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 ADAMSON QUISENBERRY, CARNEY, SELLERS, MCMILLION, HALLAGIN, AND FISHER'S MOTION AND BRIEF FOR SUMMARY JUDGMENT

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July 30th, 2018

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Plaintiff Margie M. Robinson, as the Personal Representative of the Estate of Decedent, Christina Tahhahwah (hereinafter, "Christina" or "Tahhahwah"), has sued Defendants Lindsey Adamson, Terry Quisenberry, Troy Carney, Terry Sellers, Stacey McMillion, Daniel Hallagin, and Tika Fisher in their individual capacities for allegedly violating Tahhahwah's constitutional rights during the course of said Defendants' contact with Tahhahwah in November, 2014. This Motion seeks Summary Judgment as to all claims asserted against said Defendants pursuant to Fed. R. Civ. P. 56(a):

LCvR 56.1(b) STATEMENT

Pursuant to LCvR 56.1(b), Defendants assert that there is no genuine dispute as to the following material facts:

1. On November 13, 2014, at approximately 1:37 a.m., 3:19 a.m., and 5:18 a.m. Tahhahwah called City of Lawton Dispatch (hereinafter, "dispatch") on a non-

emergency administrative line. City of Lawton police officers were dispatched to each call to check the welfare of Tahhahwah. Officers responding to the above-listed calls made contact with Tahhahwah in the garage of the residence located at 1006 SW 42nd Street, Lawton, Oklahoma and ultimately cleared each call. (Ex. 1, Jessica Carter Affidavit)

2. On November 13, 2014 at approximately 7:24 a.m., Tahhahwah called a dispatch non-emergency administrative line and asked for officers to "come see her and call her." (Ex. 1 – Affidavit of Jessica Carter)
3. In response to Tahhahwah's call on November 13, 2014 at approximately 7:24 a.m., Defendant Officer Lindsey Adamson and Officer Dan Breaden were dispatched to the residence located at 1006 SW 42nd Street. Adamson made contact with Tahhahwah in the garage of the house. It appeared to Adamson that Tahhahwah had been sleeping or staying in the garage because the garage had a bed in it. Tahhahwah introduced herself as "Cuda Bang" and told Adamson she used that name because she was promiscuous. Adamson observed Tahhahwah breathing heavily, but not in distress. Adamson asked Tahhahwah if she was "OK" and Tahhahwah responded something to the effect of "It's just because I'm fat." Officer Adamson observed Tahhahwah in a physically safe environment and Tahhahwah did not make any statements indicating that she intended to harm herself or others and did not appear to have the means to do so. Tahhahwah was coherent and responsive to Officer Adamson's questions. Tahhahwah stated she had "e.coli" in her kidneys but did not request to be taken to a

hospital. (Ex. 1 – Affidavit of Jessica Carter; Ex. 2 – Defendant Adamson's Response to Plaintiff's First Set of Discovery, Interrogatory No. 14)

4. Before Defendant Adamson and Officer Breaden could clear the call, Tahhahwah called a dispatch non-emergency administrative line said "Your two officers left me here. I need to go to the hospital because my kidneys still hurt." The dispatcher asked Tahhahwah if she needed and ambulance and Tahhahwah responded "Yes ma'am." The dispatcher then asked why her kidneys hurt and Tahhahwah responded "I have e.coli in my kidney." (Ex. 1 – Affidavit of Jessica Carter)
5. While Adamson was still on scene responding to the 7:24 a.m. call, Adamson was advised by dispatch that Tahhahwah called back requesting an ambulance because she had "e.coli" in her kidneys. Adamson advised the dispatcher to send Tahhahwah an ambulance to the residence. An ambulance was dispatched to the residence and Tahhahwah was taken from the residence to Comanche County Memorial Hospital. (Ex. 1 – Affidavit of Jessica Carter; Ex. 3- Excerpts from the Deposition of Lindsey Adamson taken on August 17, 2017, pg. 169, lines 10-15)
6. Tahhahwah arrived at Comanche County Memorial Hospital at 8:38 a.m. Tahhahwah was seen by medical professionals at the hospital for reported "abdominal pain and psychiatric history." The records state that Tahhahwah was "negative for suicidal or homicidal ideation and not hearing voices, not seeing things." The record further indicates that Tahhahwah was "awake, alert, oriented, following commands, and cooperative." Tahhahwah was discharged from the hospital at 9:45 a.m. with

instructions to fill a prescription for medication for a urinary tract infection and for her bipolar disease. (Ex. 4 – Tahhahwah Medical Records 11.13.14)

7. Tahhahwah's medical records also indicate that on November 12, 2014, prior to any of the above-listed calls, Tahhahwah presented to Comanche County Hospital's Emergency Room at 10:11 p.m. complaining of "syphilis in [her] urine." The record indicates Tahhahwah came to the hospital in a "fairly manic state" and was given 20 mg of an antipsychotic medication intramuscularly. Tahhahwah was discharged in "stable condition" and given a prescription for medication for a urinary tract infection and bipolar disease. (Ex. 5 – Tahhahwah Medical Records 11.12.14)
8. There is no record of Tahhahwah or any of her family members ever filling her prescriptions from her visits to Comanche County Memorial Hospital on November 12 or 13, 2014 as advised by hospital staff. Edward Tahhahwah, her grandfather, states he was unaware that Tahhahwah was given any prescriptions and he did not ask any doctor or nurse at the hospital if Tahhahwah had any prescriptions to fill. (Ex. 6– Excerpts of the Deposition of Edward Tahhahwah taken on April 5, 2018, pg. 74 lines 1-7)
9. There is no record indicating that the physicians and medical staff who came into contact with Tahhahwah at Comanche County Memorial Hospital on November 12, 2014 or November 13, 2014, tried to have Tahhahwah taken into protective custody or otherwise have her admitted for psychiatric treatment after her visits to the hospital. (Ex. 4 – Tahhahwah Medical Records 11.13.14; Ex. 5 – Tahhahwah Medical Records 11.12.14)

10. On November 13, 2014 at approximately 1:20 p.m. Tahhahwah's family member (Anna Chalepah) called dispatch to report a domestic dispute between herself and Tahhahwah. Officers were dispatched to the residence and Anna Chalepah placed Tahhahwah under arrest for Trespassing. Tahhahwah was then transported to the Lawton City Jail by City of Lawton Officers without incident. (Ex. 1 – Affidavit of Jessica Carter; Ex. 7 - Citizen's Complaint Form)
11. Christina was booked in to the jail at approximately 2:13 p.m. on November 13, 2014. Defendant Daniel Hallagin was working the booking desk when Christina was booked. During the booking process, Hallagin did not ask Christina any questions about her medical or mental health history, as required by Lawton City Jail Policy and Procedures. Hallagin was unable to complete the booking process because he felt that Christina was not responding to the questions he asked. Hallagin sent Christina to her cell and planned to complete her booking process at a later time or allow someone else to complete the booking. (Ex. 8 – Excerpts of the Deposition of Daniel Hallagin taken on August 24, 2017, Pg. 86, lines 4-16; pg. 121, lines 6-15)
12. Hallagin finished his shift at 3:00 p.m., without ensuring that the intake process was complete. Hallagin had no further contact with Christina after he completed his shift. Hallagin never handcuffed Christina or observed Christina being handcuffed. Hallagin was later disciplined by the City of Lawton for his failure to complete the booking process. (Ex.9 – Affidavit of Daniel Hallagin)
13. Hallagin worked at the jail on prior occasions when Christina was in the jail. He did not recall whether or not he knew Christina had a diagnosed mental illness when he

booked her in on November 13, 2014. Hallagin did not believe that Christina was delusional. (Ex.8– Excerpts from the Deposition of Daniel Hallagin taken on August 24, 2017, pg. 91, lines 11-25, pg. 92, lines 1-3, pg. 123, lines 4-15)

14. On November 13, 2014, at approximately 2:30 p.m., Defendant Sellers was downstairs in the training room conducting training when he heard extremely loud banging coming from upstairs in the jail section. Hallagin called Sellers to the jail section and Sellers was told the individual banging might hurt herself and she is "banging pretty hard." Sellers made contact with Christina while she was in her cell and saw her standing up, facing the metal bunk bed, and banging on the center of the top bunk. Sellers asked Christina to calm down, explaining that she could hurt herself or damage property. Christina made comments such as "I'm the head bitch here. I run this show. Eff' you mother eff'ers." (Ex. 10– Excerpts of the Deposition of Terry Sellers taken on June 7,2018, pg. 13, lines 7-16; pg. 17, lines 1-19; pg. 39, lines 20-24)

15. Sellers asked Christina to calm down. Sellers then instructed Christina to sit on the floor with her back against the bars and after a few requests, Christina complied and sat down with her back against the bars. Sellers does not recall how Christina's hands were placed during the cuffing or who actually handcuffed her, but knows that he would have checked the cuffs to ensure they were not too tight. (Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 20, lines 15-25; pg. 21, lines 1-11; pg. 22, lines 14-25)

16. On November 14, 2014, at approximately 1:05 a.m. and 3:10 a.m., Jailers Carney and Fisher observed and heard Christina banging on the metal bunk in her jail cell. Carney observed Christina yelling, kicking and slamming her hands so hard on the metal bunk bed that the corner of the top bunk lifted. Carney spoke with Christina and asked her to calm down and to stop banging. Christina would comply with Carney's instructions for a short amount of time and then begin banging again. Both Carney and Fisher assisted in handcuffing Christina to the bars of the jail cell to keep Christina from harming herself. The first handcuffing occurred at approximately 1:05 a.m. and Christina remained in handcuffs for 40 minutes. The second handcuffing occurred at approximately 3:10 a.m. and Christina was released 45 minutes later. Christina was not resistant during either handcuffing events. (Ex. 11 – Tahhahwah Booking Narrative; Ex. 12 – Affidavit of Troy Carney; Ex. 13 - Affidavit of Tika Fisher)

17. Jailer Carney has had prior contact with Christina in the jail. During the prior contacts, Christina would also bang and kick the metal bed to the point where staff was concerned she would injure herself. On those occasions, Christina was handcuffed to the cell bars for her safety without issue and the security measure was effective in curtailing her behavior. (Ex. 12 – Affidavit of Troy Carney)

18. Jailer Sellers has also had prior contact with Christina in the jail on nine occasions. Eight of those nine times, Christina caused some type of disturbance causing her to be handcuffed. Six of the nine times, Christina eventually calmed down and quit "acting

out" and in Seller's opinion, became a "joy to be around." (Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 165, lines 9-20)

19. On November 14, 2014 at approximately 7:25 a.m., Sellers was in the booking area when he heard Christina kicking and banging the bunk in her jail cell. Sellers went back to the cell area and observed Christina standing in the cell, facing the metal bunks, and hitting the bunks with her hands. At the time she was banging the bunk, Christina was yelling "Eff' this!" Sellers asked Christina to sit on the floor with her back against the bars. Christina complied, sat down and placed her hands over her shoulders, with her hands near her ears. Christina was handcuffed using two pairs of handcuffs, one for each hand. Sellers asked Christina if she was comfortable and she replied "yes". Sellers checked the handcuffs to ensure they were not too tight. (Ex.10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg .39, 1-7 and 20-24, pg. 40, lines 16-21, pg. 42, lines 10-23, pg. 58, lines 24-25, pg. 59., lines 1-7)

20. Approximately 40-50 minutes after Christina was handcuffed, Sellers was notified by a jail trustee that Christina had twisted her hands in the handcuffs and her hands were turning purple. Sellers immediately went to the cell area and released Christina from the handcuffs. Sellers noticed that Christina had moved her body away from the bars, causing the handcuffs to pinch her right hand and causing her right hand to turn purple. Christina was released from the handcuffs and Sellers rubbed Christina's hand to increase circulation and until her hand turned back to the normal color. (Ex.10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg . 57, 19-25, pg. 58, lines 1-3, pg. 61, lines 4-25; Ex. 11 – Tahhahwah Booking Narrative)

21. While rubbing her hands, Sellers spoke with Christina and told her "Christina, you cannot be doing this" to which Christina responded "I understand Mr. Sellers, but these other girls are just making me mad", explaining that the other detainees were making her mad by also kicking, banging, and hitting the bunks. Any other detainee that was banging on the metal bunks during the time Christina was a detainee at the jail were either instructed to stop banging and stopped banging or was handcuffed to the bars of her cell to prevent the detainee from harming herself. (Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 57, lines 21-25, pg.58, 1-13)

22. On November 14, 2014, at approximately 11:48 a.m., Jailer Stacey McMillion observed Christina hitting the metal bunk so hard that the upper bunk broke. McMillion attempted to calm Christina down by talking with her and Christina responded "I want out of here, I want to go home, I own you, I could have you fired" and statements to that effect. Sellers heard the banging and yelling from the booking area and called downstairs to the police department to request additional officers to standby while the jailers restrained Christina. (Ex.14 – Excerpts of the Deposition of Stacey McMillion taken on July 5, 2018, pg. 153, lines 16-23, pg. 154, lines 1-3, pg. 155, lines 11-25, pg. 156, lines 1-4; Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 71, lines 7-14, pg. 72, lines 4-12)

23. Defendant Officers Lindsey Adamson and Terry Quisenberry arrived in the jail section. Adamson and Quisenberry followed Sellers to the cell block area, where McMillion stood, still talking to Christina. Christina again sat with her back to the cell

bars and put her arms over her shoulders with her hands at about ear level. McMillion then placed two sets of handcuffs on Christina's hands and connected the handcuffs to the bars of the cell. (Ex. 15 – Affidavit of Lindsey Adamson; Ex. 16 – Affidavit of Terry Quisenberry; Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 86, lines 1-8; Ex. 14 – Excerpts of the Deposition of Stacey McMillion taken on July 5, 2018, pg. 158, lines 6-13)

24. Defendants Adamson and Quisenberry stood in the cellblock walkway while Christina was being handcuffed. Neither Adamson nor Quisenberry ever enters Christina's cell. At one point during the restraint, Defendant Quisenberry stands next to McMillion and lightly holds Christina's wrist while McMillion secures the handcuff to one of Christina's wrists and the cell bar. Christina was cooperative and non-combative during the restraint. Neither Adamson nor Quisenberry observed Christina to have any cuts or bleeding and she did not appear to be in any physical distress during the restraint. Adamson and Quisenberry were in the cell block area for a total of less than two minutes. Neither Defendant Adamson nor Quisenberry knew how long Christina would remain in the handcuffs, whether or not Christina had been handcuffed before, or whether Christina would be handcuffed again after they encountered her because they do not work in the jail section. (Ex. 15 – Affidavit of Lindsey Adamson; Ex. 16 – Affidavit of Terry Quisenberry)

25. Defendant Sellers felt that handcuffing Christina in this manner was the least restrictive position and that Christina was comfortable in this position. Defendant Sellers checked the handcuffs to ensure they were not too tight and told Defendant

McMillion to double-check the handcuffs for tightness before leaving the cell block area. McMillion then double-checked the handcuffs for tightness. A jail trustee (Darla Tosta) was assigned to monitor the area. Darla Tosta had observed Christina banging hard on the metal bunk and making a loud noise with her hands prior to Christina being handcuffed as well. (Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 88, lines 20, 25; Ex. 17 – Affidavit of Darla Tosta; Ex. 14 – Excerpts from the Deposition of Stacey McMillion taken on July 5, 2018, pg. 160, lines 12-18)

26. While Christina was handcuffed in this position, Darla Tosta could see Christina directly or out of the corner of her eye at all times. Tosta had conversations with Christina while she was handcuffed in this position. Defendant McMillion went back into the cell block area three times while Christina was handcuffed. During those times McMillion observed Christina having a conversation with the trustee and was able to observe Christina still sitting with her back to the bars in the position in which she had been handcuffed. Christina did not appear to be in any physical distress during the times McMillion observed her and Christina not tell McMillion the handcuffs were too tight or make any statements about being uncomfortable in the handcuffs. Adamson had no knowledge of any circumstances surrounding Tahahhwah's arrest, no knowledge of any of Tahhahwah's behavior while she was a pretrial detainee at the jail or any other incidents involving Tahhahwah being restrained while at the jail. (Ex. 17 – Affidavit of Darla Tosta; Ex. 14 – Excerpts of the Deposition of Stacey McMillion taken on July 5, 2018, pg. 160, lines 23-25, pg.

161, lines 1-8, pg. 163, lines 13-22, lines 164, lines 9-25, pg. 165, lines 2-9; Ex. 18 – Affidavit of Stacey McMillion)

27. The trustee massaged Christina's hands while Christina was handcuffed. The trustee then noticed that Christina's hands turned blue, or dark purple, and Christina stopped talking. The trustee immediately notified the jailers. Upon notification, Seller's went to the cell block area and found that Christina had scooted her back away from the bars and was unresponsive. McMillion's last observation of Christina occurred approximately 20 minutes before the trustee notified the jailers that Christina had stopped talking and her hands turned blue. (Ex. 17 – Affidavit of Darla Tosta; Ex. 10 – Excerpts of the Deposition of Terry Sellers taken on June 7, 2018, pg. 97, lines 19 - 25, pg. 98, lines 1-3; Ex. 18 – Affidavit of Stacey McMillion)

28. Jailers then responded to the area, attempted to find a pulse, used an AED (Automated External Defibrillator) on Christina and began chest compressions. Jailers notified fire and ambulance personnel. Christina was then transported to Comanche County Memorial Hospital. Christina died on November 17, 2017. (Ex. 11 – Tahhahwah Booking Narrative)

29. On November 17, 2014, the City of Lawton submitted a Jail Incident Report to the Oklahoma State Department of Health Jail Inspection Division (OSDH). There has been no action taken by OSDH since the submission of the report. (Ex. 19 – OSDH Jail Incident Report; Ex. 20 – Affidavit of Terry Sellers)

ARGUMENT AND AUTHORITY
STANDARD OF REVIEW

Under Rule 56(c), Fed.R.Civ.P., summary judgment shall be granted if the record shows that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." The moving party has the burden of showing the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). A genuine issue of material fact exists when "there is sufficient evidence favoring the non-moving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In determining whether a genuine issue of a material fact exists, the evidence is to be taken in the light most favorable to the non-moving party. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970). All reasonable inferences to be drawn from the undisputed facts are to be determined in a light most favorable to the non-movant. *United States v. Agri Services, Inc.,* 81 F.3d 1002, 1005 (10th Cir.1996). Once the moving party has met its burden, the opposing party must come forward with specific evidence, not mere allegations or denials, demonstrating that there is a genuine issue for trial. *Posey v. Skyline Corp.*, 702 F.2d 102, 105 (7th Cir.1983).

"[I]f the evidence is merely colorable, or not significantly probative, summary judgment may be granted." *Id.* In addition, "the mere existence of a scintilla of evidence in support of a plaintiff's position will be insufficient; there must be evidence on which a jury could reasonably find for the plaintiff." *Anderson v. Liberty Lobby, Inc.*, 477 U.S.

242, 248 (1986). "Even though all doubts must be resolved in (the nonmovant's) favor, allegations alone will not defeat summary judgment." *Celotex*, 477 U.S. at 324. Moreover, "(i)n response to a motion for summary judgment, a party cannot rely on ignorance of facts, on speculation, or on suspicion, and may not escape summary judgment in the mere hope that something will turn up at trial." *Conaway v. Smith*, 853 F.2d 789, 794 (10th Cir. 1988).

PROPOSITION I
DEFENDANTS' USE OF FORCE WAS CONSTITUTIONALLY PERMITTED UNDER THE FOURTH AMENDMENT

Tahhahwah was a pretrial detainee in the Lawton City Jail and had not had a judicial determination of probable cause at the time the actions that are the subject of Plaintiff's Complaint occurred. Plaintiff has alleged Defendants violated Tahhahwah's constitutional right to "be free from excessive use of force." [Doc. 1, ¶ 71] The Tenth Circuit has held that the Fourth Amendment governs excessive force claims arising from 'treatment of [an] arrestee detained *without a warrant* ' and '*prior to* any probable cause hearing."); *see also Austin v. Hamilton*, 945 F.2d 1155, 1160 (10th Cir.1991), *abrogated on other grounds by Johnson v. Jones*, 515 U.S. 304 (1995).

To state a claim of excessive force under the Fourth Amendment, a plaintiff must show both that a 'seizure' occurred and that the seizure was 'unreasonable.' " *Bella v. Chamberlain*, 24 F.3d at 1255). "[T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397.(1989)

In *Kingsley v. Hendrickson*, the Supreme Court recently held that he appropriate standard for a pretrial detainee's excessive force claim is solely an objective one. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473, 192 L. Ed. 2d 416 (2015) Under this standard, the court **"**must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Id.* (citing *Graham v. Connor*, 490 U.S. 386, 396 (1989). Ordinarily, the court would consider factors such as "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting." *Id.* (citing *Graham*, 490 U.S. at 396). However, "in cases in which the handcuffing is permissible yet the *manner* of handcuffing may render the application of force excessive, the *Graham* factors are less helpful in evaluating the *degree* of force applied." *Koch v. City of Del City*, 660 F.3d 1228, 1247 (10th Cir. 2011) (citation and internal quotation marks omitted). So, in order to succeed on a manner-of-handcuffing claim, "a plaintiff must show some actual injury that is not de minimis, be it physical or emotional." *Id.*

A court must also account for the legitimate interests that stem from [the government's] need to manage the facility in which the individual is detained, appropriately deferring to policies and practices that in th[e] judgment of jail officials are needed to preserve internal order and discipline and to maintain institutional security.

Himes v. Saldana, No. CIV-16-227-R, 2016 WL 8117959, at *3 (W.D. Okla. Oct. 6, 2016), report and recommendation adopted, No. CIV-16-227-R, 2017 WL 401265 (W.D. Okla. Jan. 30, 2017)

Plaintiff alleges Defendants Hallagin, Sellers, Carney, Fisher, Quisenberry and McMillion violated Tahhahwah's constitutional rights by "placing Christina in hand restraints and leaving her restrained for long periods of time while confined within her jail cell" and that such actions were an "excessive and an unnecessary or unreasonable amount of force under the circumstances." [Doc. 1, ¶ 72] Plaintiff further alleges to the extent they did not personally participate in the use of excessive force, said Defendants were present during the use of excessive force and had a constitutional duty to intervene but failed to do so. [Doc. 1, ¶ 72] For the reasons set forth below, Plaintiff's claims must fail.

1. The First, Second, and Third Restraints

In her Complaint, Plaintiff alleges on November 13, 2014, at approximately 2:30 pm., "Officer Hallagin….reported that Christina began banging and kicking the bars of the jail cell. Officer Hallagin requested assistance from Officer [Jailer] Terry D. Sellers and Christina was placed in hand restraints without any resistance." [Doc. 1, ¶ 45] Plaintiff further alleges on November 14, 2014, at approximately 1:05 a.m., "Officers Carney and Fisher…..made direct contact and observed the actions of Christina [and] placed Christina in hand restraints connected to the bars of her cell without resistance. Christina was released from the handcuffs approximately 40 minutes later." [Doc. 1, ¶

45] Plaintiff then alleges at approximately 3:10 a.m., Officer Fisher placed Christina in hand restraints connected to the bars of the cell without resistance and released Christina approximately 40 minutes later. [Doc. 1, ¶ 47] As set forth below, Defendants Hallagin, Sellers, Carney and Fisher are entitled to summary judgment regarding the first, second, and third restraint incidents.

a. Defendant Hallagin

It is undisputed that Defendant Hallagin reported that Christina began banging and kicking the bars and bunk and requested assistance. However, Defendant Hallagin never left the booking area to enter the cell block area while Christina was being handcuffed, did not directly or indirectly participate in Christina being handcuffed, and was not present to witness Christina being handcuffed. (Fact No. 12)

To show a constitutional violation by Defendant Hallagin in his individual capacity under § 1983, Plaintiff "must establish [Defendant Hallagin] acted under color of state law and caused or contributed to the alleged violation." *Jenkins v. Wood*, 81 F.3d 988, 994 (10th Cir. 1996) (citing *Ruark v. Solano*, 928 F.2d 947, 950 (10th Cir. 1991), *overruled on other grounds*, *Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174, 2179-82, 135 L.Ed.2d 606 (1996)); *see also Snell v. Tunnell*, 920 F.2d 673, 700 (10th Cir.1990). In this regard, personal participation is essential to find liability. As such, in order to establish liability under § 1983 against Defendant Hallagin in his individual capacity for these restraint incidents, Plaintiff must demonstrate that Hallagin acted under color of state law and personally participated in the alleged constitutional violation(s). *See Bruner v Baker*, 506 F.3d 1021, 1026 (10th Cir. 2007); *Foote v. Spiegel*, 118 F.3d 1416, 1423 (10th Cir.

1997). Plaintiff fails to establish that Defendant Hallagin personally participated in *any* restraint incident or was even present, therefore, Hallagin is entitled to summary judgment on Plaintiff's excessive force claim.

b. Defendants Sellers, Carney, and Fisher

On November 13, 2014, at approximately 2:30 pm., Defendant Sellers was downstairs in the training room conducting training with newly hired jailers when he heard extremely loud banging coming from upstairs in the jail section. Sellers was called to the jail section, at which time he was told the individual banging might hurt herself and she is "banging pretty hard." Sellers made contact with Christina while she was in her cell and saw her standing up, facing the metal bunk bed, and banging on the center of the top bunk. Sellers asked Christina to calm down, explaining that she could hurt herself or damage property. Christina made comments such as "I'm the head bitch here. I run this show. Eff' you mother eff'ers." (Fact No. 14)

Sellers instructed Christina to sit on the floor with her back against the bars and after a few requests, Christina complied and sat down with her back against the bars. Sellers does not recall how Christina's hands were placed during the cuffing or who actually handcuffed her, but knows that he would have checked the cuffs to ensure they were not too tight because he does this as a matter of practice. Tahhahwah did not resist during the handcuffing. (Fact No. 15)

On November 14, 2014, both Defendants Carney and Fisher observed and heard Christina banging on the metal bunk in her jail cell. Carney observed Christina yelling, kicking and slamming her hands so hard on the metal bunk bed that the corner of the top

bunk lifted. Carney spoke with Christina and asked her to calm down and to stop banging. Christina would comply with Carney's instructions for a short amount of time and then begin banging again. Both Carney and Fisher assisted in handcuffing Christina to the bars of the jail cell to keep Christina from harming herself. The first handcuffing occurred at approximately 1:05 a.m. and Christina remained in handcuffs for 40 minutes. The second handcuffing occurred at approximately 3:10 a.m. and Christina was released 45 minutes later. (Fact No. 16)

Carney has had prior contact with Christina in the jail. During the prior contacts, Christina would also bang and kick the metal bed to the point where staff was concerned she would injure herself. On those occasions, Christina was handcuffed to the cell bars for her safety without issue and the security measure was effective in curtailing her behavior. (Fact No. 17) Sellers also had prior contact with Christina in the jail and on eight of the nine occasions he had contact with her, she would cause some type of disturbance causing her to be handcuffed. (Fact No. 18)

Applying the factors relevant to determine the "objective reasonableness" of the Defendants' actions with respect to the first, second, and third restraints, this Court should grant summary judgment to Defendants Sellers, Carney, and Fisher. The undisputed facts show that the relationship between the need for the use of force (restraining an unruly detainee who was banging on metal bunks and could have harmed herself) and the amount of force used (handcuffing, in a seated position for less than an hour) was appropriate given the circumstances facing the jailers. Furthermore, there is no allegation that Tahhahwah suffered any physical injury during the first three restraint

incidents – and she did not in fact suffer any physical injury. The Court should also consider that each of the jailers attempted to "temper or limit" the amount of force used (or the need to use any force at all) by first talking with Tahhahwah and asking her to stop her behavior, to which she responded with statements such as "Eff this. I'm the head bitch here. I run this show."

Any alleged injury claimed by Plaintiff in relation to the above-discussed restraint incidents is *de minimis*, at best. Furthermore, the Court should find that in deferring to the judgment of the jailers, their attempts to preserve internal order within the jail was a legitimate interest accomplished with an appropriate use of force. Defendants Sellers', Carney's, and Fisher's actions were objectively reasonable in light of the circumstances confronting them and they are thus entitled to summary judgment with respect to the first, second, and third restraints.

2. The Fourth Restraint

In her Complaint, Plaintiff alleges at approximately 7:25 a.m., on November 14, 2014, "Officers Sellers…..made direct contact and observed [Christina's] actions and placed her in hand restraints connected to the bars of the cell without resistance. Christina's hands were placed through the bars in an overhand manner and cuffed. When she was restrained, she was left to stand up even though Christina was obese and weighed in excess of 300 pounds. Shortly thereafter, Christina's hands began turning colors because she had turned around and slid down on the floor causing the restraints to tighten around her hands. Christina was released from the handcuffs and told to calm down and quit acting out." [Doc. 1, ¶ 48]

There is absolutely no evidence to support Plaintiff's allegation that Christina was left to stand up while handcuffed to the cell bars. The undisputed facts show that on the morning in question, Defendant Sellers was in the booking area when he heard Christina kicking and banging the bunk in her jail cell. Sellers went back to the cell area and observed Christina standing in the cell, facing the metal bunks, and hitting the bunks with her hands. At the time she was banging the bunk, Christina was yelling "Eff' this!" Sellers asked Christina to sit on the floor with her back against the bars. Christina complied, sat down and placed her hands over her shoulders, with her hands near her ears. Christina was then handcuffed using two pairs of handcuffs, one for each hand. Sellers asked Christina if she was comfortable and she replied "yes". Sellers checked the handcuffs to ensure they were not too tight. (Fact No. 19)

Approximately 40-50 minutes after Christina was handcuffed, Sellers was notified by a jail trustee that Christina had twisted her hands in the handcuffs and her hands were turning purple. Sellers immediately went to the cell area and released Christina from the handcuffs. Sellers noticed that Christina had moved her body away from the bars, causing the handcuffs to pinch her right hand and causing her right hand to turn purple. Christina was released from the handcuffs and Sellers rubbed Christina's hand to increase circulation and until her hand turned back to the normal color. (Fact No. 20)

At that time, Sellers spoke with Christina and told her "Christina, you cannot be doing this" to which Christina responded "I understand Mr. Sellers, but these other girls are just making me mad", explaining that the other detainees were making her mad by also kicking, banging, and hitting the bunks. It should be noted that any other detainee

that was banging on the metal bunks during the time Christina was a detainee at the jail was either instructed to stop banging and stopped banging or was handcuffed to the bars of her cell to prevent the detainee from harming herself. (Fact No. 21)

Applying the factors relevant to determine the "objective reasonableness" of the Defendant Seller's actions with respect to the fourth restratint, this Court should grant summary judgment to Defendant Sellers. The undisputed facts show that the relationship between the need for the use of force (restraining an unruly detainee who was banging on metal bunks and could have harmed herself) and the amount of force used (handcuffing, in a seated position for less than an hour) was appropriate given the circumstances facing Sellers.. Furthermore, it is undisputed that Sellers attempted to "temper or limit" the amount of force used (or the need to use any force at all) by first talking with Tahhahwah and asking her to stop her behavior .

The only physical injury that could be alleged is a handcuff pinching Tahhahwah's hand, to which Sellers immediately responded , removed the handcuffs, and massaged her hand. A Tenth Circuit court has held that a Plaintiff allegations that handcuffs caused "red marks and … mental anguish" did not constitute "some actual injury that is not de minimis." *Koch v. City of Del City*, 660 F.3d 1228, 1247 (10th Cir. 2011). *see also Cortez v. McCauley*, 478 F.3d 1108, 1129 (10th Cir. 2007) (citation omitted) (rejecting plaintiff's excessive force claim based on too-tight handcuffs because "[t]he only evidence in the record is his affidavit that the handcuffs left red marks that were visible for days afterward[ ]" and holding "[t]his is insufficient, as a matter of law, to support an excessive force claim if the use of handcuffs is otherwise justified"); *Martin v. City of*

Okla. City, —— F. Supp. 3d ——, 2016 WL 1529927, at *10 (W.D. Okla. 2016) (granting defendant summary judgment on plaintiff's excessive force claim relating to handcuffing because plaintiff's "evidence of only abrasions and a wrist sprain" did not establish more than a de minimis injury"). Furthermore, the Court should find that in deferring to the judgment of the jailer (Sellers) his attempt to preserve internal order within the jail was a legitimate interest accomplished with an appropriate use of force. Defendants Sellers' actions were objectively reasonable in light of the circumstances confronting him and he is thus entitled to summary judgment with respect to the fourth restratint.

3. The Fifth Restraint

In her Complaint, Plaintiff alleges at approximately 11:48 a.m., on November 14, 2014, Sellers….again placed Christina in hand restraints connected to the bars of the cell. On this occasion, Officers Sellers, Adamson, Quisenberry and McMillion placed Christina's hands through the bars of the cell in an overhead position without resistance." [Doc. 1, ¶ 49] Plaintiff further alleges "at approximately 1:04 p.m. – an hour and sixteen minutes later – another inmate/trustee alerted the jail staff that Christina was unresponsive." [Doc. 1, ¶ 50]

The undisputed facts establish that McMillion observed Tahhahwah hitting the metal bunk so hard that the upper bunk broke. McMillion attemped to calm Christina down by talking with her and Christina responded "I want out of here, I want to go home, I own you, I could have you fired" and statements to that effect. Sellers heard the banging and yelling from the booking area and called downstairs to the police department to request additional officers to standby while the jailers restrained Christina. (Fact No. 22)

Defendant Officers Adamson and Quisenberry arrived in the jail section. Adamson and Quisenberry followed Sellers to the cell block area, where Defendant McMillion stood, still talking to Tahhahwah. Christina again sat with her back to the cell bars and put her arms over her shoulders with her hands at about ear level. McMillion then placed two sets of handcuffs on Christina's hands and connected the handcuffs to the bars of the cell. (Fact No. 23)

Defendants Adamson and Quisenberry stood in the cellblock walkway while Christina was being handcuffed. Neither Adamson nor Quisenberry ever entered Christina's cell. At one point during the restraint, Defendant Quisenberry stands next to McMillion and lightly holds Christina's wrist while McMillion secures the handcuff to one of Christina's wrists and the cell bar. Christina was cooperative and non-combative during the restraint. Neither Adamson nor Quisenberry observed Christina to have any cuts or bleeding and she did not appear to be in any physical distress during the restraint. Adamson and Quisenberry were in the cell block area for a total of less than two minutes. (Fact No. 24)

Defendant Sellers felt that handcuffing Christina in this manner was the least restrictive position and that Christina was comfortable in this position. Defendant Sellers checked the handcuffs to ensure they were not too tight and told Defendant McMillion to double-check the handcuffs for tightness before leaving the cell block area. McMillion then double-checked the handcuffs for tightness. A jail trustee (Darla Tosta) was assigned to monitor the area. Darla Tosta had observed Christina banging hard on the metal bunk and making a loud noise with her hands prior to Christina being handcuffed as well. (Fact

No. 25)

While Christina was handcuffed in this position, Darla Tosta could see Christina directly or out of the corner of her eye at all times. Tosta had conversations with Christina while she was handcuffed in this position. Defendant McMillion went back into the cell block area three times while Christina was handcuffed. During those times McMillion observed Christina having a conversation with the trustee and was able to observe Christina still sitting with her back to the bars in the position in which she had been handcuffed. Christina did not appear to be in any physical distress during the times McMillion observed her and Christina did not tell McMillion the handcuffs were too tight or make any statements about being uncomfortable in the handcuffs.(Fact No. 26)

The trustee massaged Christina's hands while Christina was handcuffed. The trustee then noticed that Christina's hands turned blue, or dark purple, and Christina abruptly stopped talking. The trustee immediately notified the jailers. Upon notification, Seller's went to the cell block area and found that Christina had scooted her back away from the bars and was unresponsive. McMillion's last observation of Christina occurred approximately 20 minutes before the trustee notified the jailers that Christina had stopped talking and her hands turned blue. (Fact No. 27)

Once Sellers found Christina unresponsive, several jailers, including McMillion, went to the cell block area. Sellers attempted to find a pulse and could not find one and could not see Christina breathing. He then used an AED (Automated External Defibrillator) on Christina's chest and the device advised to start chest compressions. Sellers and the other jailer began chest compressions and notified fire and

ambulance personnel. Fire department personnel arrived within 6 minutes. After the ambulance arrives, Christina is transported to a local hospital. Christina died on November 17, 2014. (Fact Nos. 28) On November 17, 2014, the City of Lawton submitted a Jail Incident Report to OSDH regarding the incident. The City of Lawton has not been contacted about the incident by OSDH since the submission of the report. (Fact No. 29)

Applying these undisputed facts to the fifth restraint incident, the Court should find Defendants Sellers, McMillion, Adamson, and Quisenberry are entitled to summary judgment. Applying the factors relevant to determine the "objective reasonableness" of the Defendant Seller's actions with respect to the fifth restraint, this Court should grant summary judgment to Defendants. The undisputed facts show that the relationship between the need for the use of force (restraining an unruly detainee who was banging on metal bunks and could have harmed herself) and the amount of force used (handcuffing, in a seated position in the same manner as the previous restraints) was appropriate given the circumstances facing the jailers and officers. Furthermore, it is undisputed that both Sellers and McMillion attempted to "temper or limit" the amount of force used (or the need to use any force at all) by first talking with Tahhahwah and asking her to stop her behavior and checking the handcuffs to ensure they were not too tight.

Furthermore, the Court should find that in deferring to the judgment of the jailers, the jailers' attempts to remain patient in their efforts to present Christina from hurting herself and preserve internal order within the jail was a legitimate interest accomplished with an appropriate use of force.

4. Failure to Intervene

To the extent Plaintiff is alleging Defendants Hallagin, Adamson, and Quisenberry were present during the alleged use of excessive force and had a constitutional duty to intervene but failed to do so, that claim must also fail. The Tenth Circuit has held "a law enforcement official who fails to intervene to prevent another law enforcement official's use of excessive force may be liable under § 1983." *Mick v. Brewer*, 76 F.3d 1127, 1136 (10th Cir.1996). *See Mascorro v. Billings,* 656 F.3d 1198, 1204 n. 5 (10th Cir.2011) ("It is not necessary that a police officer actually participate in the use of excessive force in order to be held liable under section 1983. Rather, an officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance.").

Nothing in the Plaintiff's Complaint nor the undisputed material facts gives rise to any plausible claim that Defendants Hallagin, Adamson, or Quisenberry are liable under a theory of failure to intervene. Defendant Hallagin was never even present during any of the restraint incidents. (Fact No. 12) Both Defendants Adamson and Quisenberry were called to the jail section to observe the routine handcuffing of an unruly detainee. By all accounts, Christina was not in any physical distress while she was being handcuffed and she did not resist during the restraints. Adamson and Quisenberry were present for less than two minutes and left the jail section. Neither Defendant Adamson nor Quisenberry knew how long Christina would remain in the handcuffs, whether or not Christina had been handcuffed before, or whether Christina would be handcuffed again after they encountered her because they do not work in the jail section. (Fact Nos. 23,24) As such,

any claim of failure to intervene against these Defendants wholly fails.

5. Application of the Subjective Standard

As cited above, in *Kingsley v. Hendrickson*, the Supreme Court recently resolved a split among the Circuits when it held that the appropriate standard for a pretrial detainee's excessive force claim is solely an objective one. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473, 192 L. Ed. 2d 416 (2015). Prior to Kingsley, some Circuits applied both a subjective and objective standard. However, because the *Kingsley* decision was not rendered until 2015, *after* the events that gave rise to the case at bar, this Court should also conduct a subjective inquiry into the officer's and jailer's states of mind in determining whether or not the force they used was excessive and in violation of Tahhahwah's constitutional rights.

In applying the subjective standard, *i.e.*, that the plaintiff must prove that the use of force was not "applied in a good-faith effort to maintain or restore discipline" but, rather, was applied "maliciously and sadistically to cause harm, the Court should find that Defendants are entitled to summary judgment. *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475, 192 L. Ed. 2d 416 (2015). The undisputed evidence in this case shows that the intentions of the jailers was to apply the handcuffs to Tahhahwah in an effort to prevent harm to Christina and to maintain and restore discipline and there is absolutely no evidence that their measures were applied maliciously and sadistically to cause her any harm.

The evidence shows that the jailers first asked Tahhahwah to calm down before applying the handcuffs; the evidence shows that Sellers asked Tahhahwah if she was comfortable when being restrained and she replied "yes"; the evidence shows that both Sellers and McMillion double checked the handcuffs to make sure they were not too tight; the evidence shows that when Tahhahwah's hand was pinched in the handcuff, Sellers immediately responded, released Tahhwahwah's hands and massaged her hands; and finally, the evidence shows that Defendant McMillion checked the cell block area 3 times while Tahhahwah was restrained to ensure that she was not uncomfortable or in distress. As such, in applying a subjective analysis to Plaintiff's use of force claims, the Court should find that Defendants are entitled to summary judgment.

PROPOSITION II
DEFENDANTS WERE NOT DELIBERATELY INDIFFERENT TO TAHHAHWAH'S MEDICAL OR PSYCHOLOGICAL NEEDS

In her second cause of action, Plaintiff asserts a 42 U.S.C. § 1983 claim against Defendants Adamson, Hallagin, Sellers, Carney, Fisher, Quisenberry, and McMillion for an alleged failure to provide medical and psychological care. The Eighth Amendment requires prison officials to provide humane conditions of confinement, including access to the basic necessities of health care. *See Farmer v. Brennan,* 511 U.S. 825, 832 (1994); *Estelle v. Gamble,* 429 U.S. 97, 103 (1976). Although the Eighth Amendment's protections do not directly apply to pretrial detainees, *see Bell v. Wolfish,* 441 U.S. 520, 535 n. 16, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979), under the Fourteenth Amendment, pretrial detainees are "'entitled to the degree of protection against denial of medical

attention which applies to convicted inmates' under the Eighth Amendment," *Martinez*, 563 F.3d at 1088

Claims of delayed medical treatment do not fall under the Fourth Amendment. Strictly speaking, claims regarding the delay of medical care for arrestees and pretrial detainees likewise are not covered under the Eighth Amendment. *See City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). Instead, the Eighth Amendment's standard of deliberate indifference to a prisoner's medical needs applies to pretrial detainees, and even arrestees, under the Fourteenth Amendment's Due Process protections. *Estrada v. Cook*, 166 F. Supp. 3d 1230, 1244 (D.N.M. 2015)

The United States Supreme Court has made clear that "deliberate indifference to serious medical needs of prisoners" may amount to a violation of the Eighth Amendment and state a cause of action under 42 U.S.C. § 1983. *See Estelle*, 429 U.S. at 104. However, mere negligence – even gross negligence – is insufficient to support a claim of deliberate indifference under § 1983. *Berry v. City of Muskogee, Oklahoma*, 900 F.2d 1489, 1495 (10th Cir. 1990). "It is obduracy and wantonness, not inadvertence or error in good faith," that violate the Constitution with regard to the "supplying of medical needs..." *Whitley v. Albers*, 475 U.S. 312, 319 (1986). A § 1983 claim alleging inadequate or delayed medical care involves "both an objective and subjective component, such that [the Court] must determine both whether the deprivation is

sufficiently serious and whether the government official acted with a sufficiently culpable state of mind." *Oxendine v. R.G. Kaplan, M.D.*, 241 F.3d 1272, 1276 (10th Cir. 2001).

As to the objective component, a medical need is considered sufficiently serious if a physician has diagnosed the condition and mandated treatment, or the condition is so obvious that even a lay person would easily recognize the medical necessity for a doctor's attention. *Oxendine*, 241 F.3d at 1276. A plaintiff must further demonstrate that the defendant's failure to timely meet that objective medical need caused him to suffer substantial harm. *Id*. at 1276-77. As to the subjective prong of this test, the Eight Amendment prohibits only cruel and unusual punishment; therefore, the prison official must have a sufficiently culpable state of mind to violate the constitutional standard." *Tafoya v. Salazar*, 516 F.3d 912, 916 (10th Cir. 2008); *see also Mata v. Saiz*, 427 F.3d 745, 751 (10th Cir. 2005) ("The subjective prong of the deliberate indifference test requires the plaintiff to present evidence of the prison official's state of mind."). The subjective component is met if "a prison official 'knows of and disregards an excessive risk to inmate health or safety.' " *Sealock*, 218 F.3d at 120 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

In order to act with subjective deliberate indifference, a prison official must (1) "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," (2) actually "draw the inference," and (3) "fail to take reasonable steps to alleviate that risk." *Tafoya*, 516 F.3d at 916. "An official's failure to alleviate a significant risk of which he was unaware, no matter how obvious the risk or how gross

his negligence in failing to perceive it, is not an infliction of punishment and therefore not a constitutional violation." *Id.*

"Although deliberate indifference is a subjective inquiry, a jury is permitted to infer that a prison official had actual knowledge of the constitutionally infirm condition based solely on circumstantial evidence, such as the obviousness of the condition." *Id.* "In response, the defendant may present evidence to show that he was in fact unaware of the risk, in spite of the obviousness." *Id.*; *see also Mata*, 427 F.3d at 7752 (stating that, at summary judgment stage, the plaintiff was "required to provide evidence *supporting an inference* that defendants knew about and disregarded a substantial risk of harm to her health and safety") (emphasis added).

Here, Plaintiff cannot meet the subjective prong of the deliberate indifference test with regard to any Defendant. Plaintiff cannot demonstrate that any Defendant was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, actually drew the inference, and then failed to take reasonable steps to alleviate that risk. (*See Tafoya*)

1. Defendant Adamson

Of the Defendants included in this Motion, Defendant Adamson is the only Defendant that had contact with Christina prior to her detention in the jail. Therefore, an analysis of Adamson's contact with Christina during the "check welfare" call and while Christina was in the jail is appropriate. First, it should be noted that in asserting her § 1983 civil rights claim for failure to provide medical and psychological care, Plaintiff's Complaint specifically states "at the time of the actions described herein, the rights of

Christina Dawn Tahhahwah were codified, established, and sufficiently clear that every reasonable officer would have understood that the failure to provide medical care and attention to the serious medical needs of an *arrestee* violated her Constitutional Rights." [Doc. 1, ¶ 63] (emphasis added)

It is undisputed that Tahhahwah was *not* an arrestee during her first interaction with Defendant Adamson. Plaintiff will be unable to establish that in the context of the check welfare call, Adamson had some affirmative duty to summon or provide medical care for Tahhahwah and failure to do so would have amounted to a violation of Tahhahwah's constitutional rights. More importantly, even if Plaintiff were to establish that a constitutional right to medical care existed in that context, Plaintiff's claim fails because Adamson did in fact advise dispatch to send an ambulance to the residence and Tahhahwah was taken to the hospital. (Fact No. 5)

Adamson's second contact with Tahhahwah was when Adamson was called to the jail section to observe the restraint of an unruly detainee. This contact occurred over 24 hours after Adamson's first contact with Tahhahwah and Adamson had no knowledge of any circumstances surrounding Tahahhwah's arrest, no knowledge of any of Tahhahwah's behavior while she was a pretrial detainee at the jail or any other incidents involving Tahhahwah being restrained while at the jail. (Fact No. 24) When Adamson came into contact with Tahhahwah in the jail, Tahhahwah was non-resistant, did not have any cuts or bruises, and did not appear to be in any physical distress. There is no evidence to suggest that Adamson (in the less than two minutes she was in contact with

Tahhahwah in the jail) was "aware of facts from which the inference could be drawn that a substantial risk of serious harm" existed.

In fact, because Adamson was specifically aware that Tahhahwah had been sent to the hospital within the last 24 hours, it would have been reasonable for Adamson to assume that whatever physical or mental ailments Tahhahwah suffered from had been sufficiently addressed during the hospital visit. Plaintiff will be unable to show that Defendant Adamson was aware of and disregarded a substantial risk of serious harm to Tahhahwah and Adamson is entitled to summary judgment on this claim.

2. Defendant Quisenberry

Defendant Quisenberry was called to the jail section to observe the restraint of an unruly detainee. He was in the jail section and able to observe Tahhahwah for less than two minutes while she was being handcuffed. (Fact No. 23,24) There is no evidence to suggest that once Quisenberry entered the jail section, he was informed of any information regarding Tahhahwah other than that she was being unruly (by banging on the bunks). There is no evidence to suggest that during the less than two minutes Quisenberry was present during Tahhahwah's restraint that Tahhahwah exhibited any behaviors or made any statements that would have alerted him that a "substantial risk of serious harm" existed. In fact, Tahhahwah was compliant, non-resistant, and Quisenberry did not observe any factors that would cause him to believe Tahhahwah was in physical or mental distress or otherwise required medical treatment. (Fact No. 24)

Plaintiff will be unable to show that Quisenberry was aware of any facts from which the inference could be drawn that a substantial risk of serious harm existed, that he

actually drew that inference, or that he failed to take reasonable steps to alleviate said risk as required to establish that Quisenberry acted with subjective deliberate indifference to Tahhahwah's medical or psychological needs. Therefore, Defendant Quisenberry is entitled to summary judgment.

3. Defendants Sellers, McMillion, Fisher, and Carney

Plaintiff will also be unable to show that Defendants Sellers, McMillion, Fisher, and Carney acted with subjective deliberate indifference to Tahhahwah's medical or psychological needs. Unlike the objective component, the symptoms displayed by the prisoner are relevant to the subjective component of deliberate indifference. The question is: "were the symptoms such that a prison employee knew the risk to the prisoner and chose (recklessly) to disregard it?" *Martinez v. Beggs*, 563 F.3d 1082, 1089 (10th Cir. 2009)

Plaintiff, in an effort to establish that Defendants were aware of and disregarded Tahhahwah's alleged psychological needs, points out that Tahhahwah made multiple calls to dispatch prior to her arrival at jail. However, Plaintiff cannot establish that Defendants Sellers, McMillion, Fisher, and Carney were aware of said calls. Furthermore, the facts show that Tahhahwah was banging and kicking the metal bunk in her jail cell on a number of occasions during her 24 hours in the Lawton City Jail. When confronted by jail staff, Christina made statements such as "I'm the head bitch here. I run this show. Eff' you mother eff'ers. I want to go home. I own you. I could have you fired." These statements do not indicate that Tahhahwah was in the "midst of a psychotic episode" as Plaintiff suggests, rather, they indicated to the jailers that Tahhahwah was

aware of and able to control her behavior and was banging the bunks in an effort to show the jailers that she was "running the show". In fact, at one point when Sellers told Christina to stop banging the bunks, she replied "I understand Mr. Sellers, but these other girls are just making me mad." (Fact Nos. 14,19,21) Again, indicating to the Defendants that Christina was aware of and able to control of her behavior.

Both Defendants Sellers and Carney were aware that Tahhahwah had been in the City Jail on prior occasions. On those prior occasions, Tahahhwah would also "act out" by yelling, banging, or kicking on the bunks. On those prior occasions, Tahhahwah was restrained by being handcuffed without incident and this measure curtailed her behavior. (Fact Nos. 17,18) Defendants had no reason to believe that this circumstance was any different.

Tahhahwah was found unresponsive while handcuffed at approximately 11:48 a.m. on November 14, 2014. Defendants Hallagin, Adamson, Quisenberry, Fisher, and Carney were not present when this occurred nor were they present when Tahhahwah was handcuffed at 7:25 a.m. that same day. During the 7:25 a.m. restraint (the fourth restraint), Defendant Sellers released the handcuffs from Christina's hands when he was notified that one of her hands was turning purple. The undisputed facts show that Sellers found Christina's hand pinched in the handcuff and was able to massage it to have it return to a "normal color" shortly thereafter. (Fact No. 20)

To the extent Plaintiff is alleging that Defendants were deliberately indifferent to Christina's medical needs relating to any risk posed by the manner in which she was handcuffed, this claim must also fail. First, Sellers immediately addressed the pinching

caused by the handcuffs tightening on Tahhahwah's wrist after she moved her back away from the bars while handcuffed. Second, although Tahhahwah was handcuffed again in the same position on the fifth restraint incident, the evidence shows that Defendant Sellers and McMillion checked the handcuffs to ensure they were not too tight and Defendant McMillion checked the cell area while Tahhahwah was restrained 3 times and observed Tahhahwah in the same position in which she had been handcuffed and in no distress. The third check was approximately 20 minutes before Tahhahwah was found unresponsive. Defendant can find no case suggesting that unruly pretrial detainees should never be restrained by handcuffs because they have a mental illness – as Plaintiff would like the case to be.

Finally, Defendants maintain that Plaintiff will be unable to show that the manner of handcuffing caused Christina's death. As set forth in Defendants' Daubert Motion to exclude Plaintiff's expert testimony [Doc.94] which is incorporated herein by reference, Plaintiff's expert opinion is based on facts that do not exist regarding the positioning of Christina's body.

To the extent Plaintiff is alleging that Defendants Adamson, Sellers, Quisenberry, Adamson, Carney and McMillion failed to provide psychological care, that claim must also fail. First, none of these Defendants booked Christina into the jail or had any reason to believe that Defendant Hallagin had not obtained Christina's medical information upon booking (as discussed below). Second, although Plaintiff now alleges that Christina was in the "midst of a psychotic episode" – there is no evidence to suggest that Christina was in fact in the "midst of a psychotic episode" or that Defendants were aware of and

ignored the same. The evidence is that Christina was banging hard on a metal bunk on several occasions and indicated to Sellers that she knew she needed to stop but did not stop because the "other girls were making her mad." The evidence also shows that Christina would make statements such as "Eff' you" and "I run this" while banging – which would have reasonably led the Defendants that witnessed the behavior to believe that she was in control of her actions.

None of the Defendants[1] were aware that Tahhahwah was treated and released from Comanche County Memorial Hospital on two occasions immediately prior to Tahhahwah being booked into the jail. However, it is important for the Court to note that although the medical professionals were aware of Tahhahwah's bipolar disease and on one visit noted that she presented in a "fairly manic state" – there is no record indicating that her "fairly manic state" was alarming enough to cause medical professionals to have Tahhahwah sent from the hospital to a mental health facility for treatment. (Fact Nos. 6,7,9) Therefore, it cannot be said that jailers should have immediately sent Tahhawah to a mental health facility when medical professionals had not done so the day before.

For the reasons set forth above, all Defendants are entitled to summary judgment on Plaintiff's claim that Defendants denied Christina psychological and medical care in violation of her constitutional rights.

[1] It should be noted that Adamson was aware that Tahhahwah was taken to the hospital the night before by ambulance, however, the reason the ambulance was called was because Tahhahwah stated that she had "e.coli" in her kidneys, and not for any psychological reason to Adamson's knowledge.

4. Defendant Hallagin

Plaintiff's Complaint alleges Defendant Hallagin "booked Christina into the City of Lawton jail facility. Officer Hallagin knew that Christina suffered from bipolar disorder and/or was in the midst of a psychotic episode because of his conversations with the other officers and because it was obvious to the untrained eye, but he did not perform a medical or mental health screening of Christina….before housing her in the jail facility." [Doc. 1, ¶44] Plaintiff's Complaint further alleges that Hallagin's actions were in violation of the Oklahoma State Department of Health Standards for Jail Facilities…and according to the standards…Christina was required to be transported to the supporting medical facility as soon as possible." [Doc. 1, ¶44]

The undisputed material facts show Jailer Daniel Hallagin was working the booking desk when Tahhahwah was booked. During the booking process, Hallagin did not ask Tahhahwah any questions about her medical or mental health history, as required by Lawton City Jail Policy and Procedures. Hallagin was unable to complete the booking process because he felt that Tahhahwah was not responding to the questions he asked. Hallagin sent Tahhahwah to her cell and planned to complete her booking process at a later time or allow someone else to complete the booking. Hallagin finished his shift at 3:00p.m., without ensuring that the intake process was complete. Hallagin had no further contact with Tahhahwah after he completed his shift. Hallagin was later disciplined by the City of Lawton for his failure to complete the booking process. (Fact Nos. 11,12)

The Tenth Circuit has held that prison officials can be found deliberately indifferent when they fail to perform "gatekeeping" roles, thereby preventing serious

medical needs from being met. *Sealock v. Colorado,* 218 F.3d 1205, 1211 (10th Cir. 2000) As cited above, in order to act with subjective deliberate indifference, a prison official must (1) "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," (2) actually "draw the inference," and (3) "fail to take reasonable steps to alleviate that risk." *Tafoya,* 516 F.3d at 916. "An official's failure to alleviate a significant risk of which he was unaware, no matter how obvious the risk or how gross his negligence in failing to perceive it, is not an infliction of punishment and therefore not a constitutional violation." *Id.*

First, it cannot be said that Hallagin was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed regarding Tahhahwah and actually drew the inference. Hallagin worked at the jail on prior occasions when Tahhahwah was in the jail. He did not recall whether or not he knew Tahhahwah had a diagnosed mental illness when he booked her in on November 13, 2014. Hallagin did not believe that Tahhahwah was delusional. (Fact No. 13)

The subjective component requires the prison official to disregard the risk of harm claimed by the prisoner. *Martinez v. Beggs*, 563 F.3d 1082, 1089–90 (10th Cir. 2009) In the Tenth Circuit Court's decision in *Estate of Hocker v. Walsh,* 22 F.3d 995 (10th Cir.1994), a detainee was placed in a detention center while intoxicated and at times incoherent or "would not wake up." *Hocker,* 22 F.3d at 997. Two days later, she was discovered dead in her cell, having hung herself from the upper bunk. *Id.* Plaintiffs argued that the detention center's policy of admitting intoxicated and unconscious individuals showed deliberate indifference, but that argument was "flawed." *Id.* at 998.

Instead, the court concluded that the plaintiffs were required to show that defendants were deliberately indifferent to the *specific risk* of suicide, and not merely to the risk of intoxication. *Id.* at 1000.

In the case at bar, Plaintiff must show that Hallagin subjectively disregarded the risk of Tahhahwah's claimed harm – which was her death, and not merely the risks of not providing medication for her bipolar disorder or sending her to a psychiatric facility for evaluation. The facts simply do not support such a conclusion. The Plaintiff will be unable to show that Hallagin was aware of facts from which the inference could be drawn that Tahhahwah would be found unresponsive in her jail cell almost 23 hours after he came into contact with her, regardless of Plaintiff's theory of how Tahhahwah died. The facts do not show that she died from lack of medication for her bipolar disease (nor do the facts show that she even had medication for her bipolar disease as evidenced by the fact that she was given a prescription upon leaving the hospital that no one in her family bothered to fill). As such, Defendant Hallagin is entitled to summary judgment.

PROPOSITION III
DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY

Plaintiff has failed to establish Defendants violated Christina Tahhahwah's constitutional rights. Therefore, Defendants are entitled to qualified immunity. In order to establish liability under § 1983, Plaintiff must prove that: 1) a person; 2) was subjected or caused one to be subjected to the deprivation of a federal statutory or constitutional right; 3) by someone acting "under the color of law." 42 U.S.C.A. §1983. It is essential to prove the deprivation of a constitutional right. The following discussion will establish that no

constitutional violations have occurred in the present case, and Defendants are entitled to qualified immunity.

In civil rights actions seeking damages from governmental officials, "courts recognize the affirmative defense of qualified immunity, which protects 'all but the plainly incompetent or those who knowingly violate the law.' *Gross v. Pirtle*, 245 F.3d 1151, 1155 (10th Cir. 2001). Qualified immunity protects public officials from individual liability in Section 1983 claims and is "an entitlement not to stand trial or face the other burdens of litigation." *Saucier v. Katz*, 533 U.S. 194, 200 (2001). The privilege is immunity from suit, and not simply a defense to liability. Accordingly, qualified immunity is effectively lost if a case is erroneously permitted to go to trial.

The threshold inquiry in considering qualified immunity is whether the officer violated a constitutional right. *Saucier*, 533 U.S. 194. If no constitutional rights are determined violated, then there is no need for further inquiries. *Id.* If a violation is identified, then it must be determined that the constitutional right was clearly established. *Id.* The rights must be clearly established to provide defendants with "fair warning" that their conduct is unconstitutional. *Mimics, Inc. v. Villiage of Angel Fire*, 394 F.3d 842 (10th Cir. 2005). Generally, there must be a Supreme Court or Tenth Circuit decision on point, or a clearly established weight of authority from other courts for the law to be clearly established. *Medina v. City and County of Denver*, 960 F.2d 1493, 1498 (10th Cir. 1992). Thus, plaintiff "must demonstrate a substantial correspondence between the conduct in question and prior law allegedly establishing that the defendant's actions were

clearly prohibited." *Medina*, 960 F.2d at 1497 [quoting *Hilliard v. City and County of Denver*, 930 F.2d 1516, 1518 (10th Cir. 1991)].

However, when a plaintiff's claim contains a subjective element, such as the defendant's purpose, motive or intent, the qualified immunity procedure must be modified slightly to include a subjective component. *Bruning v. Pixler*, 949 F.2d 352 (10th Cir. 1991). The subjective component of the qualified immunity analysis focuses on the '**good faith' of the official, and relieves him from liability if he did not actually know his conduct was unconstitutional, and did not act with malicious intent**. *Bruning*, 949 F.2d 352. (Emphasis added). When a defendant moves for summary judgment asserting he is qualifiedly immune, and his state of mind is an element of the plaintiff's claim, he must do more than merely raise the immunity defense; he "must make a *prima facia* showing of the 'objective reasonableness' of the challenged conduct." *Lewis v. City of Ft. Collins*, 903 F.2d 752, 755 (10th Cir. 1990). If the defendant makes this prima facie showing, the ***plaintiff*** must then produce specific evidence of the defendant's culpable state of mind to survive summary judgment. *Bruning*, Citing, *Pueblo v. Neighborhood Health Centers*, 847 F.2d at 649 (10th Cir. 1988). Here, there is no direct evidence in the record suggesting that the use of force applied by Defendants was done maliciously and sadistically. Thus, Defendants should prevail considering no constitutional violations occurred and no further inquiry is necessary.

Furthermore, in the context of qualified immunity, the next hurdle that Plaintiff must overcome is to show that the rights she alleges were violated are clearly established.

Herrera, 589 F.3d at 1070. To meet the burden to show that a right is clearly established, a plaintiff need not find a controlling decision declaring "the very act in question" to be unlawful, *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed. 2d 523(1987); rather, it is necessary only that "[t]he contours of the right…be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id*.

First, as shown above, Plaintiff has failed to show that any Defendant violated Tahhhwah's constitutional rights. Second, even if the Court finds that one or more of the Defendants violated Tahhahwah's constitutional rights, it must then be determined that the constitutional right was clearly established. Defendant can find no case suggesting that handcuffing a mentally ill detainee in the manner in which Tahhahwah was handcuffed was clearly prohibited and amounted to a constitutional violation. Likewise, it cannot be said that it would have been clear to the Defendants that doing so would violate any constitutional right. Defendant can find no case suggesting that a detainee who has bipolar disorder must receive an immediate referral to a mental health facility as Plaintiff suggests. In fact, in *Arrignton-Bey v. City of Bedford Heights, Ohio*, 858 F.3d 988, 993-994 (6th Cir. 2017), a Sixth Circuit Court held that even if corrections officers had reason to know that a detainee was bipolar, and even if bipolar disorder constitutes a serious medical condition, no case alerts the officers that mental instability of this sort required immediate medical attention. Likewise, it cannot be said that it would have been clear to Defendant jailers that not immediately referring Tahhahwah to a mental health facility

would violate any constitutional right. Defendant can find no case suggesting that jailers who encounter a detainee who suffers from bipolar disorder and who do not observe any symptoms that would lead the jailers to believe the detainee requires immediate medical attention, are required to immediately send the detainee to a medical facility for psychiatric treatment. For the reasons set forth above, Defendants are entitled to qualified immunity.

CONCLUSION

For the reasons set forth above, Defendants Adamson, Quisenberry, Hallagin, Sellers, Fisher, and Carney are entitled to summary judgment and/or qualified immunity regarding all of Plaintiff's claims against them.

Respectfully submitted this 30th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 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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