NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued June 6, 2023
Decided July 21, 2023

Before

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 22-2916

SARAH CHILCUTT, Individually and as Independent Administrator of the Estate of Aaron Chilcutt, deceased,
Plaintiff-Appellee,

v.

LOYDA SANTIAGO and RICK TABISZ,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 19 CV 6732

Manish S. Shah,
Judge.

O R D E R

Aaron Chilcutt's wife Mandy Tumis called Waukegan police officers to her home in October 2017 because she believed that her husband had attempted suicide. After another call to police from Tumis two weeks later, this time to report abuse, two of the same officers, Loyda Santiago and Rick Tabisz, arrested Chilcutt. While detained, Chilcutt died by suicide.

Chilcutt's daughter, individually and as independent administrator of her father's estate, sued Santiago and Tabisz, claiming they failed to protect Chilcutt or provide adequate medical care. The district court denied a motion for summary judgment by the officers because factual disputes precluded a conclusion on qualified immunity. The officers then filed this interlocutory appeal. We agree with the district court that whether the officers enjoy qualified immunity turns on disputed facts. We therefore dismiss this appeal for lack of jurisdiction.

I.

We recount the facts in the light most favorable to Chilcutt. *See Stewardson v. Biggs*, 43 F.4th 732, 734 (7th Cir. 2022). Waukegan police officers Loyda Santiago and Rick Tabisz responded to a call from Chilcutt's wife, Mandy Tumis, on October 7, 2017. Tumis told the officers that Chilcutt was suicidal, had been drinking alcohol, and had taken a lot of pills. She also told Santiago that Chilcutt, who had attempted suicide in the past, had assaulted her and said he was "tired of living and over his effing life." Chilcutt told Santiago that he was not suicidal. But Santiago decided that Chilcutt should be taken to a hospital because he had "suicidal ideations" and had taken pills in an attempt to commit suicide. At the hospital, Tumis completed an involuntary-commitment petition. Santiago and Tabisz were present when Chilcutt was involuntarily committed. Chilcutt was in the hospital for two days.

Two weeks after this incident, on October 21, Tumis called the police again from a gas station after Chilcutt had passed out. She told the dispatcher that she needed officers to arrest Chilcutt because she was not safe. Santiago and Tabisz met her at the gas station. Tumis told them that she and Chilcutt had been drinking and arguing. She did not mention his mental health. Santiago and Tabisz remembered Chilcutt's hospitalization. Tabisz expressly recalled that Chilcutt had been involuntarily committed but did not ask if Chilcutt was suicidal or had taken any pills.

Santiago and Tabisz (along with a third officer) arrested Chilcutt pursuant to a domestic battery warrant issued after the October 7 interaction. Chilcutt was calm and compliant during the arrest and did not say anything about being suicidal. Santiago drove Chilcutt to the municipal jail.

At the jail, Chilcutt proceeded through the booking process, all of which was recorded on video and audio. Typically, the officer who transports a detainee completes

the detainee screening forms, but this time, Santiago and Tabisz stood close by while the third officer completed Chilcutt's intake. That booking officer asked Chilcutt if he had any medical issues or was taking medication; Chilcutt said no. That officer did not ask Chilcutt if he had any mental health problems or was suicidal, even though the screening form she used had checkboxes for "Suicidal/Self-Destructive" and "Mental Condition." The officer did not check those boxes and did check the box marked "calm." Santiago did not give the officer any information to complete this part of the screening form; she later explained she did not know if Chilcutt had any mental conditions, Chilcutt had said he wasn't suicidal on October 7, and on October 21 Chilcutt did not make any comments suggesting he was suicidal.

After asking about Chilcutt's medical issues, the booking officer asked Chilcutt for an emergency contact. Chilcutt named Tumis, but the booking officer asked if there was anyone else. The parties dispute Chilcutt's response, and the audio on the booking-room video is not entirely clear. Chilcutt apparently could not name anyone else (the emergency contact section says, "NONE"), and he then said, according to the estate, "I guess I can go and die." (Elsewhere, the estate says Chilcutt said, "I guess I can go die"; this does not alter the meaning, but we agree with the district court's use of "go and die.") Santiago and Tabisz were standing a few feet away from Chilcutt. Both testified, like the booking officer, that they did not see or hear anything on October 21 to suggest that Chilcutt was suicidal.

A training coordinator from the department later said that "I guess I can go and die" is a suicidal statement that officers could have identified as a factor in deciding whether Chilcutt was suicidal. The Waukegan police chief opined that a statement like "I guess I can go and die now" was a good indicator of a person's current state of mind. And Waukegan police officers were trained that threatening statements are a warning sign that a detainee is at risk; they also could consider, among other things, past suicide attempts and hospitalizations for mental illness to help them identify at-risk detainees.

Chilcutt cooperated throughout the rest of the booking process. He joked while waiting to be moved to a cell, but at other times was muted and at one point said, "I've got to find someone who cares to bond me out." The officers did not enact the jail's protocols for detainees deemed suicidal—such as contacting a supervisor, calling an ambulance, and continually supervising the detainee. Nor did they follow the procedures for managing detainees at a high risk of self-harm—such as dressing them in a paper gown, placing them in a holding cell, and conducting 15-minute checks.

Instead, Santiago placed Chilcutt in a regular cell and, the officers emphasize, per "the jail's *standard* suicide-prevention protocol[]," removed his shoelaces and the drawstring from his shorts.

At 4:26 p.m., Chilcutt asked for a blanket, and Santiago gave him one. Officers (apparently including Santiago) learned informally, rather than through formal training, that blankets can be used to harm oneself. Around 6 p.m. a new officer began his shift. That officer let Chilcutt leave his cell to get water; he and Chilcutt had a conversation, in which Chilcutt was polite. About thirty minutes later, that officer was conducting a cell check and found Chilcutt hanging in his cell with the blanket tied to the bars and wrapped around his neck. Officers attempted to revive him while awaiting paramedics. Chilcutt was pronounced dead at the hospital.

Chilcutt's daughter, as administrator of his estate, sued the City of Waukegan and multiple police officers, including Santiago and Tabisz, alleging they failed to protect Chilcutt and provide him with adequate medical care. *See* 42 U.S.C. § 1983. (She also brought state-law claims, which were later dismissed, as were other officers.) The remaining defendants moved for summary judgment. As relevant here, Santiago and Tabisz argued the estate failed to raise a genuine issue of material fact about whether the officers had notice that Chilcutt was at substantial risk of suicide on October 21. They further contended they were entitled to qualified immunity because their lack of notice meant there was no constitutional violation, and it was not clearly established that "failing to invoke suicide protections when the officers had no knowledge or reason to suspect the detainee was at risk of suicide" violated a detainee's constitutional rights.

In a thorough memorandum opinion and order, the district court entered summary judgment for all moving defendants except Santiago and Tabisz. The court decided that these two officers were not entitled to judgment as a matter of law because "what they knew about the risk of suicide" depended on disputed facts and inferences. For instance, a jury could conclude that "I guess I can go and die" was "a kind of suicidal threat" that "communicated a morbid depression and a non-idle intent to" attempt suicide, given Chilcutt's prior "credibl[e] attempt." Because Santiago's and Tabisz's knowledge of the risk turned on disputed facts, the court concluded that it could not yet grant qualified immunity. This interlocutory appeal by the officers followed.

II.

A.

A public official sued under 42 U.S.C. § 1983 enjoys qualified immunity except when "the defendant violated a constitutional right," at a time when that "right was clearly established." *Estate of Clark v. Walker*, 865 F.3d 544, 549–50 (7th Cir. 2017). Therefore, a district court properly denies a motion for summary judgment based on qualified immunity when the facts, viewed in the light most favorable to the plaintiff, create a genuine dispute about whether the defendants' actions violated a clearly established constitutional right. *See id.* at 550. If the court denies summary judgment, the defendants may appeal immediately, under the collateral order doctrine, only if the denial of the qualified-immunity defense turns on an "issue of law." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985). But we lack jurisdiction to review, on an interlocutory basis, a decision denying qualified immunity "insofar as that order determines whether or not the pretrial record sets forth a 'genuine' issue of fact for trial.'' *Johnson v. Jones*, 515 U.S. 304, 319–20 (1995). "[O]ur jurisdiction on interlocutory appeal extends to pure questions of law, not mixed questions of law and fact." *Smith v. Finkley*, 10 F.4th 725, 735 (7th Cir. 2021).

The estate contends Tabisz and Santiago violated Chilcutt's rights under the Fourteenth Amendment when they failed to provide the booking officer with information about the October 7 incident and took no steps to prevent him from harming himself. Santiago even gave Chilcutt the blanket with which he hanged himself. To prevail on the merits, the estate must show that the officers acted in an objectively unreasonable manner. *See Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) (denial of medical care); *Kemp v. Fulton County*, 27 F.4th 491, 497 (7th Cir. 2022) (failure to protect). A wrinkle here is that, in 2017, objective unreasonableness was not the standard applicable to pretrial detainees' claims about their conditions of confinement; they were still treated as deliberate indifference claims, which come with a higher burden of proof. *See Miranda*, 900 F.3d at 350–52.

We have not explicitly addressed how the change in the standard affects the qualified-immunity analysis. In prior cases, we have applied current law (objective unreasonableness) to determine on the merits whether there was a violation of a constitutional right, and, for purposes of qualified immunity, looked to our deliberate indifference cases to determine if the right was clearly established at the time. *See,*

e.g., *Hardeman v. Curran*, 933 F.3d 816, 820–22 (7th Cir. 2019). We need not decide the issue here, though, because either way, the estate must show that the officers knew or had notice that Chilcutt was at risk of suicide. *See Jump v. Village of Shorewood*, 42 F.4th 782, 793 (7th Cir. 2022) (no objective unreasonableness when "officer has no reason to think a detainee is suicidal"); *Estate of Clark*, 865 F.3d at 551 (deliberate indifference requires actual knowledge).

B.

Whether there is jurisdiction in an appeal challenging a denial of qualified immunity is often a contested question. We consider whether (1) the district court identified factual disputes and (2) the appellants "adopt the plaintiff's facts, or instead make a 'back-door effort' to use disputed facts." *Smith*, 10 F.4th at 736.

On the first inquiry, the district court reasoned that it could not render a decision on qualified immunity because that issue "turn[ed] on contested facts." Specifically, the court concluded that the estate had provided sufficient evidence for a jury to determine that the officers "had actual knowledge of the substantial risk" to Chilcutt. This is a strong indicator that the qualified-immunity denial is not appealable. *See Flowers v. Renfro*, 46 F.4th 631, 634 (7th Cir. 2022).

But a district court's assertion that it cannot resolve the qualified-immunity issue because of factual disputes does not always foreclose our jurisdiction. *See Jones v. Clark*, 630 F.3d 677, 680 (7th Cir. 2011). We still may hear the appeal if the officers accept the estate's version of the facts as true or, despite recognizing factual disputes, they "take each disputed fact in the light most favorable" to the estate. *Id.* This must be a genuine exercise. We will dismiss the appeal for lack of jurisdiction if the officers attempt to contest the facts or use the appeal to "test the sufficiency of the evidence to reach the trier of fact." *Id.* An added nuance exists when—as here—there is video footage of the events. *See Scott v. Harris*, 550 U.S. 372, 378 (2007). If video footage "blatantly contradict[s]" a party's version of events so that "no reasonable jury could believe it," we will not adopt that version of events. *Id.* at 380.

In Section I of their brief the officers argue they are merely challenging the district court's conclusion that the right at issue was clearly established in October 2017. We have jurisdiction to consider this legal argument. *See Estate of Clark*, 865 F.3d at 551.

The officers dispute how the district court framed the asserted right. The court ruled that in 2017 Chilcutt had a clearly established "right to be free from deliberate indifference to the risk of suicide while in custody." The officers contend the court described the right too broadly. And although we have previously identified the right at issue in prisoner-suicide cases as the right to be free from deliberate indifference to suicide, *see, e.g.*, *Estate of Miller ex. rel. Bertram v. Tobiasz*, 680 F.3d 984, 991 (7th Cir. 2012), the officers are likely correct that the district court's phrasing was overbroad. But the officers' characterization is so specific as to make this case one of a kind:

> Was it clearly established in 2017 that failing to protect an inmate from suicide violated the Fourteenth Amendment when the only facts the officers knew were the inmate "potentially" attempted suicide two weeks prior and he made a "vague and passive" statement in the booking room that "could" have been interpreted as a "kind of a suicidal threat?"

In addition to incorporating disputed facts, this phrasing is too narrow. True, the Supreme Court insists that, to determine whether a right was clearly established, courts define that right at a high level of specificity, with reference to the "particular circumstances" facing an officer. *District of Columbia v. Wesby*, 138 S. Ct. 577, 589–90 (2018). But the specificity of the officers' framing of the right here would impermissibly require a plaintiff to find a case with facts identical to the officers' interpretation of what happened, not simply one in which officers were put on notice that their conduct was unlawful. *See Rivas-Villegas v. Cortesluna*, 142 S. Ct. 4, 7–8 (2021).

We applied these principles in *Estate of Clark v. Walker,* decided a few months before these events. *Estate of Clark* also involved a claim of deliberate indifference to a detainee's risk of suicide. 865 F.3d at 546. As here, the defendant in *Estate of Clark* filed an interlocutory appeal from the denial of qualified immunity, defining the right at issue at an extremely high level of specificity. *Id.* at 552. This court decided that although courts may not define rights at too high a level of generality, it was clearly established that the plaintiff's right to be free from deliberate indifference to his risk of suicide was violated if the defendant had actual knowledge of the serious risk of suicide and "chose to do nothing." *Id.* at 553. The same formulation applies here because the parties dispute whether the officers knew of Chilcutt's risk of suicide.

The officers argue *Estate of Clark*—in which the detainee's score on a screening tool indicated a maximum risk of suicide—defined the right with more specificity,

albeit implicitly, because that decision discusses how the officers acquired their knowledge. That discussion, however, was not part of our framing of the right at stake. The "particular conduct" that violated clearly established law was an officer choosing to take no action despite having knowledge that the detainee was at serious risk of suicide; how they came about that knowledge was not relevant to the framing of the right. *See id.*; *see also Lovett v. Herbert*, 907 F.3d 986, 994 (7th Cir. 2018) (describing *Estate of Clark* as affirming denial of qualified immunity where defendant "'chose to do nothing' despite his knowledge that the inmate was a suicide risk").

The rest of the officers' arguments in Section I, although put forward as challenges to whether the law was "clearly established," are intertwined with disputed facts and amount to impermissible sufficiency-of-the-evidence challenges. We therefore lack jurisdiction to consider them. *See Jones*, 630 F.3d at 680. For instance, the officers ask whether it was clearly established that they violated Chilcutt's rights "when the only facts the officers knew were the inmate 'potentially' attempted suicide two weeks prior and he made a 'vague and passive' statement in the booking room that 'could' have been interpreted as a 'kind of a suicidal threat.'" True, the district court described the contested statement as "vague and passive" and a "kind of suicidal threat." But the officers' description of the right fails to accept the court's ultimate conclusion—that as a whole, sufficient evidence allowed for the inference that the officers "had actual knowledge of the substantial risk that Chilcutt could kill himself." The officers may not contest that determination in this appeal. *See Smith*, 10 F.4th at 741.

Elsewhere, the officers argue there were "significantly more indicators" that the "decedents were at imminent risk of suicide" in the cases cited by the district court. But *Estate of Clark* explains that this court's "limited jurisdiction precludes considering" the argument that prior cases were factually distinguishable—an argument that implicates the sufficiency of the evidence. *See* 865 F.3d at 553. For example, the officers rely on cases in which this court affirmed summary judgment for the defendants because the plaintiffs had not presented sufficient evidence to show actual knowledge. *See, e.g.*, *Minix v. Canarecci*, 597 F.3d 824, 831, 833 (7th Cir. 2010); *Matos ex rel. Matos v. O'Sullivan*, 335 F.3d 553, 557 (7th Cir. 2003). That is the opposite of the posture here. Whether the district court correctly determined that the estate here had sufficient evidence of the officers' knowledge of the risk cannot be evaluated in an interlocutory appeal. *See Estate of Clark*, 865 F.3d at 551. It was clearly established that *if* the officers had knowledge of the serious risk, they could not "do nothing," and it is undisputed that the officers did

not enact any of the jail's protocols for detainees at risk of suicide or inform the booking officer about what they knew of Chilcutt's involuntary commitment weeks earlier.

Finally, we observe that the officers' version of the facts underpinning their qualified-immunity argument in Section I shows that they are contesting the sufficiency of the evidence. They do not accept the facts and make reasonable inferences favorable to Chilcutt, as required. *See Hurt v. Wise*, 880 F.3d 831, 839 (7th Cir. 2018), *overruled on other grounds by Lewis v. City of Chicago*, 914 F.3d 472 (7th Cir. 2019). For instance, they suggest they were not on notice of Chilcutt's risk because, although Chilcutt "potentially" attempted suicide two weeks prior, "Chilcutt's discharge doctor specifically 'ruled out' any attempt at suicide," so "the potential attempt was never even substantiated." But the district court correctly noted that the officers lacked evidence that, on October 21, they "knew what Chilcutt's doctors had concluded about their patient," and that some doctors seemed more concerned about his risk of suicide. Additionally, the officers argue that precedent does not clearly establish that they violated Chilcutt's rights because "Chilcutt exhibited such scant signs of being at any risk of harming himself." They assert that, when discussing the evidence for municipal liability, the district court said that Chilcutt did not exhibit suicidal tendencies on October 21 (apart from the contested statement). But the court also concluded that, as to the officer's liability, there were more than "scant" comments supporting the officers' knowledge of Chilcutt's risk.

For similar reasons, we do not reach the first step of the qualified-immunity analysis—whether a constitutional violation occurred. The officers argue there was no violation because they lacked sufficient notice of Chilcutt's risk. But the district court determined that what they knew depended on disputed facts and inferences, from which a jury could conclude that the officers were aware of the risk. As discussed above, we may not reevaluate whether the evidence was sufficient to show notice or actual knowledge. Nor may we resolve disputed issues of fact. *See Ferguson v. McDonough*, 13 F.4th 574, 584 (7th Cir. 2021).

III.

In Section II of their brief, the officers challenge in the alternative the district court's conclusions about the sufficiency of the estate's evidence. But nothing here justifies departing from the general proposition that this court lacks jurisdiction to

entertain sufficiency-of-the-evidence arguments in an interlocutory appeal of the denial of qualified immunity. *See Smith*, 10 F.4th at 741.

First, the officers rely on *McGee v. Parsano*, 55 F.4th 563, 572 (7th Cir. 2022), to argue that the undisputed record is so clear that this court can disregard the district court and look at the evidence de novo. But *McGee* is distinguishable. That appeal concerned "two purely legal issues," which the court could resolve based only on the video evidence and undisputed pertinent historical facts. *Id.* Here, the parties disagree on the pertinent historical facts, including what the video and audio show, and these facts are material to determining qualified immunity.

We will generally not disregard a district court's assessment of the evidence unless it is "blatantly contradict[ed]" by the record. *Smith*, 10 F.4th at 740. The officers point to evidence that they may not have been aware of Chilcutt's substantial suicide risk—he was "calm and cooperative," mentioned needing things after his release, and at some points spoke "lightheartedly." But this evidence does not "utterly discredit[]" the district court's inferences in Chilcutt's favor. *See Ferguson*, 13 F.4th at 576.

Neither is the booking-room recording dispositive. The officers ignore the district court's statement, supported by the video, that Chilcutt appeared muted and depressed at times during booking, at one point saying he needed to "find someone who cares" to pay his bond. And their attempt to jettison altogether the disputed statement—"I guess I can go and die"—goes too far. The officers contend it is pure "speculation" to infer Chilcutt said this, because the recording is unclear; they submit he could have just as plausibly said "guess not for tonight." But the booking-room recording is not so unintelligible as to be inadmissible. The district court, viewing the evidence in the estate's favor, concluded that a reasonable jury could find that Chilcutt said, "I guess I can go and die." If the video "flatly contradict[ed]" that account, we would not credit it. *See Hurt*, 880 F.3d at 840. But it does not. It is possible that Chilcutt said, "I guess I can go and die." The video is open to interpretation, and the final interpretation must be left to the trier of fact. *Id.*; *cf. United States v. Nunez*, 532 F.3d 645, 651 (7th Cir. 2008) (explaining that even when transcript of audio recording exists, jury should be instructed to "rely on its own interpretation" of recording).

We end by observing that the officers may still be entitled to qualified immunity should the case go to trial. *See Smith*, 10 F.4th at 750 (quoting *Warlick v. Cross*, 969 F.2d 303, 305 (7th Cir. 1992) ("[T]he district court may properly use special interrogatories to

allow the jury to determine disputed issues of fact upon which the court can base its legal determination of qualified immunity.”)) We also do not differentiate between the two officers for the purposes of this appeal. Qualified immunity is an individualized inquiry, *see Estate of Williams v. Cline*, 902 F.3d 643, 651 (7th Cir. 2018), and the officers’ actions were not identical. So, ultimately, the analysis may differ between the two.

Because the officers’ arguments cannot be separated from material factual disputes, we DISMISS this interlocutory appeal for lack of jurisdiction and allow the case to proceed in the normal course.