No. 19-

IN THE

Supreme Court of the United States

TERESA BERRY,

Petitioner,

v.

DELAWARE COUNTY SHERIFF'S OFFICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Sixth Circuit Court of Appeals affirmed the judgment from the United States District Court Southern District of Ohio Eastern Division finding that the municipality, specifically the Sheriff of Delaware County, the Officer in charge of the jail, was not liable under 42 USC §1983.

There are four questions presented:

A. The decision by the Sixth Circuit Court of Appeals as well as the District Court directly conflicts with *Jimenez v. Hopkins Cty., Ky* 2014 WL 176578 (W.D. Ky Jan 13, 2014) *Shadrick v. Hopkins Cty., Ky* 805 F.3d 724 (6th Cir. 2015)

B. There is testimony in the record as well as a medical policy which clearly establishes that the medical policy upon which all testimony relied was identical to that of the medical policy in place at the time of Filichia's death.

C. Deputy Mohnsen and the other Deputies and/or Correction Officers, although defined by policy as health trained personnel, had no training on how to identify a serious medical condition and ignored the decedent Filichia and her boyfriend's requests to take her to the hospital.

D. Is the fact that employees of Defendant are not trained on how to identify serious medical conditions sufficient evidence of deliberate indifference when they only receive First Aid

and CPR; there is no evidence the employees of Defendant are trained to complete the documents the District Court relies upon as evidence of training; Defendants' caused Filichia to be sequestered in a holding cell and her water shut off because of her drug history and then failed to monitor her for yet another serious medical condition, withdrawal.

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Petitioner certifies that no party to this appeal is a subsidiary or affiliate of a publicly owned corporation and no publicly owned corporation that is not a party to this appeal has a financial interest in the outcome.

LIST OF PROCEEDINGS

- *Teresa Berry, Administrator of the Estate of Rhianna Filichia v. Delaware County Sheriff's Office, et al.*, No. 2:16-cv-296, U.S. District Court for The Southern District of Ohio , Eastern Division. Judgment Entered February 1, 2019.

- *Teresa Berry, Administrator of the Estate of Rhianna Filichia v. Delaware County Sheriff's Office, et al*, Case No. 19-3096, U.S. Court of Appeals for the Sixth Circuit. Judgment entered November 14, 2019.

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Teresa Berry, Administrator of the Estate of Rhianna Filichia v. Delaware County Sheriff's Office, et al., Case No. 19-3096, U.S. Court of Appeals for the Sixth Circuit. Judgment entered November 14, 2019 reported in Lexis as Berry v. Del. Cty. Sheriff's Office 2019 U.S. App. LEXIS 33941. See 1a- 21a.

JURISDICTIONAL STATEMENT

Pursuant to SCR 14.1(e) jurisdiction in this Court is predicated upon 28 USC 1254. On November 14, 2019, the United States Court of Appeals for the Sixth Circuit issued an Entry and Order affirming the decision of the District Court and granting summary judgment against Petitioner. Accordingly, this Petition for Writ of Certiorari is filed within ninety days of the entry of judgment from the Court of Appeal, specifically February 12, 2020. Any and all notifications required by Rule 29.4(b) and (c) have been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC Section 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any

> State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On April 5, 2016, Teresa Berry, Administrator of the Estate of Rhianna Filichia, filed a lawsuit against the Delaware County Sheriff's Office, alleging that the municipality had violated her constitutional rights to medical care and her substantive due process rights. The Complaint was amended to include as a Defendant Correctional Healthcare Companies, Inc. Defendant Correctional Healthcare Companies, Inc. settled the case. Defendant Delaware County Sheriff's Office filed a Motion for Summary Judgment. As one of its Defenses, Plaintiff indicated that Defendant had incorrectly named Sheriff Russel Martin as the Delaware County Sheriff's Office. In response, Berry filed a Memorandum Contra along with a Motion for Leave to Substitute the Proper Party Defendant. On January 23, 2019, Appellant's Motion

for Leave to Substitute the Proper Party Defendant was granted. On February 2, 2019, the District Court entered judgment against Plaintiff. That case was timely appealed to the Sixth Circuit Court of Appeals. On November 14, 2019, the Sixth Circuit Court of Appeals affirmed the decision of the United States District Court.

Rhianna Filichia lived a happy simple life in Delaware, Ohio

Rhianna Filichia was born on August 15, 1977. (R#12 Pg. ID 43) She grew up surrounded by a large family of four brothers and two sisters. (R #37-1 Pg ID 1218-1219, 1249-1250) She moved to Delaware to live with boyfriend James Egbert in a home he purchased for them. (R# 37-1 Pg. ID 1171) Rhianna and Jimmy enjoyed the simply life together in Delaware with their dogs. (Id.) They enjoyed camping, fishing and having friends over by the bonfire in their backyard. (R# 37-1Pg. ID 1174-1175) Unfortunately, tragedy struck the family when Rhianna died after serving a weekend sentence in the Delaware County jail resulting from a conviction for drunk driving.

In July 2013 Filichia was charged with operating a motor vehicle while intoxicated and failure to yield in Delaware County. (13 TRC 10354) As part of the sentencing resulting from that case, Filichia was ordered to serve fifteen days in jail. (City of Delaware v. Rhianna Filichia 13 TRC 10354) Filichia served those days on weekends beginning in January 2016. In late January, early February, Rhianna began having debilitating gastrointestinal pain again and missed two weekend visits at the jail resulting in a warrant being issued for her arrest. (City of Delaware v. Rhianna Filichia 13 TRC 10354)

Rhianna Filichia was plagued by severe diverticulitis in the months prior to her death

In July 2015 (7 months prior to her death), Rhianna Filichia was admitted to Grady Memorial Hospital in Delaware Ohio through the emergency room upon diagnosis with perforated sigmoid diverticulitis. (R#36-1 Pg. ID 123 Lns. 1-2) Rhianna was treated through a course of IV Antibiotics and then an elective sigmoid colectomy several weeks later. (R#36-1 Pg. ID 123 Lns. 2-8) The colectomy occurred in October 2015. During the procedure, the colon was in such poor condition, Dr. Fuller resected most of the sigmoid colon, the descending colon and a little bit of the traverse colon. (R# 36-1, Pg. ID 126-127) In the two weeks prior to her arrest on February 20, 2016, Rhianna's physical condition was deteriorating. (R# 37-1, Pg. ID 1178-1179, 1191-1193) On February 4, Rhianna Filichia was seen in the Grady Memorial Hospital emergency room with severe stomach pains. (R# 36-1 Pg. ID 135) The CT scan showed findings consistent with colitis in the distal part of the colon. (R# 36-1. Pg. ID 135 Lns 23-24) Filichia was released from Grady Memorial with two (2) antibiotic prescriptions for Flagyl and Cipro. (R#36-1 Pg. ID 136 Lns 17-20) Filichia followed up with Dr. Fuller in his office on February 17, 2016, just three days before her arrest. (R#36-1 Pg. ID 135 Lns 17-18) During the appointment with Dr. Fuller, he noticed tenderness in her abdominal region and ordered a colonoscopy to determine what if any post-operative changes may have occurred. (R#36-1 Pg. ID 137-138) According to Dr. Fuller's testimony, Rhianna had

> **** recurrent abdominal pain. It was worse in the epigastrium, went down both sides,**

> **constant, and that's why she had gone to the emergency room previously.**

(R#36-1 Pg. ID 168)

In the days that followed her visit to Dr. Fuller, as Rhianna moved around her home, she would wince in pain. (R#37-1 Pg. ID 1191 Lns 1-4) She spent the majority of her day and evening in bed. Id. If she did get out of bed, she would often place her hand on her belly because of the pain generated by the movement. She would go to the bathroom, and then she would drink down some water, and then lay back down. (R#37-1 Pg ID 1191 Lns. 5-12) The more water she drank, it seemed like it would help. Id. She was in a lot of pain. (R#. 37-1 Pg ID 1191Lns 1-12) The week prior to the arrest Rhianna did not leave the home at all. She was home in bed. (R#37-1 Pg. ID 1236)

On the evening of February 19, 2016, Rhianna did not eat dinner. James Egbert, Rhianna's partner, didn't cook anything because "Rhianna wasn't feeling good." (R# 37-1 Pg. ID 1233 Lns 4-6) She was in bed most of the time. (R# 37-1 Pg. ID 1233 Lns. 7-8) "She was really, really not feeling good at all." (R# 37-1 Pg. ID 1233 Lns. 3-9) Egbert could tell because her stomach was distended and she was constantly holding it as she maneuvered in and out of bed. (R# 37-1 Pg. ID 1179 Lns 4-24 "her stomach was extended. She was like really bloated.", (R#37-1 Pg. ID 1199 Lns 20-22)

Delaware County Requires Any Arresting Entity to Take a Person Like Rhianna Filichia who is in Questionable Health to the Local Hospital or Emergency Care Center before Delivery to the Jail Facility.

Delaware County has certain policies in place for the operation of its jail facility. (R# 50 Pg. ID 2035-2046) Its Medical Policy requires that detainees who are in questionable health must be evaluated by a hospital before they are accepted into the jail. (R# 50 Pg. ID 2037) It reads in part:

> **If a person's physical health is questionable, the arresting agency shall take the person to the hospital for evaluation before acceptance.**

(R# 50, PG ID 2037) Although that's how the policy is written, it is not practiced that way. (R# 37-4 Pg. Id 1500-1501). In practice, the employees of Delaware County are not required to take individuals in questionable health to the hospital upon arrest, they simply drop them at the jail for evaluation by health trained personnel. (R# 37-4 Pg ID 1500-1501)

Delaware County Jail's Contract for Health Services does not require the employment of registered nurses and only provides physician care for five hours a week.

Delaware County entered into an Agreement for the provision of medical services in its jail facility that results in the presence of licensed practical nurses who are not authorized to assess or treat patients without the

supervision and direction of a physician. (R# 36, Pg ID 304-326) By the terms of its Agreement, a detainee or inmate is only fit for confinement in the jail under certain circumstances. (R# 36 Pg ID 304-326) Fit for Confinement has been defined by Delaware County as:

> **A <u>determination made by CHC authorized physician and/or health trained jail staff</u> that an INMATE /DETAINEE is medically stable and has been cleared for acceptance into the JAIL. Such determination shall only be made after resolution of any injury or illness requiring immediate transportation and treatment at a hospital or similar facility.**

R# 36-2; R# 36-4 Pg.ID 305), Further, by the terms of the Agreement, Delaware County only agreed to pay for the following services and/or health care staff:

> 1.0.1 A total of 188 hours per week of Licensed Practical Nurse services to be assigned by CHC.
>
> 1.0.2. Up to 12 hours per week of Master's Level Social Worker services to be assigned by CHC
>
> 1.0.3. Up to 5 hours per week of Physician services to be assigned by CHC

(R# 36-4 Pg. ID 310) Licensed Practical Nurses, or LPN's The state of Ohio limits the scope of practice for Licensed Practical Nurses as follows:

> **<u>Licensed Practical Nurse</u>. The LPN has a dependent role and may provide nursing care only at the direction of a registered nurse, physician, dentist, podiatrist, optometrist or chiropractor (Section 4723.01 (F)) The "direction" required for LPN practice is further defined as "communicating a plan of care to a licensed practice nurse" (Rule 4723-4-01(B)(6)), OAC)**

R #50 Pg. ID 2031 Ohio Board of Nursing Scopes of Practice: Registered Nurse and Licensed Practical Nurse. The Ohio Board of Nursing specifically lists LPN prohibitions as follows:

> **<u>LPN Prohibitions</u> The following are specific LPN practice prohibitions contained in law and rule:**
>
> - **Engaging in nursing practice without RN or authorized health care provider direction.**
>
> - **<u>Assessing health status for purposes of providing nursing care.</u>**

R#50 Pg. ID 2031 At the time that Delaware County entered into this agreement, it was aware that a physician would only be present five hours a week, and that the remainder of time, only LPN's would be present at the jail. R# 36-2; R# 36-4 Pg. ID 305, 310. It was also aware, that by law, LPN's are prohibited from assessing health status.

On February 20, 2016, Terri Bloomfield LPN was working at the Delaware County jail. (R#51 Pg. ID 2087) On February 21, 2016, the night of Rhianna's death Terri Bloomfield LPN and Charidy Lupu LPN were working. (R# 51 Pg.ID 2090) Dr. Mitchell MD, is the physician employed by the medical provider who works in the jail. (R# 53 Pgs. ID 2391-2392) She appears at the jail only one day a week for five hours. (R# 53 Pg. ID 2392 Ln 5) She does not know the definition of fit for confinement. (R# 53 Pg ID 2391-2392) Despite the contract language to which the Delaware County Sheriff agreed, Dr. Mitchell testified that she doesn't know who is responsible for making the determinations regarding fitness for confinement. (R# 53 Pg. ID 2392-2393) Finally, Dr. Mitchell testified that at no time during February 20 or February 21, 2016 does she recall ever receiving a call or any email or other paperwork from anyone at the Delaware County Jail regarding the admission, plan of care or diagnosis of Rhianna Filichia. (R#53 Pg. ID 2396-2398)

Upon entry into the jail for admission, health trained personnel also known as "correction officers" (R#50 Pg. ID 2036 "Correction officers are considered health trained personnel") must perform a medical receiving screening. (R# 50 Pg. ID 2036, R# 36-10 Pg. ID 547-548). According to the policy, the inquiry must include at least the following:

a. Current and past illness and health problems

b. Current and past dental problems

c. Current and past mental health problems

d. Allergies

e. Current medications for medical or mental health

f. Hospitalizations for medical or mental health purposes

g. Special health needs

h. Serious infections or communicable illnesses

i. Use of alcohol and drugs including types, amounts and frequency used, date or time of last use and history of any problems after ceasing use, ie, withdrawal symptoms

j. Suicidal risk assessment

k. Possibility of pregnancy

l. Other health problems as designated by the health authority.

(R# 50 Pg. ID 2036-2037). According to Correction Officer Coontz and Correction Officer O'Brien, this is to be completed by the Correction Officers and given to medical staff prior to the assessment to be completed by the medical staff to determine if an individual is fit for confinement. Coontz, O'Brien Depo. (R#37-6, Pg. ID 1689-1691, R#36-10 Pg. ID 553-556) (An example of this form which was completed for one of Rhianna's previous visits on January 8, 2016 R# 37-7 Pg. ID 1804) A determination that according to the Delaware County contract, can only be made by Dr. Mitchell. (R# 36-4

Pg. ID 305). However despite the contract language and state law, in practice, according to Lupu LPN, Bloomfield LPN and former Nursing Direction Dehaven, fitness for confinement determinations (assessments of a detainees medical condition) are made by the LPN's on duty.(R# 51, Pg. ID 2068 Lns 17-20; R# 36-12 Pg. ID 743 Lns 13-20) Even Jackson the Assistant Jail Director understands that the LPN's make confinement determinations.(R# 36-2 Pg.ID 214 Lns 1-24)

In addition to the Intake Questionnaire, a medical staff member is to complete a physical examination of the potential detainee including the taking of vital signs. (R# 51 Pg. ID 2058) The practice is to be supported by a health screening form. (R# 51 Pg. ID 2058) In addition, if a detainee as part of the health screening mentions a particular physical issue they are having, a PATHWAY is to be performed to assist the nurse with asking the appropriate questions. In conjunction with the pathway, a Nurse is to complete an SBAR form to send to Dr. Mitchell with the PATHWAY to allow her to review the detainee's medical condition. (R# 36-12 Pg. ID 747 Ln 3-20; Pg. ID 760 Lns 1-10; R# 51 Pg. ID 2166-2169). These forms were not completed for Filichia's stay resulting in her death.

On February 20, 2016, Deputy Mohnsen denies Filichia and Egbert's request that she be transported to the hospital, and instead takes her to the Delaware County Jail.

On the morning of February 20, 2016, Rhianna woke up in a "God-awful amount of pain." (R#37-1 Pg.ID 1192 Lns 12-13) She got up from her bed to use the bathroom and drink some water. (R#37-1 Pg. ID 1191-1193) James told Rhianna that he wanted to take her to the hospital.

(R#37-1 Pg. ID 1193 Lns. 3-9) Rhianna laid back down next to him and said let's wait a few minutes and see if it gets any better. (Id) Not more than five (5) minutes later, Deputy Mohnsen banged on her door to arrest her. (R#37 Pg. ID 1193 Lns 10-14) Deputy Mohnsen was met at Rhianna's home by another Delaware county deputy. (R# 37-1 Pg. ID 1193 Lns 21-22 James got up to answer the door, and informed Rhianna it was the police and that they were there to take her to jail for missing her prior weekend visits. Rhianna said, "Oh Jimmy, what am I going to do? I can't go in there, I'm hurting so bad." (R#No. 37-1 Pg.ID 1193 Lns 24; Pg.ID 1194 Lns 1-6)

Upon arrival at Filichia's home, James Egbert informed them that Filichia was laying in bed and was ill. He continued as follows:

> **I immediately went into telling them that she called down there to let you guys know that she couldn't make it last weekend because she was so sick and she is still sick. She's in bed now. She's not trying to hid from anybody. She's here at home. She's in bed and she's having some complications. You know she had a surgery back in October, and she was diagnosed with diverticulitis, and it was quite possible that something was flaring back up, and she was having severe pain and had been in contact with her doctor and the doctor scheduled a colonoscopy for the 25th.**

(R# 37-1, Pg.ID 1194 Lns 17-24, Pg.ID 1195 Lns 1-5) James Egbert went on to ask if they could please take Rhianna to the hospital. (R# 37-1 Pg. ID 1195 Lns 6-9; Pg.ID 1196 Lns 1-3) Egbert testified, that Mohnsen said

> **no, she's got to come with us. We have a warrant for her arrest. And I pleaded with them and told them that she was too sick to go in there, is there any way she could go to the emergency room and stay.**

(R# 37-1 Pg.ID 1195 Lns 23-24; pg. ID 1196 Lns. 1-3) James testified that Rhianna took quite a while to get around because she was in such pain. Mohnsen testified that

> **During this time I could see that she was not moving as I would see a normal person would move. She moved very slow and sluggishly, almost shuffling her feet kind of movement. And obviously had a look about her face that she was in discomfort and just appeared, you know, not normal. And from the dialogue with her, I did learn that she was under the care of a doctor, was having some gastrointestinal problems, I'm not sure of the whole nature of it; she didn't go into a lot of detail, and she did have a follow-up appointment at the hospital scheduled for Thursday.**

(R# 37-2 Pg.ID 1350 Lns. 19-24; Pg.ID 1351 Lns 1-8) James Egbert's testimony regarding Rhianna's physical condition is nearly identical to Mohnsen's. He offered as follows:

> **She was complaining of, you know, hurting and burning in her stomach. (R# 37-1 Pg.ID 1190 Lns. 20-22)**

***

She was real sluggish and moving kind of slow, you know. She was holding her belly and she was having some pretty bad discomfort there

(R# 37-1 Pg. ID 1191 Lns. 4-9) Although Deputy Mohnsen claims to have offered to take Rhianna to the hospital in his testimony, curiously, he never mentioned that to Detective Overly who investigated Rhianna's death (R# 37-2 Pg.ID 1353), he never mentioned it to anyone at the jail when he arrived (R# 37-2 Pg.ID 1354) and it contradicts the statements given by James Egbert under oath as well as the excited utterance given by Egbert during the death notification the next day which will be discussed in detail below (R# 38, R#41). Egbert testified as follows about his request for medical care to Deputy Mohnsen and his denial:

Q And did you request medical services prior to her leaving your home?

A I asked them, yeah, isn't there any way – first I asked them is there any way she can take care of her medical issues before she comes to the jail, you know. And they said, nope, we're here to take her, she has to co me with us. Well couldn't she go to the emergency room instead of the jail? Nope, we're her to take her and she going to go with us. That's the way its going to be.

It reminded me of the Gestapo police because they were pushing their authority, and being – it was like overkill, you know, I mean, this is a two-year-old misdemeanor, and it was just ridiculous to me.

Q So the medical treatment was denied after it was requested?

A Yeah

(R# 37-1 Pg. ID 1201 Lns 9-24, Pg.ID 1202 Lns 1-9)

The Delaware County Sheriff Provides Only CPR and Basic First Aid Training to Its Employees which is Insufficient to identify any Serious Medical Condition

Multiple Delaware County Sheriff Employees testified regarding the limited training they have received as employees of the Delaware County Sheriff. The list of employees and their training is as follows:

Deputy Mohnsen received first aid and CPR Training. (R# 37-2 Pg. ID 1291)

Q Did you ever have any medical training?

A I mean at our agency, we had first aid, CPR, you know, choking, Buddy Aid first aid.

(R# 37-2 Pg. ID 1291 Lns 18-22) Mohnsen went on to indicate that he could not identify an individual with diverticulitis, peritonitis or sepsis. (R# 37-2 Pg. ID

1295-1296) Then when asked what questions he would ask someone to assess their medical condition he stated "There's not a standardized list I would use, No." (R# 37-2 Pg. ID 1297 Lns. 1-2) Finally, if he had had any training regarding what questions to ask, he stated "Not that I can think of". (R# 37-2 Pg. ID 1297 Lns 3-7)

Detective Overly received standard Ohio Peace Officer Training and does not recall any medical training related to identification of individuals in questionable health. (R# 37-4 Pg ID 1475; Pg.ID 1497 Lns 8-12)

Correction Officer Coontz received first aid and CPR Training. She testified,

> **Q And what did they teach you at corrections school?**
>
> **A SOPs**
>
> **Q Standard Operating Procedures?**
>
> **A Correct**
>
> **Q For what?What kind of standard operating procedures?**
>
> **A I don't understand your questions.**
>
> **Q Well, are they teaching you how to book an inmate, are they teaching you how to dress an inmate, are they teaching how to search an inmate, shower an inmate, identify when an inmate has drugs, identify when an inmate**

is sick, identify when an inmate is injured? So what standard operating procedures are they teaching you?

A They taught use how to do pat-downs, they taught us CPR, first aid, self defense, cuffing, escorting, report writing. That's all I can think of.

Q Okay. CPR and first aid, is that at the CO school in Richland? Is that the only medical training they offered?

A I believe so.

(R# 37-6 Pg. ID 1640 Ln 23-24; Pg. ID 1641 Lns 1-22)

Correction Officer O'Brien received first and CPR Training (R# 36-10 Pg. ID 545 Lns 4-18) None of the employees of the Defendant Delaware County Sheriff received any training in how to identify an individual who is in questionable health and needs medical assistance, although the Sheriff's policy defines them all as "health trained personnel" and requires them to be able to identify individuals in "questionable health".

Rhianna's condition worsened at the jail with the lack of water, lack of antibiotics and lack of care.

Upon arrival, Rhianna showered. During her shower, Rhianna had an uncontrollable bowel movement and assistance had to be called to help Rhianna complete her shower. (R# 37-6, Pg ID 1675, R# 49) There is no information in the record, other than the recording of

the call for assistance in the shower and Officer Coontz testimony related to this incident. (Id.) There is no information in the record indicating that this information was transmitted to the Defendant Correctional Healthcare Companies, Inc.'s medical staff on duty at the time. Following her shower, food was delivered to Rhianna which she did not eat. No verbal contact with Rhianna was had again until the morning of February 21, 2016 at 3:30 am an LPN accompanied by a correction officer documented that Rhianna was "moaning and groaning". (R# 51, Pg ID 2180) The LPN asked the Correction Officer to open the door and the LPN spoke with the patient who reported abdominal pain from being unable to "poop". (R#51, Pg. ID 2180) The LPN further document that the patient wanted to go to the emergency room (ER). (R# 51 Pg. ID 2180) The LPN did not measure the patient's vital signs or examine her abdomen. (R# 51 Pg. ID 2180) The LPN did not contact Dr. Mitchell or send Rhianna to the emergency room. (R# 51 Pg.ID 2180) The Correction Officer and the LPN encouraged Rhianna to drink more water. (R# 51 PgID 2180) Rhianna informed the LPN that she could not reach the water pitcher on the floor. (R#51 PgID 2180) The LPN provided water to Rhianna. (R# 51 Pg.ID 2180) The LPN made a specific note that Rhianna was crying. (R# 51 PgID 2180)

Rhianna Filichia became unresponsive in her cell and paramedics were called.

There was no interaction between Rhianna and the correction officers or nursing staff until 8:20 the next evening just minutes before Rhianna became unresponsive. (R# 51 PgID 2175-2181; R# 52 Pg.ID 2367-2380) At approximately 8:20 pm on February 21,

2016, Terri Bloomfield LPN entered Rhianna's room to administer medication accompanied by Officer O'Brien. (R# 49, R#52 Pg.ID 2367-2381) After placing medication in her mouth while Rhianna was lying down, Rhianna attempted to take a sip of water. (R# 49, #38, R# 52 PG ID 2367-2381) Rhianna then began to vomit a green matter from her mouth and nose, later determined to be bile. (R#49, R#38, R# 52 Pg. ID 2367-2381) Shortly thereafter, Charidy Lupu LPN arrived and noted that the patient was moaning. (R#36-13 Pg. ID 873-874) Charidy Lupu LPN noted that Rhianna did not have a pulse. Charidy Lupu alerted Officer O'Brien to call an ambulance. (R#49, R#38) At 8:24 pm, Officer O'Brien called for an emergency squad. Charidy Lupu advised Officer Williams to retrieve the crash cart and Rhianna was moved out of the cell to begin cardiopulmonary resuscitation (CPR). (R# 36-13 Pg. ID 873-874) An automatic external defibrillator (AED) was applied to Rhianna's chest and advised no shock. (R# 36-13, Pg. ID 873-874) The AED advised to start CPR. (R# 36-13 PgID 873-874)

At approximately 8:30 pm the emergency squad arrived and left at approximately 8:48 pm. (R# 49, #38) Videotapes as well as Jail Direction Pfan's statement to James Egbert during the death notification indicate that Rhianna's abdomen was grossly distended such that one of the emergency medical responders inquiring about her medical history comment that she was obviously pregnant. (R# 38) Rhianna was transported to Grady Memorial Hospital. At 9:22 pm, Rhianna was pronounced dead. (R#36-15 Pg. ID 937-940)

Rhianna Filichia's death was the result of peritonitis.

The Deputy Coroner Dr. MacDowell concluded that the cause of death was peritonitis. (R# 36-15; R# 36-14 Pg ID 915) He has performed approximately thirty autopsies annually and his findings have never been reversed. (R# 36-14 Pg. ID 891) Peritonitis is an inflammation of the abdominal cavity that can result in infection and death. (R#36-14 Pg.ID 915) He concluded there could have been no other cause of death. (R#36-14 Pg. 42 Lns. 8-13) Defendant did not present any expert testimony disputing the report of Dr. MacDowell. Finally, the other expert reports provided by the dismissed Defendant have multiple differing conclusions regarding the cause of death. Finally, Dr. Tasos Manokas, agreed with the finding of Dr. MacDowell. (R#54-2 Pg ID 2450-2451)

James Egbert when notified of Rhianna's death wailed "I told them not to take her".

Detective Overly, an employee of the Delaware County Sheriff's Office, along with the jail Director Pfan traveled to James Egbert's home on the evening of February 21, 2016, to make the death notification (R#38, R#49) During the notification, Pfan makes several admissions regarding Rhianna's behavior including that Rhianna was not eating and that her abdomen was severely distended. (R# 38, R #49) During the notification, Egbert can be heard spontaneously shouting, "I told them not to take her". (R# 38, R #49) In explaining his statement to Detective Overly, he explained that the reported her condition to Officer Mohnsen and begged him not to take her to the jail because of her illness and he was ignored. (R#38)

ARGUMENT

The Decision of the District Court and the Sixth Circuit conflicts with an earlier decision and has departed from the accepted and usual course of judicial proceedings.

There was no training beyond CPR and First Aid provided to any employee of Sheriff Russel Martin to allow employees, specifically deputy sheriffs or jail personnel, to be able to identify individuals who are in questionable health who need medical attention from a doctor. Despite this, the Sheriff required his employees to identify individuals in questionable health to determine if they should be first taken to the hospital. Because they received no training regarding how to identify someone with a serious medical condition, Rhianna Filichia died in their jail.

42 USC Section 1983 provides a cause of action against every person who, under color of state law, subjects or causes to be subjected, an individual to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or federal law. See Civil Rights Act of 1871, REV. STAT. § 1979, 42 USC Section 1983. Political subdivisions of a state (such as Delaware County) are "persons" within the scope of Section 1983. Monell v. N.Y. City Dept. of Social Services, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed. 2d 611 (1978); Holloway v. Brush , 220 F.3d 767, 772 (6th Cir. 2000) This follows from the underlying purpose of the statute, which protects individual rights by punishing the infringement of those rights in order to compel a change in policy by those in position to effectuate such a change. Monell 436 U.S. 686-

89; Pembaur v. City of Cincinnati , 475 US 469, 490, 106 S.Ct. 1292, 89 L.Ed.2d 452 (1986) A plaintiff attempting to establish municipal liability pursuant to Section 1983 may demonstrate three categories of "official policy": (1) an express policy or custom of the municipality; (2) a final policymaker's conduct; or (3) the municipality's failure to train employees. Board of County Comm'rs of Bryan County OK v. Brown, 520 U.S. 397, 397-398, 117 S.Ct. 1382, 137 L.Ed. 2d 626 (1997)

To succeed on a claim of failure to train, Plaintiff must establish (1) the Delaware County training program was inadequate for the tasks the officers were required to perform; (2) the inadequacy was the result of Delaware County's deliberate indifference; and (3) the inadequacy was closely related to or actually caused the injury. Russo v. City of Cincinnati, 953, F.2d 1036, 1046 (6th Cir. 1992) The Supreme Court has held that "evidence of a single violation of federal rights, accompanied by a showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious potential for such a violation, could trigger municipal liability." Board v. County Comm'rs v. Brown, 520 U.S. 397, 409, 117 S.Ct. 1382, 137 L.Ed. 626 (1997) One example of such a circumstance is a city's failure to train its police officers in the use of deadly force, because city officials know that their officers will need to use such force when attempting to arrest fleeing felons. City of Canton , Ohio v. Harris, 489 U.S. 379, 390 In a jail setting, the failure of a medical care provider "to train medical personnel how to deal with medical emergencies relating to diabetes could foreseeably lead to terrible consequences, including death[,]" and thus satisfied this deliberate indifference standard. Lawson v. Whitley County, 2012 U.S. Dist.

LEXIS 12184 (E.D. Kentucky Jan 31, 2012) Further, in a nearly identical case were an individual died of sepsis, the United States District Court for the Western District of Kentucky in Jimenez v. Hopkins County No. 4:11 CV 00033, 2014 WL 176478 found that an identical system to that of Delaware County was deliberately indifferent because it failed to train its employees beyond the skills of CPR and First Aid. The Sixth Circuit later affirmed that same finding in Shadrick v. Hopkins County, et al., 805 F.3d 724 In so doing, the trial court determined as follows:

> **The Court finds that Plaintiff has produced sufficient evidence for a reasonable jury to find that the deputy jailers received inadequate training regarding how to observe and assess inmates medical needs and respond to these needs, how to determine what medical symptoms and needs should be reported to medical, and the deputy jailer's role in observing inmates that are located both in the 26-bed medical segregation unit and the detox unit. A review of HCDC Policies provided to the Court reflect that HCDC does not have jail policies providing any guidance to deputy jailers as to what constitutes a medical emergency, what constitutes a medical symptom or condition that should be reported to medical, and what to [*50] do in the event that the medical staff does not respond. The deputy jailers testified that they had received only training in CPR and first aid. The deputy jailers further testified that when they conduct the required observation of inmates in the medical segregation unit,**

the deputy jailers merely check the inmates to make sure they are breathing, moving, or not bleeding. (See, e.g., Dep. of Potocnick at 21.) In fact, often times the deputy jailers are not even aware of why the inmate is in medical segregation.

The County Defendants contend that HCDC's medical policy has been found to comply with all regulations of the Kentucky Department of Corrections. County Defendants also argue that the Department of Corrections signed off on the HCDC policy manual and dictated the training each deputy jailer was required to attend. (Plaintiff's Reply at 10.) That the deputy jailers received the bare minimum training required by the state does not mean that they received adequate training in this particular area of jail administration. If proof of completion of state required minimum training was sufficient to defeat a failure to train claim, such claims would virtually cease to exist. Under these [*51] circumstances, the Court finds that proof of the successful completion of state mandated training alone is insufficient to demonstrate adequate training regarding medical needs in the prison setting. See Thomas v. City of Shaker Heights, 2006 U.S. Dist. LEXIS 2095, 2006 WL 160303 (N.D. Ohio Jan 20, 2006) (rejecting similar argument that officers training was adequate because it was based on template provided by the state). Considering that SHP

nurses rely upon the deputy jailers to report medical needs or emergencies (Keller Dep. at 29), but that the deputy jailers receive no training regarding when to notify medical, a reasonable jury could conclude that the training in this area was inadequate to the tasks that the deputy jailers were required to perform.

Plaintiff has also produced sufficient evidence to satisfy the deliberate indifference prong. There are two situations that justify a conclusion that a municipality's failure to train was deliberately indifferent. "One is failure to provide adequate training in light of foreseeable consequences that could result from the lack of instruction." Brown v. Shaner, 172 F.3d 924, 931 (6th Cir. 1999) The other "is where the [municipality] fails to act in response [*52] to repeated complaints of constitutional violations by its officers." Id. Plaintiff has produced no evidence of repeated complaints regarding deputy jailers monitoring inmates in detox or medical segregation at HCDC, therefore the failure to train claim must proceed under the first scenario.

The record reflects that other than CPR and first-aid training, "the County does not train officers to look for or be aware of symptoms of physical illness, how to recognize and respond to medical needs, how to document requests from inmates for medical care,

or how to pass on medical concerns to jail nursing staff." Morris v. Dallas County, 960 F.Supp.2d 665, 2013 US Dist. LEXIS 85593 (N.D. Tex June 18, 2013) The jail's personnel and procedures are structured so that the deputy jailers provide the link between inmates and medical. Id. In fact, the nurses testified that they must rely on the deputy jailers to notify medical of any significant medical problems with an inmate. (Keller Dep. at 29.) Despite this, the deputy jailers who work both the 100 walk and the 500 walk are not provided any training on how to monitor, observe, [*54] and determine potential medical needs of the inmates and how to respond to those needs. Thus, Plaintiff has produced sufficient evidence to satisfy the deliberate indifference prong.

The Court further finds that Plaintiff has produced sufficient evidence that the inadequacy of the training was related to or actually caused the injury to Butler. Because the deputy jailers "are the only persons in somewhat regular and direct contact with the inmates," and because HCDC provides no training to the deputy jailers in relation to the tasks they must perform, Plaintiff has raised a fact question whether Butler's injury "was a predictable consequence of the absence of training." (Citation omitted)

Jimenez v. Hopkins County No. 4:11 CV 00033, 2014 WL 176478, pgs. 48-55.

As set forth above, none of the employees of the Delaware County Sheriff received any training on how to identify an individual in questionable health. To be sure, the only training received was basic first aid and CPR training. While Officer O'Brien testified that at least one time, someone explained to her how to complete an intake form for answering standard medical questions, no one ever trained her beyond that. Despite knowing that individuals in questionable health could die, none of the employees of the Delaware County Sheriff were trained on how to identify that possibility. Further, Deputy Mohnsen testified that he knew Filichia didn't look well and didn't take her to hospital as required by policy. Furthermore, the serious health condition here, peritonitis, which is inflammation of the abdomen is directly related to the symptoms which were being exhibited Rhianna with respect to her abdominal pain and inability to move; her uncontrollable bowel and her multiple requests to go the hospital. The failure to train employees on these signs led directly to Rhianna's death. If that were not enough evidence of deliberate indifference, the employees of Delaware County showed their deliberate indifference for Rhianna by calling her a "pharmacy snatch" over their two-way radio as she struggled to stay alive. Finally, had the employees of the Delaware County Sheriff simply followed its written policies and delivered Filichia to the hospital on Saturday morning as requested instead of the jail, she would not have died. But according to Detective Overly, that policy didn't apply to them.

Despite this the District Court argues and the Sixth Circuit agrees that the employees were trained beyond CPR and First Aid because,

> **Additionally, to the extent the written policy Plaintiff relies on was operative during the relevant time period, it states that, upon intake and completion of an initial assessment, corrections officers are instructed to notify the shift supervisor and the nurse if the officer is uncertain of a detainee's physical health. Policy, ECF No. 50, PAGEID #2037. The policy further states that, after intake, any medical emergency or any medical issue outside a correction officer's scope of competency should be forwarded to the nurse on duty. *Id.* At PAGEID #2036. Medical emergencies are defined in the policy as "acute illness or an unexpected health need that cannot be deferred until the next scheduled sick call". *Id.* At PAGEID #2039. Corrections officers are trained to contact the nurse immediately if they believe an inmate is suffering from an emergency medical condition, *id* at PAGEID #2039, and to use the "Signal 99 radio code to advise all available personnel of the emergency where it is located."**

See 41a-45a. Curiously though, none of that training has anything to do with identification of a serious medical condition. None of the deputies or correction officers were trained to determine the following are serious health conditions though all of these were observed as conditions of Filichia and not reported to anyone:

- Severe abdominal pain

- Crying
- Uncontrollable bowel movements while showering / diarrhea
- No eating
- No movement or slow movement
- Distended abdomen
- Bloating
- Moaning

In addition, to having no training on how to identify a serious medical condition (the same issue discussed detail in *Jimenez)* None of the deputies or correction officers followed the policies in place at the time of Filichia's death and the following policies (which are relied upon by the District Court and the Sixth Circuit to determine that sufficient training has been done) were not followed / forms not completed because there was no training requiring completion:

- If a Person's Physical health is questionable, they arresting agency shall take the person to the hospital for evaluation before acceptance.
- Correction officers must perform a medical receiving screening (Intake Questionnaire) R# 51, Pg.ID 2141-2152
- A Health Screening Form shall be completed

- A Pathway Shall be Completed

Each of the items above, although allegedly required by policy and allegedly part of training at least as asserted by the District Court, although there was no testimony that deputies or correction officers were trained to complete these items, were not completed. The District Court makes the leap that because the policies were in place

Another substantial piece of evidence seemingly ignored by the Sixth Circuit and the District Court is the admission by Defendant that Filichia was a drug risk. That Defendant ordered Filichia restrained in the particular holding cell in which she died, because of her drug issues. That Defendant ordered her water shut off because of her drug issues. However, Filichia was not placed on any formal watch related to drugs, specifically withdrawal, again a serious medical condition. Ignored and no training given recognition of the interaction of their orders and serious medical conditions.

While the Sixth Circuit and the District Court believe that the mere existence of policies is sufficient evidence that Defendant employees were trained to identify serious medical conditions, in practice it did not occur. There is no evidence the employees were ever trained to follow those policies. Defendant didn't identify any and neither did the Court. Further, the evidence establishes in practice the policies the District Court referred to as evidence of "training" are not followed. It also establishes the employees were not trained to follow them. The only evidence provided establishes that the only training given to these employees and acknowledged by them was CPR and First Aid and they are to touch base with medical

if there is a serious medical problem, just like *Jimenez*. There were multiple signs of serious medical problems, like *Jimenez* that were ignored by Delaware resulting in Filichia's death. Finally, in addition to those issues, and unlike *Jimenez*, Filichia was labeled a drug risk and her water was shut off. So in addition to her serious medical condition which is neither being observed nor discussed, mostly ignored, she is at risk for withdrawal and there's no watch; no forms related to potential withdrawal completed. That's because there's no training done for the potential lethal results of drug withdrawal. The District Court's decision does not consider the facts that have been outlined in detail above. The District Court ignores it in favor of sighting to written policies which give no indication on how to identify a serious medication condition. Further, The District Court does not give citation to one item in the record establishing that any training was done on the policies; and then states that there is a contract which claims additional medical training shall be given annually, but none of the officers or deputies testified that they received any. In practice, there is no training in Delaware County which would allow its officers or employees to determine whether an individual has a serious medical condition or when to communicate that to anyone who has medical training. The failure to properly train these officers and at the same time expect them to identify a serious medical condition is deliberately indifferent. It caused Rhianna Filichia's death. And another death just hours later in the same jail. The decision of the Sixth Circuit is incorrect.

CONCLUSION

The decision of the Sixth Circuit and the District Court directly conflicts with a previous decision in *Jimenez* and *Shadrick.* It is a departure from the usual course of judicial proceedings. The Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED NOVEMBER 14, 2019

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 19-3096

TERESA BERRY, ADMINISTRATOR OF
THE ESTATE OF RHIANNA FILICHIA,

Plaintiff-Appellant,

v.

DELAWARE COUNTY SHERIFF'S OFFICE,

Defendant-Appellee.

November 14, 2019, Filed

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF OHIO

BEFORE: MERRITT, DAUGHTREY, and GRIFFIN, Circuit Judges.

GRIFFIN, Circuit Judge.

After her daughter died while in jail, Teresa Berry sued the Delaware County, Ohio Sheriff's Office for

violating her daughter's civil rights under 42 U.S.C. § 1983. This appeal presents two issues: (1) whether the district court correctly granted summary judgment in favor of defendant on Berry's municipal liability claims and (2) whether the district court abused its discretion in denying Berry's motion to vacate the judgment. For the reasons stated below, we affirm.

I.

A.

Plaintiff, Teresa Berry, is the administratrix of the estate of her daughter, Rhianna Filichia. Filichia suffered from diverticulosis, a condition in which pouches (diverticula) form in the walls of the intestines. She also suffered from chronic attacks of diverticulitis, which is when diverticula become inflamed or infected.

In 2013, Filichia was charged in Delaware County, Ohio for driving under the influence and failing to stop. She pleaded guilty to those charges and was ordered to spend time in jail. Filichia was permitted to serve the jail time during weekends.

Filichia was scheduled to serve some of her remaining sentence on February 6 and 7, 2016, but she failed to appear due to her diverticulitis. A warrant for her arrest was issued on February 9, 2016. Between February 6 and 21, 2016, Filichia went to her doctor and the hospital several times due to pain caused by her diverticulitis.

Appendix A

On February 20, 2016, Deputy Darren Mohnsen and Deputy Nathan Hysell went to Filichia's residence to execute a warrant for her arrest. Filichia's boyfriend, James Egbert, answered the door. Before Deputy Mohnsen had arrived, Filichia had told Egbert that she was in pain. Egbert told the deputies about Filichia's medical condition and that she was in pain. He also asked the deputies if Filichia could go to the emergency room rather than jail. The deputies, however, said that Filichia had to go to jail, but that there was a nurse at the jail.

At the jail's intake, a licensed practical nurse evaluated Filichia for confinement. The licensed practical nurse determined that Filichia was fit for confinement. Roughly thirty-five hours later, Filichia became unresponsive. Despite efforts to save her life, Filichia died.

B.

Plaintiff sued the Delaware County Sheriff's Office and six John Doe Officers from that office. She alleged, among other things, that the Sheriff's Office violated the Eighth Amendment and 42 U.S.C. § 1983 by not giving adequate medical training to its employees and, as a result, faced municipal liability pursuant to *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). She subsequently amended her complaint; she dismissed the John Doe Officers, but added Correctional Healthcare Companies, Inc.—the company that provided medical services at the jail—as a defendant.

The Sheriff's Office moved for summary judgment. It argued that the district court should grant its motion for multiple reasons, including (1) the Sheriff's Office was not a suable party and (2) no reasonable juror could find for plaintiff on her failure-to-train claim. In response, plaintiff moved to substitute Delaware County Sheriff Russell L. Martin for the Delaware County Sheriff's Office. The district court granted plaintiff's substitution motion on January 23, 2019. The court directed plaintiff to "file her Second Amended Complaint within **SEVEN DAYS** of this Opinion and Order." Moreover, the district court warned that "**Failure to comply with this Opinion and Order will result in the Amended Complaint being dismissed, without additional notice, for naming a party that is not *sui juris***."

On February 1, 2019—two days after the amendment deadline—the district court granted the Sheriff's Office's summary judgment motion and dismissed plaintiff's complaint with prejudice. It reasoned that although it had granted plaintiff's motion to substitute a suable party into the lawsuit, plaintiff failed to do so. Alternatively, the district court determined any amendment would be futile because plaintiff failed to prove that there were any genuine disputes of material fact that showed the Sheriff was liable under *Monell*. Plaintiff moved to vacate the judgment, which the district court denied. Plaintiff timely appeals.

II.

The main issue on appeal is whether the district court correctly granted summary judgment in the Sheriff's Office's favor. "We review de novo a district court's decision on [a] motion[] for summary judgment." *Burnette Foods Inc. v. U.S. Dep't of Agric.*, 920 F.3d 461, 466 (6th Cir. 2019) (citation omitted)). "Summary judgment is proper 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Id.* at 466-67 (quoting Fed. R. Civ. P. 56(a)). The moving party must first show that the nonmoving party failed to "establish the existence of an element essential to . . . [the nonmoving] party's case, and on which . . . [the nonmoving] party will bear the burden of proof at trial." *Bormuth v. Cty. of Jackson*, 870 F.3d 494, 503 (6th Cir. 2017) (en banc) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). "Once the moving party has met the initial burden of showing the absence of a genuine dispute of material fact, the non-moving party must then 'come forward with specific facts showing that there is a genuine issue for trial.'" *Baker v. City of Trenton*, 936 F.3d 523, 529 (6th Cir. 2019) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). "The non-moving party must 'do more than simply show that there is some metaphysical doubt as to the material facts.'" *Id.* at 529 (quoting *Matsushita*, 475 U.S. at 586). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id.* at 529 (quoting *Anderson v.*

Liberty Lobby, Inc., 477 U.S. 242, 252, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

A.

As an initial matter, we conclude that the district court correctly granted summary judgment in favor of the Sheriff's Office because plaintiff failed to name a suable party. Berry does not contest that decision, and she has not directed us to any record evidence that suggests she has included a suable defendant in her lawsuit.

B.

The crux of this appeal is plaintiff's attack on the district court's alternative reason for granting summary judgment in the Sheriff's Office's favor—that plaintiff failed to establish a "failure-to-train" claim under *Monell*. As set forth below, we agree with the district court that this alternative path additionally supports its grant of summary judgment.

"[U]nder § 1983, local governments are responsible only for *their own* illegal acts. They are not vicariously liable under § 1983 for their employees' actions." *D'Ambrosio v. Marino*, 747 F.3d 378, 386 (6th Cir. 2014) (emphasis added) (quoting *Connick v. Thompson*, 563 U.S. 51, 60, 131 S. Ct. 1350, 179 L. Ed. 2d 417 (2011)). "Instead, a municipality is liable under § 1983 only if the challenged conduct occurs pursuant to a municipality's 'official policy,' such that the municipality's promulgation or adoption of the policy can be said to have 'cause[d]' one of its employees

to violate the plaintiff's constitutional rights."[1] *Id.* (quoting *Monell*, 436 U.S. at 692).

"Official municipal policy includes the decisions of a government's lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law." *Id.* (quoting *Connick*, 563 U.S. at 61). To show the existence of a municipal policy, a plaintiff must properly allege at least one of the following:

(1) the existence of an illegal official policy or legislative enactment;

(2) that an official with final decision making authority ratified illegal actions;

(3) the existence of a policy of inadequate training or supervision; or

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1. In *Winkler v. Madison County*, however, we recognized that it is an unsettled question whether finding a municipality liable under § 1983 requires proof that an individual defendant committed a constitutional violation. 893 F.3d 877, 899-901 (6th Cir. 2018). The district court acknowledged the unsettled question and assumed either (1) Deputy Mohnsen had committed a constitutional violation by being deliberately indifferent to Filichia's serious medical needs or (2) plaintiff had established a constitutional violation, but did not need to establish that an individual municipal employee had committed a constitutional violation. Because this question is unsettled and answering it is not necessary to resolve this appeal, we assume—without deciding—that plaintiff has made whatever showings are necessary on this issue and resolve the appeal on other grounds.

(4) the existence of a custom of tolerance [of] or acquiescence [to] federal rights violations.

D'Ambrosio, 747 F.3d at 386 (citation omitted). Plaintiff relies solely on the inadequate training method.

Inadequate training can be the basis for a § 1983 municipal liability claim when it "amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Roell v. Hamilton Cty., Ohio/Hamilton Cty. Bd. of Cty. Comm'rs*, 870 F.3d 471, 487 (6th Cir. 2017). But "[a] municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Connick*, 563 U.S. at 61. To succeed on an inadequate training claim, a plaintiff must prove: "(1) that a training program is inadequate to the tasks that the officers must perform; (2) that the inadequacy is the result of the [municipality's] deliberate indifference; and (3) that the inadequacy is closely related to or actually caused the plaintiff's injury." *Roell*, 870 F.3d at 487 (quoting *Brown v. Chapman*, 814 F.3d 447, 463 (6th Cir. 2016)). Plaintiff fails to show a genuine dispute of material fact on all three requirements.

1.

Plaintiff argues that the Sheriff's Office inadequately trained its officers "to identify individuals in questionable health." That is her contention because the only medical training the officers receive concerns CPR and first aid. We recently rejected an equivalent contention in *Winkler v. Madison County* and do so again here.

The plaintiff in *Winkler* argued that "there [wa]s no evidence that any jailer received training on anything other than basic first aid and CPR." 893 F.3d at 903. But we rejected that contention because the *Winkler* plaintiff "presented no proof to show that this inadequacy resulted from deliberate indifference." *Id.* at 902. That is, there was "no basis to conclude that the County exhibited deliberate indifference by failing to provide additional medical training to jail personnel" beyond CPR and first aid training. *Id.* at 903.

So too here. Plaintiff concedes that the officers in this case, like the officers in *Winkler*, had training on CPR and first aid. And she concedes that "Deputy Mohnsen acknowledge[d] that he believed Filichia to be in questionable health when he delivered her to the jail during his discussions with the [licensed practical nurse]." In other words, plaintiff concedes that Deputy Mohnsen did precisely what he should have done—he perceived that something might be medically wrong with Filichia, and he conveyed that to a medical professional.[2] Plaintiff has identified no record evidence that disputes (1) that Deputy Mohnsen had undergone first aid and CPR training or (2) that he perceived Filichia to be in questionable health and conveyed his perception to a medical professional.

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2. In similar circumstances, we have determined that police officers are entitled to rely on assessments of medical professionals regarding whether an inmate should be transported to a hospital. *See*, *e.g.*, *Spears v. Ruth*, 589 F.3d 249, 255 (6th Cir. 2009) ("Although [the police officer] admits that [the inmate] told him that he had smoked crack cocaine, [the police officer] was entitled to rely on the EMTs' and the jail nurse's medical assessments that [the inmate] did not need to be transported to the hospital.").

Shadrick v. Hopkins County, Kentucky, 805 F.3d 724 (6th Cir. 2015), is of no help to plaintiff. There, a county contracted with "a private, for-profit corporation, to provide medical services to inmates" at a detention center. *Id.* at 728-29. We determined that the private medical services provider's training program was inadequate. *Id.* at 740 (citation omitted). But *Shadrick*'s inadequacy-of-training analysis concerned the adequacy of training provided to licensed practical nurses, not police officers. *Id.* at 740-42. The training that officers receive (when they are not the primary medical care providers) and the training that licensed practical nurses receive (when they are the primary medical care providers), along with the tasks they must perform, are meaningfully different.

Accordingly, plaintiff has not created a genuine dispute of material fact regarding whether Deputy Mohnsen's training was inadequate to the tasks he had to perform.

2.

There are two ways to prove that the inadequacy of a training program is the result of a municipality's deliberate indifference. A plaintiff may prove (1) a "pattern of similar constitutional violations by untrained employees" or (2) "'a single violation of federal rights, accompanied by a showing that [the municipality] has failed to train its employees to handle recurring situations presenting an obvious potential' for a constitutional violation." *Id.* at 738-39 (citations omitted). We address each method in turn.

Appendix A

a.

"A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Connick*, 563 U.S. at 62 (citation omitted). Such a pattern is ordinarily necessary because "[u]ntil the [municipality] had notice of persistent misconduct, it did not have 'the opportunity to conform to constitutional dictates,' nor could its inaction have caused the deprivation of [plaintiff's] constitutional rights." *D'Ambrosio*, 747 F.3d at 388 (quoting *Connick*, 563 U.S. at 63 n.7). Moreover, "contemporaneous or subsequent conduct cannot establish a pattern of violations that would provide 'notice to the [municipality] and the opportunity to conform to constitutional dictates." *Connick*, 563 U.S. at 63 n.7.

Additionally, the similarity must be particularized. In *Connick*, the Supreme Court connected the notice requirement not merely to the generalized type of constitutional violation in dispute (*Brady* violations), but rather to the specific way that the constitutional violation happened. The Supreme Court determined that four prior *Brady* violations did not place the district attorney's office on notice that its "training was inadequate with respect to the sort of *Brady* violation at issue" in the case because "[n]one of [the prior *Brady* violations] involved failure to disclose blood evidence, a crime lab report, or physical or scientific evidence of any kind." *Connick*, 563 U.S. at 62-63. In short, the prior examples of wrongdoing must violate the same constitutional rights and violate them in the same way. *See D'Ambrosio*, 747 F.3d at 388 (noting that

three prior improper trial comments were insufficient to provide notice of *Brady* violations).

Plaintiff asserts that "another inmate . . . died the same night as Filichia" and because of that death, she concludes that "[t]here is evidence supporting [a] pattern, which went unmentioned by the trial court." To support that contention, plaintiff cites the deposition transcript of Deputy Rachel O'Brien. O'Brien testified—without the highest degree of firmness—that another inmate did die:

Plaintiff's Attorney:	Has anyone other than Rhianna Filichia died at the Delaware County Jail?
O'Brien:	Yeah.
Plaintiff's Attorney:	Who?
O'Brien:	I don't know. I know Tye [Downard] did.
Plaintiff's Attorney:	And do you know the circumstances of his death?
O'Brien:	All I -- I wasn't there on shift that day.
Plaintiff's Attorney:	Did he die the day before or the day after Rhianna?
O'Brien:	I think it was the same night, but I had gone home.

Plaintiff's Attorney:	So he was there while you were on shift?
O'Brien:	Yes.
Plaintiff's Attorney:	But he was alive?
O'Brien:	I don't know.
Plaintiff's Attorney:	Well, were you not responsible for watching him? Was he not on medical watch?
O'Brien:	I was in booking that day.

This testimony is insufficient to establish a pattern of similar constitutional violations. First, if the other inmate died the same night as Filichia, O'Brien's testimony is, at best, evidence of contemporaneous conduct, which does not provide notice. *Connick*, 563 U.S. at 63 n.7. Second, O'Brien's testimony does not provide any information regarding how the other inmate died. Without more information—which plaintiff has the obligation to provide because she is the nonmovant, *Bormuth*, 870 F.3d at 499 (citation omitted)—O'Brien's testimony does not demonstrate that the circumstances of Filichia's death and those of the other inmate are similar enough for the purposes of establishing a pattern. Therefore, plaintiff's pattern theory fails to establish a genuine dispute of material fact regarding whether municipal deliberate indifference caused the alleged training inadequacy.

b.

In addition to the pattern theory, a plaintiff may establish that a municipality's training program is inadequate because of deliberate indifference by proving "a single violation of federal rights, accompanied by a showing that [the municipality] has failed to train its employees to handle recurring situations presenting an obvious potential" for the violation of constitutional rights. *Shadrick*, 805 F.3d at 739 (quoting *Bd. of Cty. Comm'rs of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 409, 117 S. Ct. 1382, 137 L. Ed. 2d 626 (1997)). This method of proving that deliberate indifference caused a training program's inadequacy is available "in a narrow range of circumstances" in which a violation of federal rights "may be a highly predictable consequence of a failure to equip [employees] with specific tools to handle recurring situations." *Id.* at 739 (citation omitted).

The district court ruled that plaintiff "[could not] prevail under the 'single incident' theory." From the district court's perspective, "[i]n *Winkler*, the Sixth Circuit rejected a theory virtually identical to [p]laintiff's, concluding that the assertion that jail personnel received only first aid and CPR training was alone insufficient to 'explain how the quality of the medical training provided put the County on notice of the likelihood that jail personnel would respond inadequately to an inmate's medical emergency.'" (quoting *Winkler*, 893 F.3d at 903). "Because the evidence showed that the third party's medical staff was available to jail personnel for consultation and that jail personnel indeed contacted that

staff regarding the decedent's medical complaints," the *Winkler* court "found 'no basis to conclude that the County exhibited deliberate indifference by failing to provide additional medical training to jail personnel.'" (quoting *id.*) The district court was persuaded that the facts in this case closely mirrored those in *Winkler*: "Plaintiff fails to explain how the medical training [that the Sheriff's Office's] employees received put Delaware County on notice of the likelihood that jail personnel would respond inadequately to an inmate's medical emergency." "This is especially true where there is no evidence that [contracted medical] staff was, as a matter of policy, unavailable to jail staff for consultation." The district court's analysis of *Winkler* on this issue is persuasive and we approve it.

To prove that deliberate indifference caused the inadequacy of a municipality's training program, the plaintiff in *Winkler*—like Berry here—argued that "there [wa]s no evidence that any jailer received training on anything other than basic first aid and CPR." 893 F.3d at 903. The *Winkler* plaintiff noted that "the jailers were the only medical providers at the jail all but 40 hours per week." *Id.* The Delaware County Jail, however, has even more in-person medical coverage; it has nursing coverage 24 hours a day, seven days a week. In *Winkler*, the contract "medical professionals were contacted multiple times with regard to [the decedent's] complaints of stomach pain." *Id.* On those facts, we concluded there was "no basis to conclude that the [municipality] exhibited deliberate indifference by failing to provide additional medical training to jail personnel." *Id.*

The same is true here. The nurses were contacted about Filichia's abdominal pain and the nurses had multiple interactions with Filichia. The contract medical professionals in *Winkler* were "available to jail personnel, either in person or by phone, for consultation about an inmate 24 hours a day, 7 days a week." *Id.* As previously noted, the Delaware County Jail has even more in-person medical coverage with in-person nursing coverage all day, every day. Because the relevant facts of this case mirror *Winkler*'s so closely, we conclude that only having CPR and first-aid training does not create a genuine dispute of material fact regarding whether deliberate indifference caused the alleged inadequacy of the Sheriff's Office's training program.

3.

On a failure-to-train claim, a plaintiff must prove—among other things—"that the [training's] inadequacy is closely related to or actually caused the plaintiff's injury." *Plinton v. Cty. of Summit*, 540 F.3d 459, 464 (6th Cir. 2008) (citation and internal quotation marks omitted). The "closely related to" and "actually caused" phrases come from *City of Canton, Ohio v. Harris*, 489 U.S. 378, 391, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989). The Supreme Court stated that a "training program must be closely related to the ultimate injury" and that the plaintiff must "prove that the deficiency in training actually caused the police officers' indifference to her medical needs." *Id.* "[A]dopt[ing] lesser standards of fault and causation," the Supreme Court warned, "would open municipalities to unprecedented liability under § 1983. In virtually every

instance where a person has had his or her constitutional rights violated by a city employee, a § 1983 plaintiff will be able to point to something the city 'could have done' to prevent the unfortunate incident." *Id.*

On the causation issue, the district court framed the question as whether plaintiff identified any "evidence suggesting that either Deputy Mohnsen's or any other jail personnel's inability to identify Filichia's questionable health le[d] to her injury." The district court answered that question in the negative:

> [T]he video evidence reveals that one of the first things Deputy Mohnsen says upon entering the jail with Filichia is that he needs to speak to a nurse. When [licensed practical nurse] Bloomfield arrives, Deputy Mohnsen immediately explains that Filichia had medical issues involving pain in her abdomen, had recently been to the hospital, had a colonoscopy scheduled for later in the week, and that she had brought her medications and hospital discharge paperwork with her. Thus, Deputy Mohnsen had identified that Filichia's health was questionable, regardless of the training he received.

Additionally, the district court noted that "[p]laintiff d[id] not specify any other corrections officer who interacted with Filichia at the jail" and "failed, during the interaction, to recognize that Filichia needed medical attention due to inadequate training, and failed to refer Filichia for

medical attention." The district court's evaluation of this issue is sound and we endorse it.

Plaintiff has not identified record evidence that demonstrates that the allegedly deficient training caused Deputy Mohnsen to be deliberately indifferent to Filichia's medical needs. Plaintiff fails on this point because Deputy Mohnsen was not indifferent to Filichia's medical needs, much less deliberately indifferent. As plaintiff acknowledges, once Deputy Mohnsen and Filichia reached the jail, he contacted a licensed practical nurse and conveyed that he believed that Filichia was in questionable health. His conduct was precisely the opposite of deliberate indifference. Additionally, plaintiff has not identified record evidence that suggests other jail personnel (1) interacted with Filichia, (2) failed—because of inadequate training—to recognize that Filichia needed medical attention, and (3) failed to refer Filichia for medical attention. Accordingly, plaintiff has not identified a genuine dispute of material fact regarding whether the training's alleged inadequacy was closely related to or actually caused Filichia's injury.

III.

The second issue on appeal is the district court's denial of plaintiff's motion to vacate the judgment. "A district court's grant of post-judgment relief under [Federal] Rule [of Civil Procedure] 60(b) is reviewed for an abuse of discretion." *Blue Diamond Coal Co. v. Trustees of UMWA Combined Ben. Fund*, 249 F.3d 519, 524 (6th Cir. 2001) (citation omitted). "A district court abuses its discretion

if it bases its ruling on an erroneous view of the law or a clearly erroneous assessment of the evidence." *United States ex rel. Tenn. Valley Auth. v. 1.72 Acres of Land in Tenn.*, 821 F.3d 742, 748 (6th Cir. 2016) (citation omitted). Additionally, for an abuse of discretion to be present, there must be "a definite and firm conviction that the trial court committed a clear error of judgment." *Blue Diamond Coal*, 249 F.3d at 524 (citation omitted). Moreover, "relief under Rule 60(b) is 'circumscribed by public policy favoring finality of judgments and termination of litigation.'" *Id.* (citation omitted).

"On motion and just terms," Rule 60(b) authorizes a district court to "relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:"

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment

that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). "As a prerequisite to relief under Rule 60(b), a party must establish that the facts of its case are within one of the enumerated reasons contained in Rule 60(b) that warrant relief from judgment." *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 543 (6th Cir. 2004) (citation omitted). "An appeal from an order denying a Rule 60(b) motion does not bring up for review the underlying judgment disposing of the complaint." *Id.* (citations omitted). Instead, our task is restricted to determining "whether one of the specified circumstances exists in which [the movant] is entitled to reopen the merits of his underlying claims." *Id.* (citation omitted).

In the present case, plaintiff moved the district court for leave to substitute Delaware County Sheriff Russell L. Martin for the Delaware County Sheriff's Office as the defendant in the lawsuit. On Wednesday, January 23, 2019, the district court granted plaintiff's motion giving plaintiff seven days to file a second amended complaint with the new defendant. On Friday, February 1, 2019—the ninth day from the grant of the motion—plaintiff had still not filed a second amended complaint. Consequently, the district court granted defendant's motion for summary judgment. That same day, the clerk of the court entered a judgment that dismissed the lawsuit.

Later—but still on February 1, 2019—plaintiff filed a motion to vacate the judgment that dismissed the lawsuit. Plaintiff argued that her failure to file the second amended complaint was merely an oversight. According to plaintiff, her second amended complaint had been prepared for nearly eight months, but there was an issue at her lawyer's office. Specifically, the assistant (Suzette Doak) of plaintiff's attorney (Erica Ann Probst) was supposed to file the second amended complaint, but on January 28, 2019, Ms. Doak's husband had a medical emergency and she had to take him to a hospital. Ms. Doak did not return to the office until January 31, 2019. Additionally, the majority of Ms. Probst's staff were not in the office from January 30, 2019 to February 1, 2019 because of inclement weather. Neither Ms. Doak nor Ms. Probst realized the second amended complaint had not been filed. Once Ms. Probst received the order that dismissed the lawsuit, she filed the second amended complaint the same day.

The district court denied plaintiff's motion to vacate the judgment, noting that its previously issued summary judgment opinion "also explained that [it] would have alternatively granted summary judgment in favor of the Sherriff [sic] on the merits . . . even if Plaintiff had filed her Second Amended Complaint." Because the district court properly granted summary judgment on these alternative grounds, her challenge to the district court's motion to vacate the judgment fails as well.

IV.

For these reasons, we affirm the district court's judgment.

APPENDIX B — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION, FILED FEBRUARY 1, 2019

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 2:16-cv-296

TERESA BERRY, ADMINISTRATOR OF THE ESTATE OF RHIANNA FILICHIA,

Plaintiff,

v.

DELAWARE COUNTY SHERIFF'S OFFICE,

Defendant.

Judge Michael H. Watson
Magistrate Judge Deavers

OPINION AND ORDER

Teresa Berry ("Plaintiff") sues the Delaware County Sheriff's Office ("DCSO") under 42 U.S.C. § 1983. DCSO moves for summary judgment. Mot., ECF No. 39.

On January 23, 2019, the Court issued an Order granting Plaintiff's motion to substitute, ECF No. 58. The Court stated that Plaintiff had seven days from the

date of the Opinion and Order to file her Second Amended Complaint, or the case would be dismissed without additional notice for naming a party that is not *sui juris*. Op. and Order 8, ECF No. 68. More than seven days have passed since the Court's Order, and Plaintiff has not filed a Second Amended Complaint. Accordingly, the case still proceeds against DCSO, which, as the Court explained in its prior Opinion and Order, is not *sui juris*. *Id.* at 1 n.2. DCSO is therefore entitled to summary judgment, and the Court grants the same.

Alternatively, even if the Court were to construe the Amended Complaint as against Delaware County Sheriff Russell Martin in his official capacity, the Court would grant him summary judgment for the reasons stated below.

I. FACTS[1]

The facts of this case are tragic.

Plaintiff is the administratrix of the estate of her daughter, Rhianna Filichia ("Filichia"). Filichia suffered from diverticulosis and chronic attacks of diverticulitis and, as a result, had to have surgery in 2015 to remove a portion of her colon. Despite the surgery, Filichia continued to have chronic attacks of diverticulitis, which twice resulted in hospitalization.

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1. The following facts are taken from Plaintiff's Amended Complaint or are otherwise uncontested. Additional facts are discussed herein.

Additionally, in 2013, Filichia was cited in Delaware County for driving under the influence of alcohol and failure to stop. She pleaded guilty to those charges and was ordered to spend time in jail, to be served on the weekends. Filichia was still serving the remaining days of her weekend sentences in February of 2016 and would schedule dates to serve as her health permitted.

Filichia was scheduled to serve some of her remaining sentence on February 6 and 7, 2016, but she failed to appear due to her diverticulitis. An arrest warrant was issued on February 9, 2016. Between February 6 and February 21, 2016, Filichia went to her physician and the hospital several times due to pain from diverticulitis.

She was in pain on February 21, 2016, when Delaware County Sheriff's Deputies Darren Mohnsen ("Deputy Mohnsen") and Nathan Hysell ("Deputy Hysell") arrested her in her home on the outstanding warrant. Although Filichia's boyfriend, James Egbert ("Egbert"), asked the deputies to take her to a hospital, they took her instead to jail.

Upon intake, Filichia was evaluated by a licensed practical nurse ("LPN") from Correctional Healthcare Companies, Inc. ("CHC"), which has a contract with the Delaware County Jail, and deemed fit for confinement. At that time, Deputy Mohnsen left Filichia at the jail.

Approximately thirty-five hours later, Filichia went into septic shock and, despite efforts to save her life, died.

Appendix B

II. STANDARD OF REVIEW

The standard governing summary judgment is set forth in Federal Rule of Civil Procedure 56(a), which provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The Court must grant summary judgment if the opposing party fails to make a showing sufficient to establish the existence of an element essential to that party's case and on which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986); *see also Van Gorder v. Grand Trunk W. R.R., Inc.,* 509 F.3d 265, 268 (6th Cir. 2007).

When reviewing a summary judgment motion, the Court must draw all reasonable inferences in favor of the nonmoving party, who must set forth specific facts showing there is a genuine dispute of material fact for trial, and the Court must refrain from making credibility determinations or weighing the evidence. *Matsushita Elec. Indus. Co.*, 475 U.S. 574, 587 (1986); *Pittman v. Cuyahoga Cty. Dept. of Children and Family Serv.,* 640 F.3d 716, 723 (6th Cir. 2011). The Court disregards all evidence favorable to the moving party that the jury would not be required to believe. *Reeves v. Sanderson Plumbing Prods., Inc.,* 530 U.S. 133, 150-51 (2000). Summary judgment will not lie if the dispute about a material fact is genuine, "that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248 (1986); *Barrett v. Whirlpool Corp.,* 556 F.3d 502, 511 (6th Cir. 2009).

III. ANALYSIS

Plaintiff brings several *Monell* claims in this case: (1) DCSO[2] has a policy that was the moving force behind an employee's violation of Filichia's Eighth Amendment rights or that amounted to deliberate indifference to serious medical needs in violation of the Eighth Amendment; (2) the DCSO failed to adequately train its employees regarding medical care, in violation of the Eighth Amendment; and (3) the DCSO was deliberately indifferent to Filichia's serious medical needs in violation of the Fourteenth Amendment. Plaintiff also brings a state-law claim for wrongful death.

As an initial matter, Plaintiff's third claim fails. Count three does not even allege the existence of a municipality policy and rather appears to seek *respondeat superior* liability, which, as described below, is unavailable under § 1983.

Alternatively, to the extent Count Three is properly pleaded as a *Monell* claim, it appears superfluous to Counts 1 and 2. The only difference between Counts 1 and 2 and Count 3 is that, in Count 3, Plaintiff alleges a violation of the Fourteenth Amendment. It is undisputed

2. Plaintiff initially also brought claims against CHC, but those claims have been dismissed in light of Plaintiff's settlement with CHC. ECF No. 64.

that Filichia was not a pretrial detainee at the time of her confinement, and, thus, the Eighth Amendment (as opposed to the Fourteenth Amendment) applies to her deliberate indifference claims. *Richko v. Wayne Cty., Mich.,* 819 F.3d 907, 915 (6th Cir. 2016).

The Court now turns to Counts 1 and 2 and, in doing so, offers first some general guidance on § 1983 claims.

Section 1983 states in relevant part:

> [e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceedings for redress[.]

42 U.S.C. § 1983. To prevail on a claim under § 1983, a plaintiff must show that a person acting under color of law deprived him of his rights secured by the United States Constitution or its laws. *Berger v. City of Mayfield Heights,* 265 F.3d 399, 405 (6th Cir. 2001).

In this case, Plaintiff does not sue any individuals under § 1983 and instead invokes only the rules of municipality liability under § 1983 set forth in *Monell v. New York City Department of Social Services,* 436 U.S. 658, 692 (1978) and subsequent Supreme Court case law.

Appendix B

Under *Monell* and its progeny, "[a] municipality or other local government may be liable under this section if the governmental body itself 'subjects' a person to a deprivation of rights or 'causes' a person 'to be subjected' to such deprivation." *Connick v. Thompson,* 131 S. Ct. 1350, 1359 (2011) (citing *Monell,* 436 U.S. at 691). Local governments are responsible for their own illegal acts; they cannot be held vicariously liable for their employees' actions under § 1983. *Id.* (citing *Pembaur v. Cincinnati,* 475 U.S. 469, 479 (1986)). Thus, "[p]laintiffs who seek to impose liability on local governments under § 1983 must prove that 'action pursuant to official municipal policy' caused their injury." *Id.* (citing *Monell,* 436 U.S. at 691). In other words, a plaintiff must demonstrate a constitutional violation[3] and "(1) show the existence of a policy, (2) connect

3. Plaintiff does not explicitly argue that any DCSO employee was deliberately indifferent to Filichia's serious medical needs and does not sue any individual DCSO employee. The Court could construe Plaintiff's response brief, however, as arguing that Deputy Mohnsen was deliberately indifferent to Filichia's serious medical needs when, upon arrest, he took her to the Delaware County Jail for an evaluation of fitness for confinement instead of straight to a hospital. Although Plaintiff must establish a constitutional violation in order to prevail on her *Monell* claim, it is not clear that she must demonstrate that an individual employed by the municipality would be liable for the constitutional violation. *See North,* 2018 WL 5794472, at *6 (6th Cir. Nov. 5, 2018) ("In many cases, a finding that no individual defendant violated the plaintiff's constitutional rights will also mean that the plaintiff has suffered no constitutional violation. In a subset of § 1983 cases, however, the fact that no individual defendant committed a constitutional violation ... might not necessarily require a finding that no constitutional harm has been inflicted upon the victim, nor that the municipality is not responsible for that constitutional

that policy to the municipality, and (3) demonstrate that [her] injury was caused by the execution of that policy." *North v. Cuyahoga Cty.,* No. 17-3964, 2018 WL 5794472, at *7 (6th Cir. Nov. 5, 2018) (citation omitted).

"To show the existence of a municipal policy or custom leading to the alleged violation, a plaintiff can identify: (1) the municipality's legislative enactments or official policies; (2) actions taken by officials with final decision-making authority; (3) a policy of inadequate training or supervision; or (4) a custom or tolerance or acquiescence of federal violations." *Winkler v. Madison Cty.,* 893 F.3d 877, 901 (6th Cir. 2018) (internal quotation marks and citation omitted). The first, second, or fourth theories are "sometimes referred to as an affirmative policy or custom theory." *North,* 2018 WL 5794472, at *3.

In this case, Plaintiff invokes the third and fourth methods of proving a policy, and the Court first considers her affirmative policy theory before turning to her failure to train theory.

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harm. The type of claim ... premised on failure to act rather than affirmative wrongdoing—might fit within this analysis. Assuming that our caselaw allows for such an approach, we consider [plaintiff's] affirmative policy or custom and failure-to-train claims in turn.") (internal quotation marks and citation omitted)). Where appropriate, the Court will assume that Plaintiff either has showed that Deputy Mohnsen was deliberately indifferent to Filichia's serious medical needs (and will proceed to analyze whether Plaintiff has raised a genuine issue of material fact regarding *Monell* liability) or that she has established a constitutional violation but need not first establish liability on the part of an individual municipal employee.

Appendix B

A. Eighth Amendment: Affirmative Policy

1. Custom of Taking Detainees to the Jail for Evaluation Instead of to the Hospital[4]

Plaintiff first argues that DCSO has a written policy that requires detainees in questionable physical health to be delivered to a hospital prior to delivery to jail. She contends the evidence shows, however, that DCSO has a custom of ignoring that written policy and of instead taking all detainees, regardless of their questionable health, first to jail for an evaluation of fitness for confinement.[5] Resp. 1, ECF No. 57-1. This custom, she contends, was the moving force behind her deprivation of constitutionally adequate medical care.

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4. For purposes of this claim, the Court assumes *arguendo* that Deputy Mohnsen was deliberately indifferent to Filichia's serious medical needs by taking her to the jail for an evaluation of fitness for confinement instead of immediately taking her to a hospital.

5. Plaintiff contends that other written policies regarding the completion of intake questionnaire forms were not followed in Filichia's case, but those arguments are irrelevant to her *Monell* claim as she offers no evidence of a pattern or custom of ignoring such policies. Additionally, the evidence regarding what actions DCSO or CHC employees took after Filichia was determined fit for confinement are likewise irrelevant to this claim. In this *Monell* claim, Plaintiff challenges *only* DCSO's custom of ignoring written policies that purportedly require certain detainees to be delivered straight to a hospital and corresponding custom of instead delivering such detainees first to the jail. Finally, Plaintiff's arguments concerning LPN Bloomfield's actions or inactions are irrelevant for the additional reason that Plaintiff settled all claims against CHC.

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As of August 18, 2016, DCSO's Medical Policy stated, in pertinent part, as follows:

C. POLICY

1. STAFF (standard 5120:1-8-09/G)

. . .

d. Corrections Officers are considered health trained personnel, however, all medical emergencies, or any medical issue outside their scope of competency, will be forwarded to the nurse on duty.

2. MEDICAL RECEIVING SCREEN (standard 5120:1-8-09/B,C)

a. Health trained personnel, in accordance with protocols established by the health authority, shall perform a written medical, dental and mental health receiving screening on each inmate upon arrival at the jail and prior to being placed in general population.

1. Inquiry includes at least the following ....

> c. If the officer is uncertain of a person's physical health they will notify the shift supervisor and the nurse of the problem.
>
> d. If the persons' physical health is questionable, the arresting agency shall take the person to the hospital for evaluation before acceptance. The Sheriff's Office is not financially responsible for the medical billing of a person prior to acceptance unless the arrest was via a warrant.

Delaware County Sheriff's Office Standard Operating Policy, Ex. 12, ECF No. 50 at PAGEID ## 2036-37.

There is no genuine dispute of material fact with respect to this claim.

As an initial matter, the effective date of the above policy is *after* Filichia's death. When asked about the policy during his deposition, Detective Overly testified both that he did not know whether that policy was an amendment to a previously existing policy and that he did not know what the written policy was prior to August 18, 2016. Overly Dep. 32:15-33:8. Plaintiff cites to no evidence that this written policy—or any other written policy—was in effect at the time of Filichia's death.

Whether a written policy existed at the time of Filichia's arrest is ultimately irrelevant, however, because

Plaintiffs theory for this claim is that the written policy was not followed. Therefore, the pertinent inquiries are what the custom was during Filichia's arrest and booking and whether her injury was caused by execution of that custom. To that end, Plaintiff cites to no evidence of what the written policy, custom, or practice was at the time of Filichia's arrest and booking. Detective Overly's testimony about the actual practice of deputies, *see* Overly Dep. 32:15-34:14, ECF No. 37-4, is ambiguous with respect to timing. He testified that he did not know what the official policy was at the time of Filichia's arrest and booking, and, although he testified to the custom of deputies, it is unclear from his testimony whether he was describing the customary practice at the time of Filichia's arrest or the time of his testimony. *See id.*

Even interpreting his testimony in the light most favorable to Plaintiff and assuming that the custom he testified to was the custom of deputies at the time of Filichia's arrest, his testimony does not create a genuine dispute of material fact. Plaintiff misstates the DCSO's custom, arguing that "in practice ... detainees, regardless of their questionable health, were delivered to the jail so the personnel on duty could evaluate their fitness for confinement." Resp. 1, ECF No. 57-1. The evidence does not support that characterization of the custom. Rather, Detective Overly testified that, in practice, deputies would bring detainees to the jail for an evaluation by the jail nurse unless there was something "blatantly obvious" such as "bleeding profusely or [being] doubled over in pain and requesting to go to the hospital." Overly Dep. 34:4-14, ECF No. 37-4. He further testified that, while at the

jail, if the detainee said they needed to go to the hospital, they would be transported to Grady Memorial Hospital prior to being released into booking. *Id.* He testified that Grady Memorial Hospital would sometimes admit the detainees and sometimes "ship them back to the jail." *Id.* Plaintiff cites no evidence contradicting Detective Overly's testimony regarding the custom and thus fails to raise a genuine dispute of material fact as to whether the custom was to take detainees to jail "regardless of their questionable health." Resp. 1, ECF No. 57-1.

Further, Plaintiff offers no evidence that the DCSO's actual custom or practice was the moving force behind Deputy Mohnsen's alleged deliberate indifference. That is, as noted above, that the custom or practice described by Detective Overly required Deputy Mohnsen to take Filichia immediately to a hospital if something was "blatantly obvious" at the time of Filichia's arrest, or if she was doubled over in pain and requested to go to the hospital.

Plaintiff does not allege that Deputy Mohnsen followed that custom or practice but rather argues that he ignored even that custom and practice by failing to take Filichia to a hospital at the time of arrest despite Filichia's obvious physical discomfort and explicit requests by either Egbert or Filichia to do so.[6] In other words, she argues

6. Egbert testified that, at the time of Filichia's arrest, he asked Deputies Mohnsen and Hysell if Filichia could go to the emergency room instead of jail and was refused. Egbert Dep. 39:1–3, ECF No. 37–1. He also testified that Filichia's stomach was extended at the time of her arrest, *id.* at 42:13–22, and that the deputies were

that Deputy Mohnsen *contradicted* the actual custom or practice as it was testified to by Detective Overly. But the occasional negligent administration of an otherwise constitutional policy cannot serve as the basis for *Monell* liability. *Graham,* 358 F.3d at 385.

In sum, Detective Overly testified to the existence of a custom of taking detainees to jail for a determination of fitness for confinement *unless* there was some blatant, obvious medical condition requiring immediate medical attention or the detainee was doubled over in pain and requested to go to the hospital. He further testified that,

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aware that she was in severe pain, *id.* at 37:17–38:10, but that they nonetheless took her to jail instead of the hospital.

To the contrary, Deputy Mohnsen testified that Egbert did not ask if Filichia could remain home, if Egbert could take Filichia to the hospital, or if the deputies would take her to the hospital. Mohnsen Dep. 69:3-10, ECF No. 37-2. He further testified that he asked Filichia if she needed hospital care and that she declined. *Id.* at 69:13-15. Deputy Mohnsen further testified that he did not notice any bloating of Filichia's abdomen when he arrested her, Mohnsen Dep. 120:2-4, ECF No. 37-2, and Filichia had no trouble walking. *Id.* at 133:4-23. He testified that she did not request medical treatment during the transportation from her home to the jail. Mohnsen Dep. 134:20-22. He did, however, also testify that during the arrest, Filichia "moved very slow and sluggishly," appeared to be obviously in discomfort, and was not moving like "a normal person." *Id.* at 70:19-71:13.

At this stage of the litigation, the Court views the evidence in the light most favorable to Plaintiff. This evidence is sufficient to create a genuine dispute of material fact as to whether Egbert or Filichia requested to go to the hospital and whether Filichia was visibly ill.

if a detainee was taken to jail for a determination of fitness for confinement and requested to go to a hospital, the custom and practice was to take such a detainee to the hospital prior to releasing them into booking. Regardless of whether this custom and practice contradicted any written policy in effect during the relevant time, Plaintiff has not shown that this custom and practice was the moving force behind Deputy Mohnsen's decision to take Filichia to jail instead of a hospital. Thus, even *if* Plaintiff could show that Deputy Mohnsen was deliberately indifferent to Filichia's serious medical needs, her attempt to hold the municipality liable for Deputy Mohnsen's actions fails.

Out of an abundance of caution, the Court will consider this claim in a different light and assume that Deputy Mohnsen was not deliberately indifferent to Filichia's serious medical needs but that Plaintiff nonetheless suffered a constitutional violation in being taken to jail instead of straight to a hospital. As stated above, it is not clear whether the Sixth Circuit permits municipal liability in the absence of individual liability. Even if it does, when a plaintiff "has not demonstrated that any individual jail employee violated [her] Eighth Amendment right to adequate medical care by acting with deliberate indifference, [she] must show that the municipality itself, through its acts, policies, or customers, violated [her] Eighth Amendment rights by manifesting deliberate indifference to [her] serious medical needs." *North,* 2018 WL 5794472, at *7 (citation omitted).

Even assuming Plaintiff established a custom of taking detainees first to jail for a fitness for confinement

evaluation unless the detainee obviously needed emergency care or was doubled over in pain and asked for emergency care, Plaintiff has failed to show that such a custom rises to the level of deliberate indifference to serious medical needs in violation of the Eighth Amendment. Indeed, she does not argue that the custom or practice as testified to by Detective Overly is unconstitutional.

In fact, the custom appears to require the antithesis of deliberate indifference: if the detaining officer either subjectively notices the serious medical need or the detainee brings it to the officer's attention, custom requires the officer to take that person immediately to the hospital. A custom of taking to the jail detainees who neither appear to the arresting officer to need emergent care nor are requesting such care cannot, by definition, amount to deliberate indifference to serious medical needs. Plaintiff cannot prove, therefore, that the municipality was deliberately indifferent to the serious medical needs of detainees even if it acquiesced in this custom.

For all of the reasons above, Plaintiff's *Monell* claim based upon a custom of taking detainees to jail for a fitness for confinement evaluation fails.

2. Contract with CHC as Municipal "Policy"

It is unclear whether Plaintiff additionally bases her *Monell* claim on DCSO's contract with CHC. To the extent she does so, her claim fails as precluded by *Graham ex rei. Estate of Graham v. County of Washtenaw,* 358 F.3d 377, 384 (6th Cir. 2004) and *Winkler v. Madison County,* 893 F.3d 877 (6th Cir. 2018).

First, the Sixth Circuit has held that there is nothing facially unconstitutional about a county contracting with a third party for the provision of medical services to inmates. In *Graham,* the representative of the decedent's estate brought a *Monell* claim against the county, alleging that the county's contract with a third party medical provider "constituted a municipal 'policy' that led to a deprivation of [the decedent's] constitutional right to adequate medical care while in police custody." *Graham,* 358 F.3d at 380. The Sixth Circuit acknowledged "that it is not unconstitutional for municipalities to hire independent medical professionals to provide on-site health care to prisoners in their jails." *Id.* at 384. Similarly, just last year the Sixth Circuit held in *Winkler* that "a municipality may constitutionally contract with a private medical company to provide healthcare services to inmates." *Winkler,* 893 F.3d at 901. Thus, Delaware County's "policy" of outsourcing inmate medical care to CHC is not facially unconstitutional.

Second, Plaintiff has failed to show that Delaware County's policy of contracting with CHC for inmate medical care was adopted with deliberate indifference. "Where the identified policy is itself facially lawful, the plaintiff must demonstrate that the municipal action was taken with deliberate indifference as to its known or obvious consequences. A showing of simple or even heightened negligence will not suffice." *Id.* (internal quotation marks and citations omitted).

Here, Plaintiff has offered no evidence that CHC's "staffing or other policies presented an obvious risk to

inmates' constitutional rights to adequate medical care" or that "the County knew of and disregarded that risk," *id.* at 901-02 (citations omitted), when it entered into the contract with CHC. Indeed, Delaware County's contract in this case is similar to the contract at issue in *Graham.*

In *Graham,* the plaintiff argued that the county's contract with the third-party medical provider called for deference by jail personnel to the decisions made by that third party medical provider and impermissibly permitted LPNs to perform duties prohibited by state law, thereby creating a county "policy" of deference and LPNs exceeding their scope of competency. *Graham,* 358 F.3d at 380-81. The plaintiff's theory was that this policy caused a violation of constitutional rights because, in accordance with the policy, the booking deputies in that case deferred to a LPN's decision and detained the decedent, instead of referring him for emergency medical treatment/evaluation. *Id.* at 384.

The Sixth Circuit rejected the plaintiff's argument and found "nothing in the County's policy that is actionable under section 1983." Specifically, the court stated that it was not "unconstitutional for municipalities and their employees to rely on medical judgments made by medical professionals responsible for prisoner care." *Id.* at 384 (internal quotation marks and citation omitted). Instead, the Sixth Circuit found such a policy laudable in that it ensured that "critical decisions about whether and at what point a prisoner's medical needs are sufficiently severe that ambulatory care or hospitalization is warranted" were made by independent parties rather than correctional

officers. *Id.* It further found that even if the contract permitted LPNs to make medical decisions they are not permitted by state law to make, such a showing did not establish that the county was deliberately indifferent to inmates' serious medical needs in enacting the policy. *Id.*

Thus, the mere facts that Delaware County's contract with CHC defers to CHC personnel the authority to handle medical emergencies, including the arrangement of ambulance services, *see* Exs. 12, 25, ECF Nos. 36-4, 36-6, or relies on LPNs does not mean Delaware County was deliberately indifferent to inmates' medical needs when it enacted the policy. *See Graham,* 358 F.3d at 384 ("Even if, as [plaintiff] contends, the policy required jail personnel to defer to the medical decisions of SecureCare employees, and even if it permitted licensed practical nurses to make medical decisions that Michigan law does not permit them to make, those alleged defects are insufficient to hold the County liable for the alleged constitutional violation in this case."); *id.* at 385 ("Even if [the decedent] received constitutionally inadequate medical care, there is simply no evidence that the policy was the 'moving force' behind that constitutional violation." (citation omitted)).[7]

7. This is not to say that, if a county enters into a contract with a third-party provider for the provision of medical care to inmates knowing that the contract, on its face, presents an obvious risk to inmates' constitutional rights to adequate medical care, the county could never be found deliberately indifferent.

B. Eighth Amendment Deliberate Indifference: Failure to Train

Plaintiff's next claim is that DCSO failed to adequately train its corrections officers and deputies that bring arrestees to the jail.

"In limited circumstances, a local government's decision not to train certain employees about their legal duty to avoid violating citizens' rights may rise to the level of an official government policy for purposes of § 1983. *Connick,* 563 U.S. at 61. However, "[a] municipality's culpability for a deprivation of rights is at its most tenuous where a claim turns on a failure to train." *Id.* (citing *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 822-823 (1985)). "To satisfy the statute, a municipality's failure to train its employees in a relevant respect must amount to *deliberate indifference* to the rights of persons with whom the untrained employees come into contact." *Id.* (citing *City of Canton, Ohio v. Harris,* 489 U.S. 378, 388 (1989) (emphasis added)). Thus, under a failure to train theory, a plaintiff must show that the training was "inadequate for the tasks the [employees] were required to perform, the inadequacy resulted from [the municipality's] deliberate indifference, and the inadequacy actually caused, or is closely related to [the plaintiff's] injury." *North,* 2018 WL 5794472, at *4 (internal quotation marks and citation omitted).

1. Inadequate Training

In evaluating Plaintiff's claim, the Court first considers whether there is a genuine dispute of material

fact as to whether DCSO has a "policy" of inadequate training. Here, Plaintiff's theory of liability is that Sheriff Martin "failed to train DCSO officers to identify and care for individuals in questionable health . . . ." Resp. 1, ECF No. 57-1. Specifically, Plaintiff argues that DSCO has a policy requiring DCSO employees to take certain actions for individuals with questionable health, but DCSO employees are not trained as to how to identify individuals with questionable health. *Id.*

"[A] deputy jailer must be able to recognize when there is a risk of a serious condition that requires additional care." *Jimenez v. Hopkins Cty., Ky,* 2014 WL 176578, at *12 (W.O. Ky. Jan. 13, 2014), *overruled on other grounds by Shadrick v. Hopkins Cty., Ky,* 805 F.3d 724 (6th Cir. 2015). In *Jimenez,* the district court concluded that where there was evidence that the county lacked a jail policy providing guidance to jail personnel about what constituted a medical emergency, what constituted a medical symptom or condition that should be reported to medical, or what to do in the event medical staff failed to respond, the plaintiffs had met their burden of demonstrating a policy of "inadequate training regarding how to observe and assess inmates [sic] medical needs and respond to these needs, how to determine what medical symptoms and needs should be reported to medical ...." *Jimenez,* 2014 WL at *17.

On the other hand, the Sixth Circuit has recently granted summary judgment on a failure to train claim where the plaintiff argued, as here, that a county was liable for failing to train its jail personnel "on anything

other than basic first aid and CPR, even though the jailers were the only medical providers at the jail all but 40 hours per week." *Winkler,* 893 F.3d at 903.

Even considering the evidence in the light most favorable to Plaintiff, there is no genuine dispute of material fact as to the adequacy of the DCSO employees' training. Here, several DCSO employees testified that they were trained in CPR and first aid. Mohnsen Dep. 11:17-22, ECF No. 37-2; Coontz Dep. 15:15-18, ECF No. 37-6; O'Brien Dep. 17:8-9, ECF No. 36-10.

Additionally, to the extent the written policy Plaintiff relies on was operative during the relevant time period, it states that, upon intake and completion of an initial assessment, corrections officers are instructed to notify the shift supervisor and the nurse if the officer is uncertain of a detainee's physical health. Policy, ECF No. 50, PAGEID # 2037. The policy further states that, after intake, any medical emergency or any medical issue outside a corrections officer's scope of competency should be forwarded to the nurse on duty. *Id.* at PAGEID # 2036. Medical emergencies are defined in the policy as "acute illness or an unexpected health need that cannot be deferred until the next scheduled sick call." *Id.* at PAGEID # 2039. Corrections officers are trained to contact the nurse immediately if they believe an inmate is suffering from an emergency medical condition, *id.* at PAGEID # 2039, and to use the "Signal 99 radio code to advise all available personnel of the emergency and where it is located." *Id.* The written policy further describes exactly how corrections officers responding to a medical emergency should act. *Id.* The nurse determines whether

to call 911 to have an inmate transported to the hospital. *Id.* Additionally, it appears the County contracted with CHC for the provision of additional ongoing health education and training programs for all deputies and jailers. Agreement, ECF No. 51 at PAGEID # 2126.

Unlike in *Jimenez,* the evidence here shows that there was a written policy (assuming it was in effect) directing corrections officers on how to determine what medical symptoms and needs to report to the nurse—at intake, any time an officer is uncertain of a person's physical health; otherwise, all medical emergencies and any medical issues outside of the officer's scope of competency should be forwarded to the duty nurse. The written policy also directed corrections officers on how to respond to a medical emergency. It seems the County further secured additional, ongoing health education and training for deputies and corrections officers through CHC.

Even if the written policy was not in effect at the time of this incident, it is not clear what additional training Plaintiff contends was necessary for the corrections officers to adequately perform their tasks. With no further evidence from Plaintiff about what additional training should have been performed, she fails to raise a genuine dispute of material fact that the County's training was inadequate. *Accord Winkler,* 893 F.3d at 903.

2. Deliberate Indifference

Even assuming that Plaintiff could establish a genuine dispute of material fact as to whether the training at issue in this case was inadequate, she has not presented

evidence that, in adopting its training program, the County was deliberately indifferent to a risk of constitutional violations.

A plaintiff can allege "deliberate indifference" in one of two ways. Ordinarily, it is necessary to show a "pattern of similar constitutional violations by untrained employees" in order to show that policymakers had notice of and "deliberately [chose] a training program that will cause violations of constitutional rights." *Connick,* 563 U.S. at 62 (citing *Bd. of Comm'rs of Bryan Cty. v. Brown,* 520 U.S. 397, 409 (1997)). Absent a pattern of violations, a plaintiff may assert a "single incident" theory of liability by alleging that the constitutional deprivation at issue was the "obvious" consequence of the defendant's failure to provide specific training. *Id.* The latter theory is "rare" and exists "in a narrow range of circumstances." *Id.*

"Because [Plaintiff] does not provide evidence of any previous instances where inmates have received constitutionally inadequate healthcare at [Delaware County Jail], the [first] situation is not in play here." *Winkler,* 893 F.3d at 903.

Moreover, Plaintiff cannot prevail under the "single incident" theory. In *Winkler,* the Sixth Circuit rejected a theory virtually identical to Plaintiff's, concluding that the assertion that jail personnel received only first aid and CPR training was alone insufficient to "explain how the quality of the medical training provided put the County on notice of the likelihood that jail personnel would respond inadequately to an inmate's medical

emergency." *Id.* Because the evidence showed that the third party's medical staff was available to jail personnel for consultation and that jail personnel indeed contacted that staff regarding the decedent's medical complaints, the court found "no basis to conclude that the County exhibited deliberate indifference by failing to provide additional medical training to jail personnel." *Id.*

So too, here. Plaintiff fails to explain how the medical training DCSO employees received put Delaware County on notice of the likelihood that jail personnel would respond inadequately to an inmate's medical emergency. This is especially true where there is no evidence that CHC staff was, as a matter of policy, unavailable to jail staff for consultation. In short, Plaintiff has offered no evidence that Delaware County was deliberately indifferent to a risk of constitutional violations by failing to provide additional medical training to DCSO deputies and corrections officers.

3. Policy as "Moving Force" Behind Constitutional Injury

Finally, even if Plaintiff had shown the training was inadequate, and even if she had shown that the County was deliberately indifferent to the provision of inadequate training, her claim must ultimately fail due to the inability to establish a link between any inadequate training and the injury to Filichia.

That is, there is no evidence suggesting that either Deputy Mohnsen's or any other jail personnel's inability

to identify Filichia's questionable health lead to her injury. Rather, the video evidence reveals that one of the first things Deputy Mohnsen says upon entering the jail with Filichia is that he needs to speak to a nurse. Ex. 9, ECF No. 49. When LPN Bloomfield arrives, Deputy Mohnsen immediately explains that Filichia had medical issues involving pain in her abdomen, had recently been to the hospital, had a colonoscopy scheduled for later in the week, and that she had brought her medications and hospital discharge paperwork with her. *Id.* Thus, Deputy Moshen had identified that Filichia's health was questionable, regardless of the training he received.

Similarly, Plaintiff does not specify any other corrections officer who interacted with Filichia at the jail, failed, during the interaction, to recognize that Filichia needed medical attention due to inadequate training, and failed to refer Filichia for medical attention. LPN Bloomfield was already with Corrections Officer O'Brien when Filichia's condition escalated the evening of February 21, O'Brien Dep. 64:15-21, ECF No. 36-10; Bloomfield Dep. 147:22-24, ECF No. 36-5, mooting the relevance of the adequacy of O'Brien's training. Thus, even assuming that Plaintiff established the first two elements of a failure to train claim, Plaintiff cannot show that inadequate training was the moving force behind any constitutional violation.

C. State law: Wrongful Death

"[A] federal court that has dismissed a plaintiff's federal-law claims should not ordinarily reach the

plaintiff's state-law claims." *Winkler*, 893 F.3d at 905 (internal quotation marks and citation omitted). Therefore, because the Court would dismiss Plaintiff's § 1983 claims, it would also decline to exercise supplemental jurisdiction over her state-law claim.

IV. CONCLUSION

For the reasons stated above, the Court **DISMISSES** Plaintiff's Amended Complaint **WITH PREJUDICE**. The previously scheduled mediation is hereby **CANCELLED**. The Clerk shall enter final judgment in favor of Defendant and terminate this case.

IT IS SO ORDERED.

/s/_____
MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT