

handwriting expert Michael Hull who, after painstakingly comparing photographs of the note on the wall to known samples of Trentadue's handwriting, concluded that Trentadue wrote the note found on the wall of his cell. The court finds that the message left on the wall by Trentadue could reasonably be regarded as a suicide note.

20. The injuries to Trentadue's body were extensive. Trentadue's body was eventually removed from the FTC and transported to the Oklahoma Medical Examiner's facility for autopsy. According to Dr. Fred Jordan, Chief Medical Examiner of the State of Oklahoma, the autopsy report prepared by him and entered into evidence accurately documents each and every one of Trentadue's injuries. The autopsy report provides the following "pathological diagnosis":

I. Recent cutaneous contusions.

- A. Left posterior temporoparietal region of head (5 x 4 cm.) with peripheral abrasion and two central lacerations.
- B. Right posterior temporo-occipital region of head (6 x 4 cm.).
- C. Forehead above the eye, two lesions (3 x 1 cm.; 1 x 0.5 cm.).
- D. Left anterior chest (1 x 0.5 cm.).
- E. Right upper arm near the bicep (3 x 2 cm.).
- F. Distal left forearm, extensor surface (2.5 x 2.0 cm.), with adjacent abrasion.
- G. Right upper back (5 x 2 cm.).
- H. Immediately above the anal verge (1 x 0.5 cm.).
- I. Right lower extremity, knee (1.5 x 1.5 cm.).
- J. Right lower extremity immediately below the knee cap (1 x 0.5 cm.).
- K. Left lower extremity, medial anterior thigh, two lesions (1 x 1 cm.; 0.5 x 0.5 cm.).
- L. Bottom of left foot, four lesions (up to 1.5 cm.).

II. Acute lacerations.

- A. Mid-frontal forehead (2 x 0.5 cm.) with large adjacent contusion.

- B. Right lateral neck (6.5 x 1.5 cm.) with underlying soft tissue hemorrhage.
- III. Ligature mark of neck (26 x up to 1.5 cm.); two overlying adjacent linear acute abrasions.
- IV. Petechiae and purpurae of conjunctiva.
- V. Acute to recent abrasions.
 - A. Lateral to the right eye.
 - B. Bridge of the nose.
 - C. Medial right antecubital fossa.
 - D. Dorsum of right wrist.
 - E. Posterior lower left leg at the level of the ankle (0.5 x 0.5 cm.).
- VI. Bilateral acute contusions of tongue; intramuscular strap muscle hemorrhage.
- VII. Acute fracture of the right tip of the hyoid bone.
- VIII. Older contusions.
 - A. Dorsal surface of right hand, third and fourth metacarpal phalangeal joint (2 x 2 cm.; 3 x 2 cm.), dorsal left hand, second and third metacarpal phalangeal joints (2 x 1.5 cm.; 2 x 1 cm.).
 - B. Flexure surface of left upper arm bicep area (2 x 1 cm.).
 - C. Posterior left arm (4 cm.).
- IX. Arteriosclerotic cardiovascular disease.
- X. Micronodular cirrhosis; splenomegaly.
- XI. Biliary calculi.

Dr. Jordan testified that the injuries described in his autopsy report are depicted in the photographs that were taken of Trentadue's body while it was still located at the FTC. Dr. Jordan's trial testimony explained his pathological diagnosis in clear and understandable terms and Dr. Jordan also provided a complete description of the location and extent of the noted injuries. Dr. Jordan initially listed Trentadue's manner of death as "pending" and it was later classified as "unknown." This classification was largely due to the extensive injuries found on Trentadue's body. Following an investigation into Trentadue's death by the

Oklahoma City Police Department, however, the manner of death was amended by Dr. Jordan, in July of 1998, from "unknown" to "suicide" and the cause of death was identified as "traumatic asphyxia."

21. Evidence established that Trentadue's injuries were unusual for a hanging suicide. Witnesses familiar with other inmate hangings testified that it was unusual for so much blood to be present on the body of the hanging victim and in the immediate surroundings of a hanging.

22. The court accepts that Trentadue was alive at the time of the 2:38 a.m. cell check on August 21, 1995. The court also finds that at that time, there was no blood deposited on the floor nor had there yet been a hanging attempt. Thus, the court finds that the extensive injuries, deposits of blood, and ultimate hanging and death occurred in quite a short period of time, from approximately 2:38 a.m., at the earliest, to about 3:02 a.m., a space of approximately 24 minutes. When Trentadue was found hanging, he was apparently dead. Although there was evidence that because of the delay in opening the cell door there was no immediate attempt to save Trentadue, there was no evidence from lay witnesses or experts that Trentadue could have been revived even had such attempts been made.

23. Trial testimony established that news of Trentadue's death came as a shock to his family members, including his wife Carmen Trentadue, his brother Jesse Trentadue, his brother Lee Trentadue, his sister Donna Trentadue

Sweeney, and his mother Mrs. Wilma Trentadue. Much as the initial emergency call had generated intense activity at the FTC, the call to Trentadue's mother regarding his death led to an immediate response by his family to obtain answers to their questions and to find out as much information as possible about the unexpected death of their loved one. The valid and understandable questions from the family initially went unanswered. Trentadue's body was eventually shipped to California at his family's request. The family was not advised by anyone at the FTC or the BOP that an autopsy had been performed; thus the family was first made aware of the autopsy by viewing the obvious signs of the intrusive procedure on his body after it was received on August 26, 1995. Despite the numerous, unusual, and obvious extensive injuries to Trentadue's body, the family had not been told in advance of these injuries and were thus also forced to discover these on their own, much to their horror. Jesse Trentadue testified that he had not been told of any investigation into the death of his brother until he came to Oklahoma City from his home in Salt Lake City, Utah, and obtained, on his own, a copy of a press release which mentioned that his brother's death had been tentatively ruled a suicide. The court understands that the United States is not responsible for the embalming performed by a third party, and is also not shown to be responsible for the time it took for the family to ultimately receive the body. However, from the testimony of family members, the court determines that they suffered a quantifiable level of distress over and above

the expected level of emotional distress they would have suffered due to Trentadue's death and that the United States should be held liable for this distress.

24. At the time of his death, Trentadue was a new father, his son Vito having been born on June 20, 1995 while Trentadue was incarcerated in California. Trentadue had an extensive criminal record, including convictions for armed robbery. Trentadue had a history of abusing drugs, particularly heroin. Trentadue also had a history of alcohol abuse. There was testimony that Trentadue's lifestyle had caused something of an estrangement between himself and his father, Jesse James Trentadue, who is now also deceased. Other family members testified that, although Trentadue's life was not without tension and difficulty, the family had a warm and loving relationship.

25. The testimony of PA Mier, Lt. Freeman, and BOP guard Robert Garza raise serious questions as to their truthfulness and reveal a lack of respect for the solemnity of sworn proceedings. From the time of Trentadue's death up to and including the trial, these witnesses seemed unable to comprehend the importance of a truthful answer. The court is satisfied that the unreliability of these witnesses was fully and effectively demonstrated through cross-examination. Accordingly, the court has given their testimony only that credibility which it deserves. The testimony of former FTC inmate Steven Nusz was totally unbelievable and worthy of no credence.

Conclusions of Law

1. The court has subject matter jurisdiction over this action pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b). Personal jurisdiction and venue are proper. The United States has been properly substituted as the sole defendant pursuant to the certification of Jeffrey Axelrad, Director of the Torts Branch, Civil Division, United States Department of Justice under 28 U.S.C. § 2679(d)(1).

2. Under the Federal Tort Claims Act, the United States is liable in the same manner and to the same extent as a private individual under like circumstances. 28 U.S.C. § 2674. The United States is liable for damages caused by the negligent wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. § 1346(b). The court is to apply the substantive law of the place where the act or omission occurred. Thus the substantive tort law of the state of Oklahoma applies in this action with respect to plaintiffs' tort claims.

3. Under Oklahoma law, and as defined by the Restatement (Second) of Torts, an actor is subject to liability for battery if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) a harmful contact with the

person of the other directly or indirectly results. The Restatement defines "assault" as follows: "(1) An actor is subject to liability to another for assault if (a) he acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact, and (b) the other is thereby put in such imminent apprehension. (2) An action which is not done with the intention stated in subsection (1,a) does not make the actor liable to the other for an apprehension caused thereby although the act involves an unreasonable risk of causing it and, therefore, would be negligent or reckless if the risk threatened bodily harm." See Brown v. Ford, 905 P.2d 223, 229 n. 34.

4. The court finds that under the established facts, plaintiff has failed to prove by a preponderance of the evidence that an assault and battery occurred. Rather, the evidence establishes that Trentadue's injuries were self inflicted. The United States is entitled to judgment on the assault and battery claim.

5. Under Oklahoma law, the elements essential to a prima facie case of negligence are: (1) a duty owed by a defendant to protect a plaintiff from injury; (2) a failure to properly exercise or perform that duty; and (3) the plaintiff's injuries are proximately caused by the defendant's failure to exercise his duty of care. McKellips v. Saint Francis Hospital, Inc., 741 P. 2d 467, 470 (Okla. 1987). The federal government has a duty of care to exercise ordinary diligence to keep prisoners housed in federal facilities safe and free from harm. 18 U.S.C. § 4042.

6. From all of the evidence that was presented, the court finds that there is an insufficient factual basis to conclude that plaintiffs have shown by a preponderance of the evidence that the delay in opening the cell door was the direct cause of harm to Trentadue. Although the FTC personnel failed to follow their training in not immediately responding to the hanging, plaintiffs cannot demonstrate that the actions of the FTC personnel were the cause of Trentadue's death. Therefore, the plaintiffs have not met their burden of proof on their claim of negligence and are not entitled to judgment on this claim.

7. In order to succeed on a civil conspiracy claim, plaintiffs must show that two or more persons acted in concert to accomplish an unlawful objective. Wright v. Cies, 648 P.2d 51, 53 n.2 (Okla. Ct. App. 1982). The evidence of the conspiracy must be "clear and convincing" and must do more than raise suspicion. Dill v. Rader, 583 P.2d 496, 499 (Okla. 1978). Circumstances which are just as consistent with lawful purposes as with unlawful purposes are insufficient to establish a conspiracy. Id. The United States has argued that plaintiffs are barred as a matter of law from maintaining a claim for civil conspiracy by the "intracorporate conspiracy doctrine" which provides that employees of a single organization cannot conspire among themselves because they represent one entity. The United States cites White v. American Airlines, Inc., 915 F.2d 1414, 1418 (10th Cir. 1990) and Zelinger v. Uvalde Rock Asphalt Co., 316 F.2d 47, 51-52 (10th Cir. 1963) in support of application of the

intracorporate conspiracy doctrine. Even assuming plaintiffs' civil conspiracy claim is actionable, the court finds that plaintiffs have failed to prove their claim of civil conspiracy by clear and convincing evidence. In light of the court's ruling on the assault and battery claim, it is clear there can be no successful claim based on a conspiracy to commit an assault and battery. To the extent this claim relates to a broader actionable conspiracy of another type, the court finds that the facts do not support a finding of concerted action on the part of the FTC guards, supervisors, or others. If anything, the court finds that the facts evince a level of thoughtlessness inconsistent with the sort of planning required to form a conspiracy. Plaintiffs have consistently urged the court to accept the most sinister interpretation of the facts. At times, plaintiffs have been successful in raising questions regarding the possible motivations behind certain actions taken in connection with Trentadue's death. However, upon careful consideration of all the testimony and evidence, the court finds that plaintiffs' allegations of conspiracy have not advanced past the speculation stage. Concerning the conspiracy claim, the court finds that the challenged actions are more reasonably seen as consistent with ignorant or incompetent, rather than conspiratorial behavior. Therefore, there is insufficient evidence of a civil conspiracy and defendant is entitled to judgment on this claim.

8. Under Oklahoma law, the elements of a claim for intentional infliction of emotional distress are: (1) that the tortfeasor acted intentionally or recklessly; (2)

that the tortfeasor's conduct was extreme and outrageous; (3) that plaintiff actually experienced emotional distress; and (4) that the emotional distress was severe. Zeran v. Diamond Broadcasting, Inc., 19 F. Supp. 2d 1249, 1253 (W.D.Okla. 1997). The distress must be of such character that no reasonable person could be expected to endure it. Daemi v. Church's Fried Chicken, 931 F.2d 1379, 1389 (10th Cir. 1991).

9. Evidence at trial established that the plaintiffs suffered severe emotional distress as a result of the reckless way in which they were treated by the United States in the aftermath of Trentadue's death. The court finds that plaintiffs' understandable emotional reaction to Trentadue's death was needlessly and recklessly intensified by the United States' failure to inform the family in advance as to the existence of the extensive injuries on Trentadue's body and that an autopsy had been performed. Throughout the trial, the court heard no explanation for defendant's silence in this regard. In the face of the evidence regarding the emotional distress of the plaintiffs, the court finds that plaintiffs have met their burden on their claim for intentional infliction of emotional distress and are entitled to judgment on this claim.

10. To the extent plaintiffs assert a claim based upon negligent investigation, such a claim is barred by the discretionary function exception to the Federal Tort Claims Act. Findings of fact regarding the investigation are provided insofar as they are relevant to plaintiffs' actionable claims or for background

purposes, not as a separate basis for liability. Also, the court's rulings on plaintiffs' claims for emotional distress are not based on actions taken by the United States in connection with the investigation of Trentadue's death.

11. Neither spoliation of evidence nor prima facie tort for acts constituting spoliation of evidence has ever been recognized by Oklahoma courts as actionable. See Patel v. OMH Medical Center, Inc., 987 P.2d 1185, 1202 (Okla. 1999). The court finds that plaintiffs do not have a separate actionable claim based on spoliation. This is not to suggest, however, that the court has not properly taken into account plaintiff's claims that certain important items of relevant evidence in this case were destroyed, lost or shown to be inaccurate. For example, FBI Agent Tom Moon Eng Linn testified that the negatives of certain photographs taken of cell 709A were misplaced until March 25, 1999, almost four years after Trentadue's death and almost two years after this lawsuit was filed. However, the court accepts Agent Linn's testimony that the negatives "didn't really cast any new evidence or depict any portions of the death scene that would raise any suspicions." During trial, plaintiffs were allowed to explore the possible reasons for the mishandling of evidence and were allowed to make arguments regarding the significance of the evidence. Where appropriate, the court has drawn reasonable inferences from the circumstances surrounding lost or inaccurate evidence in deciding what weight should be given to that evidence. Ultimately, while the mishandling of potential evidence undoubtedly fueled

plaintiffs' suspicions regarding the motivations of the United States, the court finds, similarly as expressed previously in connection with plaintiffs' civil conspiracy claim, that the loss of potential evidence was the result of ignorance or incompetence as opposed to intentional behavior.

12. Plaintiffs do not have an actionable claim based on "statutory torts" under 23 O.S. § 3, as this statutory provision merely defines the term "damages" and does not create a viable cause of action under Oklahoma law.

13. Consistent with the above findings of fact and conclusions of law, and pursuant to Oklahoma law, the court awards the following damages on plaintiffs' claim for intentional infliction of emotional distress:

a. Carmen Aguilar Trentadue, wife of Trentadue, shall recover the amount of \$250,000.00 ;

b. Wilma Lou Trentadue, mother of Trentadue, shall recover the amount of \$200,000.00;

c. The Estate of Jesse James Trentadue, father of Trentadue, shall recover the amount of \$50,000.00;

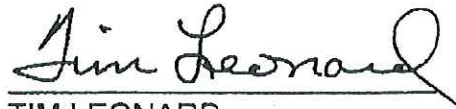
d. Donna Trentadue Sweeney, Trentadue's sister, shall recover the amount of \$200,000.00;

e. Lee Frederick Trentadue, brother of Trentadue, shall recover the amount of \$200,000.00;

f. Jesse C. Trentadue, brother of Trentadue, shall recover the amount of \$200,000.00.

Judgment will issue on a separate document in accordance with the Federal Rules of Civil Procedure.

It is so ordered this 1st day of May, 2001.



TIM LEONARD
United States District Judge

ENTERED ON JUDGMENT DOCKET ON MAY - 1 2001

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