**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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|---|---|---|
| Frances Borman, | : | |
| Plaintiff, | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 04-287 |
| | : | |
| Lynne Abraham et. al., | : | |
| Defendants. | : | |

**MEMORANDUM**

Presently pending are Defendants' motions for summary judgment, Plaintiff's response thereto, and Defendants' replies. For the following reasons, Defendants' motions for summary judgment will be granted.

## I. BACKGROUND:

Plaintiff, mother of the deceased, Eugene Mann ("Mann"), and administratrix of his estate, has filed the instant second amended Complaint against the City of Philadelphia ("City"), Police Officer Durrant, Police Officer Veal[1], the Philadelphia District Attorney's office and Lynne Abraham[2], individually and in her capacity as the District Attorney of the City of Philadelphia, pursuant to 42 U.S.C. § 1983, for violating her deceased son's civil rights. Plaintiff asserts, in her second amended Complaint, that her son was a detainee entitled, under the 14th amendment's due process clause, to "personal security and medical care." Plaintiff further asserts that the Officers were deliberately indifferent to Mann's vulnerability to suicide and failed to take appropriate measures to prevent Mann from committing suicide. Plaintiff claims that the DA Defendants and the City failed to adequately train the ADAs and the Officers respectively. Plaintiff also asserts that she is entitled to recover under Pennsylvania state law for

[1] Officers Durrant and Veal together will be referred to as the "Officers." The City of Philadelphia and its Officers Durrant and Veal together will be referred to as the "City Defendants."
[2] The Philadelphia District Attorney will be referred to as the "DA". Her office will be referred to as the "Office" and Assistant District Attorneys will be referred to as the "ADAs." The Philadelphia District Attorney, and her Office together,,will be referred to as the DA Defendants.

Mann's wrongful death and her own survival action. After full discovery, all Defendants have moved for summary judgment. Oral arguments, by counsel for the parties, have been heard.

The undisputed evidence shows that Mann was admitted to the Belmont Center for Comprehensive Treatment ("Belmont") on January 21, 2002. Mann indicated that he was suicidal and reportedly heard voices telling him to kill himself. Mann was diagnosed as suffering from poly-substance abuse induced mood disorder. The doctors at Belmont determined that Mann was not a danger to himself since the effects of the poly-substance abuse induced mood disorder had passed. Mann therefore voluntarily checked himself out of Belmont, on January 22, 2002, to appear at the Philadelphia Criminal Justice Center ("CJC"), on January 23, 2002, in response to a court hearing where he was accused of criminal trespass.

Plaintiff asserts that Mann appeared at the CJC, on January 23, 2002, to respond to the criminal trespass charges. The charges were to be prosecuted by ADA Leslie Gomez who was allegedly informed by the Plaintiff about Mann's vulnerability to suicide. The trespass charges against Mann were dismissed pursuant to a motion to quash filed by the public defenders office. Plaintiff alleges that the Officers appeared at the CJC and took custody of Mann pursuant to an arrest warrant charging carjacking; the charges were unrelated to the trespass charges. When the Officers arrested Mann, he requested that he be allowed to drive his mother home since she did not drive. The Officers denied his request, but subsequently discovered that his mother had left the CJC and did not need to be taken home.

The Officers claim, and there is no evidence to the contrary, that they planned to temporarily detain Mann at the Office of the District Attorney, located a few blocks away from the CJC. After completing certain paper work pertaining to the arrest, they planned to take him to a more permanent detention facility. En route to the holding cell, in the Office, the Officers claim that they asked Mann whether he had any serious medical conditions and if he was considering harming himself. Mann allegedly told the Officers that while he suffered from

bipolar disorder and schizophrenia, he was not considering harming himself. The Officers' testimony is not contradicted by other evidence. Once at the Office, Mann was confined to a holding cell on the eighth floor. There is evidence that Mann was informed, in response to his question, that he was to be detained in a cell on the eighth floor. The Officers assert, and Plaintiff does not contradict, that Mann was calm and may have slept while detained in his cell. When Mann was removed from his cell he darted away from the Officers, into a separate room, and jumped out of a closed eighth floor window. It is undisputed that the Officers tried to stop him by grabbing at his clothes but were unable to restrain him. Mann died from the injuries he sustained. Plaintiff has not provided any evidence to contradict the Defendants' version of the aforesaid events.

Plaintiff claims that the ADA prosecuting Mann's trespass charges was aware of Mann's mental health problems and should have warned the Officers. It is also Plaintiff's position that the Officers did not take necessary safeguards to prevent Mann from plunging to his death. More specifically, Plaintiff argues that the Officers did not conduct a mental health screening of Mann on taking him into custody or place Mann in leg shackles when he was taken from his cell at the Office. Plaintiff asserts that this is evidence from which a jury could infer deliberate indifference. Also, Plaintiff claims that the City and the DA Defendants are liable for failure to train their employees. Thus, Plaintiff claims that the Defendants showed reckless or deliberate indifference to Mann's vulnerability to suicide and are liable to the Plaintiff under 42 U.S.C. § 1983 and under Pennsylvania state law.

## II. DISCUSSION:

The Defendants have filed the instant motions for summary judgment asserting that there is no genuine dispute of material fact and judgment must be entered in their favor as a matter of law. The Defendants contend that there is no evidence to support Plaintiff's contentions that Mann's constitutional rights were violated, and the Defendants' employees were inadequately

trained. Defendants further assert that summary judgment must be granted on Plaintiff's state law claims since the Political Subdivision Tort Claims Act renders them immune from suit.

A motion for summary judgment should be granted when "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment is authorized against a party who fails to sufficiently establish an essential element to that party's case. Celotex Corp. v. Catrett, 47 U.S. 317, 321 (1986). Only disputes over facts that might affect the outcome of the suit will preclude the entry of summary judgment. Medical Protective Co. v. Watkins, 198 F.3d 100, 103 (3rd Cir. 1999). Summary judgment will not be granted if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Id.

**C. Violation of Mann's Constitutional Rights**

Plaintiff alleges that summary judgment should not be granted since the Officers violated Mann's constitutional rights when they acted with reckless indifference to Mann's vulnerability to suicide. The Officers deny that Mann's constitutional rights were violated. If a Plaintiff alleges a constitutional violation in a prison suicide case, the Plaintiff has the burden of establishing that: (1) the detainee had a "particular vulnerability to suicide," (2) the custodial officer or officers knew or should have known of that vulnerability, and (3) those officers "acted with reckless indifference" to the detainee's particular vulnerability. Colburn v. Upper Darby Tp. 946 F.2d 1017, 1023 (3d Cir.1991.) The Court of Appeals for the Third Circuit continues to recognize this test as the correct analytical framework for deciding charges of fourteenth amendment violations as it regards pretrial detainee suicides. See Schuenemann v. United States, 2006 U.S. App. LEXIS 4350 (3d Cir. 2006); See Woloszyn v. County of Lawrence, 396 F.3d 314 (3d Cir. 2005)

Applying the three-pronged Colburn test, Plaintiff claims that Mann had a particular vulnerability to suicide. A "particular vulnerability" speaks to the degree of risk inherent in the detainee's condition. Id. at 1024. A particular vulnerability to suicide may be demonstrated if there is "a strong likelihood, rather than a mere possibility, that self-inflicted harm will occur." Id. It is undisputed that Mann was bipolar and had a history of one or more suicide attempts. It is also not disputed that Mann was treated, at Belmont, for suicidal thoughts caused by a poly-substance induced mood disorder. There is also evidence that the physicians at Belmont, after assessing Mann's condition determined that the effects of the poly-substance abuse induced mood disorder had passed and did not seek to prevent his release. The undisputed evidence is that Mann himself claimed, when questioned by the Officers, that he did not intend to harm himself. In light of Mann's history of mental disease, his history of attempting suicide, his treatment at Belmont and his statement to the Officers there is sufficient conflicting evidence to submit to a jury the issue of whether Mann had a particular vulnerability to suicide and whether there was a strong likelihood that self inflicted harm would occur.

In addition to having a particular vulnerability, Plaintiff must also demonstrate that the custodial officer or officers knew or should have known of the detainee's vulnerability. Colburn, 946 F.2d at 1023. The court held, in Colburn, that while it is not necessary that the custodian have a subjective appreciation of the detainee's particular vulnerability, there can be no reckless or deliberate indifference to a detainee's particular vulnerability to suicide unless there is something more culpable on the part of the officials than a negligent failure to recognize the high risk of suicide. See Id at 1025. The Colburn court stated that the likelihood of suicide must be "so obvious that a lay person would easily recognize the necessity for preventative action." Id.

Plaintiff argues that if the Officers had completed Mann's mental health assessment, they would have discovered Mann's vulnerability to suicide. Plaintiff has provided no evidence to

prove her assertion. The court notes that en route to the Office, Mann was asked whether he intended to harm himself, and Mann denied having such intentions. There is no evidence that Mann's response to a mental health assessment question would have been different from his response to the Officers' orally posed question about his intent to harm himself. Moreover, the Officers assert, and Plaintiff does not contradict, that Mann was calm throughout his arrest including when he was removed from his cell at the Office. Mann's demeanor does not support an inference of notice to the Officers of a mental health problem.

Neither Mann's own responses to the Officers' questions, nor his demeanor suggest any impropriety, by the Officers, in first taking Mann to the Office before taking him to a more structured detention facility. There is no evidence that the Officers knew or should have known that Plaintiff had a particular vulnerability to suicide.

Since there is no evidence to suggest that the Officers knew of Mann's vulnerability to suicide, the Plaintiff cannot meet her burden to prove that the Officers acted with deliberate indifference to Mann's vulnerability. Accordingly, the Officers' Motion for Summary Judgment will be granted.

**D. Failure to Train**

Plaintiff is also suing the City and the DA Defendants under 42 U.S.C. § 1983 for failure to train the Officers and the ADA respectively. When a Plaintiff asserts failure to train in a prison suicide case, the plaintiff must: (1) identify specific training not provided that could reasonably be expected to prevent the suicide that occurred; and, (2) must demonstrate that the risk reduction associated with the proposed training is so great and so obvious that the failure of those responsible for the content of the training program to provide it can reasonably be attributed to a deliberate indifference to whether the detainee succeeds in taking his life. Colburn, 946 F.2d at 1030.

i. *District Attorney and Her Office.*

Plaintiff alleges that the DA Defendants failed to train the ADAs to share information, about a detainee's mental illness or immediate medical needs, with arresting officers. The confidentiality provision of the Pennsylvania Mental Health Procedures Act prohibits the disclosure of an individual's treatment unless authorized by the individual. See 50 P.S. § 7111 (2005). This court was unable to find any case law to support Plaintiff's contention that Mann's history should have been disclosed, by the ADA, to the Officers despite the prevailing statutory state law. Plaintiff has also not identified any other specific training that DA Defendant should have provided to the ADAs. In fact, there is no evidence that the Assistant District Attorney knew of any mental health problem information which may have been contained in the District Attorney's file. Without knowledge she cannot be found to be deliberately indifferent. Accordingly, this court will grant summary judgment in favor of the DA Defendants.

*ii. The City Defendants:*

Plaintiff alleges that the Officers were inadequately trained in arrest procedures involving vulnerable detainees. Plaintiff cites to the arresting Officers failure to obtain Mann's medical history, using the available Detainee Medical Checklist ("Checklist"), as evidence of failure to train. However, it is undisputed that the Philadelphia Police Department Directives ("Directives") require that the Checklist, developed by the City, be used to obtain a detainee's medical history and evaluate a detainee's susceptibility to suicide. The evidence on summary judgment is that the City provides the training, via the Directives. Plaintiff has therefore failed to meet her burden to prove that the Officers were inadequately trained. The Officers' failure to follow the Directives or their failure to take Mann immediately to the structured place of detention provided by the City would, at most, be negligence on the part of the officers. Plaintiff has failed to identify any other training that must be provided to the Officers. Accordingly, the City's Motion for Summary Judgment on the claim of failure to train will be granted.

### E. Plaintiff's State Law Claims

Plaintiff asserts that she is entitled to recover, under Pennsylvania state law, for Mann's wrongful death and on her own survival action. The charged Defendants assert that Plaintiff's claims against them must be dismissed since they are immune from suit pursuant to the Political Subdivision Tort Claims Act ("Act"). The Act states that "no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person." 42 Pa.C.S. § 8541.

Plaintiff asserts that the DA Defendants and the Officers would be exempt from the statute's grant of immunity if their actions constituted "willful misconduct" by an employee of a government unit. There is no evidence in this case to support a finding of intentional misconduct, by the Defendants, as it relates to Mann's death. There is no evidence in this case to support a finding of defective design or construction of the eighth floor windows because of the failure to use Plexiglass windows or barred windows to prevent suicide attempts. Pennsylvania courts have considered similar claims of exemption to the immunity statute involved herein and have held that no exemption applies where the challenged defect merely facilitated, but did not cause, the death.[3] Negligent conduct is not actionable pursuant to the Act. Accordingly, this court will grant Defendants motion for summary judgment as it relates to Plaintiff's state law claims

An appropriate order follows.

[3]See Pa. State Police v. Klimek, 839 A.2d 1173 (Pa. Commw. Ct. 2003.)

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**ORDER**

Presently pending is Defendant Lynne Abraham and the District Attorney's Office's Motion to Strike Report of Plaintiff's Proffered Expert and Plaintiff's Memorandum of Law in Opposition. Also pending are the Defendants' motions for summary judgment, Plaintiff's response and Defendants' replies. **AND NOW** this _____ day of September, 2006, upon consideration of Defendants' motions and replies and Plaintiff's response, and counsels' oral arguments **IT IS HEREBY ORDERED** that:

1) Defendant's Motion to Strike Report of Plaintiff's Proferred Expert is **DENIED**.[1]
2) The Motion for Summary Judgment by Defendants Lynne Abraham and the Philadelphia District Attorney's Office is **GRANTED.**
3) The Motion for Summary Judgment by Defendants City of Philadelphia, and Officers Durrant and Veal is **GRANTED.**

**BY THE COURT**

s/_____
**CLIFFORD SCOTT GREEN, SJ**.

[1] The Report has been considered a part of the record on summary judgment

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**JUDGMENT**

**AND NOW** this 11th day of September 2006, **IT IS HEREBY ORDERED** that Judgment is entered in favor of all Defendants and against Plaintiff.

**BY THE COURT**

**s/_____**

**CLIFFORD SCOTT GREEN, SJ.**