

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

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

**DEFENDANTS TURNER AND SHORT’S REPLY TO
PLAINTIFF’S RESPONSE TO DEFENDANTS
MOTION AND BRIEF FOR SUMMARY JUDGMENT**

COMES NOW Defendants Turner and Short pursuant to LCv.R7.1(I), and submits this Reply in support of their Motion and Brief for Summary Judgment. [Doc.92]

I. Reply to Plaintiff’s Response to Defendant’s Statement of Facts

3. Jessica Carter is the current Emergency Communications Manager for the City of Lawton. Her affidavit serves to verify the content of dispatch recordings kept in the regular course of business for the City of Lawton. Defendants reserved the right to call any witness necessary to authenticate any record and any custodian of records, which would include Jessica Carter. [Doc. 85] As such, her affidavit should not be excluded.

6. Plaintiff states that Defendant Gordon’s testimony should be disregarded by the Court. However, the Court should note that Plaintiff has not asked nor attempted to depose Defendant Gordon in the two years since Defendant Gordon was named as a party

to this suit. Therefore, Defendant Gordon's sworn recitation of her recollection of events should not be excluded by the Court.

7. Plaintiff's statement that Christina was "obviously not taking care of herself" is not supported by any facts of record. Defendant Turner's statements that he observed her sitting at a table eating food from a styrofoam container has not been disputed by Plaintiff. [Doc. 92, ¶ 23] Furthermore, the fact that Christina made statements on a phone call to dispatch about "killing people" does not mean that she made the same statements in the presence of the officers. Furthermore, it is not disputed that when Christina made a statement to a dispatcher that she was about to kill her aunt and pull her gun on her, the The dispatcher told Tahhahwah "well don't do anything like that" to which Tahhahwah responded "No, I'm not." [Doc. 92, Fact No. 1, admitted by Plaintiff]

23. Plaintiff refers to Officer Lindsey Adamson's interaction with Christina a few hours before her interaction with Defendants Short and Turner as indicative of Christina's "need to go to Taliaferro" but ignores (and asks the Court to disregard) the fact that after Christina's interaction with Officer Adamson, Christina was seen by medical professionals at a hospital who did not believe her behavior warranted involuntary commitment. [Doc. 92, ¶ 15]

24. Plaintiff rejects Defendants' statements that they did not observe Christina make any statements indicating that she had an intent to harm herself or anyone else but offers no evidence to refute their observations. However, there is circumstantial evidence to support their observations in that the medical professionals that treated Christina at the

hospital hours before her encounter with Defendants Short and Turner also noted that she was “negative for suicidal or homicidal ideation.” [Doc. 92, ¶ 15]

27. Defendant notes that Edward Tahhahwah stated “well, what kind of charges can I file against her?” [Doc. 107-7, at 77] and “Anna said, okay, I’ll file – I’ll file trespassing charges against her (Christina).” [Doc. 108, Appendix, Ex.7 at 82: 3-8] as evidence of their intent to arrest Christina. Also, Plaintiff relies on Jerome Tahhahwah’s statements that the officers told him that “we can’t take her in” – which supports the Defendants’ assertions that they did not believe Christina met the criteria to be involuntarily committed under an EOD process.

30. See ¶ 27.

II. Response to Plaintiff’s Statement of Disputed or Omitted Material Facts

1. Admitted.

2. Admitted.

3. Admitted but this statement is incomplete. Defendant Short also stated that he did not assist in any way with the citizen’s arrest and Defendant Turner completed the paperwork with the grandfather. [Doc. 107-9, at 49: 8-14]

4. Admitted.

5. Denied as immaterial given the fact that there is no evidence to suggest that Christina’s family members were “ordering” an Emergency Order of Detention.

6. Defendants do not deny the content of the City’s policy, however, if the officer does not observe behavior that indicates that a person “appears to be mentally ill” at the time of his/her encounter with the person, this provision is not applicable.

7. Denied as misleading. Plaintiff presented a partial email but excluded the remainder of the email in which the Assistant Chief of Police responded to the email and then forwarded the information to “all sworn police supervisors and officers” to clarify the matter. [Ex. 1]¹

8. Denied as immaterial.

ARGUMENT AND AUTHORITIES

Defendants would first note that Plaintiff relies heavily on Jerome Tahhahwah’s testimony to support her argument that the Defendants violated Christina’s constitutional rights. First, with regard to the false arrest claim, it is important to note that Jerome Tahhahwah’s testimony that he asked the officers to take Christina to Taliferro and the Defendants told him “well, we can’t take her in...[s]he hasn’t done nothing for us to take her in” actually supports the Defendants argument that the Defendants did not observe any factors to allow them to involuntarily commit Christina to Taliaferro under an EOD process. [Doc. 105, pg. 13]

Also, Plaintiff repeatedly requests the Court to consider circumstantial evidence to support her claim that Christina was falsely arrested, but alternatively asks the Court to ignore the direct evidence that supports the fact that Defendants had probable cause to continue the arrest effected by Anna Chalepah including phone calls from Christina to dispatch wherein she stated that her grandpa had kicked her out of the house [Doc. 95, Fact No. 11 – not disputed by Plaintiff], the signed citizen’s arrest form [Doc. 95, Fact

¹ Defendants would note that the submission of this additional exhibit merely responds to matters placed in issue by the opposition brief and does not spring upon the Plaintiff new reasons for the entry of summary judgment.

No. 11 – not disputed by Plaintiff], and Jerome Tahhahwah’s own discussion with dispatchers in which he told the dispatcher to just “come pick [Christina] up and take her to jail.” [Doc. 95, Fact No. 11 – not disputed by Plaintiff]. As such, Plaintiff has failed to show that Defendants Turner or Short lacked probable cause to continue the arrest effected by Anna Chalepah and they are entitled to summary judgment on this claim.

With respect to Plaintiff’s argument that Defendants Turner and Short are not entitled to qualified immunity on Plaintiff’s deliberate indifference claim, Plaintiff’s argument also fails. Plaintiff again requests the Court rely heavily on Jerome Tahhahwah’s statement that “she needed to go to Taliaferro” [Doc. 105, pg. 17] but to ignore the fact that medical professionals had treated Christina a few hours prior to her contact with Defendants Short and Turner and there is no record of those medical professionals trying to have Christina taken into protective custody or otherwise have her admitted for psychiatric treatment due to her behavior. [Doc. 92, Fact Nos. 15 and 18, which are undisputed by Plaintiff].

Finally, in her statement of undisputed facts, Plaintiff points to testimony of Defendant Turner, who “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.” [Fact No. 5, pg. 10] However, Plaintiff points to no evidence to support an assertion that any family member ordered the detention of Christina Tahhahwah. In fact, the only affidavit or statement filled out by any family member of Christina was the Citizen’s Complaint Form [Doc. 96, Ex. 13] which is devoid of any reference to Christina’s bi-polar disorder and of any reference to Taliaferro.

CONCLUSION

WHEREFORE, all premises considered, the Defendants respectfully requests that this Court grant their summary judgment motion and for any other such relief as the Court deems appropriate.

Respectfully submitted this 5th day of September, 2018.

/s Clay R. Hillis

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2018, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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s/Clay Hillis
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