IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

(1)	MARGIE M. ROBINSON, as the Personal Representative of the Estate of Christina Dawn Tahhahwah, Deceased,	)	
	Plaintiff,	)	
vs.		)	Case No. CIV-16-869-F
(1)	THE CITY OF LAWTON, OKLAHOMA *et al.*,	)	
	Defendants.	)	

PLAINTIFF MARGIE M. ROBINSON'S RESPONSE IN OPPOSITION TO DEFENDANTS SHORT AND TURNER'S MOTION AND BRIEF FOR SUMMARY JUDGMENT

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Plaintiff Margie M. Robinson, as the Personal Representative of the Estate of Christina Dawn Tahhahwah, Deceased, submits the following Response in Opposition to Defendants Turner and Short's Motion and Brief for Summary Judgment [Doc. 92]. The Court should deny the Motion in its entirety. Robinson would show the Court as follows:

Introduction

On November 14, 2014, Defendants Kurt Short and Lawrence Turner were dispatched to the residence of Edward Jerome Tahhahwah and Anna Chalepah.[1] Christina Tahhahwah ("Christina") was present at their residence as an invited guest; Mr. Tahhahwah was her grandfather, and he had been responsible for raising her and caring for her throughout her life. At the time of this encounter, he was 83 years old.

Christina was in the midst of what Mr. Tahhahwah described as a bipolar state, and she was causing problems at the residence. She was not taking her medications for bipolar disorder, and she had been up all night the previous night. She had repeatedly called the Lawton Police Department and made multiple threats to kill people, including Ms. Chalepah.

Before Defendants Turner and Short arrived, dispatch notified them that Christina had made threats to kill people and that she had assaulted Ms. Chalepah. When Defendants Turner and Short encountered Christina, she had defecated on herself and was nonresponsive to questions. Mr. Tahhahwah and Ms. Chalepah told Defendants Short and

[1] Defendants refer to Mr. Tahhahwah as "Edward." In Plaintiff's briefs, she refers to Mr. Tahhahwah as "Jerome" or "Mr. Tahhahwah." Anna Chalepah is deceased and was never deposed in this matter.

Turner that Christina was bipolar, that she was not taking her medications, and that she needed to go to Taliaferro Community Mental Health Center ("Taliaferro") in Lawton.

According to the City of Lawton Police Department's Policies and Procedures Manual, the Lawton City Jail is not designed or staffed to house the mentally ill. Indeed, police officers are required to take mentally ill persons to Taliaferro before bringing them to the jail, if they are arrested for a misdemeanor offense where charges might be filed. Officers are required to complete an Emergency Order of Detention ("EOD") form at Taliaferro and request that the person be evaluated as soon as possible.

Although the City of Lawton Police Department has this written policy, the City knew that some of its officers had a misconception about the reasons for completing an EOD. According to then-Assistant District Attorney Susan Zwaan, officers had a misconception because they believed that an EOD was only appropriate if a person was homicidal or suicidal.

Despite the obvious indicators for an EOD, Defendants Short and Turner told Mr. Tahhahwah and Ms. Chalepah that they could not take Christina in to Taliaferro unless they filled out a citizen's arrest form. Ms. Chalepah then filled out a citizen's arrest form as instructed. However, Defendants Turner and Short did not take Christina to Taliaferro. Instead, they caused her to be taken to the Lawton City Jail. On the way, she urinated on herself. She was ultimately booked into the city jail on a complaint of trespassing.

Defendants attempt to characterize Christina as if she were acting in a rational, coherent manner. They provide testimony about their unrecorded interactions with her and note that she was coherent, responsive, and in no distress. This testimony is subject to a

genuine dispute and is contradicted by many other record facts. Christina was obviously in the midst of a mental health crisis and she needed mental health treatment from Taliaferro. The policies and procedures required this, yet Defendants Turner and Short refused to provide her with any medical care. Obviously, the City was aware that its officers did not have an appropriate understanding of EOD requirements, and that misconception played an important role in Christina's ultimate death.

Plaintiff Margie M. Robinson is the Personal Representative of the Estate of Christina Dawn Tahhahwah, Deceased. She has brought two claims against Defendants Short and Turner. Robinson has alleged that Defendants Short and Turner falsely arrested Christina in violation of her Fourth Amendment right to be free from unreasonable seizures. Robinson has also alleged that Defendants Short and Turner were deliberately indifferent to Christina's serious medical needs. Defendants have moved for summary judgment on both claims, but their motion should be denied in its entirety. There is more than sufficient evidence for a reasonable jury to conclude that Defendants Short and Turner falsely arrested Christina and were deliberately indifferent to her serious medical needs. Christina's constitutional rights in this regard were clearly established. Accordingly, Robinson respectfully requests that the Court deny the Motion.

Response to LCvR 56.1 Statement

1. Admitted.

2. Admitted.

3. Disputed. Defendants have attempted to support paragraph 3 by referencing the affidavits of Jessica Carter and Daniel Harter. Neither of these two persons are

identified as witnesses by any of the Defendants. [Doc. 85]. Defendants cannot rely on affidavits from non-witnesses to support summary judgment. Such evidence is inadmissible not because it is in the form of an affidavit but because individuals who are not listed as witnesses are not permitted to testify. [Doc. 69 (stating that "Except for good cause shown, no witness will be permitted to testify . . . in any party's case in chief unless such witness . . . was included in the party's filed witness or exhibit list."].[2]

4. Admitted.

5. Admitted.

6. Disputed. Christina is deceased and cannot offer any testimony to contradict the officers' account of these events. However, a reasonable jury could reject their testimony that Christina was "coherent and responsive to the officers' questions." Christina made threats to kill people when she spoke to dispatch.[3] Later on in an interaction with Defendant Lindsey Adamson at about 7:30 a.m. on November 14, Adamson told dispatch that Christina was "way, way worse" than she was yesterday and that Christina could "barely breathe just sitting there. Like, literally."[4] Once Christina arrived at the jail in the afternoon of November 14, she was unresponsive to Defendant Hallagin and just said

[2] Defendants support other paragraphs with the affidavit from Jessica Carter. Robinson admits some of these facts because they are proven by audio recordings in Robinson's possession. Robinson objects to Jessica Carter testifying as a witness since she was not identified on Defendants' Final Witness List.

[3] Doc. 92 at 7, ¶ 1; Doc. 92 at 15, ¶ 20

[4] Appendix, Exhibit 28 at p. 4; and see Exhibit 6 at 180:20-181:22

"nonsense" and repeated the word "chlamydia."[5] Defendant Gordon's biased testimony[6] does not have to be credited in light of the evidence of Christina's erratic and concerning behavior, both before and after his interaction with her. The Court should "be cautious on summary judgment to ensure that the officer is not taking advantage of the fact that the witness most likely to contradict his story—[the decedent]—is unable to testify." Abraham v. Raso, 183 F.3d 279, 294 (3d Cir. 1999) (internal quotation and citation omitted). "The court may not simply accept what may be a selfserving account by the officer. It must also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story." Id. (internal quotation and citation omitted).

7. Admitted, except that Robinson disputes Christina's behavior did not meet EOD criteria. See ¶ 6, above. She was bipolar, not taking her medication, making threats to kill people, and obviously not taking care of herself as reflected by her problems when Short and Turner encountered her.

8-15. Robinson disputes that paragraphs 8-15 are material to the resolution of this Motion. Defendants Turner and Short deny any knowledge of any of these interactions. See Doc. 92 at 15, ¶ 19.

16. Admitted.

[5] Appendix, Exhibit 5 at 122:2-10 and 143:22-144:1-3

[6] Officer Harter is not listed as a witness and his affidavit should not be considered.

17-18. Robinson disputes that paragraphs 17-18 are material to the resolution of this Motion. Defendants Turner and Short deny any knowledge of any of these interactions. See Doc. 92 at 15, ¶ 19.

19. Admitted.

20. Admitted.

21. Robinson admits paragraph 21, including that the dispatcher informed both officers that Christina was "making threats to kill people." Defendant Turner denied having any knowledge that Christina threatened to kill anyone before he arrived on the scene.[7] Defendant Short testified that he did not recall if he received this information.[8]

22. Admitted.

23. Disputed. Specifically, Robinson first disputes that Tahhahwah "was alert and did not appear to be in any type of distress." According to Defendant Short, Tahhahwah was nonresponsive to his questions for a few minutes.[9] According to Defendant Short, she had also defecated on herself.[10] She urinated on herself on the way to the jail.[11] Edward Jerome Tahhahwah, Christina's grandfather, told the officers that Christina was bi-polar,

[7] Appendix, Exhibit 10 at 34:5-8

[8] Appendix, Exhibit 9 at 37:10-19

[9] Appendix, Exhibit 9 at 45:2-24

[10] Appendix, Exhibit 9 at 45:2-24

[11] Appendix, Exhibit 20

was off her medications, and she needed to go to Taliaferro.[12] Only a few hours before this, at approximately 7:30 a.m., Officer Lindsey Adamson observed Christina and stated that she was "way, way worse" than the day before, and that Christina could "barely breathe just sitting there. Like, literally."[13] Furthermore, Christina had been incoherent in her calls to the police department, and had repeatedly made threats to kill someone. Defendants Turner and Short further *knew* that Christina had threatened to kill someone and that she had assaulted who they believed was her grandmother.[14] A reasonable jury could reject the testimony that Christina "was alert and did not appear to be in any distress." A reasonable jury does not have to reject all of Christina's prior behavior over the past 24 hours just because two biased witnesses testify they did not observe it.

24. Robinson admits that Jerome Tahhahwah and Anna Chalepah told Defendant Short (and Defendant Turner) that Christina was not taking her medication and needed to go to Taliaferro. Robinson disputes that Defendant Short did not observe Christina make any statements indicating that she had an intent to harm herself or anyone else and that she did not have the means to do so. A reasonable jury could reject this testimony. See ¶ 23, above.

25. Disputed. See ¶ 23, above.

[12] Appendix, Exhibit 7 at 76:18-25

[13] Appendix, Exhibit 25 at p. 4; and see Exhibit 6 at 180:20-181:22

[14] Doc. 92 at 16, ¶ 21

26. Disputed. A reasonable jury could reject the Defendants' testimony. See ¶ 23, above.

27. Robinson admits that Anna Chalepah filled out the form. Robinson denies that Jerome Tahhahwah and Anna Chalepah had the intent to arrest Christina. Jerome Tahhahwah testified that Defendants Turner and Short told him and Anna that the only way the officers could take Christina in to Taliaferro was if they filled out this form. Jerome Tahhahwah testified: "I told them that Christina was going into a bipolar state and that – and ask them if they could take her to Taliaferro. I told them that Taliaferro had all – knew all about – all about her and they would take her in. And one of the officers said – scratching his head, you know, and he said, well, we can't take her in. And he said, the only way we could take her in is you'll have to file charges against her. And I said, well, what kind of charges can I file against her? And he said, well, he said, you can file trespassing. Okay. And then they said, yeah, okay, well, we'll sign the trespassing charges for you to get her out. And I told them, would you – would you please take her to Taliaferro."[15] He explained that Defendants Turner and Short did wrong by "not taking her to Taliaferro like I requested them to do."[16]

28. Admitted but this occurred before the police arrived.[17]

29. Admitted.

[15] Appendix, Exhibit 7 at 76:21-77:12

[16] Appendix, Exhibit 7 at 88:14-19

[17] Appendix, Exhibit 7 at 82:19-25

30. Robinson disputes that Anna Chalepah placed Christina under arrest for trespassing. See ¶ 27, above.

31. Admitted.

32. Admitted. The City of Lawton's explicit policies and procedures provide that: "It is recognized by the Lawton Police Department that the Lawton City Jail is not designed or staffed to house the mentally ill."[18]

33. Disputed that there was "no incident." Christina had urinated on herself by the time she arrived at the Lawton City Jail.[19] Defendant Hallagin also testified that, when Christina was booked into the jail, she was saying "nonsense" and would only respond to his questions by repeating the word "chylamydia."[20] A reasonable jury can reject the testimony that Christina was behaving normally and having ordinary conversations based on her behavior leading up to, and following, this alleged event.

34. Admitted.

35. Admitted.

Plaintiff's Statement of Disputed or Omitted Facts

1. At all relevant times, Defendant Turner acted under color of law.[21]

[18] Appendix, Exhibit 24

[19] Appendix, Exhibit 20 (Response to RFA No. 11)

[20] Appendix, Exhibit 5 at 122:2-10 and 143:22-144:1-3

[21] Compare Doc. 1 at ¶ 11 with Doc. 22 at ¶ 11

2. At all relevant times, Defendant Short acted under color of law.[22]

3. As Defendant Short assessed the situation, he did not believe that Christina had committed any crimes.[23]

4. Defendant Short testified that Jerome Tahhahwah "just kept saying he wanted [Christina] gone." He also testified that Jerome Tahhahwah made the decision to take Christina into custody.[24]

5. Defendant Turner admitted that one option the officers had was to conduct a third party Emergency Order of Detention, where it is ordered by a family member.[25]

6. The City of Lawton Police Department's Policies and Procedures on Mental Health Offenders states as follows: "If an officer takes a person who appears to be mentally ill into custody after that person has committed a misdemeanor crime where charges might be filed, he will take the person to Taliaferro, inform the staff at Taliaferro that charges are pending including what the charges are, complete an EOD form, and request that the person be evaluated as soon as possible."[26]

7. The City of Lawton knew that its police officers were not properly trained to assess the need for an emergency order of detention. On September 30, 2014, Former

[22] Compare Doc. 1 at ¶ 10 with Doc. 22 at ¶ 10

[23] Appendix, Exhibit 9, Excerpts of Deposition of Kurt Short at 49:5-7

[24] Appendix, Exhibit 9 at 42:5-9 and 50:7-9

[25] Appendix, Exhibit 10 at 111:20-112:10

[26] Doc. 95-25 at 4

Assistant District Attorney Susan Zwann sent an email to the Chief of Police and Assistant Chief of Police stating: "There is a misconception that the only way a police officer can EOD a person is if they are homicidal or suicidal. The criteria for a person to be EOD'd is whether the person is considered to be a risk of harm to self or others. Obviously, suicidal or homicidal ideations qualify. But if the person is at substantial risk of immediate serious physical injury to self as manifested by evidence that the person is unable to provide for and is not providing for his/her basic physical needs, that qualifies too. If the person is not eating and not taking meds that are prescribed for diabetes, high blood pressure, any number of illnesses that without medication could cause serious injury or death, that person is not providing for his/her basic needs."[27]

8. Jerome Tahhahwah was born on August 5, 1931.[28] In November 2014, he was 83 years old. Mr. Tahhahwah was the main person who helped to take care of Christina's financial needs.[29] In November 2014, Christina was living with Mr. Tahhahwah and Anna Chalepah at 1006 S.W. 42nd Street.[30]

[27] Appendix, Exhibit 19 (COL 14494)

[28] Appendix, Exhibit 7 at 5

[29] Appendix, Exhibit 7 at 28:12-17

[30] Appendix, Exhibit 7 at 55:14-22

Argument and Authorities

I. DEFENDANTS SHORT AND TURNER ARE NOT ENTITLED TO QUALIFIED IMMUNITY AS TO ROBINSON'S CLAIM FOR FALSE ARREST.

The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. "A police officer violates an arrestee's clearly established Fourth Amendment right to be free of unreasonable seizure if the officer makes a warrantless arrest without probable cause." Olsen v. Layton Hills Mall, 312 F.3d 1304, 1312 (10th Cir. 2002). It "has long been clearly established that knowingly arresting a defendant without probable cause, leading to the defendant's subsequent confinement and prosecution, violates the Fourth Amendment's proscription against unreasonable searches and seizures." Wilkins v. DeReyes, 528 F.3d 790, 805 (10th Cir. 2008). This analysis is no different when a police officer effectuates a seizure after a "citizen's arrest." Lusby v. T.G. & Y. Stores, Inc., 749 F.2d 1423, 1432 (10th Cir. 1984), vacated on other grounds by City of Lawton, Oklahoma v. Lusby, 474 U.S. 805 (1985) (holding that determination of probable cause is a nondelegable duty).

In this case, Defendants Short and Turner, while acting under color of law, knowingly arrested Christina without probable cause. Defendant Short admitted that, in his assessment of the situation, he did not believe that Christina had committed any crime.[31] Defendant Turner spoke to both Jerome Tahhahwah and Anna Chalepah about the citizen's

[31] Plaintiff's Statement of Facts at ¶ 3

arrest form.[32] According to Turner, "I told them that the only way that we could have her leave was if they filed a citizen's complaint against her for trespass."[33] Defendant Turner testified that he told Jerome Tahhahwah and Anna Chalepah that he and Officer Short would be taking Christina to jail.[34] However, there is a material factual dispute about what Defendant Turner said. Jerome Tahhahwah testified that:

> I told them that Christina was going into a bipolar state and that -- and ask them if they could take her to Taliaferro. I told them that Taliaferro had all -- knew all about -- all about her and they would take her in. And one of the officers said -- scratching his head, you know, and he said, well, we can't take her in. She hasn't done nothing for us to take her in. And he said, the only way we could take her in is you'll have to file charges against her. And I said, well, what kind of charges can I file against her? And he said, well, he said, you can file trespassing. Okay. And then they said, yeah, okay, well, we'll sign the trespassing charges for you to get her out. And I told them, would you -- would you please take her to Taliaferro.[35]

Jerome Tahhahwah also testified that the officers did not tell him where they were taking Christina, and he assumed they were taking her to Taliaferro like he asked.[36]

When viewing this evidence in the light most favorable to Robinson, a reasonable jury could conclude that Defendants Turner and Short knew that the citizen's arrest form was only signed because Jerome Tahhahwah and Anna Chalepah believed that was the

[32] Appendix, Exhibit 10 at 63:1-17

[33] Appendix, Exhibit 10 at 63:1-17

[34] Appendix, Exhibit 10 at 69:15-20

[35] See Response to LCvR 56.1 Statement at ¶ 27

[36] Appendix, Exhibit 7 at 84:7-10

only way Christina would be taken to Taliaferro. A reasonable jury could conclude that Defendants Turner and Short knowingly arrested Christina without probable cause.

Defendants try to support their quest for summary judgment by attacking Jerome Tahhahwah's credibility. They argue that Jerome Tahhahwah has tried to "recreate the events in an effort to nudge a baseless false arrest claim forward." [Doc. 92 at 26]. "On summary judgment, a district court may not weigh the credibility of the witnesses." Fogarty v. Gallegos, 523 F.3d 1147, 1165 (10th Cir. 2008). Even considering Jerome Tahhahwah's credibility, his testimony is not a recent fabrication to support this lawsuit. Defendant Short admitted that **both** Jerome Tahhahwah and Anna Chalepah "did mention that they wanted [Christina] to go to Taliaferro."[37] Defendants' contention that this is some new, made up story is therefore both legally inappropriate and factually inaccurate.

This right was clearly established at both a general and particularized level. As the Tenth Circuit has held: "The law was and is unambiguous: a government official must have probable cause to arrest an individual." Cortez v. McCauley, 478 F.3d 1108, 1117 (10th Cir. 2007). It is also clearly established that it violates the Fourth Amendment to knowingly make an arrest without probable cause. Wilkins, 528 F.3d at 805.

Defendants have argued that Robinson must "identify a case where an individual acting under similar circumstances as Defendants Turner and Short was held to have violated the Fourth . . . Amendment." [Doc. 92 at 35]. This is incorrect. Defendants Turner and Short may be held individually liable "[e]ven without prior case law on point" if they

[37] Appendix, Exhibit 9 at 58:16-17

were on reasonable notice that their actions ran afoul of the Fourth Amendment. Cortez, 478 F.3d at 1118-1119. "This follows from the fact that the Supreme Court has instructed that 'a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question, even though the very action in question has not previously been held unlawful.'" Id. (internal citation omitted). Here, there is obvious clarity in the law even if there is not a case directly on point.

This situation can be properly analogized to the situation where an officer obtains an arrest warrant based on materially false information. The Supreme Court's ruling in Franks v. Delaware, 438 U.S. 154 (1978), "clearly established that knowingly, or with reckless disregard for the truth, including false information in the affidavit supporting the arrest warrant constituted a Fourth Amendment violation." Pierce v. Gilchrist, 359 F.3d 1279, 1299 (10th Cir. 2004). Here, Robinson's evidence establishes that Defendants Turner and Short falsely told Jerome Tahhahwah that the only way they could take Christina to Taliaferro was if Jerome or Anna filled out the citizen's arrest form. This was not true (they could have done a third-party EOD and, of course, Defendants Short and Turner had no intention of taking Christina anywhere but jail). Without this false statement, the citizen's arrest form would not have been filled out. This is similar to an officer including false information to a judge who signs an arrest warrant. This law was clearly established even if there is not a case exactly on point. See Fuerschbach v. Southwest Airlines Co., 439 F.3d 1197, 1206 fn 4 (10th Cir. 2006) (recognizing that "officials committing outrageous, yet sui generis, constitutional violations ought not to shield their behavior behind qualified

immunity simply because another official has not previously had the audacity to commit a similar transgression") (internal citation omitted).

II. DEFENDANTS TURNER AND SHORT ARE NOT ENTITLED TO QUALIFIED IMMUNITY ON ROBINSON'S DELIBERATE INDIFFERENCE CLAIM.

"The Fourteenth Amendment's Due Process Clause entitles pretrial detainees to the same standard of medical care owed to convicted inmates under the Eighth Amendment." Rife v. Okla. Dep't of Pub. Safety, 854 F.3d 637, 647 (10th Cir. 2017). "Thus, the Fourteenth Amendment is violated if state officials are deliberately indifferent to a pretrial detainee's serious medical needs." Id. There is a two-prong test for deliberate indifference claims. Farmer v. Brennan, 511 U.S. 825, 834 (1994). "Under this test, a plaintiff must satisfy an objective prong and a subjective prong." Rife, 854 F.3d at 647. "The objective prong concerns the severity of a plaintiff's need for medical care; the subjective prong concerns the defendant's state of mind." Id.

"The objective prong of the deliberate indifference test examines whether the prisoner's medical condition was 'sufficiently serious' to be cognizable under the Cruel and Unusual Punishment Clause." Al-Turki v. Robinson, 762 F.3d 1188, 1192 (10th Cir. 2014) (internal citation omitted). "A medical need is considered sufficiently serious to satisfy the objective prong if the condition 'has been diagnosed by a physician as mandating treatment or is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." Id. at 1192-93. Here, the undisputed facts demonstrate that Christina's medical needs were sufficiently serious. Her bipolar disorder had been diagnosed by a physician as mandating treatment. On November 12, 2014, she received

treatment for her bipolar disorder and was reportedly in a "fairly manic" state.[38] As a part of this treatment, the physician gave her medication to calm her down and prescribed her with a mood stabilizing drug, Risperdal.[39] Furthermore, it was obvious even to a lay person that Christina needed a doctor's attention. She was nonresponsive to Defendant Short's questions.[40] Jerome Tahhahwah told Defendants Turner and Short that Christina was bipolar, that she was not taking her medication, and that she needed to go to Taliaferro.[41] She had defecated on herself.[42] She urinated on herself on the way to the jail.[43] A reasonable jury could conclude that Christina had a sufficiently serious medical condition based on this evidence. See Olsen v. Layton Hills Mall, 312 F.3d 1304, 1317 (10th Cir. 2002) (holding that it is for the jury to determine if a medical condition is "sufficiently serious").

"The subjective prong is satisfied only if the defendant knew of an excessive risk to the plaintiff's health or safety and disregarded that risk." Rife v. Okla. Dep't of Pub. Safety, 854 F.3d 637, 647 (10th Cir. 2017). "In deciding whether this prong is satisfied, the factfinder may consider circumstantial evidence." Id. "[T]he existence of an obvious risk to health or safety may indicate awareness of the risk." Id. The evidence of Christina's

[38] See Response to LCvR 56.1 Statement at ¶ 16

[39] See Response to LCvR 56.1 Statement at ¶ 16

[40] See Response to LCvR 56.1 Statement at ¶ 23

[41] See Response to LCvR 56.1 Statement at ¶¶ 23-24

[42] See Response to LCvR 56.1 Statement at ¶ 23

[43] See Response to LCvR 56.1 Statement at ¶ 23

symptoms recited above demonstrates that, when viewing the evidence in the light most favorable to the non-moving party, that Defendants Turner and Short had knowledge of an excessive risk to Christina's health or safety and disregarded that risk. They knew Christina was bipolar.[44] They knew she was not properly taking care of herself because she was not taking her medications and she defecated and urinated on herself.[45] They knew that the Lawton City Jail was not equipped to deal with her mental health issues. Indeed, the Lawton City Jail's policy provides that it "is not designed or staffed to house the mentally ill."[46] With this knowledge, a reasonable jury could conclude that Defendants Turner and Short were deliberately indifferent to Christina's serious medical needs.

In Olsen, the Tenth Circuit held that it is not a district court's task "to decide whether [the defendant] was indeed ignorant" of the serious risk to health. Olsen, 312 F.3d at 1317. "This is for a jury to decide." Id. Here, like in Olsen, there is sufficient evidence for a jury to conclude that Defendants Turner and Short knew of, and disregarded, an excessive risk to Christina Tahhahwah's health by taking her to a place that they *knew* was not equipped to provide her with treatment and that, by policy, is not "designed or staffed to house the mentally ill."

Defendant Turner and Short violated Christina's constitutional rights by denying her medical care and instead taking her to a jail facility that was not equipped, designed, or

[44] See Response to LCvR 56.1 Statement at ¶ 23

[45] See Response to LCvR 56.1 Statement at ¶ 23

[46] See Response to LCvR 56.1 Statement at ¶ 32

staffed to house the mentally ill. The constitutional right that they violated was clearly established in 2014. "The right to custodial medical care is clearly established." Olsen, 312 F.3d at 1315. The Tenth Circuit has previously held that an arresting officer has the same duty to provide for a pretrial detainee's serious medical needs as does a jailer. See Garcia v. Salt Lake County, 768 F.2d 303 (10th Cir. 1985); see also Prado v. Lane, 98 Fed.Appx. 757, 759-760 (10th Cir. 2004) (unpublished).

Robinson has therefore set forth sufficient facts to prove that Defendants Turner and Short violated her Fourteenth Amendment constitutional right to adequate medical and mental health care. This constitutional right was clearly established as of November 2014. Accordingly, Defendants' Motion for Summary Judgment should be denied.

Conclusion

For the reasons set forth herein, Plaintiff Margie M. Robinson respectfully requests that the Court deny the Motion and Brief for Summary Judgment filed by Defendants Turner and Short.

Dated this 24th day of August, 2018.

WARD & GLASS, L.L.P.

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CERTIFICATE OF SERVICE

This is to certify that on this 24th day of August, 2018, a true and correct copy of the above has been delivered via ECF to all attorneys of record.

Kelea L. Fisher
Clay Hillis

s/Barrett T. Bowers