UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CHARLA CONN, et al., Plaintiffs, vs. CITY OF RENO, et al., Defendants.	3:05-cv-00595-HDM-RAM ORDER

Before the court is the defendants' motion for summary judgment (#49). Plaintiffs have opposed (#53), and defendants have replied (#58).

Plaintiffs Charla and Dustin Conn bring this action against the City of Reno and its officers Ryan Ashton and David Robertson pursuant to 42 U.S.C. § 1983 for the alleged violation of the constitutional rights of their mother, Brenda Clustka.[1]

[1] Charla Conn appears both individually and on behalf of Clustka's estate.

Plaintiffs' claims stem from Clustka's April 28, 2005, suicide while a pretrial detainee in Washoe County Jail ("WCJ") and are based on the individual defendants' interaction with Clustka on April 26, 2005.

On March 19, 2005, Reno Police Department ("RPD") officers, among them defendant Ashton, arrested Clustka for misdemeanor domestic battery after a dispute she had with her mother at their shared residence. Clustka was booked into WCJ. The next day she was placed on suicide watch for about 4 hours after making comments about "not being able to make it in jail." (Pl. Mot.,[2] Exs. 4-6; Def. Mot. at 3). Clustka remained at WCJ for more than a month, during which time her mother applied for and received a temporary protective order ("TPO") that required Clustka to stay away from her house and be accompanied by RPD when retrieving her belongings. (Def. Mot. at 3). Clustka was released from WCJ on April 22. (*Id.*)

On April 25, Clustka and her mother had a verbal altercation when she told her mother she would overdose on her anxiety medication. Her mother called 911 at 8 a.m. and reported that Clustka had threatened to kill herself. (Def. Mot. at 3). RPD officers responded and took Clustka to Washoe Medical Center ("WMC") to be evaluated for an involuntary commitment to a mental health facility. She was admitted to the emergency department of the hospital at about 9:30 a.m. She was examined by WMC staff, and

[2] Pl. Mot. refers to plaintiff's motion for partial summary judgment, submitted on November 3, 2005, which is not before the court.

she denied to the staff that she had ever made any suicide threats or attempts. Clustka was then transferred to Northern Nevada Mental Health Institute ("NNMHI") on a Legal 2000 commitment.[3] (*Id.* Ex. B). She arrived at NNMHI at around 4:30 p.m. NNMHI staff held her overnight and released her around 9:30 a.m. on April 26 after determining she was a "low risk of harm." (*Id.* Ex. C). Upon her release, Clustka was given back the anxiety medication on which she had threatened to overdose the day before. (*Id.*)

At around 2 p.m. that same day, Regional Emergency Medical Services Authority ("REMSA") responded to a 911 call from a motorist reporting that a woman (Clustka) was passed out on a sidewalk. Finding Clustka intoxicated, REMSA called RPD to take her into Civil Protective Custody[4] ("CPC"). (Def. Mot. at 4; Pl. Opp'n Ex. 6). Defendants Ashton and Robertson responded. (Pl. Opp'n Ex. 6). They found Clustka intoxicated, and described her as having red, watery eyes, slurred speech, and difficulty walking. (Pl. Opp'n Ex. 8 (Ashton Dep. at 10:21-11:2; 22:5-8)). A preliminary breath test registered her blood alcohol level at .10%.

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[3] Legal 2000 is an emergency admission procedure whereby mentally ill people deemed to be a danger to themselves or others may be involuntarily committed to a mental health facility for up to 72 hours. *See* Nev. Rev. Stat. §§ 433A.115, 433A.150 *et seq.*

[4] Under Nev. Rev. Stat. § 458.270, a person found in a public place intoxicated and unable to care for herself must be taken to either an alcohol abuse facility or a city or county jail for shelter and supervision until she is no longer under the influence of alcohol.

(*Id.* Ex. 6). When the officers told Clustka they were taking her in for a CPC, she became belligerent, refused to get in the police vehicle, and, apparently aware of the outstanding TPO, demanded that she be taken to her mother's house to retrieve her belongings. (*Id.* Ex. 8 (Ashton Dep. at 21:19-22:11); *id.* Ex. 9 (Robertson Dep. at 38:17-19; 38:20-23)). Although the officers intended to take Clustka to WCJ, Robertson, in an attempt to diffuse the situation, told her they would take her home. (*Id.* Ex. 9 (Robertson Dep. at 39:4-17)). Clustka then calmed down; the officers helped her into the vehicle and fastened her seat belt, but they did not handcuff her. (*Id.* Ex. 5 (Ashton Int. at 4:12-13)). As they were preparing to leave for WCJ, the wants and warrants report received by Ashton revealed that Clustka had a history of violence, substance abuse, and mental illness. It also reflected the outstanding TPO, but the officers declined to serve it on Clustka because of her level of intoxication. (*Id.* Ex. 6 at 2).

On the way to WCJ, Clustka unfastened her seat belt and began walking around the vehicle and knocking on the surveillance camera. (Pl. Opp'n Ex. 5 (Ashton Int. at 4:15-19)). Ashton asked whether they should stop to put the seat belt back on, but Robertson said they were almost to the jail. (*Id.* Ex. 6 at 2). When they stopped at the railroad crossing near the jail, Clustka, who had been looking out the window, sat down and lapped a seat belt around her neck. Ashton believed Clustka engaged in this conduct once she realized she was going to jail and not to her mother's house. (*Id.* Ex. 5 (Ashton Int. at 5:14-17); Pl. Opp'n at 8:11-14). Ashton observed Clustka's action through the surveillance camera and told Robertson it appeared she was trying to "choke herself." The

officers got out of the vehicle and went to the back, where they removed the seat belt from Clustka's neck, placed flexible handcuffs on her, and refastened her seat belt. (Pl. Opp'n Ex. 5 (Ashton Int. at 5:18-6:9); *id.* Ex. 6 at 2-3). As they were doing so, Clustka screamed, "You lied to me. Just kill me. I'll just kill myself then." (*Id.* Ex. 5 (Ashton Int. at 6:5-6); *see also id.* Ex. 9 (Robertson Dep. at 45:11-21) (describing Clustka's words as "You lied to me, I want to die, kill me, you lied to me.")).

After Clustka was secured, they continued on to WCJ, arriving around 3 p.m. When the defendants opened the back of the police vehicle, Clustka screamed again that she "wanted to die." (*Id.* (Robertson Dep. at 46:25-47:4). Unidentified WCJ deputies other than the defendants removed Clustka from the vehicle, and while she was in the intake area, Clustka screamed that the officers had beat her. (*Id.* Ex. 5 (Ashton Int. at 6:15-16)). The officers told WCJ deputies that Clustka was disoriented. They did not advise anyone of the incident in the back of the police vehicle, nor did they report it to their supervisor or write an incident report that day. (*Id.* Ex. 5 (Ashton Int. at 7:10-8:8); *id.* Ex. 9 (Robertson Dep. at 46:11-24-48:4)). At WCJ, a Prison Health Services ("PHS") nurse gave Clustka a standard CPC evaluation, which meant checking Clustka's vital signs and general appearance. (*See id.* Ex. 7 (Singletary Dep. at 44:2-12)). The nurse did not note that Clustka appeared to be a suicide risk. (Def. Reply Ex. F). Clustka was held in CPC until about 8:30 p.m., at which time she was released from the jail. Before she left the facility, she was served with the TPO. (Def. Mot. at 7).

Despite the TPO, Clustka returned to her mother's house. At

11:30 p.m., her mother called 911 to report that Clustka was causing a disturbance. The RPD officers, not the defendants, who responded noted that Clustka appeared grossly intoxicated, so they took her back to WCJ for another CPC. As her blood alcohol was below .08%, she was refused for CPC, but the officers then took her to WMC, where she was readmitted for observation. (Def. Mot. at 7). WMC released Clustka around 3 a.m. on April 27 without sending her on to NNMHI for a Legal 2000. The medical staff's observations noted that Clustka was alert and oriented, and that she was being discharged because she didn't want any treatment. (Def. Reply at 5; *id.* Ex. G).

At 2:30 p.m. on the same day, Clustka showed up grossly intoxicated at her mother's house in violation of the TPO. After her mother called 911, Clustka was arrested by officers of the RPD, not the defendants, and taken to WCJ. There, a nurse examined Clustka, and although she denied being suicidal, Clustka did admit she was taking anxiety medication. The nurse put her in a red jumpsuit to indicate a high-risk inmate and placed her in the mental health unit of the jail. (Def. Mot. at 8; Def. Reply Ex. H).

At 8 a.m. on April 28, Clustka was taken out of her cell for a video arraignment on the TPO violation. As Clustka returned to her cell at around 8:35 a.m. following the arraignment, she appeared distraught and was crying. (Pl. Mot. Exs. 13-15). At about 9:17 a.m., WCJ officials found her hanging from her bed sheet, unresponsive. (*Id.* Ex. 14). Deputies cut her down from the sheet and administered life-saving measures without success. (*Id.* Ex. 15). She was pronounced dead at 9:55 a.m. (*Id.*)

Summary judgment "shall be rendered forthwith if the

pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The burden of demonstrating the absence of a genuine issue of material fact lies with the moving party, and for this purpose, the material lodged by the moving party must be viewed in the light most favorable to the nonmoving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970); *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1378 (9th Cir. 1998). A material issue of fact is one that affects the outcome of the litigation and requires a trial to resolve the differing versions of the truth. *Lynn v. Sheet Metal Workers Int'l Ass'n*, 804 F.2d 1472, 1483 (9th Cir. 1986).

Once the moving party presents evidence that would call for judgment as a matter of law at trial if left uncontroverted, the respondent must show by specific facts the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *Id.* at 249-50 (citations omitted). "A mere scintilla of evidence will not do, for a jury is permitted to draw only those inferences of which the evidence is reasonably susceptible; it may not resort to speculation." *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 952 (9th Cir. 1978); *see also Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 596 (1993) ("[I]n the event the trial court concludes that the scintilla of evidence presented

supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free . . . to grant summary judgment."). Conclusory allegations that are unsupported by factual data cannot defeat a motion for summary judgment. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

A. Liability of Individual Defendants

To prove a violation under § 1983, a plaintiff must establish that the defendants (1) acting under color of law (2) deprived plaintiff of the rights, privileges, or immunities secured by the Constitution or the laws of the United States. *Gibson v. U.S.*, 781 F.2d 1334, 1338 (9th Cir. 1986). There is no dispute here that defendants were acting under the color of law.

Plaintiffs allege that defendants Ashton and Robertson were deliberately indifferent to Clustka's serious medical need – specifically, a particular vulnerability to suicide. *See Payne v. Churchich*, 161 F.3d 1030, 1041 (7th Cir. 1998); *Est. of Abdollahi v. County of Sacramento*, 405 F. Supp. 2d 1194, 1203-04 (E.D. Cal. 2005). Plaintiffs maintain that Ashton and Robertson had a constitutional obligation to protect Clustka once they realized she was vulnerable, either by telling WCJ officials that Clustka had wrapped the seat belt around her neck while in the police vehicle or by taking her to the hospital for care on April 26.

Under the 8th Amendment, prison officials must take reasonable measures to guarantee inmate safety, which includes addressing serious physical and mental health needs. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982). Because Clustka was a pre-trial detainee, plaintiffs'

claims arise under the 14th Amendment Due Process Clause. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). However, because the rights under both the 8th and the 14th Amendments are comparable, the Ninth Circuit applies the same standards to both claims. *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

To state a claim under the 8th and 14th Amendments, plaintiffs must show (1) an objectively, sufficiently serious deprivation; (2) that the individual defendants were "deliberately indifferent" to Clustka's health and safety – that is, they must have had a "sufficiently culpable state of mind," *see Farmer*, 511 U.S. at 834; *Est. of Ford v. Ramirez-Palmer*, 301 F.3d 1043, 1049 (9th Cir. 2002); and (3) harm caused by the indifference. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

Plaintiffs argue that Clustka objectively required protection because she was in fact at risk of suicide; for years, she had struggled with depression and suicidal tendencies. (Pl. Opp'n Exs. 1-3). The issue before the court is whether Clustka posed an objective risk of suicide.

Defendants argue that when they interacted with Clustka on April 26, she was not objectively suicidal. In the days before her suicide, Clustka was examined or evaluated by a number of different medical and law enforcement personnel, and all of them either did not determine she was a suicide risk or ultimately released her after finding she was no longer at risk. First, Clustka was admitted to NNMHI on April 25, 2005, and on admission was found to be a high risk of harm. Upon release, however, she was rated a low risk of harm, and the medications she had threatened to overdose on were returned to her. Second, on April 26 the intake nurse who

examined Clustka for the CPC initiated by Ashton and Robertson made no determination that Clustka was a suicide risk. Further, Clustka did not attempt to harm herself and made no suicide threats during this custody. Third, WMC emergency staff who evaluated Clustka in the early morning hours of April 27, after she was released from CPC, did not note that she was a suicide risk, and they did not send her to NNMHI for a Legal 2000. Finally, the intake nurses at WCJ did not find that Clustka was a suicide risk and did not place her on a Legal 2000 when she was arrested for violating the TPO on April 27.

None of the medical personnel who examined or treated Clustka at the time of her release from NNMHI on April 26, during her two visits to WCJ on April 26, on her admission to WMC early April 27, and then at WCJ on April 27 concluded that Clustka posed a risk of suicide. While this evidence, that on the relevant dates the health officials concluded that Clustka was not suicidal, suggests that Clustka's medical needs on April 28 were not objectively serious enough to find a 14th Amendment violation, the court does not need to decide the issue because the evidence is insufficient to establish as a matter of law that the defendants were deliberately indifferent to Clustka's serious medical needs when they failed to report the seat belt incident or that such failure to report caused harm to Clustka.

A prison official is deliberately indifferent to a person's serious medical needs where he or she "knows of and disregards an excessive risk to inmate safety." *Farmer*, 511 U.S. at 837. The defendants must both (1) be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and

(2) they must also draw the inference. *Id.*; *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004). The plaintiff "need not show that a prison official acted or failed to act believing that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm." *Farmer*, 511 U.S. at 842.

It is no violation if the person should have been aware of the risk, but was not. *Toguchi*, 391 F.3d at 1057; *Jeffers v. Gomez*, 267 F.3d 895, 914 (9th Cir. 2001). Because the defendant's state of mind is a question of fact, it can be demonstrated "in the usual ways, including inference from circumstantial evidence." *Farmer*, 511 U.S. at 842. Knowledge may be inferred if a risk was obvious. *Farmer*, 511 U.S. at 842; *McCoy v. Terhune*, 2006 WL 2374753 at *3 (E.D. Cal. 2006); *see also Gibson v. County of Washoe, Nevada*, 290 F.3d 1175, 1197 (9th Cir. 2002) (noting that a plaintiff could show that officers "must have known" of a risk of harm by showing the obvious and extreme nature of a detainee's abnormal behavior). An obvious risk is one that a reasonable person would realize. *Farmer*, 511 U.S. at 842. However, "obviousness per se will not impart knowledge as a matter of law." *McCoy*, 2006 WL 2374753 at *3.

Defendants were aware of the following facts relevant to this inquiry. First, Ashton knew that Clustka had a history of violence, substance abuse, and mental problems – both from the wants and warrants report and from his personal interaction with her a month before. Second, both defendants noted that Clustka was disoriented and intoxicated. Finally, defendants observed Clustka wrap the seat belt around her neck and heard her state, "You lied

to me. Just kill me. I'll just kill myself then," or words to that effect.

Although the defendants' state of mind is a question of fact, the plaintiffs must present sufficient evidence to allow a trier of fact to conclude that officers Ashton and Robertson believed that Clustka was suicidal.[5] Both officers testified that they believed that Clustka was not trying to hurt herself in the police vehicle when they transported her April 26. They reached this conclusion because: (1) based on Clustka's behavior, they believed that her actions with the seat belt arose from anger and intoxication, and that she was attempting to manipulate them and get their attention; (2) they believed she could not have actually hurt herself because the seat belt would have slackened once she tried, and she knew the officers were watching her through the surveillance camera; and (3) when they went to the back of the police vehicle, Clustka had enough breath to scream at them, and there were no visible bruises or marks on her neck where the seat belt had been held.[6]

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[5] Plaintiffs allege that the risk was obvious to the defendants because they saw Clustka wrap the seat belt around her neck and heard her scream that she wanted to die. But these facts alone do not constitute an obvious risk, as reasonable people could come to differing conclusions as to what Clustka intended by that conduct.

[6] Robertson, in fact, says he would handle the situation exactly the same if it were to happen again. (Pl. Opp'n Ex. 9 (Robertson Dep. at 130:6-8; 133:20-25)). Ashton says that he still does not feel that a Legal 2000 was appropriate for Clustka; however, if the same situation were to recur today he would report it to his supervisor,

While the evidence suggests that the defendants' failure to report the seat belt incident was a violation of department policy, such a violation of policy in this case does not create a constitutional violation. *See Case v. Kitsap County Sheriff's Dep't*, 249 F.3d 921, 929-30 (9th Cir. 2001) (citing cases from several circuits finding that violations of internal policies do not necessarily give rise to § 1983 liability). While the actions of Officers Ashton and Robertson in failing to report the seat belt incident may have been negligent conduct, such conduct does not create a triable issue of fact sufficient to support a finding of deliberate indifference.

Defendants also persuasively argue that there is no causal connection between their actions on April 26 and Clustka's injury – her suicide two days later. Plaintiffs contend that had defendants told WCJ staff about the seat belt incident, written a report, or taken Clustka to the hospital for treatment, "a whole safety net of precautions" would have prevented her suicide.

"When plaintiffs . . . seek to hold an individual defendant personally liable for damages, the causation inquiry . . . . must focus on whether the individual defendant was in a position to take steps to avert [the injury] but failed to do so intentionally or with deliberate indifference." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988). Even assuming that plaintiffs could show deliberate indifference, they still must prove that the

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but only because he now knows that his supervisor wants such incidents reported, not because he believes that Clustka was trying to hurt herself. (*Id.* Ex. 8 (Ashton Dep. 33:2-35:7; 83:20-85:9)).

indifference was the "actual and proximate cause" of the deprivation of Clustka's rights. *See id.* at 634. It is sufficient for causation if the defendants set in motion a series of acts by others that they knew or reasonably should have known would cause others to inflict the constitutional injury. *Kwai Fun Wong v. U.S.*, 373 F.3d 952, 966 (9th Cir. 2004).

Clustka's claim is premised on the fact that defendants deprived her of "avenues of protection" to prevent her suicide. As Clustka was released from the custody imposed by the defendants after less than six hours without any medical incidents and was free to seek (and indeed did receive) medical attention on her own, the claim is most properly cast as delayed medical treatment.

When the 8th Amendment deprivation is a failure to treat a serious medical need, deliberate indifference requires showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need; and (b) harm caused by the indifference. *See Jett*, 439 F.3d at 1096. Although the Ninth Circuit does not require a *de minimis* physical injury to sustain an 8th Amendment claim, *Oliver v. Keller*, 289 F.3d 623, 628 (9th Cir. 2002), a delay in medical treatment is a sustainable claim only if a resulting harm is shown. *See Berry v. Bunnell*, 39 F.3d 1056, 1057 (9th Cir. 1994).

The harm presented by the facts of this case is Clustka's suicide. The failure to provide Clustka medical attention for about six hours while she was in CPC resulted in no harm; Clustka did not injure or attempt to injure herself while in CPC, nor did she try to harm herself upon release. Moreover, after her release but before her subsequent arrest she was evaluated on two separate

occasions – once by a CPC intake nurse and the other by WMC professionals.

The amount of intervening medical attention that Clustka received is substantial in this case. Clustka was evaluated by a number of different medical professionals after her release from the CPC that was initiated by the defendants: (1) she was seen by the CPC intake nurse who refused her because her blood alcohol level was too low; (2) she was seen by WMC emergency department staff, who released her almost immediately; and (3) she was seen by the last CPC nurse upon her arrest on April 27. These intervening events, along with Clustka's independent decision to return to her mother's house and violate the TPO, defeat any claim that there was a causal link between the defendants' failure to report the seat belt incident and Clustka's suicide.

Further, the plaintiffs have failed to present admissible evidence that had the defendants advised the intake personnel of the seat belt incident the course of events would have been any different. Plaintiffs' argument in this regard relies entirely on speculation. Plaintiffs suggest that defendants had three options, all of which would have averted Clustka's suicide. First, the defendants could have taken Clustka to the hospital, where she would have been carefully watched, thoroughly assessed, and transferred to a mental health institute where she would have been kept as long as needed. Second, the defendants could have told jail authorities, and the authorities could have refused Clustka for CPC and sent her to the hospital for detoxification and suicide assessment, thereafter to be transferred to a mental institute. Finally, the defendants could have told jail authorities, and the

authorities could have kept her, observed her for any suicidal actions, and then put her on a Legal 2000 when they released her from CPC.

The evidence does not support these conclusions. PHS Nurse Gail Singletary testified that suicide threats and attempts are just one factor used in determining how to handle a patient. (Pl. Opp'n Ex. 7 (Singletary Dep. at 41:11-16; 49:8-16)). Had the jail staff been told of Clustka's actions, they could have refused her for admittance. Equally as likely, they could have kept her and watched her for suicidal acts, and then released her after detoxification without instituting a Legal 2000. Had Clustka been taken to the hospital, she would have been evaluated, but it is as likely as not that the hospital staff would have released her, or if she had been sent to the mental health facility, she could have been released just as she was on April 26. (Pl. Opp'n Ex. 14 (Gansert Dep. At 10:1-6)).

In addition, if defendants had told jail staff of Clustka's actions with the seat belt in the police vehicle, and jail staff decided to watch Clustka for suicidal tendencies and then release her (as they actually did) after she was detoxified, the course of events would not have been any different. In such a case, even though Clustka would have been in the jail the day before threatening suicide, this information would not have been available to the PHS nurses who did her intake April 27 after she was arrested. This is because the paper trail on CPCs is minimal, and incoming inmates, as Clustka was the night of April 27, are not screened for any past CPCs. (*See* Pl. Opp'n Ex. 7 (Singletary Dep. at 54:7-55:16)). Thus, even if the officers had reported the

incident and it had been noted in the CPC file, no one would have known about it when Clustka was checked in April 27, unless the same intake nurse handled her both times. (*Id.*) The parties do not dispute that the nurses who handled Clustka on April 26 and April 27 were different.

Plaintiffs have failed to establish sufficient facts to support a conclusion by the trier of fact that the conduct of the defendants in failing to report the seat belt incident constituted deliberate indifference to Clustka's rights, or that the conduct of the defendants was the actual cause of Clustka's harm sufficient to constitute a 14th Amendment violation and impose § 1983 liability.

B. Municipal Liability

Plaintiffs also allege a § 1983 violation by the City of Reno. They do so on four bases: (1) failure to train, (2) failure to implement policies,(3) failure to discipline, and (4) charging a known deficient officer with the responsibility of protecting the public. They allege that because the City of Reno had no written policy on the reporting of suicide threats, no suicide prevention policy, and no training on how to distinguish genuine suicide threats, that Ashton and Robertson did not properly handle Clustka on April 26.

A municipality may be held liable only where it inflicts an injury; it may not be held liable under a respondeat superior theory. *Monell v. Dep't of Social Servs. of City of N.Y.*, 436 U.S. 658, 691 (1978); *Gibson v. County of Washoe*, 290 F.3d at 1185. Liability may be established by what the municipality does or by what it fails to do; that is, there may be direct liability or liability by omission. *Gibson v. County of Washoe*, 290 F.3d at

1186; *see also Est. of Abdollahi*, 405 F. Supp. 2d at 1204.

Direct liability may be established by showing either that the city violated Clustka's rights or that it directed an employee to do so. *Gibson v. County of Washoe*, 290 F.3d at 1185. The city is liable for injuries inflicted pursuant to its own policies, regulations, customs, or usage. *Chew v. Gates*, 27 F.3d 1432, 1444 (9th Cir. 1994). Plaintiffs do not allege any direct violation of Clustka's constitutional rights by the city. Rather, their argument focuses on what the city failed to do.

A city may be liable where its omission amounts to deliberate indifference to the rights of persons with whom the police come into contact, and the deficiencies are closely related to the plaintiff's ultimate injury. *City of Canton v. Harris*, 489 U.S. 378, 388-91 (1989). To establish liability by omission, plaintiffs must show that a (1) city employee violated Clustka's rights; (2) the city has customs or policies that amount to deliberate indifference; and (3) these policies were the "moving force" behind the employee's violation of Clustka's constitutional rights. *Gibson v. County of Washoe*, 290 F.3d at 1193-94.

For the reasons set forth above, plaintiffs have failed to establish that Clustka's constitutional rights were violated by the individual defendants. Therefore, under the facts of this case the plaintiffs cannot establish a § 1983 claim against the City of Reno.

Accordingly, defendant's motion for summary judgment is **GRANTED**. The clerk of the court is directed to enter judgment in favor of the defendants and against the plaintiffs.

IT IS SO ORDERED.

DATED: This 8th day of March, 2007.

Howard D McKibben

UNITED STATES DISTRICT JUDGE