No. 22-2958

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BETTYE JACKSON, as Independent Administrator
of the estate of Eugene Washington, Deceased,
Plaintiff-Appellant,

v.

SHERIFF OF WINNEBAGO COUNTY, ILLINOIS, in his official capacity, and
JEFF VALENTINE, Individually and as Agent,
Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Northern District of Illinois
Case No. 3:20-cv-50414 Hon. Iain D. Johnston

BRIEF FOR APPELLANT BETTYE JACKSON

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January 3, 2023

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 22-2958

Short Caption: Jackson v. Sherriff of Winnebago County and Jeff Valentine

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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Betty Jackson, as Independent Administrator of the Estate of Eugene Washington, Deceased

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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not applicable

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

not applicable

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

not applicable

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

not applicable

Attorney's Signature: /s/Brian Wolfman Date: 1/3/2023

Attorney's Printed Name: Brian Wolfman

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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not applicable

Attorney's Signature: /s/ Esthena Barlow Date: 01/05/2023

Attorney's Printed Name: Esthena Barlow

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Attorney's Signature: /s/ Madeline Meth Date: January 4, 2023

Attorney's Printed Name: Madeline Meth

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Bhavani Raveendran Date: 10.31.22

Attorney's Printed Name: Bhavani Raveendran

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Attorney's Signature: /s/Sam Harton Date: 12/13/2022

Attorney's Printed Name: Sam Harton

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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Attorney's Signature: /s/Antonio Romanucci Date: 1/5/2022

Attorney's Printed Name: Antonio Romanucci

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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Introduction

In the early morning of October 28, 2019, while Eugene Washington struggled to breathe in his jail cell, his cellmate, Lamar Simmons, did all he could to help. Defendant Jeff Valentine, a correctional officer with emergency medical training, did not. Valentine was responsible for fielding overnight emergency calls from inmates and twice defied jail policy when he delayed his responses to Simmons' emergency calls for assistance. As a result, Washington did not get the immediate medical attention he required, and he needlessly suffered and died.

Simmons awoke to Washington gasping for air and, unable to rouse him, pressed an emergency intercom button in their cell. Simmons told Valentine, who received the call, "my cellie can't breathe." Valentine knew an inmate's inability to breathe was a medical emergency. Yet he hung up on Simmons after only thirty seconds without sending any help.

Eight minutes after the first call, when it was clear no one was coming to Washington's aid, Simmons desperately pressed the emergency button again. While Simmons was screaming Washington's name to try to wake him and kicking his cell door to attract attention to the crisis, Valentine let the second call ring for a minute and a half before answering. Now in the presence of two other officers, Valentine acknowledged that he heard that Washington was struggling to breathe. Yet he still did not issue an emergency jail-wide medical code, which would have brought emergency medical personnel to Washington's cell immediately.

After officers finally arrived in Washington's cell, more than thirteen minutes after Simmons first pressed the intercom, they began CPR. A defibrillator detected ongoing cardiac activity, indicating that Washington was alive. Washington was then taken to a nearby hospital where he was declared dead.

Washington's legal representative sued Valentine under 42 U.S.C. § 1983, maintaining that Valentine violated Washington's Fourteenth Amendment right to adequate medical care. To prevail, Washington must show that Valentine's conduct was objectively unreasonable. The district court observed that there were disputes of material fact as to whether Valentine's conduct was objectively unreasonable, but nonetheless granted Valentine summary judgment because, in its view, no reasonable jury could find that Valentine's conduct caused Washington any harm. Because the district court overlooked Washington's evidence of causation—and because a reasonable jury could find that Valentine's conduct was objectively unreasonable—this Court should reverse.

Jurisdictional Statement[1]

The district court had subject-matter jurisdiction over Washington's Section 1983 claim under 42 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1331 and

[1] This suit was filed by appellant Bettye Jackson as administrator of the estate of Eugene Washington. To avoid confusion, we refer only to Washington when describing both the historical facts and Jackson's prosecution of the suit. *See Ortiz v. City of Chicago*, 656 F.3d 523, 527 (7th Cir. 2011).

supplemental jurisdiction over his state-law claims under 28 U.S.C. § 1367. 1 App. 47. The district court's October 13, 2022 memorandum opinion (ECF 57) and judgment (ECF 58), granting defendants' motion for summary judgment, disposed of all claims of all parties.

The notice of appeal was timely filed on October 31, 2022. 2 App. 506. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

I. Whether the district court erred in granting summary judgment because a reasonable jury could conclude that Washington presented evidence sufficient to show that Valentine's delay caused Washington harm.

II. Whether a reasonable jury could conclude that Valentine acted purposefully, knowingly, or recklessly and that his conduct was objectively unreasonable when he failed to arrange prompt medical care for Washington.

Statement of the Case

I. Factual background

In October 2019, Eugene Washington was detained pretrial in the Winnebago County, Illinois jail. 1 App. 57. Early one morning, Washington's struggle to breathe awakened his cellmate, Lamar Simmons, who promptly called for help via an intercom in the cell. 2 App. 449. When Simmons' first call did not elicit a response from jail personnel, he called again. 1 App. 251. Officers did not enter the cell and begin CPR on Washington until about

thirteen minutes after Simmons first called for help. *Id*. Washington was pronounced dead soon after he was transported from the jail to a nearby hospital. 2 App. 255-56.

In the pages that follow, relying principally on the testimony of the jail's officers and their supervisors, we describe the jail's emergency response system and policies and Valentine's failure to follow them during the events that culminated in Washington's suffering and death.

A. Winnebago County correctional officers' training and knowledge

The Winnebago County Jail. Each floor of the Winnebago County Jail is separated into housing units called "pods." 2 App. 257. The third floor has eight pods, lettered A through H. *Id*. Washington was assigned to pod 3-H, a unit with 33 cells. *Id*. Each night, inmates are in "lockdown," confined to their cells between 10:30 p.m. and 6:00 a.m. 2 App. 258.

Officers' duties during lockdown. During lockdown, correctional officers are not continuously present in the pod, but instead monitor inmates by conducting "rounds" about every thirty minutes. 2 App. 258-59. At least one officer continuously sits at the floor control desk, which is in a hallway outside each pod. 2 App. 259. The control desk contains two video surveillance monitors (or screens), a computer, a telephone, and an integrator system. 2 App. 259-60. The integrator system gives the correctional officer working at the control desk the ability to control the

doors in the pod and contains an emergency intercom system connected to each cell in the pod. 2 App. 260.

Emergency response and the intercom system. All correctional officers undergo roughly five weeks of field training when they begin work. 2 App. 279. Valentine, Sergeant Robert Jacobson, Lieutenant Mark Lolli, and other correctional officers testified that they are taught it is their responsibility to act immediately in response to medical emergencies. 1 App. 62; 2 App. 279-80. To enable correctional officers to carry out this responsibility, the County trains all officers on operating the emergency intercom system. 1 App. 104-05 (Heinzeroth Dep.). The intercom should be used for emergencies only. 2 App. 412 (Ditto Dep.). Officers are trained that emergencies include medical emergencies, flooding, and pipe breaks. 1 App. 121 (Heinzeroth Dep.); 2 App. 319 (Lolli Dep.), 422 (Jacobson Dep.). Officers are required to continuously monitor the intercom system's screens for incoming calls while working at the control desk and are taught to treat every incoming intercom call as if it could be an emergency. 2 App. 282-83.

Each cell contains an emergency call button and a speaker so that inmates can activate and use the intercom system. 1 App. 174. Officers stationed at the control desk can also initiate calls. 2 App. 303. The intercom button in the cells is also known as the "medical emergency button." 1 App. 181 (Schumaker Dep.). When an inmate hits the button, a monitor at the control desk flashes a green light and shows which cell the call is coming from. 1 App. 145 (Valentine Dep.). Simultaneously, a speaker plays a continuous

pinging sound to alert the control-desk officer. 2 App. 260-61. Officers testified that they are not permitted to lower the volume on the speaker that plays the pinging sound. *See* 2 App. 285.

An officer who sees an incoming call must answer immediately. 2 App. 284, 440-42 (Schumaker Dep.). Sergeant Robert Jacobson testified that it is never acceptable for an officer to see a call come in and not answer immediately. 2 App. 429. Multiple officers explained that this protocol is particularly important during nightly lockdown when inmates are confined to their cells and have no other way of reporting an emergency, 2 App. 284, 324, because officers are typically not present in the pods unless they happen to be on rounds, 2 App. 258-59.

When an officer stationed at the control desk answers an emergency call, the officer is automatically connected to the inmate. *See* 1 App. 187; 2 App. 439 (Schumaker Dep.). The officer then asks the inmate to state the nature of the emergency. 2 App. 261. During the call, officers are responsible for finding out the precise nature of the inmate's request. 2 App. 320; 1 App. 188. If the officer is unable to understand the inmate, the officer is expected to attempt to gain clarity by posing further questions or asking the inmate to step back from the speaker, slow down, or stop yelling. 2 App. 488, 311 (Lolli Dep.), 305 (Arbisi Dep.), 328 (Heinzeroth Dep.), 372-73 (Kryder Dep.), 443 (Schumaker Dep.). Only officers at the control desk, and not inmates, are able to disconnect an intercom call, 1 App. 148-49 (Valentine Dep.), and an

officer is not permitted to disconnect before confirming the caller's need, 2 App. 312-13 (Lolli Dep.); *see* 1 App. 188 (Schumaker Dep.).

If an officer determines that an inmate is reporting a non-emergency, the officer must still continue the conversation, gather more details, remind the inmate that the call button is for emergencies only, and advise the inmate to speak later to an officer on rounds to follow up. 2 App. 284, 352 (Posada Dep.). For some reports, like a broken toilet, the officer should place an order so the problem can be fixed. 2 App. 352.

If an inmate calls about an emergency, the control-desk officer can respond directly to the emergency if others are present at the control desk. 1 App. 175 (Ditto Dep.). But if the answering officer is the only person at the control desk, the officer must contact another officer to respond to the emergency. *Id.*

In a medical emergency, the officer at the control desk should send out an emergency code, known as a code-100, which alerts all other available jail personnel. 2 App. 281; 1 App. 81 (Arbisi Dep.). Officers are trained that medical emergencies include chest pain, shortness of breath, and light-headedness. 2 App. 387 (Valentine Dep.); 1 App. 185-86 (Schumaker Dep.). Officers are taught to inform appropriate medical staff when they learn that an inmate is struggling to breathe. *Id.*

Medical training. When a code-100 goes out, officers are trained to respond immediately and run to the emergency to provide whatever assistance is needed. 1 App. 107 (Heinzeroth Dep.). Officers are required to

know when and how to perform CPR and how to use a defibrillator. 1 App. 75-76 (Arbisi Dep.); 2 App. 413-14 (Ditto Dep.). If an inmate is unresponsive, officers are trained to begin CPR immediately. 1 App. 130 (Posada Dep.). When performing CPR, officers are taught to place the person on a flat, hard surface, like the jail floor, and do chest compressions until a defibrillator arrives. 1 App. 109 (Heinzeroth Dep.); 2 App. 396 (Valentine Dep.). Once a defibrillator arrives, officers are trained to place the device's pads on the unresponsive person's chest and listen for the device's commands. 1 App. 69. At least one defibrillator is located on each floor of the jail. 1 App. 104 (Heinzeroth Dep.). All medical staff and correctional officers are trained to use it. *Id*. As officers learned during training, a defibrillator is an automated device used to resuscitate a person by transmitting an electrical shock to the body. 1 App. 68-69; *see also How Do Defibrillators Work?*, AED USA.[2] The defribillator analyzes the body for electrical activity within the heart, and when it detects a heartbeat, it audibly advises its operator to initiate an electrical shock. 1 App. 69. If the defibrillator does not detect a heartbeat, it tells the operator to continue CPR. *Id.*

B. The circumstances prior to Washington's medical emergency

Valentine has been a correctional officer at the Winnebago County Jail since 2015. 1 App. 142, 143. He received the intercom and emergency training described above. 2 App. 385-86. As a result, he knew how to identify signs

[2] Available at https://perma.cc/L7AS-2ALS (last visited Jan. 2, 2023).

of an emergency, such as an inmate experiencing a seizure, difficulty breathing, chest pain, or another type of serious distress. 2 App. 387. Valentine was trained to respond quickly when an inmate is struggling to breathe because, as he testified, he knows that oxygen is necessary to live, and that prolonged oxygen deprivation creates a risk of death or serious brain injury. 2 App. 388-89.

Valentine was working during the early morning hours of October 28, 2019, at the time of Washington's emergency and death. His shift began at 6:00 p.m. the previous evening and was scheduled to end at 6:00 a.m. that day. 1 App. 156. Correctional officers George Arbisi, Miguel Posada, Matthew Ditto, Jared Kryder, Kyle Heinzeroth, and Stephen Schumaker were also working the night shift, along with Lieutenant Lolli and Sergeant Jacobson. *See generally* 2 App. 254-76.

As noted, Washington and his cellmate, Simmons, shared cell 23 in pod 3-H on the third floor. Nickles Parks, another inmate, was just three cells down from Washington and Simmons. 2 App. 478. At 4:30 a.m., around ten hours into his overnight shift, Valentine took over the duties at the third-floor control desk. 1 App. 168 (Valentine Dep.). Officer Posada was assigned to do rounds on the third floor and noticed nothing out of the ordinary during his 4:30 a.m. rounds. ECF 56-4 at 14; *see* 1 App. 212. Shortly after, Valentine received the first call from cell 23.

C. Simmons' first intercom call

Around 4:36 a.m., Simmons, a light sleeper, was awakened by the sounds of Washington "lifting his back up off the bed" and gasping for air. 2 App. 451; 1 App. 199. Simmons immediately tried to wake Washington by calling his name and shaking him, but Washington did not respond. 1 App. 199. Simmons then did the only thing left to do from his cell in the middle of the night: press the cell's emergency intercom button for help. 1 App. 199; 2 App. 324. Simmons knew that the button was to be used for emergencies only, and he had never pressed the button before. 2 App. 454. As described earlier, the jail's intercom system is intended to alert the officer sitting at the control desk to a medical emergency in the overnight hours, when no other patrol officer is stationed in the pod. *See, e.g.*, 2 App. 315.

Simmons first pushed the intercom at 4:37:07 a.m. 2 App. 264. Twelve seconds later, Simmons pushed it again, desperate to get through to an officer. 1 App. 251. As indicated, Valentine was the control-desk officer on duty. Instead of answering the call immediately, as officers are trained to do, 2 App. 301 (Arbisi Dep.), Valentine waited more than a minute before picking up, 1 App. 251. Valentine testified that he was sitting at the control desk watching the monitors when the call came in, but he never explained why he waited to answer. 2 App. 399.

During the time Valentine let the call ring, the intercom system flashed a green light and pinged consistently. 2 App. 260-61. Even though correctional officers are not permitted to turn the intercom volume down or off, 2 App.

337-38, Valentine testified that he could "just vaguely hear" the intercom sounds, which were "probably turned down kind of low," 2 App. 397. And though Valentine knew how to adjust the volume—he acknowledged having turned down the volume roughly thirty times in the past, 2 App. 398—he did not turn it up that night, 2 App. 397-98.

As soon as Simmons heard Valentine pick up, Simmons "clearly and understandably," 2 App. 461, told Valentine, "my cellie can't breathe," 2 App. 449, using a common term for a cellmate understood by officers, 2 App. 344. Valentine told Simmons that the intercom was for emergencies only. 2 App. 461. To Simmons, Valentine sounded sleepy. 2 App. 462. Simmons responded: "who [is] hitting the button at this time of night and it ain't a medical emergency?" and then reiterated: "My cellie can't breathe." 2 App. 461. Then, Simmons heard Valentine "click[] off" the call. 2 App. 453, 461. Valentine hung up on Simmons after only thirty seconds without clarifying the reason for the call or asking Simmons to step back from the speaker or speak more slowly. *See* 2 App. 461. After hanging up, Valentine did not call Simmons back for clarification, which he had the ability to do from the control desk. 2 App. 303-04.

Valentine claims not to have understood Simmons but also recalls hearing Simmons say something about the toilet or sink not working, 1 App. 161, even though Simmons spoke at a normal volume so he could be heard and said no word that sounds like "toilet" or "sink," 1 App. 197; 2 App. 482. Valentine did not mention or ask Simmons to describe anything further

about a problem with a toilet or sink, *see* 1 App. 197, which would be considered an emergency under jail policy if it were causing flooding, *see* 1 App. 121 (Heinzeroth Dep.); 2 App. 319 (Lolli Dep.), 375 (Kryder Dep.).

Nearby, inmate Parks heard the ongoing emergency. 2 App. 478. Parks corroborated Simmons' account, testifying that he clearly heard Simmons repeatedly telling Valentine that his cellmate could not breathe. 2 App. 480-81. Parks did not, however, hear Simmons report anything about plumbing issues before he heard the call disconnect. 2 App. 482.

D. Simmons' second intercom call

Unable to get the help he had requested during the first call, Simmons continued trying to wake Washington. Meanwhile, Parks heard Simmons yelling that "my celly's not breathing," that he was dying, and that "they [were] not answering." 2 App. 481-83. Having received no help from jail staff or a call back from Valentine, Simmons made a second emergency call from his cell using the intercom at 4:46:53 a.m.—nearly ten minutes after Simmons' first call and more than eight minutes after Valentine hung up on him. *See* 1 App. 251. Valentine didn't answer, so Simmons desperately pressed the intercom button again a minute later at 4:47:53 a.m. *Id.* Still, Valentine did not answer this second call until 4:48:22 a.m. *Id.* Thus, although Valentine was sitting at the control desk—and not permitted to leave it unattended, 2 App. 417 (Ditto Dep.)—he let the call ring for a minute and a half, 1 App. 251. It was not until after officers Arbisi and Posada

arrived at the control desk to wait for their 5:00 a.m. rounds—that is, not until others were there to observe Valentine's inaction—that Valentine answered Simmons' second call. 2 App. 333-35; 1 App. 251.

When Valentine finally picked up, Simmons again reported that "[m]y cellie can't breathe" and "[he] needs help." 2 App. 458. This time, Valentine claims that he could clearly hear Simmons tell him that his cellmate was struggling to breathe. 2 App. 267. But even then, according to Arbisi, Valentine did not tell Arbisi and Posada about the ongoing medical emergency, 1 App. 85, which could have increased the speed of the officers' response. Instead, Valentine simply asked the officers to head to the cell to figure out what was going on, ECF 56-1 at 29; *see* 1 App. 77. Valentine did not call in a code-100, which he could have done from the control desk, to alert all medical personnel to the emergency. 2 App. 344.

Posada maintains that although Simmons' voice sounded broken up on the intercom, he understood something about Simmons' cellmate having difficulty breathing. 2 App. 339. Posada testified that after he heard that Washington was having difficulty breathing, he said "let's go to the cell." 2 App. 341. Arbisi and Posada left the control desk to check on cell 23. 2 App. 343; 1 App. 125. Meanwhile, Simmons was trying to attract attention and get Washington help by kicking his cell door and making noise. 2 App. 449-50, 455-56.

E. Medical response and subsequent reports

Arbisi and Posada arrived at Washington's cell at about 4:50 a.m. 1 App. 251. They found a "very distraught" Simmons, 1 App. 79, who recounted hearing Washington make a choking sound and then appear to stop breathing, 1 App. 85.

After Arbisi and Posada entered the cell and found Washington unresponsive, Arbisi issued a code-100 to all jail personnel and began performing CPR on Washington, who was laying on the top bunk. 2 App. 269. Shortly thereafter, officers Heinzeroth and Schumaker arrived, having run to the cell after receiving the code-100. 2 App. 270; 1 App. 107. Together, the officers moved Washington from the top bunk to the floor, where Arbisi and Schumaker took turns performing CPR chest compressions in an effort to mimic a pumping heart and keep blood flowing through the body. 1 App. 109; *see* Centers for Disease Control and Prevention, *Three Things You May Not Know About CPR*, Oct. 22, 2021.[3]

Nurse Val Kidd arrived in Washington's cell two minutes later with a defibrillator. *See* 1 App. 251; 2 App. 270. After Kidd opened the defibrillator, and Heinzeroth placed its pads on Washington's chest, the machine audibly said, "shock advised," meaning electrical activity had been detected in Washington's heart. 1 App. 113-14. The officers applied a shock to Washington four or five times, as instructed by the defibrillator. 2 App. 271.

[3] Available at https://perma.cc/Y6ZP-CTG4 (last visited Jan. 2, 2023).

Meanwhile, Lieutenant Lolli arrived at the cell and called the Rockland Fire Department. 2 App. 272. The fire department's emergency medical technicians, or EMTs, arrived at about 5:00 a.m., about ten minutes after officers had first entered Washington's cell. 2 App. 272; 1 App. 251. They spent about five minutes in the cell before transferring Washington to an ambulance, which took him to a local hospital where he was pronounced dead shortly after his arrival. 2 App. 272-73. Officer Heinzeroth testified that when the EMTs were taking Washington out of the jail, he believed "there was still something there, [Washington] still had a chance." ECF 55-3 at 58.

The fire department EMTs issued an emergency medical report. The report estimated that Washington's heart stopped between 4:52 a.m. and 4:54 a.m.—as much as fifteen-and-half minutes after Simmons placed his first emergency intercom call. 2 App. 485.

The Illinois State Police also issued a report after interviewing the inmates and jail personnel and consulting relevant records to construct the timeline of events. *See* 1 App. 250-53.

F. Autopsy

Dr. Mark Peters performed an autopsy on Washington at the Winnebago County Coroner's facility the day after Washington's death. In preparing his autopsy report, Dr. Peters consulted the Illinois State Police report. 2 App. 216. Dr. Peters concluded that Washington died of cardiac arrhythmia caused by sleep apnea. 2 App. 211. Cardiac arrhythmia is an irregular

heartbeat caused by a lack of oxygen, which is a significant risk factor for cardiac arrest. 2 App. 212. Dr. Peters noted that a person can be in arrhythmia for many minutes before reaching a fatal state of arrhythmia—when the person experiences cardiac arrest and the heart stops completely. 2 App. 472.

According to Dr. Peters, Washington suffered a cardiac arrhythmia from at least as early as when Simmons noticed Washington's irregular breathing until Washington's death. 2 App. 473-74. Put differently, Washington's cardiac arrhythmia lasted from at least the time that Simmons made the first emergency call at 4:37 a.m. until Washington's death. 1 App. 251; 2 App. 458-59.

II. Procedural background

Washington sued Valentine under 42 U.S.C. § 1983, alleging that Valentine denied him the right to timely medical care as a pretrial detainee in violation of the Due Process Clause of the Fourteenth Amendment. 1 App. 50. Washington maintained that the due-process deprivation caused him prolonged suffering and pain and led to his death. 1 App. 51; D. Ct. Op. (ECF 57) at 1. Washington also brought two Illinois-law claims against Valentine and the Winnebago County Sheriff. 1 App. 52-54.[4]

[4] Washington's Section 1983 claim arises under the Fourteenth Amendment's Due Process Clause, not the Eighth Amendment's Cruel and Unusual Punishment Clause, because, as a pretrial detainee not convicted of any crime, Washington cannot be punished by the state. *See Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018). Washington's Section 1983

Defendants moved for summary judgment. ECF 43. As to Washington's due-process claim, Valentine argued that his actions on the morning of Washington's death were not objectively unreasonable, the standard for imposing liability, *see Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018), and that Washington had not presented sufficient causation evidence linking his injuries and death to Valentine's conduct. D. Ct. Op. (ECF 57) at 8. Washington opposed summary judgment on both issues. ECF 46. As to causation, Washington pointed to a wealth of evidence that Valentine's delay was detrimental to him, leading to his prolonged pain and suffering and an increased risk of death. ECF 47 at 9-10.

The district court granted summary judgment to Valentine on Washington's Fourteenth Amendment claim. The court recognized that "there are disputed facts over whether the Defendants' conduct was objectively reasonable," but held that causation was lacking because Washington had not established that the delay in receiving care was detrimental to Washington. D. Ct. Op. (ECF 57) at 8.

The court acknowledged that medical records together with testimony may be sufficient for a factfinder to determine that a delay in receiving medical care caused a person harm, but then considered only Dr. Peters' testimony in assessing causation. D. Ct. Op. (ECF 57) at 12-13. The court

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claim originally named the Winnebago County Sheriff as well as Valentine, but he has since dropped his Section 1983 claim against the Sheriff. *See* ECF 41-1; *see also* 1 App. 50-51.

maintained that Dr. Peters' testimony did not adequately support Washington's claim because Dr. Peters had not directly opined on whether the delay exacerbated Washington's medical condition. *Id.* at 13.

Having rejected Washington's Section 1983 claim, the court then declined to exercise supplemental jurisdiction over Washington's state-law claims against Valentine and the Sheriff without commenting on their merits. D. Ct. Op. (ECF 57) at 14; *see* 28 U.S.C. § 1367(c)(3).

Summary of Argument

I. Washington provided sufficient evidence for a reasonable jury to conclude that Valentine's delay in responding to Washington's medical emergency caused Washington harm as he struggled to breathe, suffered, and died. In a delay-of-medical-care case, causation generally is decided by a jury, and summary judgment should be granted only when the plaintiff lacks any evidence of causation. The district court erroneously failed to consider all relevant evidence of causation—including medical records, corroborating testimony from correctional officers and inmates, and other records establishing the timeline of events—which were sufficient evidence of causation to preclude summary judgment. The evidence shows that Washington died from cardiac arrest caused by lack of oxygen. All officers at the jail, including Valentine, were trained to recognize and quickly initiate the appropriate emergency medical response for inmates struggling to breathe. Washington's cellmate, Simmons, alerted Valentine to

Washington's emergency when he first called for help, yet Valentine ignored his pleas and did not send help until after Simmons' second call.

When viewed in the light most favorable to Washington, as it must be, the evidence shows that Valentine's conduct delayed the provision of emergency medical care for about thirteen minutes while Washington struggled to breathe, went into cardiac arrest, and inched toward his death. Valentine could have and should have sent help much sooner. A reasonable jury could conclude that this delay prolonged Washington's pain and suffering, diminished his chance of survival, and caused his death.

II. Applying this Court's two-step approach to delay-of-medical-care claims for pretrial detainees, a reasonable jury could find that Valentine violated Washington's Fourteenth Amendment right to the provision of adequate medical care.

First, Valentine acted knowingly, purposefully, or recklessly in response to Washington's serious medical condition when he took the deliberate actions detailed above that delayed the response to Simmons' emergency calls. Second, Valentine's conduct was objectively unreasonable. Common sense and the overwhelming testimony of other officers at the jail, including Valentine's superiors, show that a reasonable officer, following the jail's reasonable policies, would have acted differently under the same circumstances.

Standard of Review

The district court's grant of summary judgment is reviewed de novo. *See Koch v. Village of Hartland*, 43 F.4th 747, 750 (7th Cir. 2022). This Court must draw "all reasonable inferences in the light most favorable to the nonmoving party," here Washington. *See id*. (quotation marks and citation omitted).

Argument

State officials have a duty to provide adequate medical care to prisoners. *Estelle v. Gamble*, 429 U.S. 97, 103 (1979); *Williams v. Liefer*, 491 F.3d 710, 714 (7th Cir. 2007).

In a case involving a delay in the provision of medical care, a plaintiff must provide evidence of causation showing that the delay caused some harm. *See, e.g.*, *Williams*, 491 F.3d at 715. To show that Valentine's actions violated the Due Process Clause, Washington must prove that Valentine acted purposefully, knowingly, or recklessly in delaying his response to Washington's serious medical condition and that Valentine's conduct was objectively unreasonable. *See, e.g.*, *Miranda v. County of Lake*, 900 F.3d 335, 353-54 (7th Cir. 2018). Unlike a convicted prisoner, who would bring a case under the Eighth Amendment, Washington, a presumed-innocent pretrial detainee, need not also show that Valentine subjectively intended to delay the provision of needed medical care. *See id* at 353.

We first show why a reasonable jury could find that there was sufficient evidence of causation and why the district court erred in holding otherwise. We then explain why a reasonable jury could find both that Valentine's

conduct was purposeful, knowing, or reckless and that it was objectively unreasonable.

I. A reasonable jury could find that Valentine's delay in responding to Washington's medical emergency caused Washington harm.

The district court erred in holding that Washington did not provide sufficient causation evidence to avoid summary judgment. We start from the proposition that "[p]roximate cause is a question to be decided by a jury, and only in the rare instance that a plaintiff can proffer no evidence that a delay in medical treatment exacerbated an injury should summary judgment be granted on the issue of causation." *Gayton v. McCoy*, 593 F.3d 610, 624 (7th Cir. 2010). Thus, "[i]f a plaintiff offers evidence that allows the jury to infer that a delay in treatment harmed an inmate, there is enough causation evidence to reach trial." *Est. of Perry v. Wenzel*, 872 F.3d 439, 459 (7th Cir. 2017) (citation omitted).

Contrary to the district court's suggestion, *see* D. Ct. Op. (ECF 57) at 8, Washington did not "bear the burden of proving that but for the defendants' inaction, [he] would definitely have lived," *Miranda v. County of Lake*, 900 F.3d 335, 347 (7th Cir. 2018); *see also Gayton*, 593 F.3d at 625. Instead, "[i]t was enough for [Washington's] Estate to show that the resulting harm was a diminished chance of survival." *Miranda*, 900 F.3d at 347. Washington needed to offer only "evidence that tends to confirm or corroborate that the delay was detrimental," "unnecessarily prolonged and exacerbated [his]

pain," or "caused [him] some degree of harm." *Williams v. Liefer*, 491 F.3d 710, 715-16 (7th Cir. 2007).

We first review Washington's causation evidence, which demands that this case go to a jury, and then explain why the district court erred in holding otherwise.

A. Washington presented sufficient causation evidence.

Washington provided a variety of evidence sufficient for a jury to find that Valentine's delay prolonged Washington's pain and suffering, diminished his chance of survival, and caused his death. Evidence of causation can include medical records, expert testimony, or other non-expert evidence. *See Grieveson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008); *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007); *Ortiz v. City of Chicago*, 656 F.3d 523, 535 (7th Cir. 2011). Of particular salience here, this Court has recognized in delay-of-medical-care cases that simple "common-sense conclusion[s]"—like those tying a lack of oxygen to pain, suffering, a diminished chance of survival, and death—can be made by juries in the absence of expert testimony on the ultimate question of causation. *Gil v. Reed*, 535 F.3d 551, 556 (7th Cir. 2008); *see also Grieveson*, 538 F.3d at 779; *Gayton v. McCoy*, 593 F.3d 610, 624-25 (7th Cir. 2010).

Washington's evidence—including medical records, corroborating testimony and documents, and Dr. Peters' testimony and report—is enough

for a reasonable jury to conclude that Valentine's delay caused Washington harm, especially when viewed in the light most favorable to Washington.

1. Evidence of the timeline of events—jail call logs, jail personnel and inmate testimony, and reports from the Rockford Fire Department and the Illinois State Police—shows that Valentine delayed getting Washington the medical care he needed.

Simmons made the first emergency call to Valentine reporting Washington's struggle to breathe at 4:37 a.m., as corrobated by Simmons and Parks. 1 App. 251; 2 App. 461, 480-81. Seeing Washington arching his back and gasping for breath, Simmons witnessed Washington's suffering and understood that immediate medical intervention could save him. 2 App. 451. But Valentine hung up on Simmons after only thirty seconds and did nothing to respond to the emergency. 1 App. 251. Valentine then let Simmons' second call ring for a minute and a half before picking up. *Id*. As a result, no jail personnel arrived at the scene of Washington's emergency until approximately 4:50 a.m.—roughly thirteen minutes after the emergency was first reported. *See id.* Once at the cell, an officer promptly issued a medical code-100 and jail personnel began the emergency resuscitation response—CPR and defibrillation. 1 App. 67, 81. The EMTs arrived shortly thereafter and estimated that Washington's heart stopped between 4:52 a.m. and 4:54 a.m., 2 App. 485—around the time the nurse arrived with the defibrillator, 1 App. 251. As Washington was being transported to the hospital, one of the officers testified that he believed

Washington might survive because the defibrillator had detected his cardiac activity. ECF 55-3 at 58 (Heinzeroth Dep.).

This evidence could convince a reasonable jury that had the aid-providing officers and nurse been alerted by Valentine promptly, and thus sent to Washington's cell sooner, the same potentially life-saving measures would have begun much earlier. Put otherwise, a reasonable jury could conclude that Valentine, as the officer responsible for the control desk and emergency line, should have responded by initiating life-saving measures immediately after the first call—about thirteen minutes earlier than he did.

This common-sense understanding of the timeline of events is echoed in the testimony of the jail's officers—officers, who like the laypeople of a jury, recognize that a delay in providing medical care to someone deprived of oxygen may well cause serious harm. Valentine himself understood from his training that "if an inmate … was struggling to breathe" and "an officer waited to provide assistance to that inmate, it increased the risk of that inmate dying or being seriously harmed." 2 App. 395-396 (Valentine Dep.). Sergeant Jacobson testified that it is "common knowledge" that "the longer somebody goes without breathing the more detrimental it would be to their health." 2 App. 427. A jury could infer from this testimony that an immediate response to an inmate struggling to breathe improves the inmate's chance of survival and that Valentine's failure to respond caused Washington increased pain and unnecessary suffering, and that his inaction increased the likelihood that Washington would die. *See also, e.g.*, Nicholas G. Bircher,

M.D., et al., *Delays in Cardiopulmonary Resuscitation, Defibrillation, and Epinephrine Administration All Decrease Survival in In-hospital Cardiac Arrest*, J. Am. Soc'y of Anesthesiologists, Inc., Mar. 2019, Vol. 130, 414-422.[5]

2. Dr. Peters' testimony would also allow a reasonable jury to infer that Washington was suffering a serious, time-sensitive medical emergency when Simmons first called Valentine and that a prompt response could have prevented harm to Washington. Dr. Peters is a forensic pathologist who regularly conducts autopsies and determines causes of death. 2 App. 471-72; 1 App. 202-05 (Dr. Peters describing his education and professional experience). His testimony and autopsy report drew on his scientific knowledge and professional training. *See Gayton*, 593 F.3d at 616.

Dr. Peters concluded that Washington's cause of death was cardiac arrhythmia. 1 App. 212, 221. Cardiac arrhythmia, he explained, can last "many minutes" before it leads to cardiac arrest and eventually death. 1 App. 213-14. He testified that Washington suffered cardiac arrhythmia from at least as early as when Simmons noticed Washington's irregular breathing until his death. 2 App. 473-74. So, according to Dr. Peters, Washington was already suffering cardiac arrhythmia at the time of Simmons' first call. *See id*.

Dr. Peters' testimony and report therefore "confirm or corroborate" that Washington was experiencing a medical emergency throughout the timeline

[5] Available at https://perma.cc/WGC5-K6PM (last visited Jan. 2, 2023).

of events described above. *Williams*, 491 F.3d at 715. With that, a jury could conclude that Valentine's inaction caused a "detrimental" delay in the provision of potentially life-saving aid—CPR and defibrillation—that "unnecessarily prolonged and exacerbated" Washington's suffering, decreased his chance of survival, and caused his death. *Id.* at 715-16.

B. The district court erred in granting summary judgment on causation.

In light of the evidence just reviewed, the district court erred in holding that Washington failed to introduce evidence "tying [Washington's] harm to the delay." D. Ct. Op. (ECF 57) at 13. In coming to that conclusion, the court suggested that Washington's suit was doomed because Dr. Peters did not "state any opinion on if the delay was detrimental to Washington" or "express a view on the timeliness or adequacy of the care that Washington eventually received." *Id.*; *see also id.* at 12 (noting that Washington did not provide expert testimony). The court also suggested that Washington lacked "verifying medical evidence." *Id.* at 10.

The district court's observations are flatly at odds with this Court's precedent. First of all, a plaintiff need not "introduce expert testimony stating that his medical condition worsened because of the delay." *Grieveson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008). As already explained, juries do not need expert testimony on the ultimate issue of causation when the evidence is "neither complex nor technical" because jurors are able to "make logical connections of the kind a layperson is well equipped to make." *Wong*

v. Belmontes, 558 U.S. 15, 24 (2009). When a potential causal link is clear, like the connection between a lack of oxygen and a diminished chance of survival, courts "need not check [their] common sense at the door." *Gil v. Reed*, 535 F.3d 551, 556 (7th Cir. 2008); *see also Roe v. Elyea*, 631 F.3d 843, 865 (7th Cir. 2011). Put another way, it is well within a layperson's understanding to know that this sort of delay in arranging medical care can exacerbate the harm endured by someone struggling to breathe or experiencing cardiac arrest.

Second, Washington did provide "verifying medical evidence." The district court wrongly implied that this phrase is a term of art demanding a particular type of evidence or expert opinion. In reality, it is simply shorthand for the full array of evidence that may help a jury determine medical causation in a given case. As the district court rightly observed, this evidence can include "[m]edical records, treatment notes, or physician notes that confirm or corroborate a claim that the delay was detrimental," D. Ct. Op. (ECF 57) at 10, and Dr. Peters' report and testimony did, in fact, draw on that type of evidence, as just explained (at 25-26). But these kinds of evidence are not the *only* permissible types of causation evidence. Washington needed only to "provide independent evidence that the delay exacerbated the injury or unnecessarily prolonged pain." *Petties v. Carter*, 836 F.3d 722, 730-31 (7th Cir. 2016) (citing *Williams v. Liefer*, 491 F.3d 710, 716 (7th Cir. 2007); *Gil v. Reed*, 381 F.3d 649, 662 (7th Cir. 2004)). That evidence here includes the documentary proof of the timeline of events and the lay testimony from the

officers and inmates—which the district court overlooked in coming to its no-causation determination. D. Ct. Op. (ECF 57) at 10-13.

Finally, and most importantly, the district court was mistaken in believing that Washington lacked evidence tying Valentine's delay to Washington's harm. As already described (at 23-25), the evidence shows that Simmons called Valentine asking for help because Washington was struggling to breathe. Valentine did not inform any medical professionals, assess the situation himself, or otherwise send any help to Washington for over twelve minutes after Simmons' initial call for help. This evidence, alone or taken together with Dr. Peters' testimony and report indicating that Washington was in cardiac arrhythmia no later than Simmons' first call, 2 App. 473-74, constitutes powerful evidence that early intervention could have prevented or mitigated the harms suffered by Washington.

The district court's grant of summary judgment on causation was therefore unwarranted, and this Court should reverse.

II. A reasonable jury could find that Valentine's conduct was purposeful, knowing, or reckless, and that it was objectively unreasonable.

A jail official violates the Due Process Clause in responding to a pretrial detainee's serious medical condition if the official's conduct is (1) knowing, purposeful, or reckless and (2) objectively unreasonable. *Miranda v. County of Lake*, 900 F.3d 335, 353-54 (7th Cir. 2018). A determination under this standard "entails a context-sensitive, fact-bound inquiry into the

intentionality of the defendant's conduct," *James v. Hale*, 959 F.3d 307, 316-17 (7th Cir. 2020), but does not, as noted earlier (at 16 note 4), require proof that the officer subjectively believed he was providing an inadequate response to a serious medical need, *Pittman by and through Hamilton v. County of Madison*, 970 F.3d 823, 828 (7th Cir. 2020).

Washington undisputedly was suffering from a serious medical condition—an inability to breathe properly—and Valentine has never argued otherwise. *See generally* Defs.' Mem. Supp. Summ. J. (ECF 44). And, as the district court observed, a reasonable jury could find that Valentine's conduct was purposeful, knowing, or reckless, and objectively unreasonable. *See* Dist. Ct. Op. (ECF 57) at 8

A. A reasonable jury could find that Valentine's knowing, purposeful, or reckless actions delayed the response to Washington's medical emergency.

1. A reasonable jury could conclude that Valentine's decision to delay a response to Simmons' emergency call was purposeful, knowing, or reckless. *Miranda v. County of Lake*, 900 F.3d 335, 354 (7th Cir. 2018). Even if Valentine did not knowingly or purposefully intend that Washington receive delayed medical care—which is in serious doubt given Valentine's conduct—his actions were purposeful, knowing, or reckless because *the actions themselves* were deliberate. *Kingsley v. Hendrickson*, 576 U.S. 389, 396 (2015).

Valentine made deliberate choices that delayed critical care to Washington. When Valentine first received Simmons' emergency call at the

control desk, he let the first call ring for over a minute. 1 App. 251. After finally picking up, Valentine remained on the line for only thirty seconds. *Id*. Beyond purportedly asking Simmons once to repeat himself, 1 App. 162—an assertion that Simmons disputes, *see* 2 App. 461—Valentine hung up before ascertaining whether there was an emergency, *see id*. Around eight minutes later, Valentine let Simmons' second call ring for a full minute and a half. *See* 1 App. 251. And even then, when he knew the nature of the emergency, Valentine chose not to make an emergency medical code-100 call over the radio. 2 App. 344.

2. Valentine did not argue below that his conduct was merely negligent. And for good reason. Unlike negligent actions such as mixing up medical charts or responding to the wrong jail cell, Valentine's deliberate decisions not to act went beyond negligence. *See, e.g.*, *Orlowski v. Milwaukee County*, 872 F.3d 417, 425 (7th Cir. 2017) ("Failing to consult or alert a medical professional where an inmate is unconscious and barely breathing surpasse[s] mere negligence and enter[s] the realm of deliberate indifference." (internal citation and quotation marks omitted)).

Valentine provided no explanation for waiting sixty and then ninety seconds to answer Simmons' two calls. And any explanation Valentine might offer—such as being asleep, on his phone, or otherwise distracted—would exceed negligence. A jury could infer, in any of those circumstances, that he made intentional choices—like routinely turning down the system's volume, 2 App. 398 (Valentine Dep.)—to buck his responsibility as the only

person fielding overnight emergency calls. In other words, by not giving the emergency intercom system his full attention, as his training demanded, he "knew of a substantial risk of harm to [an] inmate and acted or failed to act in disregard to that risk." *Grieveson v. Anderson*, 538 F.3d 763, 780 (7th Cir. 2008) (citation omitted).

3. Valentine may contend that his voluntary acts were not taken in response to a serious medical need because he thought the call was about a toilet or sink. 1 App. 161. But that contention would not suffice at summary judgment because conflicting testimony—indicating that Simmons clearly reported Washington's struggle to breathe—calls Valentine's account into serious question. 2 App. 449, 480-81.

In any case, officers testified that the intercom system is designed for reporting medical emergencies. 1 App. 95 (Lolli Dep.), 134 (Posada Dep.). As noted earlier, the intercom button is known as the "medical emergency button." 1 App. 184 (Schumaker Dep.). Thus, a reasonable jury could conclude that, at the least, Valentine recklessly disregarded the risk that he was failing to respond promptly to a serious medical need. That is, even if a jury were to credit Valentine's improbable testimony that he was uncertain about the nature of the emergency after the first call, the jury could still find that Valentine was on notice that Simmons could have been calling about an emergency. Yet Valentine still deliberately let the first call ring for more than a minute, 1 App. 251, failed to follow protocol by not following up or

ascertaining the true reason for the call, *see* 2 App. 461, and then let the second call ring for a full minute and a half, 1 App. 251.

B. A reasonable jury could find that Valentine's conduct was objectively unreasonable.

The objective reasonableness of an officer's conduct is determined by what a reasonable officer would do under similar circumstances. *See Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). A jury need not find that officers at the same jail would have acted differently under the circumstances to determine that a particular officer acted unreasonably. But here a reasonable jury could find that the Winnebago County Jail's training and protocol were reasonable, and so were the officers who adhered to them. That is, substantial evidence demonstrates that other officers at the jail would have acted differently from Valentine under the circumstances, based on their understanding of their training and jail protocol.

Officers testified that they should never hang up an emergency intercom call without ascertaining the caller's need. 2 App. 312-13 (Lolli Dep.), 302 (Arbisi Dep.). Even if a jury accepted Valentine's dubious claim that he heard something about a "toilet" or "sink," Valentine hung up on Simmons' first call without inquiring whether there was a plumbing emergency, *see* 2 App. 461, as other officers testified is required by their training and jail protocol, 1 App. 121; 2 App. 319.

Nor does Valentine's assertion that he had trouble hearing Simmons allow him to escape liability. To begin with, Simmons and Parks testified

that Simmons spoke clearly, which creates a material dispute on that question. *See* 2 App. 461, 480. And in any event, officers testified that they are not permitted to turn down the volume on the control-desk intercom speaker. *See, e.g.*, 2. App. 337-38, 351 (Posada Dep.). A jury could reasonably conclude that any trouble Valentine had hearing occurred because *he* had turned down the volume, based on his testimony that the speaker was "probably turned down kind of low" and that he had habitually turned down the volume in the past. 2 App. 397-98.

Moreover, Sergeant Jacobson stated that, in light of their training, waiting sixty or ninety seconds before answering an intercom call—as Valentine did here—is unreasonable. 2 App. 433 (Jacobson Dep.); *see also* 2 App. 429, 442. Others testified that when an officer cannot clearly hear an intercom caller—as Valentine asserts occurred on the first call—they are trained to ask callers repeatedly to lower their voice, step away from the intercom button, or call back. 2 App. 488, 311 (Lolli Dep.), 305 (Arbisi Dep.), 328 (Heinzeroth Dep.), 372-73 (Kryder Dep.), 443 (Schumaker Dep.). Valentine did none of this. Here, too, a reasonable jury could conclude that Valentine's conduct was objectively unreasonable.

It was "common knowledge" among officers that the longer a person is deprived of oxygen, the greater the risk of serious injury or death. 2 App. 427. Officers were therefore expected to respond immediately if an inmate struggled to breathe. 2 App. 309. If Simmons' and Parks' testimony are credited, as required at summary judgment, then Valentine was alerted to

Washington's dire medical condition on the first call. 2 App. 461, 480. Yet, Valentine did not respond at all until after the second call, when other officers were present. 2 App. 335.

All told, then, the officers' testimony showing that they, as reasonable officers complying with reasonable protocol, would have acted differently from Valentine demonstrates that a jury could find that Valentine's conduct was objectively unreasonable. Beyond that, this Court and others have found similar time delays in the provision of medical care sufficient for a jury to conclude that a constitutional violation occurred. *See Bradich ex rel. Est. of Bradich v. City of Chicago*, 413 F.3d 688, 691 (7th Cir. 2005) (an officer's ten-minute delay in response to a suicide attempt could be deliberately indifferent); *Est. of Owensby v. City of Cincinnati*, 414 F.3d 596, 603 (6th Cir. 2005) (same as to officers' six-minute delay in seeking medical care for an asphyxiating pretrial detainee); *Tlamka v. Serrell*, 244 F.3d 628, 633 (8th Cir. 2001) (same as to correctional officers' ten-minute delay in providing CPR to an unconscious inmate). As one court put it, a "delay in care for known unconsciousness brought on by asphyxiation is especially time-sensitive and must ordinarily be measured not in hours, but in a few minutes." *Bozeman v. Orum*, 422 F.3d 1265, 1273 (11th Cir. 2005).

* * *

In sum, once officers were alerted to Washington's emergency condition, the medical response was swift and in accordance with protocol. But the response came too late because Valentine failed to timely respond to the

emergency. For the reasons explained, a reasonable jury could conclude that Valentine's conduct was knowing, purposeful, or reckless, and objectively unreasonable.

Conclusion

This Court should reverse and remand for a trial on the merits of Washington's claims.[6]

[6] As noted earlier (at 18), after granting summary judgment to Valentine on Washington's Section 1983 claim, the district court declined to exercise supplemental jurisdiction over his state-law claims without addressing their merits. D. Ct. Op. (ECF 57) at 14 (citing 28 U.S.C. § 1367(c)(3)). If this Court reverses on Washington's Section 1983 claim, it should reinstate his state-law claims and remand so that they can be addressed in the first instance by the district court. *See Edwards v. Snyder*, 478 F.3d 827, 832 (7th Cir. 2007).

Respectfully submitted,

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January 3, 2023

Certificate of Compliance

In accordance with Federal Rule of Appellate Procedure 32(g), I certify that this brief:

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) and Circuit Rule 32(c) because it contains 8,511 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2016, set in Palatino Linotype in 14-point type.

/s/ Brian Wolfman
Brian Wolfman

Attached Appendix

Certificate of Compliance with Circuit Rule 30

In accordance with Circuit Rule 30(d), I certify that this appendix contains all of the materials required by Circuit Rule 30(a) and that the separately submitted appendix contains all of the materials required by Circuit Rule 30(b).

/s/ Brian Wolfman
Brian Wolfman

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

BETTYE JACKSON, as Independent Administrator of the Estate of Eugene Washington, Deceased Plaintiff, v. SHERRIFF OF WINNEBAGO COUNTY, ILLINOIS, in his official capacity, and JEFF VALENTINE, Individually and as Agent, Defendants.	)	No. 3:20-cv-50414 Judge Iain D. Johnston

MEMORANDUM OPINION AND ORDER

Plaintiff Bettye Jackson, as the administrator of the estate of the decedent Eugene Washington, brings this action under 42 U.S.C. § 1983 against the Sheriff of Winnebago County and Jeff Valentine. In Count I, Plaintiff invokes the Fourteenth Amendment and claims that Defendants deprived Washington of his civil rights while he was a pretrial detainee in the Winnebago County Jail and claims that this deprivation led to Washington's death. Dkt. 20. Counts IV and V are brought under state law for wrongful death and a Survival Act claim.[1] Defendants now bring this motion for summary judgment. Dkt. 43.

[1] Count II was voluntarily dismissed. Dkt. 42. There was no Count III pled.

I. Background

The following background is taken from the parties' Local Rule 56.1 statements of undisputed material facts. Dkt. 45, Dkt. 49. In the Winnebago County Jail ("the jail"), between the hours of 10:30PM to 6:00AM inmates are placed on lockdown, and during that period an assigned jail officer monitors the cells remotely from the "Floor Control Desk". Def. SOF, Dkt. 45, at 6. At least one officer is required to be present at the Floor Control Desk at all times. In addition to the remote monitoring, other officers conduct rounds in the cell blocks every thirty minutes. During this period, if inmates are unable to get the attention of officers conducting rounds, the only official way for them to contact officers is to press an emergency intercom button located in each cell that connects them with the officer stationed at the Floor Control Desk. The intercom system is intended for emergency purposes only but is frequently used by inmates for improper non-emergency purposes. When an inmate uses the intercom for an improper purpose, officers are trained to remind the caller that the intercom is for emergency purposes only. The parties agree that most non-emergency calls, such as most plumbing calls[2], do not require an immediate physical response by an officer.

Between 2016–2019, Eugene Washington was an inmate at the jail on five separate occasions. On October 27, 2019, Washington was once again detained at the jail, this time as a pretrial detainee, where he had been detained for

[2] Certain plumbing issues, such as flooding, may qualify as an emergency.

approximately two months. As part of standard procedure, the jail conducted medical intake interviews with Washington upon each of his incarcerations. Def. SOF, Dkt. 45, at 9. Washington never disclosed to medical personnel or jail staff that he had sleep apnea or any disease, diagnosis, condition or issue that affected his ability to breathe. *Id.*

During his final stint at the jail, Washington shared a cell with inmate Lamar Simmons. Early in the morning of October 28, 2019, Simmons awoke to the sound of Washington gasping for air while sleeping. Simmons went over to Washington's bed and tried to wake him by shaking him and calling his name, but Simmons was unsuccessful. Simmons Dep., Dkt. 55-10, at 13–14. Washington continued to lay in his bed with his eyes closed, struggling to breathe.

At 4:37AM, on October 28th, Simmons pressed his cell's emergency intercom button to request assistance for Washington. At 4:38AM, the officer on duty at the Floor Control Desk, Defendant Jeff Valentine, answered the call by asking Simmons what the emergency was. The parties give different versions of Simmons' response. Simmons testified that he told Valentine, "My cellie can't breathe." Simmons Dep., Dkt. 55-10, at 9. This testimony was corroborated by the testimony of another inmate. Dkt. 48, at 12. In contrast, Valentine testified that he had difficulty hearing what Simmons said into the intercom but heard Simmons "say something along the lines that the toilet or the sink [was] not working." Valentine Dep., Dkt. 55-6, at 52. Valentine further testified that he

asked Simmons to repeat himself, and again heard Simmons say the same thing he previously heard, "that the toilet and the sink were not working." Valentine Dep., Dkt. 55-6, at 52–53. Valentine states that he responded by telling Simmons that the intercom was for emergency use only and ended the call. Plaintiff disputes that Valentine asked Simmons to repeat himself and that Simmons made any statement regarding the toilet or sink. Instead, according to Plaintiff, Simmons replied to Valentine by asking rhetorically "who pushes the button at this time of night and it's not an emergency?" Simmons also testified that the officer he connected with on the intercom "acted like he could not hear [him]" and disconnected the call without saying anything else. Simmons Dep., Dkt. 55-10, at 9. Officers frequently had trouble hearing or understanding what an inmate said over the intercom due to the inmate either speaking too loudly or standing too close to the microphone of the intercom. Arbisi Dep., Dkt. 55-1, at 22, Valentine Dep., Dkt. 55-6, at 52. The parties agree that Simmons was calm and not panicking during the initial call. To Valentine, Simmons' tone did not sound like he was attempting to report an emergency. Plaintiff admits that Simmons had no way of knowing what Valentine heard Simmons say during the first call, and that Simmons "can't speak for his end." Simmons Dep., Dkt. 55-10, at 38–39.

At 4:46AM—eight minutes later—Simmons pressed the emergency call button again. Upon connecting the call, approximately 90 seconds later, Valentine heard Simmons report that Washington was having irregular

breathing. Valentine was able to clearly hear Simmons during the second call and immediately directed officers to respond to Washington and Simmons' cell. After "[a] minute to two minutes, maybe even shorter," the responding officers arrived at the cell. Arbisi Dep., Dkt. 55-1, at 67–68. Simmons testified that he knew his intercom worked "[b]ecause he heard me the second time clearly and hurried up and had them come in, but they [were] not fast enough." Simmons Dep., Dkt. 55-10, at 39. Before the morning of October 28th, Valentine did not know Washington and knew nothing about his medical history.

When officers arrived at the cell, Simmons told them that Washington was not breathing. The officers found Washington on the top bunk, unresponsive, and with his mouth and eyes open. He did not have a detectable pulse, his lips were blue, he was cold to the touch, and he was not breathing. Arbisi Dep., Dkt. 55-1, at 34. Additional officers and medical staff arrived at the cell, performed CPR and used an Automatic External Defibrillator attempting to resuscitate Washington, but to no avail. EMTs arrived and were also unable to resuscitate Washington. They took him to a local hospital, where he was pronounced dead shortly after his arrival.

Dr. Mark Peters performed an autopsy on Washington and opined in the autopsy report that the manner of death was cardiac arrythmia caused by sleep apnea. According to Dr. Peters, arrythmia caused by sleep apnea can result in death either "very fast or very slowly," and a person can be in an arrhythmic state for many minutes before "you finally reach that fatal arrhythmic state."

Peters Dep., Dkt. 55-11, at 38. However, Dr. Peters relied on an Illinois State Police summary of Simmons' statements because he was unable to determine Washington's cause of death from his own examination. The parties agree that Dr. Peters did not provide any opinion on the timeliness or adequacy of the resuscitation efforts made by jail staff or EMTs. Def. SOF, Dkt. 45, at 17–18. Nowhere in Dr. Peters' testimony or autopsy report did Dr. Peters provide any opinion on whether any delay in treatment caused Washington pain or contributed to his death. It is undisputed that when Simmons first noticed Washington "gasping for air," his arms were "locked straight in the air" and his eyes were closed. Ditto Dep., Dkt. 55-7, at 44. Despite Simmons attempts to wake Washington, Simmons never saw Washington open his eyes again.

II. Motion for Summary Judgment

Legal Standard

A successful motion for summary judgment demonstrates that there is no genuine dispute of material fact and judgment is proper as a matter of law. A party opposing summary judgment must proffer specific evidence to show a genuine dispute of fact for trial. FED. R. CIV. P. 56; *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A genuine dispute of material fact exists if a reasonable jury could return a verdict for the non-movant when viewing the record and all reasonable inferences drawn from it in the light most favorable to the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). However, the existence of just *any* disputed facts will not defeat an otherwise proper motion for summary judgment. *Borcky v. Maytag Corp.*, 248 F.3d 691, 695 (7th Cir.

2001). Rather, the disputed facts must be both "genuine" and "material." *Id.* A fact is material if it might affect the outcome of the suit under governing law. *Id.* If the nonmoving party has the burden to establish the existence of an element essential to his case and fails to do so, summary judgment must be granted for the moving party. *Ortiz v. John O. Butler Co.*, 94 F.3d 1121, 1124 (7th Cir. 1996).

A party opposing summary judgment "is entitled to the benefit of all favorable inferences that can reasonably be drawn from the underlying facts, but not every conceivable inference." *De Valk Lincoln Mercury, Inc. v. Ford Motor Co.*, 811 F.2d 326, 329 (7th Cir. 1987). The court must construe the "evidence and all reasonable inferences in favor of the party against whom the motion under consideration is made." *Rickher v. Home Depot, Inc.*, 535 F.3d 661, 664 (7th Cir. 2008). The court does not "judge the credibility of witnesses, evaluate the weight of the evidence, or determine the truth of the matter." *Gonzalez v. City of Elgin*, 578 F.3d 526, 529 (7th Cir. 2009). Summary judgment is appropriate only when the court determines that "no jury could reasonably find in the nonmoving party's favor." *Blasius v. Angel Auto, Inc.*, 839 F.3d 639, 644 (7th Cir. 2016).

Analysis

In her amended complaint, Plaintiff pleaded a constitutional claim under 42 U.S.C. § 1983 that Defendants Jeff Valentine and his employer, Sheriff of Winnebago Country, failed to timely provide Eugene Washington adequate medical care in violation of the Due Process Clause of the Fourteenth

Amendment. Jackson also pleaded two claims under Illinois law: a wrongful death claim, and a Survival Act claim. Before the Court is Defendants' motion for summary judgment on all of those claims. Defendants claim that Washington's civil rights as a pretrial detainee were not violated and further argue they are entitled to the protections afforded by the Illinois Government and Governmental Employees Tort Immunity Act ("Tort Immunity Act").

Although there are disputed facts over whether the Defendants' conduct was objectively reasonable, Defendants are nevertheless entitled to summary judgment on Plaintiff's Fourteenth Amendment claim because Plaintiff failed to present verifying medical evidence that a delay in receiving medical care was detrimental to Washington. In the absence of any remaining federal claim, the Court declines to exercise supplemental jurisdiction over the state law claims in Counts IV and V, and those claims are dismissed without prejudice.

I. Fourteenth Amendment – Count I

Defendants move for summary judgment on Plaintiff's § 1983 civil rights claims for two reasons. First, Defendants contend that Valentine's conduct during the intercom calls was objectively reasonable. Second, Defendants argue that Plaintiff has failed to provide any verifying medical evidence that the delay in providing Washington with medical care harmed Washington, caused his death, or was otherwise detrimental. The Court does not address Defendants' first argument; instead, summary judgment is granted based on the second argument.

Because Washington was a pretrial detainee at the Winnebago County Jail, Plaintiff's claim that Defendants failed to timely provide adequate medical care arises under the Fourteenth Amendment's Due Process Clause. *Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *see Fisher v. Lovejoy*, 414 F.3d 659, 661 (7th Cir. 2005). Under the Fourteenth Amendment, a plaintiff's claim of constitutionally inadequate medical care is subject only to the objective unreasonableness inquiry, rather than the Eighth Amendment's deliberate indifference test. *Miranda v. County of Lake*, 900 F.3d at 352. So, a pretrial detainee need not prove that the defendant was subjectively aware that his actions were unreasonable. *McCann v. Ogle Cty.*, 909 F.3d 881, 886 (7th Cir. 2018).

The objective unreasonableness inquiry is a two-part test. First, the plaintiff must show that the defendant acted purposely, knowingly, or recklessly. *Id.* Negligence, or even gross negligence, is not enough to satisfy this requirement. *Id*; *see also Kemp v. Fulton County*, 27 F.4th 491, 495–96. Second, the court decides if the conduct was objectively reasonable considering the relevant facts and circumstances. *James v. Hale*, 959 F.3d 307, 318 (7th Cir. 2020). Although the result is the same, some Seventh Circuit decisions articulate a four-element analysis that requires the plaintiff to prove each of the following elements: (1) that the plaintiff suffered from an objectively serious medical condition, (2) the defendant committed a voluntary act regarding the plaintiff's serious medical need, (3) that act was done purposely, knowingly, or recklessly

with respect to the risk of harm, and (4) that the defendant's conduct was objectively unreasonable under the circumstances. *Gonzalez v. McHenry County*, 40 F.4th 824, 827–28 (7th Cir. 2022). Reasonableness is determined from the perspective of a reasonable officer standing in the defendant's shoes. *See Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015) ("A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with 20/20 vision of hindsight").

If a plaintiff alleges that prison officials delayed, rather than denied, medical treatment, the plaintiff must also present "verifying medical evidence" that the delay, instead of the underlying condition, caused the harm. *Walker v. Wexford Health Sources, Inc.*, 940 F.3d 954, 964 (7th Cir. 2019) (internal citation omitted). So, a plaintiff must offer medical evidence that tends to confirm or corroborate a claim that the delay was detrimental. *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007). Expert opinions are a form of verifying medical evidence, but not the only form. Medical records, treatment notes, or physician notes that confirm or corroborate a claim that the delay was detrimental can be sufficient. *Id.* However, evidence of a plaintiff's diagnosis and treatment, standing alone, is insufficient to meet the verifying medical evidence requirement if it does not assist the jury to determine if a delay exacerbated the plaintiff's condition or otherwise harmed him. *Id.*

Plaintiff's amended complaint and response brief frame the claim as a delay in providing medical care case. Dkt. 47, at 9–11 ("Plaintiff Has Produced Sufficient Evidence that Delay in Treatment Caused Washington Harm"); Dkt. 20, at 5, 6. Plaintiff never argued that the case was a denial of medical care case. Dkt. 47, at 9–11; *Walker*, 940 F.3d at 964 ("In cases such as this one—where the plaintiff alleges the defendant delayed, rather than denied, medical treatment—we have required that the plaintiff present 'verifying medical evidence' that the delay, and not the underlying condition, caused some harm."). So, any claim based on a denial of medical care is waived. Indeed, although not using the term, Plaintiff's amended complaint and response brief sound as though Plaintiff is making a claim for "loss of chance"; specifically, that Valentine's failure to act in response to the first intercom call decreased Washington's chance at survival. Dkt. 47, at 10. Whether a loss of chance claim exists under 1983 is questionable. *Grafton v. Bailey*, No. 13-2940, 2018 U.S. Dist. LEXIS 85860, at *34 n.3, (citing *Phillips ex rel Phillips v. Monroe County*, 311 F.3d 369 (5th Cir. 2002)). But because the parties have not developed that theory, the Court will not address it. Instead, the Court will limit itself to the issues as framed by the parties.

Because Plaintiff frames the claim as a delay—not denial—of medical care, Defendants argue that Plaintiff lacks any "verifying medical evidence" that the delay in medical treatment, rather than the underlying condition, caused harm. *Walker*, 940 F.3d at 964; *see also Williams*, 491 F.3d at 714–15 ("[A]

plaintiff must offer medical evidence that tends to confirm or corroborate a claim that the delay was detrimental."). Again, Plaintiff does not quarrel with the proposition that her claim is a delay—not denial—of medical care claim. Instead, Plaintiff argues that sufficient verifying medical evidence has been presented, requiring a trial on the claim.

Under *Walker*, Plaintiff must have "verifying medical evidence" to show that because Valentine dispatched officers to the cell only after the second call, rather than after the first call eight minutes earlier, Washington was harmed, his injury was exacerbated, or that the delay was detrimental. In *Williams*, 491 F.3d at 715, the Seventh Circuit explained the type of evidence that would qualify as "verifying medical evidence." Without doubt, a proper and admissible expert opinion would constitute "verifying medical evidence." *Id.* Equally without doubt, evidence of a plaintiff's diagnosis and treatment, standing alone, is insufficient to survive summary judgment. *Id.* But, in *Williams*, the Seventh Circuit found that medical records in conjunction with testimony can be sufficient to allow a fact-finder to determine that the delay caused additional harm. *Id.*; *see, e.g., Grieveson v. Anderson*, 538 F.3d 763, 779 (7th Cir. 2008).

In this case, Plaintiff chose not to provide expert testimony to support the delay claim. Instead, in response to the summary judgment motion, Plaintiff attempts to rely on medical records. The only medical evidence that Plaintiff produces is the testimony of Dr. Peters and the autopsy report he created. Dr.

Peters testified that the manner of death was natural cardiac arrhythmia caused by sleep apnea. Peters Dep., Dkt. 55-11, at 33. Specifically, Plaintiff claims that Dr. Peters' testimony that Washington suffered a cardiac arrythmia "from at least the time period from when his cellmate noticed him having irregular breathing and was unable to rouse him until the time that he died", is sufficient verifying medical evidence that the delay caused Washington harm. Peters Dep., Dkt. 55-11, at 49–50; Pl.'s Mem. Opp. Sum. Judg., Dkt. 47, at 10–11. But this testimony is merely a post-mortem diagnosis of the manner and cause of death, which standing alone is insufficient to assist the jury in determining whether the delay exacerbated Washington's condition and therefore does not meet the "verifying medical evidence" requirement. *Walker*, 940 F.3d at 964. This type of evidence is evidence of the underlying condition Washington suffered, which is insufficient. *Id.* (the evidence must show that the delay, and not the underlying condition, caused some harm). The proffered evidence is not verifying medical evidence tying harm to the delay. Dr. Peters does not state any opinion on if the delay was detrimental to Washington, nor does he express a view on the timeliness or adequacy of the care that Washington eventually received. Def. SOF., Dkt. 45, at 17–18.

Accordingly, the record does not confirm or corroborate Plaintiff's claim that the delay in medical treatment was detrimental to Washington. *See Williams*, 491 F.3d at 715. On the contrary, there is evidence that Washington was unconscious and unresponsive from the time when Simmons first tried to wake

him to when the officers arrived after the second intercom call. Simmons testified that he never saw Washington open his eyes, and when the responding officers arrived, Washington had no pulse and was cold to the touch. Arbisi Dep., Dkt. 55-1, at 34.

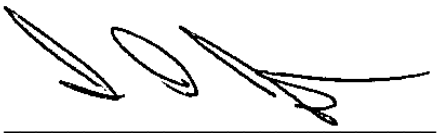
Because Plaintiff failed to present verifying medical evidence, which is an essential element to a claim alleging a constitutional violation due to a delay in medical care, granting summary judgment is proper. Accordingly, the court grants Defendant's summary judgment motion on Count I.

II. Illinois State Law – Counts IV and V

Plaintiff also asserts claims under state law for wrongful death and under the Survivor Act. When all federal claims have been dismissed before trial, federal courts generally relinquish jurisdiction over the remaining state law claims under 28 U.S.C. § 1367. *Wilson v. Price*, 624 F.3d 389, 395 (7th Cir. 2010). Because no federal questions remain the court declines to exercise 28 U.S.C. § 1367 jurisdiction over the Illinois state law claims. As a result, the Court need not address the Defendants' arguments under the Tort Immunity Act.

Conclusion

For the reasons given, Defendants' motion for summary judgement is granted on Count I. Counts IV and V are dismissed without prejudice to being refiled in state court.

Date: October 13, 2022 By: 

IAIN D. JOHNSTON

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Bettye Jackson,

Plaintiff(s),

v.

Sheriff of Winnebago County, et al,

Defendant(s).

Case No. 3:20-cv-50414
Judge Iain D. Johnston

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Sheriff of Winnebago County and Jeff Valentine
and against plaintiff(s) Bettye Jackson

.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☐ decided by Judge Iain D. Johnston on a motion report and recommendation.

Date: October 13, 2022

Thomas G. Bruton, Clerk of Court

\s\Yvonne Pedroza, Deputy Clerk