

# Claims Over Suicide Attempt In Police Custody to Proceed

## The Legal Intelligencer

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In a ruling stemming from a case that questions the adequacy of Philadelphia's prisoner suicide reduction training for its police and correctional officers, the U.S. District Court for the Eastern District of Pennsylvania has allowed to go to trial three claims brought by a detainee rendered incapacitated after trying to kill himself in a city jail.

According to the memorandum opinion in *Foster v. City of Philadelphia, et al*, two of the claims that are permitted to proceed are civil rights actions against the police correctional officers who oversaw plaintiff Christopher Foster shortly before or during his suicide attempt in July 1999 in the police administration building's police detention unit. The third claim is a "failure to train" claim against the city itself.

In denying summary judgment motions regarding the two correctional officers and the city, the court did grant summary judgment on claims involving eight other officers and employees, as well as the city Police and Fire departments.

"In conclusion," Judge Legrome D. Davis wrote in *Foster*, "the record reveals that the city has proven the existence of comprehensive written policies regarding the handling [of] detainees who are high-risk for suicide. The city, however, has offered insufficient evidence to refute the plaintiff's contention that the content of the city's training program was *inadequate*."

The plaintiff's attorneys, [Thomas R. Kline](#) and [Johnathan M. Cohen](#) of Kline & Specter, said that as a result of asphyxiation from hanging, Foster incurred irreversible brain injury that will require him to be institutionalized for the rest of his life.

According to the opinion, the 22-year-old Foster was arrested by police officer Anna Mae Law, a defendant in the case, on a misdemeanor charge of highway obstruction shortly after midnight on July 29, 1999. He was taken to the 26th Police District.

Once inside the 26th, the opinion stated, Foster was questioned by city employee Robert Otto, a defendant, who filled out the accompanying detainee medical checklist form required for each detainee. The medical checklist is composed of 13 questions that are designed to help city employees determine the mental and/or physical health of each detainee.

According to the opinion, Foster responded in the negative to all 13 questions asked. After several hours at the 26th, he was transferred to the Front and Westmoreland Police District. While there, an officer, not named as a defendant in the case questioned Foster to create an updated medical checklist. This time he acknowledged having tried to kill or harm himself in the past, and he was placed in a plexi-glass suicide-watch cell.

After several more hours, the opinion stated, he was transferred to the East Detectives Division, where yet another medical checklist was filled out, this time by Officer Ira Watterson, also a defendant in the case. During this round of questioning, Foster again acknowledged having tried to kill or harm himself in the past and also divulged that he was taking Vallium. Watterson noted in his remarks that Foster said he had overdosed on pills in May 1996.

Early the morning of the 30th, Foster was taken to the police detention unit in the administration building, according to the opinion. The paperwork related to his arrest and detention was transferred, but receiving officers were not verbally alerted that Foster had previously been under suicide watch.

Once at the PDU, correctional officer Felicia Massey, a defendant, reviewed the medical checklists from earlier in Foster's confinement and prepared another medical checklist, the opinion stated. Under questioning by Massey, Foster again mentioned his previous suicide attempt and also stated a present wish to harm himself.

At 8 a.m., correctional officer Sheldon Moore, another defendant in the case, took Foster out of his cell for a closed-circuit television arraignment, according to the opinion. Once returned to a standard cell, Moore testified, Foster asked for his medication, but Moore responded that he would have to wait until the nurse arrived.

Roughly one hour later, Foster hanged himself with his shirt from the bars on his cell door, according to the opinion. Jail paramedics administered CPR for roughly eight minutes, at which point fire rescue personnel arrived and took him to the hospital.

Davis began his opinion by granting summary judgment to the defense on Foster's state negligence claims, finding the defendants immune to the suit under state law. He also dismissed Foster's state bad faith claim noting that Foster had made no more than a single mention of that count.

Turning toward Foster's claims under Section 1983 of the Federal Civil Rights Act, Davis dismissed the suits against Law, Otto and Watterson, finding that their conduct was not improper in light of the allegations. He also granted summary judgment on the claims against two officers who attended to Foster after he was found hanging, finding that it could not be reasonably concluded that they acted with reckless indifference to his medical needs.

Summary judgment was denied, however, regarding the claims against Massey and Moore.

"Massey's failure to take any preventative measure cannot be said to be constitutionally reasonable as a matter of law," Davis wrote.

"Although Moore was not specifically advised by any other officer that Foster presented an increased risk of suicide," Davis wrote later in his opinion, "a reasonable jury could find that Moore should have known of the plaintiff's increased risk of suicide based on his interactions with him during his detention at PDU."

Davis also noted irregularities in the two officers' accounts of the events surrounding Foster's suicide attempt. According to a footnote in the opinion, Massey testified that although she recorded Foster as having acknowledged considering harming himself when she interviewed him, he had actually responded in the negative and she has typed in the wrong response on her computer.

In an interview with Moore shortly after Foster's suicide attempt, the opinion stated, Moore said that Foster's cellmate alerted him to the suicide attempt; during his deposition, Moore testified that he himself found Foster hanging during a routine cellblock walk-through.

The opinion cited the Police department's policies on detainees suicide reduction, which include directives that personnel should remove from an at-risk detainee's cell items that could aid in suicide and should monitor at-risk detainees at five-minute intervals, if not more frequently. Another directive lists warning signs for high-risk detainees.

Massey, unaware of the five-minute interval rule, testified that she was trained to monitor suicide-watch detainees at 15-minute intervals, the opinion stated.

According to the opinion, capt. Edward Cleary, the supervisor of the PDU, testified that Foster's acknowledgements of past suicide attempts and current thoughts of self-harm alone should have resulted in his being designated as at-risk for suicide. Cleary also testified that he was unable to produce documentation that department employees were being trained to verbally alert PDU receiving officers that a detainee had previously been in a high-suicide-risk cell.

"Thus, the principal training official offered by the city on the issue of training provided few specific details about the relevant aspects of the suicide reduction training," Davis wrote of Cleary's testimony. He added in a footnote below those comments, "Significant gaps exist in the city's proof as to the content of the training program for suicide risk reduction for detainees. In effect, the city contends adequate training was provided, but fails to present the elements of the training program to the court for review."

Kline and Cohen said they believe that in the past, there had been fewer "failure to train" claims against the City of Philadelphia than civil rights cases against individual officers.

"I think that the development of case law [in this area] has put a significant burden on the plaintiff," Kline said, "and the burden of proof is a difficult one for the plaintiff in these cases."

Davis noted in his opinion that the federal decision relevant to *Foster*, the 1978 U.S. Supreme Court ruling in *Monell v. Dept. of Social Services* states that a municipality is liable for a constitutional tort only when a specific injury is inflicted by "execution of a government's policy

or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy."

In 2001, the Eastern District ruled in *Mitros v. Borough of Glenolden* that the chief of the Glenolden Police Department, but not the municipality or the department itself, could be sued under Section 1983 in a claim stemming from a Glenolden officer's alleged sexual assault of the plaintiff. The ruling cited *Monell*.

Kline and Cohen said that they were prepared to go forward with their client's case as soon as a trial listing is given.

"We believe we have a strong claim against the city," Kline said. "We're just anxious to get a trial date."

Press officers from the police Department referred questions on the case to the Law Department.

Edward D. Chew, senior attorney in the Law Department's civil rights unit handled the city's case in the matter.

Divisional Deputy City Solicitor Milton Velez declined to comment on the decision.