IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

WILLIE MARTIN, individually and as father of Kevin Scott, and LINDA SCOTT HARRIS, individually and as mother of Kevin Scott,	)	**No. 05-2181 Ml/P**
Plaintiffs,	)	
vs.	)	
CORRECTIONS CORPORATION OF AMERICA, et al.,	)	
Defendants.	)	

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF WILLIE MARTIN'S RENEWED MOTION TO COMPEL DISCOVERY

Before the court is plaintiff Willie Martin's Renewed Motion to Compel Discovery Against Defendants Corrections Corporation of America ("CCA"), Magnola Vaugh, and Danny Scott (D.E. 83).[1] On August 17, 2006, the court held a hearing on this motion. Counsel for all parties were present and heard. Based on new legal

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[1]The court previously denied Martin's original motion to compel without prejudice due to noncompliance with the court's consultation requirement. In his renewed motion to compel, Martin states that he has since consulted with opposing counsel, and as a result of that consultation, has agreed to withdraw several discovery requests that were at issue in his original motion to compel.

arguments raised by counsel during the hearing, the court allowed the parties to submit supplemental memoranda of law in support of their arguments. These supplemental briefs were filed August 23, 2006.

For the reasons below, the motion to compel is granted in part and denied in part.

I. BACKGROUND

This case arises from the death of Kevin Scott by suicide on February 11, 2004, while in custody at the Shelby Training Center, a juvenile detention facility in Memphis, Tennessee owned and operated by defendant CCA. Kevin had been sentenced on December 8, 2003, to the custody of the Youth Service Bureau and was at the Shelby Training Center from December 8 until his death on February 11. On December 24, 2003, Kevin was found by the nurse banging his head against his cell door and threatening to kill himself. He was placed on "crisis intervention alert" and was seen by the mobile crisis unit. On December 28, 2003, after he was seen by a mental health clinician and a discharge order was entered by the facility psychiatrist, Kevin was discharged from crisis intervention.

In January 2004, the facility psychiatrist assessed Kevin and diagnosed him with depressive disorder NOS (no origin specified) and psychotic disorder NOS, and prescribed anti-depressant and anti-psychotic medication. On January 21, 2004, Kevin was moved to the facility's Foxtrot Unit where he was continued to be seen by

the medical staff. On February 11, 2004, Kevin was found dead in his cell as a result of suicide by hanging.

Plaintiffs Willie Martin and Linda Scot Harris, Kevin's natural father and mother, filed a complaint against CCA, Shelby County, Youth Services Bureau of Shelby County, and various individual defendants employed by or agents acting on behalf of CCA or the Shelby Training Center. The complaint alleges causes of action under 42 U.S.C. § 1983 and for negligence. Plaintiffs' § 1983 claims allege the defendants deprived Kevin of the freedom from the use of unjustified and excessive force, freedom from a deprivation of liberty without due process of law, and freedom from cruel and unusual punishment. Plaintiffs' negligence claims assert that the defendants were negligent by failing to provide adequate treatment and care to Kevin and by failing to take adequate action to prevent Kevin from committing suicide. Plaintiffs also seek an award of punitive damages.

In the present motion, plaintiff Willie Martin seeks an order from the court directing defendants CCA, Magnola Vaughn and Danny Scott to provide substantive responses to the following discovery requests, as modified by Martin in his renewed motion and at the August 17 hearing:

> Interrogatory number 5: With the exception of Kevin Scott, has any resident or inmate ever committed suicide, attempted to commit suicide or threatened to commit suicide at any CCA facility from [2002], and at the Shelby Training Center and Tall Trees from [1999], to the

present date? . . .[2]

Interrogatory number 12: List the names, parents' names, and addresses of all residents housed at the Foxtrot Unit for the 60 days leading up to February 11, 2004. For each resident, please provide the resident's date of birth and social security number.

Interrogatory number 13: Has CCA or Shelby County ever been sued or threatened with suit by a resident or family of a resident for circumstances arising out of a suicide attempt at a CCA owned or operated [juvenile] facility; and if the answer is "yes," state the date of the incident and complaint, name of the claimant, the facility, and the outcome of the claim. . . .[3]

Document Request number 3: Produce any and all incident reports, logs, audio tapes, video tapes, investigative files, or summaries of any nature concerning any prior suicide attempts made by (1) any resident at Shelby Training Center and Tall Trees from [1999] to the present date, and (2) any resident of any other CCA operated [juvenile] facility from [2002] to the present date.[4]

Document Request number 7: Produce all documents showing the names, parents' names, and addresses of all residents who were housed at Shelby Training Center in the Foxtrot Unit (or the Unit Kevin was housed) on February 11, 2004, and for the 60 days preceding February 11, 2004.

Document Request number 14: Produce copies of any

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[2]For purposes of these discovery requests, Martin has defined "suicide attempts" as those instances where a resident made some physical act toward committing suicide, and "threatened to commit suicide" as a verbal threat of suicide that triggered action by the CCA facility.

[3]Martin states in his motion that CCA maintains a system wherein every lawsuit against CCA is identified with a code which classifies the case based on subject matter, and that Martin has agreed to limit this request to a list of all lawsuits that are coded as suicide as the initial code.

[4]Martin has agreed to limit this request to the production of the 5-1 packets (CCA's term for the investigative packet) from Shelby Training Center and Tall Trees for all suicide attempts since 1999.

documents concerning policies and procedures established and/or implemented after February 11, 2004, addressing suicide threats, suicide ideation, or attempted suicide. This request shall include all policies or drafts of policies that were in effect at any time prior to February 11, 2004.

Document Request number 36: Please produce all documents relating to any complaints lodged by any resident or any family member of a resident against Defendant CCA relating to allegations of [physical abuse by] CCA staff against a resident at Shelby Training Center for the past ten years. Such complaints include, but are not limited to, legal complaints filed with a court, official complaints filed with the Shelby Training Center, or formal complaints sent by correspondence from the resident or the residents's representative. This request shall include all complaints asserted against CCA, the Department of Children's Services, Youth Services Bureau, Memphis Police Department, or any other organization or entity designated to investigate such matters.

Document Request number 37: Please produce all documents relating to any complaints lodged by any resident or any family member of a resident against Defendant CCA relating in any way to a suicide or attempted suicide by a resident [at a juvenile detention facility] for the past ten years. Such complaints include, but are not limited to, legal complaints filed with a court, official complaints filed with the Shelby Training Center, or formal complaints sent by correspondence from the resident or the resident's representative. This request shall include all complaints asserted against CCA, the Department of Children's Services, Youth Services Bureau, Memphis Police Department, or any other organization or entity designated to investigate such matters.

Document Request number 39: In addition to the documents produced in the previous requests, please produce copies of [formal complaints of negligence] lodged by any resident or resident's representative (i.e., family member, guardian, or attorney) against CCA related to allegations of negligence by CCA or CCA staff for the past ten years [regarding the provision of medical care at Shelby Training Center] and resulting in injury or death of an inmate or resident at [Shelby Training Center]. This request shall include all complaints brought to the attention of a CCA employee, the

> government entity with which CCA has contracted to operate such facility, or a law enforcement agency in the area of such facility.

Defendants oppose the motion, and argue that these discovery requests are overly broad, unduly burdensome, and seek irrelevant information. Defendants further argue that information relating to juvenile detainees housed at CCA detention facilities are confidential under T.C.A. §§ 37-5-107(a) and 37-1-153.

II. ANALYSIS

Federal Rule of Civil Procedure 26(b)(1) allows for the discovery of "any matter, not privileged, that is relevant to the claim or defense of any party." Fed. R. Civ. P. 26(b)(1). Relevancy for discovery purposes is construed broadly. Discoverable evidence need not be admissible at trial; rather, material is discoverable if it is "reasonably calculated to lead to the discovery of admissible evidence." Id. "Nevertheless, discovery does have 'ultimate and necessary boundaries,'" Miller v. Federal Express Corp., 186 F.R.D. 376, 383 (W.D.Tenn. 1999) (quoting Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978)), "and 'it is well established that the scope of discovery is within the sound discretion of the trial court.'" Id. (quoting Coleman v. American Red Cross, 23 F.3d 1091, 1096 (6th Cir. 1994)). A court need not compel discovery if "the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(2)(iii).

A. Discovery Relating to Other Suicides and Suicide Attempts

Through Interrogatory numbers 5 and 13 and Document Requests numbers 3 and 37, Martin seeks discovery of information relating to other suicides, suicide attempts, and threats of suicide at all juvenile detention facilities operated by CCA throughout the United States. Martin argues that the information is relevant to his claims under § 1983 and for negligence, as well as to his demand for punitive damages.

In support of their argument in opposition to Martin's motion, the defendants cite Cook v. Sheriff of Monroe County, 402 F.3d 1092 (11th Cir. 2005). In that case, Daniel Tessier, a pretrial detainee, committed suicide while incarcerated at the Monroe County Detention Center. Id. at 1100. The personal representative of Tessier brought an action alleging the sheriff was deliberately indifferent to Tessier's medical needs in violation of § 1983, and that the sheriff was liable for negligent supervision, training, and management of MCDC employees and negligent failure to prevent Tessier's suicide. Id. At trial, the court excluded evidence of five other suicides occurring within a twenty-three month period at the MCDC, two of which took place after Tessier's suicide. Id. at 1104. The court also excluded the testimony of plaintiff's expert, who intended to testify that six suicides in twenty-three months was an excessively high rate. Id.

On appeal, the appellate panel affirmed the trial court's

decision to exclude the evidence of other suicides at the MCDC. Id. at 1105. With respect to the relevance of other suicides to plaintiff's § 1983 claim, the court stated that

> Cook's argument appears to be that evidence of the other suicides is admissible to demonstrate "knowledge" on the part of the Sheriff – that is, to prove, based on a pattern of suicides, that Tessier's suicide was foreseeable. For purposes of Cook's § 1983 claim, this argument plainly fails. Under controlling case precedent, § 1983 requires that the defendant have "notice of the suicidal tendency of *the* individual whose rights are at issue in order to be held liable for the suicide of that individual." Tittle v. Jefferson County Comm'n, 10 F.3d 1535, 1539 (11th Cir. 1994) (en banc) (emphasis in original). Other suicides occurring in the MCDC are in no way probative of the Sheriff's knowledge of *Tessier's* suicidal tendencies. Thus, we have little trouble concluding that the trial court acted within its discretion in determining that the evidence was not relevant to Cook's § 1983 claim.

Id. at 1105 (emphasis in original).[5]

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[5]The Sixth Circuit, like the Eleventh Circuit, requires some specific knowledge of suicidal danger by the decedent before liability under § 1983 can attach. Barber v. City of Salem, Ohio, 953 F.2d 232, 239 (6th Cir. 1992). The Barber court adopted the Eleventh Circuit's holding in Popham v. City of Talladega, 908 F.2d 1561, 1564 (11th Cir. 1990) and concluded that the proper inquiry under § 1983 for a jail detainee's suicide is "whether the decedent showed a strong likelihood that he would attempt to take his own life in such a manner that failure to take adequate precautions amounted to deliberate indifference to the decedent's serious medical needs." Id. at 239 (citing Elliot v. Cheshire County, N.H., 940 F.2d 7 (1st Cir. 1991); Belcher v. Oliver, 898 F.2d 32 (4th Cir. 1990); Estate of Cartwright v. City of Concord, 856 F.2d 1437 (9th Cir. 1988); State Bank of St. Charles v. Camic, 712 F.2d 1140 (7th Cir. 1983)); see also Smith v. Brevard County, Florida, No. 6:06-cv-715-Orl-31JGG, 2006 WL 2355583, at *4 n.9 (M.D. Fla. Aug. 14, 2006) ("Deliberate indifference, in the jail suicide context, is not a question of the defendant's indifference to suicidal inmates or suicide indicators generally, but rather it is a question of whether a defendant was deliberately indifferent to an individual's mental condition and the likely consequences of

Regarding the issue of whether these other suicides were relevant to plaintiff's negligence claim, the court considered that issue to be "a closer question." Id. The court explained that evidence of the two suicides that occurred after Tessier's suicide "surely could not have served to put the Sheriff on notice of any deficiencies in the MCDC's procedures for detecting and addressing suicide risks" and that "the only even *potentially* relevant suicides are the three occurring *prior* to Tessier's." Id. at 1105-06 (emphasis in original). With respect to the three prior suicides, the court stated that because the plaintiff did not offer any information regarding the facts and circumstances of these other suicides, and because based on the appellate record it appeared that the other suicides were factually different from Tessier's suicide, the court concluded that the trial court did not abuse its discretion by excluding the evidence. Id. at 1106. Thus, while the court held that evidence of other suicides is inadmissible to prove a § 1983 claim, the court left open the possibility that such evidence may be relevant to prove a negligence claim.

The other cases cited by the defendants in their brief do not address the issue of whether this type of information is discoverable under Rule 26. To the contrary, those courts' brief discussion of evidence in the record of other suicides and suicide

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that condition.") (quoting Cook, 402 F.3d at 1117).

attempts suggests that such information is discoverable. See, e.g., Gray v. City of Detroit, 399 F.3d 612, 619 (6th Cir. 2005) (stating that evidence showed that "as of Gray's death no other inmate had ever committed suicide in a Receiving Hospital cell. In fact, defendants offer testimony that by using existing procedures, officers had been successful in interrupting eight suicide attempts in those cells in the past 20 years."); Frake v. City of Chicago, 210 F.3d 799, 782 (7th Cir. 2000) (observing that plaintiff presented evidence of twenty other suicides and 163 attempted suicides by hanging over seven-year period); Tittle v. Jefferson County Comm'n, 10 F.3d 1535, 1538 (11th Cir. 1994) (noting that "Captain Latta's records show that between October 19, 1987 and February 18, 1989, the date of Harrell's suicide, there were twenty-seven suicide attempts and two suicides in the jail"). The court concludes that, even assuming *arguendo* that evidence of other suicides and suicide attempts are not discoverable to prove the § 1983 claim, Martin is nevertheless entitled to discover this information to prove his negligence claim.

The defendants argue that this type of information is confidential under T.C.A. §§ 37-1-153 and 37-5-107(a). Although the court recognizes and appreciates the confidential and sensitive nature of these records, the court finds that Martin's interest in obtaining discovery under the facts of this case outweighs the need to protect these records from disclosure, so long as the

information is produced pursuant to a protective order and the discovery requests are fashioned in such a way so as to minimize the unnecessary disclosure of juvenile records. See Farley v. Farley, 952 F. Supp. 1232, 1242 (M.D. Tenn. 1997) (holding that although T.C.A. §§ 37-1-409 and 37-1-612 establish an evidentiary privilege, "the statutory and administrative scheme under Tennessee law ensuring only limited disclosure of child abuse files must yield to a supervening interest in their production and use in federal civil rights actions."); see also Doe v. District of Columbia, No. Civ.A.03-1789, 2005 WL 1787683, at *5 (D.D.C. July 5, 2005) (in case involving defendant that opposed production of records of foster care facilities on grounds that information was protected from disclosure by District's confidentiality statute, the court concluded that "interests in promoting liberal discovery and fundamental fairness outweigh the slight interest in preventing the continued production of documents, especially because such documents will be shielded by the protected order.").

Turning to Martin's motion to compel, the court finds that Interrogatory numbers 5 and 13 and Document Requests numbers 3 and 37, in their current form, seek information that is irrelevant and are overly broad on their face. Thus, the court will impose reasonable limits to the discovery requests in order to balance the parties' interests with the interests of the juveniles and their parents in protecting the confidentiality of the information.

Specifically, the court denies Martin's request for the following irrelevant information: (1) threats of suicide; (2) suicides or suicide attempts at CCA juvenile detention facilities other than the facilities located in Memphis (Shelby Training Center and Tall Trees); (3) suicides or suicide attempts that occurred before 1999 or after February 11, 2004; and (4) threatened lawsuits against CCA. Discovery of this information is not reasonably calculated to lead to the discovery of admissible evidence as to either the § 1983 or negligence claims, and any potential benefit that this information might have to Martin's claim for punitive damages is far outweighed by the burden of production.

With respect to the remainder of these interrogatories and document requests, the court grants the motion and requires defendants to respond to these discovery requests as modified by the court below:

> Interrogatory number 5: With the exception of Kevin Scott, has any resident or inmate ever committed suicide or attempted to commit suicide at the Shelby Training Center or Tall Trees from January 1999 to February 11, 2004? If the answer is yes, please state with specificity the facility, name of person, parents' names, address of resident and parents (if a minor child) and telephone number of such persons, whether it was a suicide or suicide attempt, and the precise actions that you contend were taken to prevent or to attempt to prevent the suicide from occurring.
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> Interogatory number 13: Has CCA or Shelby County ever been sued by a resident or family of a resident for circumstances arising out of a suicide attempt that took place between January 1999 through February 11, 2004, at Shelby Training Center or Tall Trees; and if the answer is "yes," state the date of the incident, claimant, court

> and docket number for each lawsuit filed, and the name of the attorney who filed the suit on behalf of the resident or his/her family.
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> Document Request number 3: Produce any and all incident reports, logs, audio tapes, video tapes, investigative files, or summaries of any nature concerning any prior suicide attempts made by any resident at Shelby Training Center or Tall Trees that occurred between January 1999 and February 11, 2004.
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> Document Request number 37: Please produce all documents relating to any complaints lodged by any resident or any family member of a resident against Defendant CCA relating in any way to a suicide or attempted suicide occurring between January 1999 through February 11, 2004, by a resident at Shelby Training Center or Tall Trees. Defendants need only produce those documents in their possession.

B. Discovery of Other Juvenile Detainees at Foxtrot Unit

Interrogatory number 12 and Document Request number 7 ask for information and documents relating to the names, parents' names, and addresses of all residents who were housed at Shelby Training Center in the Foxtrot Unit on February 11, 2004, and for the sixty-day period before February 11, 2004. Martin seeks this information in order to find out what other juvenile detainees who were housed in the same Foxtrot unit as Kevin might know about his treatment at Shelby Training Center, and more specifically, what he might have said to the staff about his suicidal tendencies. In support of his argument, Martin cites to the deposition testimony of Kermella Gaddy, a former employee of CCA, who testified that on February 10, 2006, she was on duty in the Foxtrot Unit and heard Kevin yelling and then heard him say that he was going to kill himself. Martin

believes, based on this information, that other detainees may have heard Kevin yelling on February 10 or may have heard him tell the staff that he was going to kill himself. The defendants argue that the request is overly broad, and that the records are protected from discovery by the Tennessee confidentiality statute.

For the same reasons stated above, the court concludes that the Tennessee statute does not prohibit discovery of this information. However, the court agrees that the discovery sought is overly broad, especially in light of the fact that Martin seeks confidential information for all juvenile detainees in the Foxtrot Unit over a two-month period, even though Kevin was not housed in Foxtrot for the entire sixty-day period and even though the other juvenile detainees were moved between Foxtrot and other units at various times during that same period. Moreover, Martin states in his Supplemental Memorandum filed August 17 that what is important to prove his case is the identities of detainees who were housed with Kevin in the days leading up to his suicide. The court believes that discovery of the identities of other juvenile detainees in the Foxtrot Unit on February 10 and February 11, 2004, will provide Martin with the relevant pool of potential witnesses during the days leading up to Kevin's suicide. Defendants shall provide Martin with the detainees' names, dates of birth, social security numbers, their parents' names, and last known addresses on file with defendants. Defendants need not, however, provide Martin

with "all documents" relating to the information produced, as requested in Document Request number 7.

C. Document Request number 14

Martin seeks production of defendants' policies and procedures established and/or implemented after February 11, 2004, addressing suicide threats, suicide ideation, and attempted suicide (collectively "suicide prevention"). Although Martin agrees that Federal Rule of Evidence 407 generally prohibits the admission of evidence of subsequent remedial measures to prove negligence or culpable conduct, he contends that the court should allow him to obtain this discovery at this time, and if appropriate, address the admissibility issues at trial if the need arises. Rule 407 provides as follows:

> When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Fed. R. Evid. 703. At this time, the court cannot determine whether changes to CCA's suicide prevention policies will be admissible at trial, as Rule 407 expressly permits the admission of such evidence to prove ownership, control, and feasibility of precautionary measures if controverted, and for impeachment

purposes. Since the information sought is relevant under Rule 26 and may be admissible at trial if one or more of the exceptions are satisfied, the motion to compel is granted to the extent Martin seeks documents relating to suicide prevention polices and procedures established or implemented on or after February 11, 2004 at Shelby Training Center. The motion is denied with respect to CCA's suicide prevention policies at other CCA facilities.

D. Documents Request numbers 36 and 39

Finally, Document Request numbers 36 and 39 seek documents relating to complaints by residents or their family members against CCA relating to (1) allegations of physical abuse by CCA staff at Shelby Training Center over the past ten years; and (2) allegations of negligence by CCA staff regarding the provision of medical care at Shelby Training Center and resulting in injury or death. The court concludes that these two requests, on their face, seek information that is overly broad and irrelevant. The discovery request seeking information on physical abuse has no apparent relevance to any of Martin's allegations in his amended complaint, and the requests for information on physical abuse over a ten year period and provision of negligent medical care resulting in death are clearly over broad. The motion to compel is denied with respect to both of these document requests.

III. CONCLUSION

For the reasons above, the motion to compel is GRANTED in part

and DENIED in part. Defendants shall provide responses to the discovery requests as described above within twenty (20) days from the date of this order.

It is further ordered that any information or documents produced that reveals confidential juvenile information, including the identities of juvenile detainees, their families, their addresses, and other personal information, shall be governed by a protective order that limits disclosure of such information to the parties, their attorneys, and experts, and limits the use of this information for litigation purposes only. The parties shall submit a proposed protective order to the court for approval within seven (7) days from the date of this order.

IT IS SO ORDERED.

s/ Tu M. Pham
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TU M. PHAM
United States Magistrate Judge

October 16, 2006
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Date