

**In the Circuit Court of Kanawha County, West Virginia**

**CONNIE HARDY, as the,**  
Plaintiff,

v.

Case No. CC-20-2021-C-537  
Judge Stephanie Abraham

**CURTIS WINES,  
JOHN DOES,  
WEST VIRGINIA DIVISION OF  
CORRECTIONS AND  
REHABILITATION,**  
Defendants

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT WEST VIRGINIA  
DIVISION OF CORRECTIONS AND REHABILITATION'S MOTION FOR SUMMARY  
JUDGMENT**

On the 9<sup>th</sup> day of May 2024, the parties appeared before the Court. Plaintiff, Connie Hardy, as the Personal Representative of the Estate of Franklin Barnhouse, appeared by Counsel, Joseph H. Spano, Jr., Pritt & Spano, PLLC; Defendant, West Virginia Division of Corrections and Rehabilitation ("Defendant") appeared by Counsel, William E. Murray, Bailey & Wyant, PLLC. The parties then presented arguments in support of and in opposition to Defendant's Motion for Summary Judgment. After receiving the arguments of Counsel, and the evidence adduced, the Court **FINDS** as follows:

**FINDINGS OF FACT**

1. On June 22, 2019, decedent, Franklin Barnhouse, was admitted to Eastern Regional Jail on alcohol related charges. Once processing of Mr. Barnhouse was completed, he was assigned to holding cell number five (5), which is around the corner from the booking area.
2. That subsequent to Mr. Barnhouse's admission to jail, Defendant Curtis Wines, and others, were admitted into the jail. After processing, which included a pat-down search

and a body scan, Mr. Wines and others were placed in the same holding cell with Mr. Barnhouse.

3. According to all reports, Defendant Wines had brought into the facility with him, inside his body cavity, heroin and/or fentanyl. It appears that those drugs were removed from his body and were ingested by some inmates in the holding cell. It is alleged and believed that Mr. Barnhouse ingested some of those drugs.
4. That at approximately 11:15 a.m. on June 23, 2019, Mr. Barnhouse was found unresponsive in the holding cell and was later transported to a hospital where he was pronounced dead.
5. There is no evidence in the record that Mr. Barnhouse was physically examined at any time by the correctional staff between his placement in holding cell and his discovery as nonresponsive at 11:15 a.m. the next morning, although officers had moved other inmates in and out of the cell.
6. That holding cells may have been available for the placement of Mr. Barnhouse which would have allowed constant observation of him, and it is alleged by Plaintiff that, due to his intoxication, he should have been placed into such a cell.

#### **CONCLUSIONS OF LAW**

7. That in Count II of Plaintiff's Complaint, various constitutional violations are alleged. The Court finds that the West Virginia Constitution provides no private causes of action except for under Article 3, Section 10. The Court finds that the State of West Virginia does not have in a statute analogous to 42 U.S.C. § 1983 which allows for a cause of action for violations of the United States Constitution. The cases addressing constitutional violations require that deliberate indifference or an intentional malicious act be performed.
8. That the allegations in Plaintiff's Complaint and the evidence put forth does not rise to

the heightened specificity to raise a claim of constitutional deprivation.

9. That it was not reasonably foreseeable that the officials would believe at some point the decedent would ingest some controlled substances and that the ingestion would ultimately cause his death. Therefore, a claim of deliberate indifference is not substantiated, and the Court is of the opinion to and hereby does, **ORDER** that summary judgment be **GRANTED** on the constitutional claims as set forth in Count II of the Plaintiff's complaint.
10. As relates to the issue of qualified immunity which has been asserted by Defendant, the standard to pierce qualified immunity requires more than mere negligence. It requires a violation of a statutory or constitutional duty which must be seen as reasonably foreseeable to an official or be something of which the official would be aware.
11. That in this instance, Plaintiff has provided an affidavit of an agent indicating that several separate written policies regarding Mr. Barnhouse's placement which carries at least a question of fact sufficient to overcome Defendant's Motion for Summary Judgment.
12. Therefore, based upon the foregoing, the Court is of the opinion to and hereby does **DENY** summary judgment on the remaining allegations in Plaintiff's Complaint.

The Clerk is hereby Ordered to provide a certified copy of this Court's Order to all Counsel of record.

PREPARED BY:

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**/s/ Stephanie Abraham**

Circuit Court Judge

13th Judicial Circuit

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