

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

FILED

MAY 01 2001

ROBERT L. DENNIS, CLERK
U.S. DIST. COURT WESTERN DIST. OF OK
BY *J. Youngberg* JUSTY

ESTATE OF KENNETH)
MICHAEL TRENTADUE, et al.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA, et al.,)
)
Defendants.)

Case No. CIV-97-849-L

DOCKETED

ORDER

Beginning on November 13, 2000, and concluding on December 15, 2000, a non-jury trial was held in the captioned matter on certain claims against the defendant United States of America pursuant to the Federal Tort Claims Act, 28 U.S.C. §1346(b). Simultaneously with the bench trial, a jury trial was held on certain civil rights claims against the individual defendant, Stuart A. Lee, brought pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). On December 15, 2000, the jury duly rendered its verdict on the claims tried to the jury. The jury found that defendant Stuart A. Lee violated Kenneth Michael Trentadue's civil rights by being deliberately indifferent to his serious medical needs and awarded compensatory damages on this claim in the amount of \$20,000.00. The jury awarded no punitive damages

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on this claim. The jury found in favor of defendant Stuart A. Lee on the three other civil rights claims for excessive force, failure to protect from assault, and conspiracy to deprive Kenneth Michael Trentadue of his civil rights. The jury in the Bivens action did not act as an advisory jury to the court on plaintiff's non-jury claims based on the FTCA and its verdict is not binding on this court. Engle v. Mecke, 24 F.3d 133, 135 (10th Cir. 1994).

Upon due consideration and review of the evidence, the court makes its findings of fact and conclusions of law in the non-jury trial as stated below. To the extent any findings of fact constitute conclusions of law and *vice versa*, they are so adopted.

Findings of Fact

1. The Federal Transfer Center (FTC) is a Federal Bureau of Prisons (BOP) facility located in Oklahoma City, Oklahoma. The FTC opened in April of 1995 as a short-term holding facility for inmates being transported around the country. The FTC is unique in that it is located essentially on the airport, minimizing the movement of inmates. The new facility was staffed by a mix of new BOP employees and BOP employees transferred from other locations.

2. Within the FTC is an area called the Special Housing Unit (SHU) which is used for, among other things, administrative detention and disciplinary segregation. Among the inmates housed in the SHU in August of 1995 were maximum custody inmates, inmates subject to disciplinary proceedings, medical

cases, psychological studies, and protective custody inmates. SHU is located on the seventh floor of the FTC and consists of three separate ranges, A, B, and C.

3. On or about June 10, 1995, plaintiffs' decedent, Kenneth Michael Trentadue (Trentadue), also known as Vance Paul Brockway, was arrested in California for driving under the influence. During the booking procedure, authorities ascertained that a 1989 warrant for Trentadue's arrest based on a federal parole violation was pending. Trentadue was in violation of the conditions of his parole as he had stopped reporting to his federal probation officer as required. Evidence indicated that at the time of Trentadue's parole, a significant amount of time remained to be served on his underlying federal conviction for armed robbery of a savings and loan association. After his arrest on the parole violation, Trentadue was initially held in local jails and on August 18, 1995 he was routinely transferred to the FTC for a parole violation hearing.

4. Upon arrival at the FTC, Trentadue was held in the Parole Violator's Unit, located on the fifth floor, F range, of the FTC. The Parole Violator's Unit housed many inmates awaiting parole revocation hearings. Evidence at trial indicated that Trentadue may have been acting strangely during his stay in the Parole Violator's Unit. Also, during this time, on or about August 19, 2000, Trentadue made four phone calls to family members. These calls were tape-recorded pursuant to FTC procedure and were played in court. In the phone conversations, Trentadue discusses his upcoming hearing and the need for

certain documents and money. Letters written by Trentadue to his family during this period were also entered in evidence. The court cannot say that the calls, letters or other evidence of Trentadue's behavior indicated that he was outwardly showing suicidal tendencies. Evidence established that it is not uncommon for persons intent on suicide to conceal their intent and isolate themselves to carry out suicide.

5. On August 20, 1995, Trentadue asked to be removed from the Parole Violator's Unit and placed in protective custody. The BOP form "Administrative Detention Order" was signed by Trentadue and states that he "requested admission to the SHU for his own protection" and that he "believes other inmates are out to get him." Because the Administrative Detention Order is a multicopy form, the court attaches no particular significance to the fact that several different versions of the form exist. From all the evidence that was presented surrounding the creation of the form, the court determines that Trentadue actually signed the form and was placed into protective custody in the SHU at his own request. Trentadue was escorted from the Parole Violator's Unit to the SHU by Lieutenant Rosa Howard and Officer Steve Lambeth. After a routine strip search and physical inspection, the only injury noted on Trentadue's body was a blister on his heel. Trentadue was placed in cell A709, on the A range of SHU, at around 8:00 a.m. on August 20, 1995.

6. From the time he entered cell A709 at approximately 8:00 a.m. on August 20, 1995, until 3:02 a.m. on August 21, 1995, Trentadue was alone. Although there were some inaccuracies in the FTC records showing cell assignments, there was no credible evidence that Trentadue shared a SHU cell with any other inmate. Specifically, the court rejects the theory that Trentadue was ever placed in the same cell as inmate Alden Gillis Baker, an undisputedly dangerous psychopath with a history of violence. The testimony of Baker, who is now deceased, was presented at trial by way of deposition. Baker was a seriously disturbed individual; his testimony is entitled to no weight due to his lack of credibility as a witness. The presence in cell A709 of "extra" toiletry or food items, that is, more than would typically be allowed for one inmate, was adequately explained by evidence that inmates often hide such contraband or trade with other inmates by using a string or "fishing line."

7. Nothing out of the ordinary was reported by FTC personnel during several regular cell checks conducted during the period Trentadue was in cell A709. There is no credible evidence of anything out of the ordinary being seen, heard, witnessed, or reported as occurring in SHU and/or cell A709 during this period. Officers Dennis Williams, Wiley Creasey, Eric Ellis, and Kimberly Heath were assigned to the SHU during the midnight to 8:00 a.m. shift on August 21, 1995. Officer Williams was the "SHU # 1" officer, meaning that he was the officer in charge of SHU that night. For security reasons, not every officer has keys to

inmate cells. Officer Williams was the only one with keys to the individual cells. Officers Ellis and Creasey, the SHU # 2 and SHU # 3 officers, were responsible for the inmate counts and checks in the SHU ranges. Officer Heath, SHU # 4 officer, was the only officer with the keys to the door separating the SHU from the rest of the prison and the doors to the ranges. Checks were performed every thirty minutes. Counts were performed five times a day in August of 1995: at 1:00 a.m., 3:00 a.m., 5:00 a.m., 4:00 p.m., and 10:00 p.m. During a regular check, Officers Ellis and Creasey saw Trentadue uninjured in his bed at 2:38 a.m. on August 21, 1995. At the time of the 2:38 a.m. check, the officers saw no sign of torn sheets, blood on the floor or a noose suspended from any vent or other fixture in the cell.

8. At approximately 3:00 a.m. on August 21, 1995, Officers Ellis and Creasey began the SHU count on B range. Next, they proceeded to A range. At 3:02 a.m., Officer Ellis discovered Trentadue hanging inside his cell and a radio call went out that, "I've got one hanging." The radio call generated intense activity on the part of FTC personnel.

9. All movement of staff and inmates from one section to another section within the FTC, including the SHU, is monitored and controlled by correctional officers working in what is known as the Control Center. Officers in the Control Center are responsible for opening and locking doors separating one section of the prison from another, including the SHU, and making sure that the inmate

counts are correct. Testimony indicated that each section of the FTC is separated from another by "sally port" doors, which are essentially two locked doors separated by an open space. At each sally port door there is a video camera and a two-way communication speaker or intercom. When an FTC employee proceeds from one section to another, he or she must stop at the sally port, identify himself or herself by voice and on camera to the Control Center officer, and wait for the officer to make an identification prior to opening the door. After the door is opened, the staff member must wait in the space between the two doors until the second door is opened. Thus, officers in the Control Center are aware of all movement into and out of the SHU.

10. Officer Michelle Scott was the correctional officer in charge of the Control Center on the midnight to 8:00 a.m. shift on August 21, 1995. Scott's responsibilities were comprised, in part, of controlling staff and inmate movement within the FTC, by opening and closing the doors leading to the SHU and other parts of the institution. Scott was therefore in charge of the Control Center at the time of the 3:02 a.m. radio call, *i.e.*, "I've got one hanging." The court finds the trial testimony of Officer Scott to be extremely credible. Scott testified that when the Control Center was alerted by radio that an inmate was hanging, she immediately looked up at a digital clock with a red LED display and noted the time, 3:02. Scott duly entered into the Control Logbook that she received the emergency report at 3:02 a.m. A broadcast of an emergency situation was

transmitted throughout the FTC. Eight minutes after receiving the call, at 3:10 a.m., Scott entered in the logbook that the gurney carrying the inmate's body left the SHU. Therefore, the total time that elapsed from the time of the first radio call to the time that Trentadue's body was removed from SHU was eight minutes.

11. The court heard hours of testimony and received volumes of evidence pertaining to the actions taken by various individuals during these eight minutes. Many of the witnesses provided conflicting accounts of the response by FTC personnel to the hanging. Lieutenant Stuart A. Lee, the operations lieutenant and highest ranking officer in the FTC during the 12:00 a.m. to 8:00 a.m. shift on August 21, 1995, was in the Control Center at the time Trentadue was discovered hanging. Lt. Lee immediately left the Control Center to respond to the hanging. On the way to the SHU, Lt. Lee radioed Physician's Assistant (PA) Carlos Mier, the highest ranking medical staff member in the FTC at the time, to go to the SHU. Officer Ellis testified that Lt. Lee told him over the radio not to go into the cell and not to unlock the door to the cell.

12. Lt. Lee arrived at cell A709 approximately two to three minutes after receiving the initial radio call. PA Mier arrived shortly thereafter. In addition to the four SHU officers, Lt. Lee and PA Mier, other correctional officers and staff members from all areas of the FTC swiftly responded to cell A709.

13. Despite the immediate, facility-wide initial response to the SHU, the evidence indicated that there was a period of delay in actually unlocking the door

to cell A709. While the door was locked, however, Trentadue's body could be seen through a narrow window in the cell door. Lt. Lee looked into the cell from the window and concluded that Trentadue was already dead. Lt. Lee admittedly had no medical training and was not qualified to determine that Trentadue was dead by looking at him through a window.

14. The opening of the cell door may have been delayed in part by confusion regarding whether there were enough correctional officers present to enter the cell safely pursuant to BOP and/or FTC procedures. Delay undoubtedly resulted from the decision by Lt. Lee to videotape the entry into the cell. Time passed as an officer was sent to retrieve the camera and battery. Lt. Lee would not allow the cell door to be unlocked until the video camera was operational. Also, it took some time for correctional officers to obtain a knife or scissors from a secure location in order to cut the noose, although it appears that this was done before the door was unlocked. Trentadue was not immediately cut down once the door was opened. No attempt was made to support Trentadue's body to relieve pressure from his neck.

15. Once inside the cell, PA Mier was seen to conduct a cursory physical examination of Trentadue. PA Mier claims he checked Trentadue's wrist for a pulse but none was detected. PA Mier claims he placed a stethoscope on Trentadue's chest but no heartbeat was detected. PA Mier claims he noted the color of Trentadue's face and the slackness of his jaw. Based upon his physical

examination, PA Mier concluded that Trentadue was dead. PA Mier's credibility as a witness is seriously undermined by evidence of several conflicting statements he gave as well as instances of admitted misrepresentation (*i.e.*, PA Mier falsely told the FBI that he had attempted resuscitative measures on Trentadue). The court has taken into account PA Mier's lack of reliability in considering his testimony regarding the physical examination of Trentadue. It is clear that no resuscitative measures were taken by PA Mier or any FTC personnel in an attempt to save or revive Trentadue. As previously stated, Trentadue's body was removed from the SHU at 3:10 a.m. and was taken to the FTC infirmary.

16. FTC guards are instructed that brain damage can occur in four minutes and death in five to six minutes from the start of a hanging. BOP training materials show that BOP guards are taught to summon assistance, request backup support and medical assistance, and lift the hanging victim up so that the inmate's weight is no longer putting pressure on the noose. The court also heard testimony of Emergency Medical Services Authority (EMSA) paramedic Michael Smith, who responded to the FTC on the morning of August 21, 1995 and was told by PA Mier that the inmate was already dead. Upon hearing PA Mier's description of the death, Smith testified that he asked PA Mier if the inmate had bled to death or died by strangulation. Smith testified generally that if a patient is without oxygen for a while paramedics might be able to resuscitate the patient,

but if the patient bled to death they could not usually be resuscitated. The paramedics, who were later called to the FTC a second time, eventually conducted EKG tests on Trentadue which confirmed that he was dead. Dr. Fred Jordan, Chief Medical Examiner of the State of Oklahoma testified that Trentadue "died very rapidly. . . I can't tell you whether it's if you're going to start the 5 second, 10 second, 15 second business, I can't do that for you because I don't know and I don't think anybody knows. But I suspect it was less than a minute from the time the ligature went around his neck." Dr. Jordan later clarified his testimony, saying that Trentadue "probably had no blood pressure and no heart beat within a minute." Plaintiffs' expert witness, Dr. Miles Jones, testified that he had no evidence that Trentadue was alive when he was first discovered hanging. Officer Ellis testified that he recalled no movement or sign of life from the time he found Trentadue's body until other staff members responded to cell A709. Officer Wiley Creasey testified that Trentadue appeared dead, there was no movement of the body and he saw no signs of life. Witness Brian Kitson, another FTC employee who responded to the cell, testified that at no point did he hear any noise from Trentadue's body and that he saw no signs of life from the body. Officer Williams also testified there was no movement of Trentadue's body and that he saw no signs of life.

17. Special Investigative Supervisor (SIS) Lt. Kenneth Freeman was notified of the hanging and arrived at the FTC on the morning of August 21, 1995

to begin investigating the incident. Lt. Freeman testified that he was trained in the preservation of crime scenes and the collection of evidence, however, he did not consider cell A709 a crime scene since he had been told by FTC guards that Trentadue's death was a suicide. There was no evidence that any of the FTC guards were medically or otherwise qualified to determine the cause or manner of death of Trentadue or anyone else. Lt. Freeman testified that he had notified Federal Bureau of Investigation (FBI) agent Jeffrey Jenkins of the hanging on the morning of August 21, 1995. According to Freeman, Agent Jenkins turned the investigation over to Freeman and merely asked him to "fax him a copy of the report" when completed. Freeman described his subsequent "investigation" as " cursory." Freeman primarily attempted to photograph everything in the cell that had blood on it. Lt. Freeman and an FTC evidence technician also collected physical evidence from the cell and made a sketch showing the location of several items taken from the cell. A photo log was also created describing the photographs taken. Freeman collected the following items from the cell: a bloodstained pillow case, a bloodstained sheet, a bloodstained bed sheet used as a noose, a pencil, personal papers from the cell, Trentadue's inmate ID card, hair removed from the wall of the cell, blue canvas shoes with a blood stain on the right heel, a bloodstained plastic knife, two tubes of toothpaste, a bloodstained washcloth, and a bloodstained towel. Other items of physical evidence were later collected by the FBI from the Oklahoma Medical Examiner's

office. Once Freeman's investigation was complete, cleaning of the cell and the infirmary began and was completed by early afternoon on August 21, 1995.

Similarly to the situation with the testimony of PA Mier, the reliability of Lt. Freeman's trial testimony was significantly impeached by prior inconsistent, incomplete and/or misleading testimony.

18. Evidence indicated that Lt. Lee took a number of Polaroid photographs of the cell, before it was cleaned, and Trentadue's body, after it was taken to the infirmary. Lt. Freeman also took several photographs of cell 709A and Trentadue's body in the FTC infirmary on the morning of August 21, 1995. Trial witnesses who viewed the scene testified that the photographs accurately portray the cell and body as they appeared on the morning of August 21, 1995. The court has carefully scrutinized the photographs, as they provide the most accurate depiction of the death scene. The photographs show blood on the floor and a bloody noose suspended from a wall grate. The blood and noose would have been clearly visible from the doorway. Lt. Freeman photographed a handwritten note in pencil on the wall of Trentadue's cell which read: "My Mind No Longer It's Friend Love ya. Familia!"

19. The photographs depicting the death scene are consistent with the finding that Trentadue's injuries were self inflicted. Analysis of the physical evidence, including DNA testing, is also consistent with the finding that Trentadue's injuries were self inflicted. The court credits the testimony of