Jail/Corrections Liability:

A Foreseeable Suicide May Create Liability

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In *Turney v. Waterbury*, 375 F.3d 756 (8th Cir. 2005) the United States Court of Appeal for the 8th Circuit reviewed a case in which Sheriff Waterbury, of the Bennett County, South Dakota Sheriff's Department was sued in his official and individual capacity for the death of prisoner by means of hanging in the jail. The prisoner, Bill Turney was being held in the Bennett County jail on an outstanding warrant. When he began acting violently, Sheriff Waterbury had Turney transferred to the Pennington County Jail. While incarcerated in Pennington County, Turney attempted suicide. Turney was returned to Bennett County for a court appearance at which time the transporting officer was told about the suicide attempt. The transporting officer then informed Sheriff Waterbury. The transporting officer also informed the sheriff that Turney had made a statement during the transport that if he received more than 15 years on his current charge, he would die and he would take someone with him.

When Turney arrived at the Bennett County Jail, he by-passed the normal intake process which included filling out a sheet that included a question regarding past attempts at suicide. The process was bypassed due to the fact that Sheriff Waterbury brought Turney directly to a cell that was isolated from other prisoners. The sheriff reported that he did this out of a fear that Turney may attempt to take a hostage. Before leaving for the day the sheriff told the detention officer who was alone on duty, to make ten-minute checks of Turney, but under no circumstances to enter the cell alone. The sheriff did not tell the jailer that Turney had attempted suicide at Pennington County, but the jailer reported that the ten-minute check order indicated to her that Turney was on a suicide watch. At some point, Turney requested a phone call. The jailer called for the one deputy on duty to come into the jail so that Turney could be given a phone call. When she went to tell Turney that the deputy was on the way in, she observed that he was hanging from a bed-sheet attached to the bars. Following the orders of the sheriff, she did not enter the cell, but instead called the deputy to come in and called the sheriff at home to come in. Sheriff Waterbury, who lived nearby, arrived first and cut Turney down. He was pronounced dead at the hospital.
Sheriff Waterbury attempted to avoid liability in this lawsuit by seeking qualified immunity. The trial court had granted this immunity but the United States Court of Appeal for the 8th Circuit overturned the grant of immunity. In doing so, the court noted that the Sheriff had notice of several factors indicating that Turney may commit suicide. The Sheriff had initially transferred Turney to Pennington County due to behavioral problems; he was aware that Turney had attempted suicide at the Pennington County Jail; and, he was aware that Turney had made a statement indicating that he was going to die. The court noted that the sheriff failed to do any follow-up on Turney's attempted suicide at Pennington County. If he had, he would have found out that Turney's attempt had happened three days earlier and that he attempted to commit suicide by using a bed-sheet. Notwithstanding these indicators, Turney was put in a cell with a bed-sheet and exposed bars at the ceiling. The court concluded: “Turney's claim against Waterbury is strengthened by evidence of Waterbury's conduct toward Merchen and McMillin. Instead of allowing Merchen to fill out an intake form for Turney (a form which included questions about past suicide attempts), Waterbury brought Turney directly to his cell. He then ordered Merchen not to enter the cell alone under any circumstances. Although he told Merchen to keep Turney under a close watch, this order provided no protection to Turney since Merchen could not actually enter Turney's cell in the event of an emergency. Waterbury claims that he told McMillin to keep a close eye on Turney, but McMillin testified that this conversation never happened. In short, Waterbury's response to Turney's known suicide risk, which included not investigating the earlier attempt, not permitting Merchen to complete Turney's intake form, placing Turney in a cell alone with a bed sheet and exposed ceiling bars, and ordering Merchen not to enter Turney's cell without backup-yet leaving her as the only official at the jail-are facts which exhibit deliberate indifference. We thus reverse the district court's grant of qualified immunity as to Waterbury.” As a result the sheriff faces a trial with the potential for liability in the hands of a jury.

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