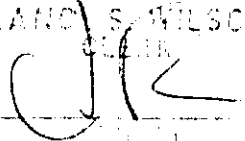


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FILED
NOV 3 2005 PM 12:35
LAND S. WILSON
BY 

**UNITED STATES
DISTRICT**

CV-N-05-0595-HDM-VPC

CHARLA CONN, administrator of the
ESTATE OF BRENDA JEAN CLUSTKA,
CHARLA CONN,

Plaintiffs,

vs.

CITY OF RENO, RPD OFFICER RYAN
ASHTON, RPD OFFICER DAVID
ROBERTSON,

Defendants.

COMPLAINT

JURY DEMAND

JURISDICTION AND VENUE

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201; and 42 U.S.C. §§ 1983 and 1988.
2. Venue in this action is appropriate in the Northern District of Nevada pursuant to 28 U.S.C. Section 1391(b).
3. This Court has jurisdiction to grant the declaratory relief requested pursuant to 28 U.S.C. § 2201 and Federal Rules of Civil Procedure, Rule 57.

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PARTIES

4. Plaintiff CHARLA CONN is the duly appointed, qualified, and acting special administrator for the Estate of BRENDA JEAN CLUSTKA, deceased, and is the daughter of Brenda Jean Clustka, who died in the manner alleged below on April 28, 2005. Plaintiff is over the age of eighteen and is a citizen of Clark County, Nevada. Plaintiff Conn brings this action on behalf of the estate and for the benefit of the heirs of the state as well as in her own capacity as an heir to the decedent.

5. Defendant Reno Police Department Officer RYAN ASHTON is an officer in the Reno Police Department, employed by City of Reno.

6. Defendant Reno Police Department Officer DAVID ROBERTSON is an officer in the Reno Police Department, employed by City of Reno.

7. Defendant CITY OF RENO is a municipality duly incorporated under the laws of the State of Nevada.

8. Defendants Ashton and Robertson are sued in their individual and official capacities.

9. Defendants Ashton and Robertson, under color of state law, have caused the decedent Brenda Jean Clustka to be deprived of her constitutional rights.

10. Plaintiff alleges that each of the defendants performed, participated in, aided and/or abetted in such manner the acts averred herein, proximately caused the damages averred below, and that each is liable to plaintiff for the damages and other relief sought herein.

FACTUAL ALLEGATIONS

11. The seventh of nine children, the decedent Brenda Jean Clustka was born to working class parents in southern California on October 16, 1961. She maintained a close and loving family relationship that began to disintegrate with the break up of her twelve-year relationship with the father of her two children in or about 1988.

12. In 1988, Clustka left her children's father, packed her belongings and moved with her two children, Dustin and Charla Conn, to her mother's home in Reno, Nevada. From that time on, the children's father, would come in and out of her life sporadically, staying with her for stretches of time then disappearing. His inattention was devastating to her. Also, no longer able to rely on financial

1 support from her children's father, and with only a GED, Clustka accepted various low paying jobs in
2 retail, telemarketing and waitressing. For several years, juggling her dual role as a loving and
3 attentive mother as well as the sole bread earner for her family, she managed to hold a job and bring
4 home enough money to pay rent and essential expenses.

5 13. In or about year 2000, worn out from the daily struggle of making ends meet while
6 parenting two children alone, Clustka began to go down hill. She started drinking heavily and abusing
7 prescription medications. Extremely depressed and anxious over her situation, Clustka got into
8 arguments with her mother and siblings and began to make suicide threats. Thoughts of suicide began
9 to consume her and she repeatedly mentioned suicide as a viable option to her difficulties.

10 14. In or about 2003, Clustka began to accumulate an arrest record for misdemeanor crimes—
11 domestic violence, DUI, and petty larceny offenses. Over time, she spiraled downward, becoming
12 well known at Washoe County Detention Facility ("jail") as a repeat offender with minor traffic
13 offenses with a documented history of alcohol and other drug dependence, hypertension, anxiety
14 disorder and suicide threats. Her health deteriorated and she gained weight. Financially desperate, she
15 began living with her mother and her brother in a home owned by her mother.

16 15. On March 19, 2005, the Reno Police Department (RPD) arrested Clustka and transported
17 her to the Washoe County jail. Clustka was charged with misdemeanor domestic battery stemming
18 from minor disputes with family members. Police observed that Clustka had received several bruises
19 and injuries to her head, which she insisted her brother, who also resided at that address, had
20 inflicted.

21 16. On March 20, 2005, jail authorities placed Clustka on suicide watch in the Washoe
22 County jail's infirmary after she admitted to medical staff that she had threatened to commit suicide
23 the night of her arrest. Jail documents reflect she had threatened suicide. Soon after she was
24 transferred to general population where she remained until her release on April 21, 2005 on her own
25 recognizance.

26 17. Clustka fared poorly after her release from jail. Between about April 21, 2005 and April
27 25, 2005, she was taken to Washoe Medical Center on a 72-hour mental health hold due to her being
28 suicidal.

1 18. Upon her release from the mental health facility, unable to function and spiraling further
2 downward in depression and despair, Clustka returned to the home of her mother and brother.

3 19. On that day, April 25, 2005, Clustka's mother called Washoe County court services and
4 complained that Clustka was continually intoxicated and "out of control." Her mother further
5 informed court services that she was in the process of obtaining a temporary protection order (TPO)
6 to protect her from her daughter's volatility.

7 20. Clustka's mother's decision to obtain a TPO presented a serious problem for Clustka
8 because she was living with her. With a TPO in place against her, she would have no place to live.
9 Clustka's despair deepened.

10 21. On April 26, 2005, Clustka called the Reno Police Department for assistance in retrieving
11 her belongings from her mother's home. She was aware her mother had obtained a TPO against her
12 but she had as yet not been formally served with the document. She wanted the police to assist her so
13 there would be no problem in obtaining her belongings. She was concerned that if she attempted to
14 retrieve her belongings without the assistance of the police, her actions might be construed as a
15 violation of the TPO (even though she had not yet been served with the TPO) and she might be in
16 even more legal difficulties. She desperately wanted to avoid going to jail.

17 22. On April 26, 2005, defendants Ryan Ashton and David Robertson responded to Clustka's
18 call for assistance regarding her belongings. The officers found Clustka intoxicated and in great
19 mental distress. They were aware she was seeking to avoid potential problems with a TPO by having
20 them present when she removed her belongings from her mother's home. She explained to them that
21 she was doing everything possible to avoid problems with the yet to be served TPO.

22 23. While Ashton and Robertson were fully aware Clustka greatly feared jail and wanted to
23 avoid it, they decided jail was precisely where they would take her. Because of her high level of
24 intoxication and disorientation, defendants determined she would be taken to jail for Civil Protective
25 Custody ("CPC"). They did this not because she had committed any crimes, which she had not, but
26 because of her intoxication and disorientation.

27 24. Defendants lied to the distraught Cluska, telling her they would assist her in picking up
28 her belongings when they actually had no intention of doing so. Instead, they intended to take her to

1 jail and mislead her into thinking they would be doing on thing (assisting her to obtain her
2 possessions) when they fully intended on doing another thing (taking her to jail).

3 25. Before taking the agitated Clustka into CPC, Ashton and Robertson conducted a wants
4 and warrants check, the results of which indicated to them that Clustka was known to abuse drugs
5 and alcohol, had a history of mental problems, and had violent tendencies.

6 26. The Reno Police Department has a policy that intoxicated persons detailed for CPC are to
7 be placed into the alcoholic Detoxification Center for treatment and not in the county jail. The Detox
8 Center is located at the Nevada State Hospital, 480 Galetti Way, Sparks, Nevada. While Clustka met
9 all the requirements for being transported to the Detox Center and should have been taken there by
10 defendants Ashton and Robertson, yet she was not. Instead, she was transported to the county jail.
11 Had defendants taken Clustka to the Detox Center, she would not have committed suicide at the
12 county jail less than two days later. Going to jail – and being lied to by defendants -- pushed the
13 distraught Cluskta, with her suicidal ideation to the breaking point.

14 27. Defendants transported Clustka to the Washoe County jail facility by placing her in the
15 back of a paddy wagon. They chose not to handcuff her because she had not been arrested for a
16 crime. Robertson drove the paddy wagon, and Ashton was in the passenger seat.

17 28. As the officers drove in the direction of the jail, Ashton watched Clustka through a video
18 surveillance camera trained on the back of the paddy wagon. He observed her undo her seatbelt, leave
19 her seat, walk around the wagon several times and repeatedly knock at the camera with her hand.
20 Robertson chose not to stop the paddy wagon to secure Clustka in her seat because they were fast
21 approaching the Washoe County jail.

22 29. When Clustka sighted the Washoe County jail out the back out the back window of the
23 paddy wagon, she became even more visibly agitated and distressed. She sat back down on her seat,
24 grabbed the seatbelt strap and wrapped it tight around her neck in an attempt to choke herself.

25 30. Ashton saw Clustka wrap the seatback strap around her neck and made Robertson stop the
26 paddy wagon. The officers went to the back of the wagon, removed the seatbelt strap from around
27 Clustka's neck, put her down on the floorboard of the wagon, placed her hands behind her back, and
28 handcuffed her with flexible handcuffs.

1 31. As the officers were removing the seatbelt strap from around Clustka's neck, she cried out
2 to them, "You lied to me. Just kill me or I'll kill myself." Not only did the officer have knowledge
3 that she intended to kill herself, they witnessed her attempt.

4 32. Ashton and Robertson proceeded to transport Clustka the remainder of the way to the jail
5 in handcuffs, to avoid further suicide attempts. They advised Central Control that they had an
6 uncooperative and "disoriented" female but were inexplicably silent over her attempt to commit
7 suicide, choosing to withhold that vital piece of information on her mental health. Not only did
8 defendants know about her plans to commit suicide, they had full knowledge of her intoxication, her
9 disorientation, and her past history of alcohol and prescription drug abuse. That Clustka was a serious
10 suicide risk was a matter they kept to themselves despite multiple opportunities to easily pass on this
11 vital information in the form of warnings to jail personnel.

12 33. At all times Clustka had the constitutional right to be free from deliberate indifference to
13 the known risk of harm of suicide. The law at the time was clear that once an official knows of a risk,
14 the Fourteenth Amendment requires the official to take reasonable measures to abate the risk.
15 Defendants had a duty to inform jail personnel they had witnessed Clustka attempt to commit suicide
16 and heard her threaten to commit suicide. In intentionally declining to pass on what they knew to be a
17 serious risk of harm, defendants violated Clustka's constitutional rights.

18 34. Ashton did ask Robertson, who was the senior officer, if they shouldn't write a report,
19 given Clustka made a suicide attempt while under their custody. **Robertson advised Ashton not to**
20 **do a report, and Ashton thought no more of it.** Thus, Ashton and Robertson made a deliberate
21 choice to **not** inform jail personnel of Clustka's suicide attempt, which they personally witnessed,
22 and they made a deliberate choice to **not** write up an incident report documenting the suicide attempt
23 or the suicide threats. Accordingly, both were recklessly indifferent to the serious risk of harm that
24 Clustka would again attempt to kill herself.

25 35. Ashton rationalized his failure to report the suicide attempt with the nonsensical assertion
26 that she couldn't have succeeded in killing herself in the wagon because she was being watched and
27 because she could not have maintained sufficient tension with the seatbelt to actually kill herself after
28 passing out. Thus, Ashton and Robertson deliberately ignored the extreme likelihood that Clustka
would again attempt to commit suicide and would be successful.

1 36. The night of April 26, 2005, Clustka was released from civil protective custody and the
2 TPO was served on her.

3 37. Almost immediately, Clustka was back in trouble. Early on April 27, 2005, Clustka
4 returned home in another attempt to retrieve her personal belongings. This time, she did not ask the
5 police for assistance. Presumably, she feared that, rather than assist her, they would lie to her and
6 deceive her and again take her back to jail.

7 38. At about noon on April 27, 2005, Clustka's brother called the Reno police based on
8 Clustka's violating the TPO by returning home. Reno police arrested Clustka for misdemeanor
9 violation of the TPO and took her back to jail. When she arrived at the jail facility, additional charges
10 were added.

11 39. Upon her booking and initial medical screening, Clustka was sent to HU3, a medical
12 housing unit, because of her known history of mental health problems (including the jail suicide
13 watch of a month before) and her anxiety disorder.

14 40. Prison Health Services records from the April 27, 2005, booking note Clustka's history of
15 hypertension and anxiety. Records from her medical screening document that she appeared to be
16 under the influence of, or withdrawing from drugs or alcohol. Clustka was immediately placed on a
17 narcotic detox protocol and was scheduled for a psychiatric interview to take place the next day.
18 Since Ashton and Robertson had failed to document or report her failed suicide attempt one day
19 earlier and her threats to kill herself, she was not placed on suicide watch and was not deprived of
20 items traditionally used by prisoners to kill themselves – namely a bedsheet.

21 41. On April 28, 2005, at about 7:30 to 8:00 a.m., Clustka was taken from the medical unit to
22 Reno Municipal video court. The sheriff's deputy who accompanied her noticed that, as he was
23 placing the waist restraints on her, she acted confused and disoriented. He gave little thought to her
24 agitation because he was not warned that she was suicidal. Clustka pled not guilty at her video court
25 arraignment and was held over for trial. She told the deputy who accompanied her know that she was
26 upset about her video arraignment and had wanted to tell the judge her side of the story and was
27 prevented from doing so. She asked to make a phone call but was not permitted to make a call then
28 and there, which made her further upset. The deputy returned Clustka to her cell at about 8:35 a.m.
the morning of April 28.

1 42. At about 9:15 a.m. that same morning, the sheriff's deputy assigned to the unit began
2 calling out a group of inmates, including Clustka, to begin their tier time. She called out to Clustka's
3 cell and received no response. She called several times. After Clustka repeatedly failed to respond,
4 the deputy walked over to her with another deputy to check on her. On looking into the cell, he saw
5 she had hung herself with a sheet. An emergency Code 50 was issued.

6 43. Clustka killed herself before her psychiatric interview ever took place. No preventive
7 measures had been taken because Ashton and Robertson failed to inform jail officials of Clustka's
8 suicide attempt and threats less than two days before.

9 44. Clustka succeeded in strangling herself by tying the knotted bed sheet around her neck
10 and to the top bunk as she lay in the bottom bunk. Several deputies and medical personnel responding
11 to the Code 50 tried but could not save her life. It took a good 20 to 30 seconds alone to cut the sheet
12 from around her neck because the knife, which was kept for such emergencies, was too dull. By
13 about 9:19 a.m., the deputies were able to release Clustka from her bed sheet noose and lay her on her
14 back onto the floor. They tried administering CPR and other life-saving measures with no success. It
15 was too late. Unresponsive, Clustka was pronounced dead at 9:55 a.m.

16 45. Had Ashton and Robertson not failed to report Clustka's suicide attempt in their paddy
17 wagon less than two days before, she would have been placed on a suicide watch by the jail. Jail
18 medical staff and other personnel would have more carefully scrutinized her mental health history
19 would have been alerted to her history of suicide attempts and the need to protect her from killing
20 herself. She would have been carefully monitored and would not have been provided with a bed
21 sheet. It is common sense that if a person is on a suicide watch, that person would not be given
22 something that could easily be used to harm himself with. If defendants had passed on the serious risk
23 of harm, it is likely jail officials would have discovered that only days before, Clustka was in a 72-
24 hour suicide hold at the local hospital and would have taken preventative measures to assure her
25 safety.

26 46. The problem of jail suicide is so prevalent that a United States Department of Justice
27 newsletter has been devoted to just that issue, *The JailSuicide/Mental Health Update*. In the Fall 2002
28 issue of this newsletter, an article entitled "Characteristics of Suicide attempts in a Large Urban Jail

1 System with an Established Suicide Prevention Program,” states, “Suicide is the leading cause of
2 death in U.S. Jails.” The article further states:

3 Factors that makes jails a particularly high-risk environment include the large portion
4 of inmates who have mental illness, the high rate of enforced withdrawal from alcohol
5 and drugs, and the traumatic effect that criminal conviction and incarceration have on
an inmate’s personal life.

6 47. The Washoe County Detention Facility has had several jail suicides. Less than one month
7 before Clustka succeeded in killing herself, on March 29, 2005, inmate Patrick Boyle was found
8 hanging in his cell.

9 48. Despite the known prevalence of jail suicides, City of Reno Police Department failed to
10 train its officers on their responsibilities to report information they have regarding suicide attempts by
11 detainees. In deliberate and wanton indifference to the predictable harm, Reno Police Department
12 failed to provide Ashton and Robertson any training whatsoever on their responsibility and duty to
13 report any and all suicide attempts and threats by detainees to appropriate authorities.

14 49. As a direct and proximate result of the defendants’ deliberate indifference, the surviving
15 children of Clustka, plaintiff Charla Conn and brother Dustin Conn, were deprived of their mother’s
16 care, comfort, love, protection, advice, society, and physical assistance in addition to expectations of
17 support, maintenance and other pecuniary benefits.

18 **FIRST CAUSE OF ACTION**

19 **(Fourteenth Amendment, 42 U.S.C. § 1983)**

20 50. Plaintiff realleges and incorporates each and every allegation contained in the preceding
21 paragraphs.

22 51. Clustka had a serious medical need, namely a particular vulnerability to suicide. There was a
23 strong likelihood, given Clustka’s failed suicide attempt in the paddy wagon in the afternoon of April 26,
24 2005, and her known history of drug abuse and mental disorders, that self-inflicted harm would soon
25 occur.
26

27 52. Defendants Ashton and Robertson knew or should have known of Clustka’s particular
28 vulnerability to suicide because they personally witnessed Clustka attempting to kill herself. The officers

1 were required to take adequate measures in response to Clustka's known suicide risk, which at a
2 minimum required them to inform Washoe County Detention Facility staff of her failed suicide attempt.

3 53. Defendants Ashton and Robertson acted with reckless indifference to Clustka's particular
4 vulnerability by making deliberate and intentional decision to not notify Washoe County Detention
5 Facility staff of Clustka's suicide attempt and to not write an incident report documenting the attempt. It
6 is classic deliberate indifference where a police officer witnesses a detainee attempting to kill herself and
7 determines to warn no one and do nothing about it. Acts of omission, namely Ashton and Robertson's
8 failure to report Clustka's suicide attempt, constitutes the predicate for a finding of liability on their part.

9 54. As a direct and proximate result of the aforescribed unlawful and deliberately indifferent
10 conduct by Ashton and Robertson committed under color of law and under each individual's authority as
11 a Reno police officer/employee, decedent Clustka was deprived of her right to be free from deliberate
12 indifference to risk of suicide in violation of the Fourteenth Amendment to the United States
13 Constitution.

14 55. As a direct and proximate result of defendants' conduct, decedent Clustka suffered extreme
15 physical pain and suffering before death, loss of ability to earn income, loss of life expectancy, loss of
16 consortium, loss of pleasure in life, medical and burial expenses and death.

17 56. As a consequence thereof, Clustka suffered death by suicide in the morning of April 28,
18 2005, leaving behind two children, Dustin Conn and Charla Conn, Special Administrator for the
19 Estate of Brenda Jean Clustka and a plaintiff in this action. As a direct and proximate result of any
20 and/or all of the acts of defendant, the surviving children of Clustka were deprived of a liberty
21 interest inherent in the relationship with their mother, including support, maintenance and other
22 pecuniary benefits in addition to the decedent's care, comfort, love, protection, advice, society, and
23 physical assistance.

24 57. At the time of the incident alleged herein, Clustka had a clearly established right under the
25 Fourteenth Amendment to be free from deliberate indifference to risk of suicide.

1 58. The acts of defendants Ashton and Robertson were intentional, wanton, malicious and
2 oppressive and made with reckless indifference to plaintiffs' rights thus entitling plaintiffs to an award of
3 punitive damages against the individual officers.

4 **SECOND CAUSE OF ACTION**

5 **(Practice, Policy, Failure to Train –City of Sparks Only– 42 U.S.C. § 1983)**

6 59. Plaintiff realleges and incorporates each and every allegation contained in the preceding
7 paragraphs.

8
9 60. At all times relevant to this complaint, defendants Ashton and Robertson were police
10 officers/employees of City of Reno Police Department, acting under the direction and control of the City
11 of Reno by and through its policymakers.

12 61. Plaintiff alleges all conduct complained of herein by these plaintiffs was the result of an
13 abject failure to train defendants Ashton and Robertson regarding the requirement that they report
14 suicide attempts by detainees in their custody.

15
16 62. City of Reno's failure to properly train, supervise, control and/or discipline defendants
17 Ashton and Robertson with respect to their obligations to report suicide attempts by detainees is the
18 cause in fact and the proximate cause of the injuries claimed by plaintiffs.

19 63. Given the known high prevalence of jail suicides, this failure to provide proper training
20 amounts to deliberate indifference. City of Reno, through its policymakers, had knowledge of, or had it
21 diligently exercised its duties to instruct, supervise, control, and discipline on a continuing basis, should
22 have had knowledge that the wrongs that were done to plaintiff herein were likely to be committed.

23
24 64. Plaintiffs allege that the deliberate indifference in City of Reno's failure to train involves
25 more than a mere suspicion that harm may occur.

26 65. Defendant City of Reno had knowledge of or, had it diligently exercised its duties to
27 instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the
28 wrongs that were done, as heretofore alleged, or other unlawful or unconstitutional acts were going to
be committed.

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66. Defendant City of Reno had power to prevent or aid in preventing the commission of said wrongs, could have done so, and intentionally knowingly, or with deliberate indifference to the rights of detainees, and specifically decedent Clustka, herein failed or refused to do so.


67. As a direct and proximate result of the aforescribed unlawful and malicious conduct by the individual defendants – approved, ratified, and condoned -- by City of Reno through its policymakers, Clustka was deprived of her life and her right to be secure in her person against violations of her due process rights under the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for judgment against the defendants as follows:

1. For a declaratory and injunctive relief that the policies, practices, and acts complained of herein are illegal and unconstitutional;
2. For actual and compensatory damages from defendants, jointly and severally as appropriate, in an amount to be determined at trial;
3. For exemplary and punitive damages from the individual defendants in an amount to be determined at trial;
4. For attorney fees and costs incurred herein;
5. For leave to amend this complaint should it become necessary;
6. For nominal damages;
7. For such other and further relief as this Court may deem appropriate.

Dated this 3 day of November, 2005,


 TERRI KEYSER COOPER
 DIANE K. VAILLANCOURT
 Attorneys for Plaintiff Charla Conn