v. Gibson, 355 U.S. 41, 45-46 (1957), wherein the Court stated:

> . . . In appraising the sufficiency of the Complaint we follow . . . the accepted rule that a Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

The Court adds that a complaint may not be dismissed because the plaintiffs' claim does not support the legal theory they rely on since the Court must determine if the allegations provide relief on

any possible theory. See Robertson v. Johnston, 376 F.2d 43, 44-45 (5th Cir. 1967). With these principles in mind, the Court now turns to the Plaintiffs' Amended Complaint to determine if it survives the Defendants' Motion To Dismiss.

A. The Plaintiffs' Allegations

The Plaintiffs' allegations are as follows. In July 1994 the Sheriff of Broward County and the Broward County Commissioners entered into a consent decree in the case of Carruthers, et al. v. Cochran, et al., Case No. 76-6068-CIV-HOEVELER. In January 1995 the consent decree was approved by Judge Hoeveler and became binding on the Sheriff of Broward County and the Broward County Commissioners and their respective successors. The purpose of the consent decree was to correct conditions in the Broward County jail system which violated the constitutional rights of inmates. Pursuant to the consent decree, the Sheriff and Broward County are obligated to inform their employees as well as any private parties with whom they contract that they must comply with the requirements of the consent decree.

In August 1993 the Sheriff of Broward County entered into a contract with Defendant EMSA Limited Partnership to provide health services for inmates confined in the Broward County jail system. In April 1997 the contract was amended and renewed to run through September 2000.

On March 9, 1999, Cottone was allegedly involved in a domestic

violence incident with his father. Cottone was "Baker Acted" and sent to Memorial Hospital for observation and evaluation due to this incident.[1] On March 14, 1999, Cottone was brought to the Broward County jail and booked, assessed, and sent to Unit 1 of the North Broward Detention Center (hereinafter "Unit 1"). Unit 1 is for mentally ill inmates.

On March 1, 1999, Widnel Charles (hereinafter "Charles") was arrested. Prior to his arrest, Charles had been "Baker Acted" numerous times and had demonstrated violent propensities. While in the booking area on March 1, Charles struck another inmate. This incident was observed and documented by a deputy sheriff and a booking nurse. Despite a history of schizophrenia and the March 1 incident, Charles was initially placed in general population at the Broward County Main Jail. On March 6, after being reassessed, Charles was sent to the North Broward Detention Center.

On April 1, 1999 Dr. Maurice Waldman, the staff psychiatrist at the North Broward Detention Center, determined that Charles was stable and reduced the psychotropic medication being administered to Charles. On April 6, 1999, Ellie McKenzie, staff nurse, placed Charles in Unit 1 with Cottone and another inmate. On April 7, 1999, Albert St. Hubert, the third inmate housed in Unit 1,

---

[1] The phrase "Baker Acted" refers to Florida Statute Section 394.467, which permits a person to be involuntarily placed in a treatment facility if the person is found by clear and convincing evidence to be mentally ill, and, inter alia, there is a substantial likelihood that the person will inflict serious bodily harm on himself or herself, or the person of another, as evidenced by recent behavior.

summoned the officers on duty, Defendants Joseph D'Elia and George Williams, to his cell. When the officers arrived they found Cottone unconscious on the floor of his cell with ligature marks around his neck. Charles had allegedly strangled Cottone with shoe laces. Cottone was taken to North Broward Medical Center where he died.

With regards to each of the Defendants, the Plaintiffs further allege as follows. In Count III of the Amended Complaint, the Plaintiffs allege that the Defendants Joseph D'Elia (hereinafter "D'Elia") and George Williams's (hereinafter "Williams") deliberate indifference to the care and housing of mentally ill patients deprived Cottone of his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendment to the United States Constitution.

In Count IV, the Plaintiffs allege that the Defendants Dwight St. Claire (hereinafter "St. Claire") and Delores Watson (hereinafter "Watson") were the supervisors of D'Elia and Williams and that they failed to train or supervise D'Elia and Watson regarding the monitoring, housing, and security of inmates at North Broward Detention Center. The Plaintiffs further allege that St. Claire and Watson knew that failing to train D'Elia and Watson would result in a serious risk of harm to inmates and that they were deliberately indifferent to such risk.

In Count V, the Plaintiffs allege that Defendant Barbara Law (hereinafter "Law") was the supervisor of Defendants St. Claire,

Watson, D'Elia, and Williams, and that she failed to properly train or supervise said Defendants. The Plaintiffs further allege that Law was deliberately indifferent to the serious risk of harm to inmates and that her failure to properly train her subordinates was the proximate cause of Cottone's constitutional deprivations.

In Count VI, the Plaintiffs allege that Defendant Patrick Tighe (hereinafter "Tighe") failed to properly train or supervise Law, St. Claire, Watson, D'Elia, and Williams and that such failure amounted to deliberate indifference resulting in Cottone's constitutional deprivations.

In Count VII, the Plaintiffs allege that Defendant Kenneth C. Jenne, II (hereinafter "Jenne"), as Sheriff of Broward County, had the duty of adopting and implementing regulations regarding the medical treatment, housing, security, and monitoring of mentally ill patients confined in the Broward County jail system. The Plaintiffs further allege that Jenne was deliberately indifferent to his duties and that his failure to carry out his duties resulted in Cottone's constitutional deprivations.

B. The Defendants' Motion

The Court notes that in order to overcome a Rule 12(b)(6) motion based upon qualified immunity the Plaintiffs must allege facts that, in light of clearly established law at the time of the incident, obviously amount to a constitutional violation. Marsh v. Butler County, Ala. 268 F.3d 1014, 1028 (11th Cir. 2001). "In the

qualified immunity analysis, we generally first determine whether a plaintiff has stated a constitutional violation at all. Id.; see also Saucier v. Katz, 533 U.S. 194, 201 (2001) ("A court required to rule upon the qualified immunity issue must consider, then, this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right?"); Lee v. Ferraro, 284 F.3d 1188, 1194 (11th Cir. 2002) (same). If the Plaintiffs have stated a constitutional claim, the Court must then consider whether the law was clearly established at the time of the events in question. Saucier, 533 U.S. at 201.

The Court next notes that because Cottone was a pretrial detainee the relevant constitutional guarantee is not the Eighth Amendment's prohibition against cruel and unusual punishment, but rather the Due Process Clause of the Fourteenth Amendment. See Ingraham v. Wright, 430 U.S. 651, 671-72 n.40 (1977) (when State seeks to impose punishment without adjudication of guilt in accordance with due process of law the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment, not the Eighth Amendment); see also Bozeman v. Orium, III, 199 F.Supp.2d 1216, 1230 (M.D.Ala. 2002) (same). Nevertheless, the Eleventh Circuit has held that in circumstances implicating the denial of the basic needs of a pretrial detainee, the Eighth and Fourteenth Amendment protections are co-extensive. Hamm v. Dekalb

County, 774 F.2d 1567, 1574 (11th Cir. 1985). The Court further notes that "[a] prison official's 'deliberate indifference' to a substantial risk of serious injury to an inmate violates the Eighth Amendment." Farmer v. Brennan, 511 U.S. 825, 828 (1994). Therefore, to state a claim that the Defendants violated Cottone's Fourteenth Amendment rights the Plaintiffs must adequately allege that the Defendants acted with deliberate indifference to a substantial risk of serious injury to Cottone.

In Marsh, the Eleventh Circuit held that an Eighth Amendment violation will occur when (1) a substantial risk of serious harm exists; (2) the official is subjectively aware of that risk; (3) the official does not respond reasonably to that risk; and (4) the constitutional violation caused the plaintiff's injury. Marsh, 268 F.3d at 1028.

In regards to Defendants D'Elia and Williams, the Court finds that the Plaintiffs have stated a constitutional claim against these Defendants in their individual capacities. First, the Court finds that the Plaintiffs have adequately alleged that an objective, substantial risk of serious harm to inmates existed. Simply stated, the presence of Charles posed an objective, substantial risk to other inmates. Second, the Court finds that the Plaintiffs have adequately alleged that D'Elia and Williams were subjectively aware of the risk. The Plaintiffs allege that both D'Elia and Williams were on duty at the time of the events in

question, that prior to the killing Charles was in the throes of schizophrenia, hallucinating, and violent, and that his mental condition was obvious to both D'Elia and Williams. Third, the Court finds that the Plaintiffs have adequately alleged that D'Elia and Williams responded in an objectively unreasonable manner. The Plaintiffs allege that inmates housed in Unit 1 were not being monitored at the time of the incident, and that a computer game was being run on the monitor in the control room where D'Elia and Williams were stationed. And finally, the Plaintiffs allege that allowing a violent inmate like Charles to move freely among other inmates caused Cottone's death. This allegation is adequate to show that the constitutional violation caused Cottone's death.

Taken as a whole the Court finds that these allegations are sufficient to satisfy the pleading requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure.

Having found that the Plaintiffs have stated a constitutional claim against D'Elia and Williams in their individual capacities, the Court must now consider whether the law was clearly established at the time of Cottone's death. The United States Supreme Court recently clarified what is meant by the phrase "clearly established law." See Hope v. Pelzer, 70 U.S.L.W. 4710 (2002). In Pelzer, the Supreme Court held that the Eleventh Circuit's requirement that a plaintiff point to case law with "materially similar" facts to establish that the law was clearly established at the time in

question was a "rigid gloss on the qualified immunity standard" inconsistent with Supreme Court precedent. Id. at 4712. Instead, the Supreme Court stated that the salient question the Court of Appeals should have asked is "whether the state of the law [at the time in question] gave respondents fair warning that their alleged treatment [of the victim] was unconstitutional." Id. at 4713. Under this standard, it is "clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances." Id.

Here, the Court finds that the Supreme Court's opinion in Farmer, and the Eleventh Circuit's opinion in Lamarca v. Turner, 995 F.2d 1526 (11th Cir. 1993), provided D'Elia and Williams with "fair warning" that their alleged failure to protect Cottone was unconstitutional. Pelzer, 70 U.S.L.W. at 4713. Farmer dealt with a pre-operative transsexual who was beaten and raped after being placed in the general prison population of a federal penitentiary in Indiana. Lamarca dealt with substandard conditions at a Florida correctional institution, including a prevalence of weapons, inadequate patrols by guards, a lack of reporting procedures for rapes and assaults, and rampant homosexual activity which resulted in a lack of protection and inmates being assaulted. Although the facts of these cases are not identical to the facts under review here, their "premise has clear applicability in this case." Pelzer, 70 U.S.L.W. at 4714. That is, it is clear from these cases

that being deliberately indifferent to a substantial risk of serious inmate on inmate violence constitutes either an actionable Eighth or Fourteenth Amendment violation. Therefore, the Court finds that Farmer and Lamarca "gave fair warning to the [Defendants] that their conduct crossed the line of what is constitutionally permissible." Id.

Accordingly, the Court finds that D'Elia and Williams in their individual capacities are not entitled to dismissal of Count III of the Amended Complaint.

With regards to Defendants Tighe, Law, St. Claire, and Watson, the Court finds that the Plaintiffs have stated a claim for a constitutional violation against these Defendants in their individual capacities. The Court notes that supervisor liability under § 1983 "occurs either when the supervisor personally participates in the alleged constitutional violation or when there is a causal connection between actions of the supervising official and the alleged constitutional deprivation." Brown v. Crawford, 906 F.2d 667, 671 (11th Cir. 1990). Here, there are no allegations that Defendants Tighe, Law, St. Claire, or Watson were personally involved in the circumstances surrounding Cottone's death. However, the Plaintiffs do allege that the Defendants failure to supervise and train their subordinates caused the alleged constitutional deprivation. The Court finds such allegations sufficient to meet the requirements of Rule 8(a)(2). Moreover, the

Court finds that under the standard recently set forth by the Supreme Court the law was clearly established law at the time in question that a failure to train or supervise a subordinate could result in a constitutional violation.

Accordingly, the Court finds that Defendants Tighe, Law, St. Claire, and Watson in their individual capacities are not entitled to dismissal to Counts IV, V, and VI of the Amended Complaint.

Finally, the Court notes that Defendants D'Elia, Williams, Tighe, Law, St. Claire, Watson, and Jenne have been sued in their official capacities. The Court further notes that a suit against a governmental official in his or her official capacity is a suit against the governmental entity that the official represents. Farred v. Hicks, 915 F.2d 1531, 1532 (11th Cir. 1990). A governmental entity may be found liable under § 1983 only "when a governmental 'policy or custom' is the 'moving force' behind the constitutional deprivation." Id. (quoting Kentucky v. Graham, 473 U.S. 159, 166 (1985). Respondeat superior or vicarious liability will not do. "It is only when the 'execution of the government's policy or custom . . . inflicts the injury' that the [governmental entity] may be held liable under § 1983." City of Canton v. Harris, 489 U.S. 378, 385 (1989).

The Court further notes that in limited circumstances an allegation of failing to train or supervise employees can be the basis of § 1983 liability. Gold v. City of Miami, 151 F.3d 1346,

1350 (11th Cir. 1998). Those limited circumstances occur when (1) a governmental entity fails to adequately train or supervise its employees; (2) such failure to train or supervise amounts to a policy; (3) the policy causes the plaintiffs constitutional deprivation; and (4) the failure to train or supervise rises to the level of deliberate indifference. Id.; see also City of Canton, 489 U.S. at 388-89 (failure to train may serve as basis for § 1983 liability only where such failure amounts to deliberate indifference).

Here, the Court finds that the Plaintiffs' allegations that the Defendants failure to supervise or train their subordinates amounted to a custom or policy on behalf of the Broward County Sheriffs Office are sufficient to satisfy Rule 8(a)(2).

Accordingly, the Court finds that the Defendants D'Elia, Williams, Tighe, Law, St. Claire, Watson, and Jenne are not entitled to dismissal of Counts III, IV, V, VI, and VII in their official capacities.

In closing, the Court notes that the legal issues raised by the Defendants in their Motion To Dismiss may be more properly addressed in a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Defendants, Kenneth C. Jenne, II, Patrick Tighe,

Barbara Law, Joseph D'Elia, George Williams, Dwight St. Claire, and Delores Watson's Motion To Dismiss Amended Complaint (DE 111) be and the same is hereby **DENIED**; and

2. The Defendants, Kenneth C. Jenne, II, Patrick Tighe, Barbara Law, Joseph D'Elia, George Williams, Dwight St. Claire, and Delores Watson shall file their Answer to the Plaintiffs' Amended Complaint within fifteen (15) days of the date of this Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 15th day of July, 2002.

WILLIAM J. ZLOCH
Chief United States District Judge

Copies furnished:

Jodi C. Page, Esq.
Barbara A. Meyer, Esq.
Michael Piper, Esq.
James Rowlee, Esq.