UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-9175
Summary Calendar

CARLOS PEREZ FLORES, Individually and as Next Friend of Carlos Tudon Flores, Deceased, ET AL.,

Plaintiffs-Appellees,

VERSUS

COUNTY OF HARDEMAN, TEXAS, ET AL.,

Defendants,

CHESTER INGRAM, Sheriff of Hardeman County, Texas,

Defendant-Appellant.

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No. 94-10673

CARLOS PEREZ FLORES, Individually and as Next Friend of Carlos Tudon Flores, Deceased, ET AL.,

Plaintiffs-Appellees,

VERSUS

COUNTY OF HARDEMAN, TEXAS, ET AL.,

Defendants,

JACK EASON,

Defendant-Appellant.

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CHRISTINA ROSE MOORE, As Next Friend of SHELLEY BRIANNE FLORES, A Minor, Etc.,

Plaintiff-Appellee,

VERSUS

COUNTY OF HARDEMAN, TEXAS, ET AL.,

Defendants,

JACK EASON,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Texas (7:92-CV-05-K C/W 7:93-CV-134-K)

(April 17, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Chester Ingram and Jack Eason bring this interlocutory appeal from the denials of their motions for summary judgment based on qualified immunity. As to Ingram, we **DISMISS** the appeal; as to Eason, we **REVERSE** and **REMAND**.

I.

Carlos Tudon Flores, a pretrial detainee, hung himself while incarcerated at the Hardeman County, Texas jail. Two 42 U.S.C. § 1983 actions were filed, with Ingram (the sheriff of Hardeman

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[1] Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

County), and Eason (a Texas Department of Public Safety Trooper) as defendants.

The following facts are undisputed. On January 12, 1990, Flores was on the roof of a building across the street from a motel in Quanah, Texas. A rock had been thrown through a window of the motel; and law enforcement officers, including Ingram and Eason, arrived to investigate. After Flores fired shots from the roof, a stand-off ensued between Flores and the officers until Flores' father persuaded him to surrender his weapon. While attempting to climb to the roof to subdue Flores, Eason fell and was injured, but ultimately took custody of Flores.

Following his arrest, Flores was taken to the Hardeman County Jail, where Sheriff Ingram ordered him to be placed in an observation cell, stripped to his underwear, and issued only a mattress and pillow. Sheriff Ingram ordered that Flores was to be checked at 30-minute intervals, rather than the usual hourly schedule.

Following his arraignment the next day, Flores was issued the standard supplies, including a blanket, and was placed in a cell which had a shower and toilet area that were not visible through the cell-door window. Shortly thereafter, Flores was found hanging by his neck from the shower support bar by a strip of his blanket.

In the resulting civil rights actions, consolidated by the district court, Ingram and Eason's motions for summary judgment based on qualified immunity for the claims at issue here were denied.

II.

It goes without saying that we review *de novo* the denial of summary judgment. To avoid the defense of qualified immunity, the plaintiff must (1) allege a constitutional violation, and (2) demonstrate both that the constitutional right was clearly established at the time of the incident, and that the defendant's conduct was objectively unreasonable in view of that right. ***Brewer v. Wilkinson***, 3 F.3d 816, 820 (1993), *cert. denied*, 114 S. Ct. 1081 (1994).

A.

Ingram appeals the denial of qualified immunity for the claim concerning Flores' known suicidal tendencies. Ingram concedes that plaintiffs have alleged a constitutional violation. *See* ***Rhyne v. Henderson County***, 973 F.2d 386, 391 (5th Cir. 1992) ("The failure to provide pre-trial detainees with adequate protection from their known suicidal impulses is actionable under § 1983 as a violation of the detainee's constitutional rights."). Likewise, he concedes that a detainee's right to adequate protection from *known* suicidal tendencies was clearly established at the time of the violation. *See* ***Partridge v. Two Unknown Police Officers of Houston***, 791 F.2d 1182, 1187 (5th Cir. 1986).

At issue is only whether Ingram had knowledge of Flores' suicidal tendencies; he denied that he did. In addition, he offered statements by numerous officials who had contact with Flores during his arrest and custody; all declared that Flores had not shown such tendencies. Plaintiffs countered with expert

testimony, based on Flores' behavior and the surrounding circumstances, that Ingram knew, or should have known, that Flores was suicidal. Plaintiffs also point to the added precautions Ingram took when Flores was first taken into custody, *i.e.*, Flores was stripped down, placed in observation cell, not given sheets or a blanket, and was observed more frequently than usual. Ingram states that these precautions were taken, not because of suspected suicidal tendencies, but only because he believed Flores may have been intoxicated or on drugs.

Based on the summary judgment evidence, we conclude that a genuine issue of material fact exists as to Ingram's knowledge of Flores' condition. Ingram's interlocutory appeal is, therefore, dismissed. *See* ***Hale v. Townley***, 1995 WL 54714 (5th Cir. Feb. 9, 1995).[2]

B.

Eason appeals the denial of qualified immunity for the claims of excessive use of force in subduing Flores, and of deliberate indifference to Flores' suicidal tendencies.

1.

In 1990, the clearly established law on a Fourth Amendment excessive force claim required the plaintiff to prove, *inter alia*, a "significant injury, which resulted directly and only" from the officer's use of force. ***Johnson v. Morel***, 876 F.2d 477, 480 (5th

[2] To assist the district court on remand, we note that our court has ordered rehearing en banc in ***Hare v. City of Corinth***, 36 F.3d 412 (5th Cir. 1994) (concerning duty owed suicidal pretrial detainee), *reh'g en banc granted*, Dec. 8, 1994; oral argument will be held in early May 1995.

Cir. 1989) (en banc). Plaintiffs claim that Flores suffered a black eye and an aching back from Eason's use of force.[3] Such minor injuries are insufficient. *E.g.*, ***Wise v. Carlson***, 902 F.2d 417 (5th Cir. 1990). Accordingly, Eason is entitled to qualified immunity from the excessive force claim.

2.

We conclude also that Eason was entitled to qualified immunity on the suicidal tendencies claim. Eason's role in this entire episode was limited to subduing Flores after he surrendered his weapon. Eason was injured in the course of this; and, when Flores was taken to jail, Eason was taken, by ambulance, to a hospital for treatment.

Plaintiffs have cited no authority recognizing a claim for known suicidal tendencies against an officer who subdued that suspect. In any event, there is no evidence suggesting that Eason had reason to know of Flores' suicidal tendencies. Moreover, Eason's conduct was not objectively unreasonable in light of his need for immediate medical attention, and the fact that any suicidal tendencies, if at all apparent, would be equally noticeable to the other law officers on the scene and at the jail.

III.

For the foregoing reasons, Ingram's appeal is **DISMISSED**. The denial of qualified immunity as to Eason on the excessive force and

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[3] Plaintiffs also allege that Flores' suicidal tendencies were "heightened" as a result of Eason's use of force. Plaintiff's expert concluded that "the tackling and beating of [Flores] by Jack Eason heightened [Flores'] tendencies toward suicide". We find this allegation insufficient.

suicidal tendencies claims is **REVERSED**; and those claims against him are **REMANDED** for further proceedings, if any, consistent with this opinion.