UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

DANIEL C. BENNETT,

Plaintiff,

v. **Case No. 5:23cv189-TKW-MJF**

BAY COUNTY SHERIFF TOMMY FORD, et al.,

Defendants.
_____/

ORDER GRANTING SUMMARY JUDGMENT

This case is before the Court based on Defendants' motions for summary judgment (Docs. 65, 66). Upon due consideration of the motions, Plaintiff's responses in opposition (Docs. 89, 90), Defendants' replies (Docs. 103, 104), and the evidence submitted by the parties (attachments to Docs. 64, 68, 88, 94, 101), the Court finds that the motions are due to be granted.

I. Facts

In or around April 2020, Plaintiff moved from Hawaii to his grandparents' house in Panama City, Florida to help them repair the hurricane damage to the house and prepare it for sale. After a few weeks in Florida, Plaintiff's family started to notice that he was acting strange – for example, Plaintiff's brother observed Plaintiff

wandering half naked in the grandparents' yard, talking incoherently to himself, hearing voices through the radio, and staring at walls in the house.

On July 10, after observing more of these strange behaviors, Plaintiff's family called the Panama City Police Department to Baker Act[1] Plaintiff. When the police arrived at the grandparents' house, Plaintiff left the house, jumped into a nearby bay, and swam away. Plaintiff eventually returned to the house the following morning.

That day (July 11), Plaintiff's grandfather again called the police out of concern for Plaintiff. When the police arrived, they arrested Plaintiff for allegedly pushing his grandmother. Plaintiff was taken to Bay County Jail where a preliminary medical assessment was completed along with an initial risk assessment, mental health screening, and intake victimization screening.

During the booking process, Plaintiff did not report that he suffered from any prior medical conditions or that he was on any medications. However, based on Plaintiff's confused and manic behavior during the booking process, jail staff determined that he should be placed on Behavioral Observation – a designation for inmates who have not exhibited any suicidal behavior or made any suicidal statements but are deemed unable to cope with general population.

[1] Ch. 394, pt. I, Fla. Stat. (providing for the involuntary commitment of persons who pose a danger to themselves or others).

There were no reported incidents of self-harming behavior by Plaintiff between July 11 and July 16, but Plaintiff was kept on Behavioral Observation. Defendant Shanderico Gray, a mental health counselor, was a member of the committee that determined on July 15 that Plaintiff should remain in Behavioral Observation.

On Friday, July 17, 2020, Plaintiff was found with a plastic bag over his head and a shirt tied around his neck and he was flooding his cell. A correctional officer ordered Plaintiff to remove the bag from his head. Plaintiff did not comply, so the officer administered one application of pepper spray. The officer ordered Plaintiff to get on the ground and Plaintiff again did not comply, so the officer administered another application of pepper spray. At this point Plaintiff became compliant and the officer was able to enter the cell and remove the bag from Plaintiff's head.

Based on this incident, the jail's senior licensed mental health counselor, Defendant Jack Howell, instructed jail staff to place Plaintiff on suicide precautions until he could conduct a pre-segregation assessment of him. Nurse Christine Pena completed the jail's Suicide Precaution Request Form for Plaintiff to be placed on Suicide Precautions Level One (SP-1) – the highest and most restrictive level of suicide precautions. Nurse Pena attempted to conduct a Pre-Segregation Health Evaluation of Plaintiff, but he refused to participate.

Later that day Howell conducted a mental health assessment of Plaintiff. He noted that Plaintiff's speech was rapid and rambling and that he could not be redirected. Howell also noted Plaintiff exhibited psychomotor agitation, which is a state of appearing visually mentally agitated.

During the assessment, Howell offered Plaintiff counseling, but Plaintiff did not consent to counseling. At the end of the assessment, Howell noted Plaintiff was to stay on SP-1 and receive "daily" mental health assessments. Plaintiff was kept in restraints until he was provided with a suicide blanket and mat.

Jail policy for SP-1 mandates "direct supervision 24 hours each day" and states that "Detention Officers will conduct 15-minute security checks using the Wand System." A Detention Officer was always present inside the dorm to conduct the 15-minute security checks, and a Detention Specialist was stationed just outside the dorm monitoring a bank of cameras.

Jail policy also required that, "[a] Mental Health Professional shall assess the inmate on Suicide Precaution Status at least once per working day (Monday-Friday), or more often as needed." While on SP-1, inmates are only allowed to have a safety garment, safety blanket, and, when needed, a safety toothbrush, individual packaged toothpaste, toilet tissue, and a flexible spork.

Over the weekend (July 18 and 19), Plaintiff was observed in his cell picking paint chips off the walls, yelling and hitting the window, removing a lightbulb, talking to himself, and smearing feces on the cell door window.

Plaintiff was under direction supervision by jail security staff while on suicide precautions, but no mental health professional assessed or observed Plaintiff because "daily" mental health assessments only occurred Monday through Friday.

Around 1:23 a.m. on Monday, July 20, Plaintiff was removed from his cell and taken to the shower so the feces could be cleaned from Plaintiff and the cell. When Plaintiff was returned to his cell, he started yelling profanities, banging on the food flap, and crying out for "animal crackers" he claimed had been taken from him.

Later that day, Gray conducted the "daily" mental health assessment of Plaintiff ordered by Howell. Gray was not assigned to the unit where Plaintiff was housed, and she was only tasked with conducting the assessment because Howell was unexpectantly out for the day because of a death in his family.

Gray explained that when she saw Plaintiff, he acknowledged her when she called his name, gave a thumbs up for the answers to her questions, and appeared to understand everything she asked. Gray explained that Howell told her not to expect verbal responses from Plaintiff because he was not familiar with her.

Gray completed a form after her assessment of Plaintiff. She initially wrote the date of "7/21/20" on the form, but she later changed the date to "7/20/20." She

claimed that the date change was merely to correct scrivener's error, but it is undisputed that the manner in which she changed the date on the assessment violated standard medical recordkeeping practices because she simply wrote over the incorrect date instead of drawing a line through the mistake, initialing it, and dating the correction.

Gray's assessment notes a drastic improvement in Plaintiff's mental health condition. The defense experts testified that Gray's recorded observations of Plaintiff's improvements were plausible, but one of Plaintiff's experts, Janice Griffin opined that the sudden improvement reported by Gray was "not likely at all" because "there would be no reason for [Plaintiff] to get better all of a sudden and be doing well." Ms. Griffin did not, however, testify that the drastic improvement recorded by Gray was impossible.

On July 21, between 2:00 a.m. and 4:30 a.m., while still on SP-1, Plaintiff was observed picking at his light, peeling paint off the wall, sticking his head inside his toilet and attempting to flush it, doing handstands, and banging his head on the door. However, around 4:30am, Detention Officer Jason Smith conducted a security check by looking into Plaintiff's cell and saw he was doing fine.

Between 4:30 a.m. and 4:39 a.m. the guards were not consistently monitoring the video feeds of the SP-1 cells. During that period, Plaintiff removed his eyeballs from their sockets—which is an action called self-enucleation.

At 4:39 a.m., Detention Specialist Malcolm Beal conducted his "camera checks" and observed Plaintiff lying on the floor of his cell. Beal radioed Smith to check on Plaintiff.

Detention Officer Aaron Hester heard the radio call, checked the cameras, and observed Plaintiff lying on his back with blood on his face and his left eyeball protruding from its socket. Hester instructed Beal to call a Code Purple, the indication for a self-harm attempt, and then went with Nurse Pena and Smith to Plaintiff's cell.

When Nurse Pena arrived and saw Plaintiff with both of his eyeballs out of the socket – one fully detached and the other still attached by a ligament – she instructed the officers to call EMS. While waiting for EMS, jail staff administered emergency assistance. When Hester entered Plaintiff's cell, Plaintiff asked if he "did a good job" and if he should do it again. When EMS arrived, they took Plaintiff to Bay Medical Center for treatment.

Plaintiff was returned to the jail on July 23. The criminal charges against him were dismissed the following day.

Before Plaintiff was released from the jail, Howell completed a form initiating an involuntary examination of Plaintiff under the Baker Act. Prior to Plaintiff's charges being dismissed, the Baker Act was not an available option.

Plaintiff was thereafter released from the jail and transferred to the hospital pursuant to a court order. Plaintiff remained in the hospital under the Baker Act until August 31, 2020.

Plaintiff suffered serious injuries as a result of his self-enucleation, including blindness.

There had never been any prior instances of self-enucleation at the jail, but there were suicides at the jail in 2004, 2008, 2009, and 2018, self-mutilation in 2013 and a suicide attempt in 2019. The 2004 and 2008 suicides occurred before Sheriff Ford took over the jail, and the 2009, 2013, 2018, and 2019 incidents occurred before the jail adopted a new suicide precaution policy in response to an audit conducted by the Florida Model Jail Standards Inspection Team.

The jail's suicide precaution policy is in compliance with the Florida Model Jail Standards. However, the "direct supervision" component of the policy differs from the National Commission on Correctional Health Care (NCCHC) standards in that the jail's policy allows the supervision to occur by constant observation of video camera feeds from the inmate's cell rather than constant *in-person* supervision of the inmate.

Gray received a negative performance evaluation on September 1, 2020, a little over a month after the incident involving Plaintiff. Her performance issues were related to "attendance, punctuality, and proper methods of notifying

supervisors when not able to work her scheduled shift," but she was also verbally counseled on the importance of having up-to-date documentation of her assessments and including documentation in the charts. Gray resigned from her position with the jail several months later.

Plaintiff presented three expert witnesses—Dr. Michael Conrad, Dr. Robert Marcello, and Janice Griffin—who were all critical of the mental health care that Plaintiff received at the jail. They opined that Plaintiff would not have suffered the injuries that he did if he had received adequate mental health care, but they also conceded that self-enucleation is exceedingly rare and virtually impossible to predict.

Dr. Conrad opined that Plaintiff should have been elevated to a higher level of mental health care including "psychiatric referral or referral out of the jail to a medical mental health care facility." He also testified that failure to evaluate Plaintiff over the weekend violated the applicable standard of care.

Dr. Marcello opined that Plaintiff should have been assessed over the weekend and that his level of care should have been elevated by referral to the medical department, initiating a Baker Act proceeding, or referral to an outside facility. He also testified that Gray's report was either inadequate or was not conducted at all based on the difference between her report and the reports of Plaintiff's behavior prior to her report. Finally, he opined that the jail's suicide

precaution policy did not meet the standard of care because it did not require constant in-person supervision or 15-minute checks at staggered intervals as contemplated by the NCCHC standards.

Ms. Griffin opined that based on Plaintiff's prior presentations, Gray's report was "highly suspect" and should "at least be questioned." She also opined that failing to evaluate Plaintiff over the weekend violated the standard of care and that Plaintiff's level of care should have been elevated including transferring him out of the jail for a medical or psychiatric evaluation.

II. Procedural History

In March 2023, Plaintiff filed a complaint (and an amended complaint) in state court against Bay County Sheriff Tommy Ford in his official capacity and Howell and Gray in their individual capacities. Sheriff Ford removed the case to this Court based on federal question and supplemental jurisdiction under 28 U.S.C. §§1331 and 1367. Howell and Gray thereafter joined in and consented to removal. *See* Docs. 9, 12.

Defendants responded to the amended complaint with motions to dismiss, which were granted in part. *See* Doc. 21. Plaintiff thereafter filed a second amended complaint (Doc. 22), which is now the operative complaint.

The second amended complaint asserts a state law negligence claim against Howell and Gray (Count I); a deliberate indifference to serious medical need claim

against Howell and Gray under 42 U.S.C. §1983 (Count II); and a *Monell*[2] claim against Sheriff Ford under §1983 for "failure to implement and/or enforce policies" (Count III). Defendants responded to the second amended complaint with a joint motion to dismiss, which was denied. *See* Doc. 27. Defendants thereafter answered the complaint, denying the claims against them and asserting various affirmative defenses.

The parties engaged in an extended period of discovery, which closed in August 2024. After discovery closed, Howell and Gray filed a joint motion for summary judgment and Sheriff Ford filed a separate motion for summary judgment. Both motions are fully briefed and ripe for rulings. No hearing is needed to rule on the motions.

III. Standard of Review

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). An issue of fact is "material" if it would change the outcome of the litigation, and a dispute about a material fact is "genuine" if the evidence as a whole could lead a reasonable factfinder to find for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

[2] *Monell v. Dep't of Social Servs.*, 436 U.S. 658 (1978).

When reviewing a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party. *Pennington v. City of Huntsville*, 261 F.3d 1262, 1265 (11th Cir. 2001). However, where objective evidence such as a video contradicts a witness's testimony, the Court must view the evidence as it is reflected in the video. *See Scott v. Harris*, 550 U.S. 372, 380 (2007); *Johnson v. City of Atlanta*, 107 F.4th 1292, 1300-01 (11th Cir. 2024); *Brooks v. Miller*, 78 F.4th 1267, 1279 (11th Cir. 2023); *Baker v. City of Madison, Ala.*, 67 F.4th 1268, 1277-78 (11th Cir. 2023).

The Court's role at the summary judgment stage is not to weigh the evidence, but rather to "conclude whether [the evidence] is so one-sided that the result of any trial is inevitable." *Turner v. Phillips*, 2022 WL 458238, at *4 (11th Cir. Feb. 15, 2022). Thus, when ruling on a motion for summary judgment, "the judge must ask himself … whether a fair-minded jury could return a verdict for the [non-moving party] on the evidence presented." *Anderson*, 477 U.S. at 252.

IV. Analysis

Defendants seek summary judgment on all claims. Each claim will be discussed in turn, starting with Count II

A. Count II – Deliberate Indifference

Count II asserts a claim for deliberate indifference against Howell and Gray in their individual capacities under §1983. Howell and Gray argue that this claim is barred by qualified immunity.[3] The Court agrees.

To determine whether a claim is barred by qualified immunity, the Court must determine (1) whether there is an "underlying constitutional violation" and (2) whether the constitutional right at issue was "clearly established" at the time of the incident giving rise to the suit. *Jackson v. West*, 787 F.3d 1345, 1352 (11th Cir. 2015). Here, the first issue is dispositive.

Pretrial detainees like Plaintiff have "a Fourteenth Amendment due process right 'to receive medical treatment for illness and injuries, which encompasses a right to psychiatric and mental health care, and a right to be protected from self-inflicted injuries.'" *Cook ex rel. Estate of Tessier v. Sheriff of Monroe Cnty., Fla.*, 402 F.3d 1092, 1115 (11th Cir. 2005). That right is violated if correctional officials are "deliberate[ly] indifferen[t] … to [the detainee's] serious … psychological needs," *Harris v. Thigpen*, 941 F.2d 1495, 1505 (11th Cir. 1991), or "deliberately disregard 'a *strong likelihood* … that the self-infliction of harm will occur,'" *Cook*,

[3] Howell and Gray also argue that Plaintiff cannot establish that their alleged deliberate indifference was the cause of the harm he suffered because they had no way to know (and no reason to believe) that he might self-enucleate while on SP-1. The Court need not consider that argument because, as discussed below, there is no evidence from which a jury could find that Howell and Gray were deliberately indifferent to Plaintiff's serious medical needs or his risk of self-harm.

402 F.3d at 1115 (quoting *Cagle v. Sutherland*, 334 F.3d 980, 986 (11th Cir. 2003) (emphasis in original)).

"The deliberate indifference standard is 'a difficult burden for a plaintiff to meet.'" *West v. Tillman*, 496 F.3d 1321, 1327 (11th Cir. 2007) (quoting *Popham v. City of Talladega,* 908 F.2d 1561, 1563 (11th Cir. 1990)).

A deliberate indifference claim has objective and subjective elements: "First, a plaintiff must set forth evidence of an objectively serious medical need. Second, a plaintiff must prove that the [defendant] acted with an attitude of 'deliberate indifference' to that serious medical need." *Farrow v. West,* 320 F.3d 1235, 1243 (11th Cir. 2003).

Here, Howell and Gray contend that Plaintiff has not established either element. The Court disagrees with respect to the objective element but agrees with respect to the subjective element.

1. Objective Element

An objectively serious medical need is "one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Id.* "[T]he medical need must be one that, if left unattended, poses a substantial risk of serious harm." *Id.*

Here, a reasonable jury could find that Plaintiff had an objectively serious medical need because he was placed on the highest level of suicide precautions after attempting suicide and he continued to engage in behaviors indicative of a serious mental health condition over the next four days until he self-enucleated. Indeed, the fact that Plaintiff was found to meet the qualifications for the highest level of suicide precaution on July 17 and, again, on July 20 is likely enough by itself to establish that he had a medical need that, if left unattended, posed a serious risk of harm. Thus, Plaintiff established the objective element of the deliberate indifference claim.

2. Subjective Element

The subjective element requires the plaintiff to prove that (1) "the [defendant] was subjectively aware that the [plaintiff] was at risk of serious harm," (2) "the [defendant] disregarded that risk," and (3) "the defendant acted with subjective recklessness as used in the criminal law." *Wade v. McDade*, 106 F.4th 1251, 1255, 1262 (11th Cir. 2024).

To satisfy the third prong of this test, the plaintiff "must show that the defendant was actually, subjectively aware that his own conduct caused a substantial risk of serious harm to the plaintiff." *Id.* at 1262. However, "even if the defendant 'actually knew of a substantial risk to inmate health or safety,' he 'cannot be found liable under the Cruel and Unusual Punishments Clause' if he 'responded reasonably to the risk.' *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 844-45 (1994)).

The subjective element focuses on what the defendant knew and what the defendant did or did not do with that knowledge, so each individual defendant's acts and omissions must be judged separately. *Burnette v. Taylor*, 533 F.3d 1325, 1331 (11th Cir. 2008). Thus, even though the claims against Howell and Gray are asserted in a single count, the claims will be considered separately.

a. Howell

There is evidence from which a reasonable jury could find that Howell was subjectively aware that Plaintiff was at risk of serious self-harm based on his mental health condition. Indeed, it was Howell who determined that Plaintiff should be placed on suicide precautions after his suicide attempt. The fact that Howell might not have known that Plaintiff would engage in self-enucleation specifically is immaterial because the reason that Howell put Plaintiff on suicide precautions was to prevent him from engaging in *any* self-harming behavior.

That said, under *Wade*, Howell's general awareness that Plaintiff was at risk of self-harm based on his mental health issues is not enough to establish deliberate indifference. Instead, Plaintiff must show that Howell was aware that "his own actions or inactions … put the plaintiff at substantial risk of serious harm." *Wade*, 106 F.4th at 1258. Thus, Plaintiff must show that Howell knew that he was putting Plaintiff at a substantial risk of harm when he placed him on suicide precautions

rather than referring him to a higher level of care and failing to ensure that he was assessed by a mental health professional over the weekend.

On that issue, there is no evidence from which a jury could find that Howell knew that Plaintiff would be at risk of substantial harm if he was placed on SP-1 after his suicide attempt. Indeed, based on the information known to Howell at the time he made that placement decision, it was not unreasonable for him to believe that the risk of harm to Plaintiff would be reduced because he would be under "continuous monitoring" and "daily" assessments by a mental health professional while on SP-1.

The Court did not overlook that Plaintiff's experts testified that Howell should have referred Plaintiff to a higher level of care,[4] but that is not enough to establish deliberate indifference because the Constitution does not "require[] that mental health care be 'perfect, the best obtainable, or even very good,'" *Harris*, 941 F.2d at 1510 (quoting *Brown v. Beck*, 481 F. Supp. 723, 726 (S.D. Ga. 1980)), and "a simple difference in medical opinion does not constitute deliberate indifference," *Ciccone v. Sapp*, 238 Fed. App'x 487, 489 (11th Cir. 2007). Indeed, the question of "[w]hether governmental actors should have employed additional … forms of

[4] For example, Dr. Marcello opined that Howell should have referred Plaintiff to the jail medical department to reassess his medication or initiated Baker Act proceedings so Plaintiff could be taken to the hospital. However, it is undisputed that Baker Act proceedings could not have been initiated while Plaintiff's criminal charges were pending.

treatment is a classic example of a matter for medical judgment and … is not an appropriate basis for liability under the Eighth [or Fourteenth] Amendment[s]," *Sifford v. Ford*, 701 Fed. App'x 794, 796 (11th Cir. 2017); *see also Brown v. McClure*, 849 Fed. App'x 837, 841 (11th Cir. 2021) ("[W]here a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, we are generally reluctant to second guess medial judgments and to constitutionalize claims which sound in state tort law.") (internal quotations omitted).

The Court also did not overlook Plaintiff's argument that Howell should have ensured that Plaintiff was assessed by a mental health professional over the weekend, but even if it would have been "prudent" for him to do so (as one of Plaintiff's experts claimed), that is at most ordinary negligence. Moreover, the failure to assess Plaintiff over the weekend is immaterial because it is undisputed that Plaintiff did not self-enucleate until Tuesday—after he had been assessed by Gray on Monday.

In sum, for the reasons stated above, there is no evidence from which a jury could find that Howell was deliberately indifferent to Plaintiff's serious mental health needs. Accordingly, Howell is entitled to summary judgment on the §1983 claim against him.

b. Gray

As with Howell, there is evidence from which a reasonable jury could find that Gray was subjectively aware that Plaintiff was at risk of serious self-harm because of his mental health condition. Indeed, putting aside the fact that Gray was on the committee that determined that Plaintiff should initially be under Behavioral Observation, it is undisputed that she knew on July 20 when she was tasked with assessing Plaintiff that he was on SP-1 which is reserved for inmates who are at the greatest risk of self-harm.

But, as with Howell, Gray's general awareness that Plaintiff was at risk of self-harm based on his mental health issues is not enough to establish deliberate indifference under *Wade*. Instead, Plaintiff must show that Gray was aware that her "own actions or inactions … put [him] at substantial risk of serious harm." *Wade*, 106 F.4th at 1258.

On that issue, Plaintiff argues that a jury could find that Gray recklessly disregarded the risk of substantial harm to Plaintiff by (1) failing to assess him over the weekend of July 18-19 and (2) either failing to perform July 20 assessment or performing a "substandard" assessment. Neither argument is persuasive.

With respect to the first argument, although it is undisputed that Gray was working over the weekend of July 18-19, it is also undisputed that she was not assigned to the unit where Plaintiff was housed. Thus, even if Howell's order for

"daily" assessment could have been (or should have been) construed to require assessments over the weekend, there is no evidence that Gray was responsible for conducting those assessments such that she could be found to have been deliberately indifferent (or even negligent) for not doing so.

With respect to the second argument, although it is undisputed that Gray initially wrote the date of July 21 on the assessment form and then failed to follow standard procedures in changing the date to July 20, that is not enough for a jury to find that Gray did not conduct the assessment on July 20 as she unequivocally testified that she did. Indeed, even if the date change was "highly suspect" (as one of Plaintiff's experts claimed), mere speculation about "backdating," without more, does not create a factual dispute as to whether Gray conducted the assessment on July 20. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) ("Speculation does not create a *genuine* issue of fact; instead, it creates a false issue, the demolition of which is a primary goal of summary judgment." (quoting *Hedberg v. Ind. Bell Tel. Co.*, 47 F.3d 928, 931-32 (7th Cir. 1995)) (emphasis in original)); *see also Jackson v. Corizon Health, Inc.*, 2022 WL 303288, at *5 (11th Cir. 2022) (explaining the "speculative inferences are equally plausible – and speculation is not sufficient to overcome summary judgment.").

On the latter point, the Court did not overlook that Plaintiff's experts testified that it was "unlikely" that Plaintiff would have presented in the manner that Gray

recorded on the assessment form based on his conduct over the weekend and his self-enucleation the day after the assessment. However, the experts did not testify that the improvement that Gray claimed to have observed on July 20 was *impossible* and Defendant's experts testified that it was indeed possible. Thus, although there is a factual dispute as to the likelihood that Plaintiff would present in the manner recorded by Gray on the assessment form, that factual dispute is immaterial to the question of whether Gray performed the assessment as she claimed because it is undisputed that it was at least possible (even if unlikely) for Plaintiff to have presented in the manner that Gray recorded. Moreover, as was the case with Howell, Gray's failure to refer Plaintiff to a higher level of care based on her assessment (as Plaintiff's experts testified that she should have done) is, at most, ordinary negligence, not deliberate indifference.

In sum, for the reasons stated above, there is no evidence from which a jury could find that Gray was deliberately indifferent to Plaintiff's serious mental health needs. Accordingly, Gray is entitled to summary judgment on the §1983 claim against her.

B. Count III – *Monell* Claim

Count III asserts a claim against Sheriff Ford in his official capacity, which is effectively a suit against a municipality. *See Kentucky v. Graham*, 473 U.S. 159, 165 (1985). To establish municipal liability under §1983, the plaintiff must show

"(1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004).

Here, for the reasons stated above, no reasonable jury could find that Plaintiff's constitutional rights were violated while he was on suicide precautions at the jail. Thus, Plaintiff cannot prevail on his §1983 claim against Sheriff Ford. *See Knight ex rel. Kerr v. Miami-Dade Cnty.*, 856 F.3d 795, 821 (11th Cir. 2017) ("There can be no policy-based liability or supervisory liability when there is no underlying constitutional violation.").

Based on this conclusion, the Court need not consider Sheriff Ford's argument that Plaintiff failed to establish the existence of an official custom or policy that caused the violation of his constitutional rights. That said, for sake of completeness, the Court agrees with Sheriff Ford that there is no evidence from which a jury could find that he had a custom or policy of not providing adequate mental health care to inmates on suicide precaution because it is undisputed that the jail has a policy requiring "daily" assessment and "continuous monitoring" of such inmates that complies with the Florida Model Jail Standards.

The fact that there is evidence that Plaintiff was not being directly observed by jail staff between 4:30 and 4:39 a.m. on July 21 when he self-enucleated is

immaterial to Sheriff Ford's liability under §1983 because it is well-established that municipal liability under §1983 cannot be based on the theory of respondeat superior, *see McDowell*, 392 F.3d at 1289, or an employee's failure to follow established policy, *see Tittle v. Jefferson Cnty. Comm'n*, 10 F.3d 1535, 1540 (11th Cir. 1994). Moreover, there is no evidence that jail staff was not properly trained on the jail's suicide precautions or that Sheriff Ford condoned noncompliance with the policy by failing to discipline noncompliant employees.[5]

The Court did not overlook the Plaintiff's expert's criticisms of the jail's suicide policy—e.g., its failure to require continuous in-person observation and failure to require mental health assessments over the weekend. However, even if there was merit to those criticisms, they do not preclude summary judgment because (1) the Constitution does not require a specific type or frequency of monitoring or mandate compliance with the NCCHC standards, *see Salter ex rel. Estate of Salter v. Mitchell*, 711 Fed. App'x 530, 541 (11th Cir. 2017) (explaining the Constitution does not impose a requirement that corrections officials constantly monitor inmates with mental health problems every minute of every hour, 24 hours a day); *see also*

[5] On the latter point, the Court did not overlook Plaintiff's argument that Sheriff Ford "failed to remediate sub-par employee Defendant Gray." However, there is no evidence of substantive issues with Gray's performance of her duties as a mental health counselor before the incident giving rise to this case. Moreover, the performance issues reflected on the negative evaluation that Gray received more than a month after the incident related to attendance, punctuality, and properly documenting her assessments, not failing to conduct assessments or conducting inadequate assessments.

Popham v. City of Talladega, 908 F.2d 1561, 1565 (11th Cir. 1990); and (2) the policy's failure to require assessments by mental health professionals over the weekend as a matter of course did not cause Plaintiff's injuries because he did self-enucleate over the weekend.

The Court also did not overlook Plaintiff's argument that the prior incidents of self-harm at the jail establish the existence of a custom of providing inadequate mental health care to suicidal inmates. However, that argument is unpersuasive because those incidents involved materially different circumstances and/or predated the jail's revision of its suicide protocols. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1162 (11th Cir. 2005) (affirming dismissal of *Monell* claim because plaintiff failed to show that any of the other instances of excessive force "involved factual situations that are substantially similar to the case at hand").

Accordingly, Sheriff Ford is entitled to summary judgment on the claim against him in Count III of the second amended complaint.

C. Count I – Negligence

Count I asserts a negligence claim against Howell and Gray in their individual capacities under Florida law. Howell and Gray argue that this claim is barred by sovereign immunity. The Court agrees.

Florida has waived sovereign immunity for torts committed by governmental employees within the course and scope of their employment, but employees are

generally immune from suit in their individual capacities. *Keck v. Eminisor*, 104 So. 3d 359, 366 (Fla. 2012). To overcome that immunity, the plaintiff must show that the employee acted in "bad faith" or "with malicious purpose" or "in a manner exhibiting wanton and willful disregard of human rights, safety, or property." §768.28(9)(a), Fla. Stat.

Here, Plaintiff does not argue that Howell or Gray acted with "bad faith" or "with malicious purpose."[6] Rather, he only argues that they "showed willful and wanton disregard for [his] constitutional rights" by not providing him adequate mental health treatment. *See* Doc. 90 at 48-51.

The "wanton and willful" standard in §768.28(9)(a) requires conduct that is "worse than gross negligence," *Sierra v. Associated Marine Insts., Inc.*, 850 So. 2d 582, 593 (Fla. 2d DCA 2003), and "much more reprehensible and unacceptable than mere intentional conduct." *Richardson v. City of Pompano Beach*, 511 So. 2d 1121, 1123 (Fla. 4th DCA 1987). For conduct to be "wanton," it must be done "with a conscious and intentional indifference to consequences and with the knowledge that damage is likely to be done to persons or property," and for conduct to be "willful," it must be done "intentionally, knowingly, and purposefully." *Peterson v. Pollack*, 290 So. 3d 102, 110 (Fla. 4th DCA 2020).

[6] These standards require "actual malice" and "ill will, hatred, spite, or an evil intent," *Peterson v. Pollack*, 290 So. 3d 102, 109 (Fla. 4th DCA 2020), and there is no evidence that.

The standard of "wanton and willful" conduct in §768.28(9)(a) is the same as the federal standard for deliberate indifference. *See Turner v. Phillips*, 2022 WL 458238, at *4 (11th Cir. Feb. 15, 2022) ("The federal standard for deliberate indifference amounts to recklessness, and so does the standard of 'wanton and willful' conduct under Florida law."). Thus, if a plaintiff has not established deliberate indifference under §1983, he has not established wanton and willful conduct under §768.28(9)(a).

Here, for the same reasons that Plaintiff failed to establish that Howell or Gray acted with deliberate indifference under §1983, he failed to establish that their conduct was wanton or willful under §768.28(9)(a). Accordingly, Howell and Gray are entitled to summary judgment on the negligence claim in Count I of the second amended complaint.

V. Conclusion

In sum, for the reasons stated above, it is **ORDERED** that:

1. Defendants' motions for summary (Docs. 65, 66) are **GRANTED**.

2. The Clerk shall enter judgment in favor of Defendants and close the case file.

DONE and ORDERED this 20th day of February, 2025.

T. KENT WETHERELL, II
UNITED STATES DISTRICT JUDGE