No. _____

# In the Supreme Court of the United States

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KENNETH GREENWAY,
Individually and as Administrator of the
Estate of Tammy Greenway, Deceased,

*Petitioner,*

v.

SOUTHERN HEALTH PARTNERS, INC., NURSE ALYSSA ARMENTI PHARRIS, DEPUTY CHRISTOPHER A. BOYER, SERGEANT KENNETH LANGSTON, SERGEANT JASON MUSE, SERGEANT SHARON CHAPMAN, CAPTAIN SCOTT RICE, DEPUTY JAMES T. BROOKS, BANKS COUNTY, GEORGIA and SHERIFF CARLTON SPEED,

*Respondents.*

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*On Petition for a Writ of Certiorari to the*
*United States Court of Appeals for the Eleventh Circuit*

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## PETITION FOR A WRIT OF CERTIORARI

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December 16, 2020

## QUESTIONS PRESENTED

1. Should the Eleventh Circuit be permitted to reinvent the Fourteenth Amendment standard for deliberate indifference to serious medical needs by ruling as a matter of law that jail officials who claim to have disbelieved statements that an inmate was suicidal were not deliberately indifferent, which not only adds an impermissible gloss to that standard but violates this Court's mandate in *Tolan v. Cotton*, 572 U.S. 650 (2014) that all inferences be drawn in favor of the nonmoving party and the credibility of self-serving statements are the sole province of the jury?

2. Does 28 U.S.C. §1367 require a district court to weigh the factors set forth in *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715 (1966) – and to articulate the process by which it weighed such factors – in exercising discretion to retain supplemental jurisdiction over state law claims after all federal claims have been dismissed when there are substantive differences between state and federal law, and the interests of federalism dictate that state courts be the ultimate arbiter of state law questions?

## PARTIES TO THE PROCEEDINGS

Petitioner, Kenneth Greenway, who brought this action in both his individual capacity as surviving spouse of Tammy Greenway and as administrator of her estate, was Plaintiff and Appellant in the court below. Respondents Southern Health Partners, Inc., Alyssa Armenti Pharris, Christopher A. Boyer, Kenneth Langston, Jason Muse, Sharon Chapman, Scott Rice, James T. Brooks, Banks County, and Carlton Speed were Defendants and Appellees in the court below.

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Petitioner filed this wrongful death lawsuit under 42 U.S.C. §1983 against jail officers and medical staff alleging that they were deliberately indifferent to statements made by him and other family members that his wife was suicidal after they were both arrested following a domestic disturbance, alleging a violation of the Fourteenth Amendment and asserting a pendent state law claim for medical negligence. At the close of discovery, the district court granted summary judgment to Respondent on all claims – including state law claims that Petitioner submits should have been dismissed without prejudice so that they could be refiled in state court based on substantive differences between federal and state law which the trial court failed to appreciate. (App. 24). Petitioner appealed the grant of summary judgment to the Court of Appeals for the Eleventh Circuit, which affirmed the trial court order on all issues. (App. 1). Petitioner filed a petition for rehearing *en banc* which was denied. (App. 76).

## JURISDICTION

The decision of the Court of Appeals denying the petition for rehearing was issued on October 29, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed under 28 U.S.C. § 2101(c).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV:

"… No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law…"

42 U.S.C. §1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State … 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 …"

28 U.S.C. §1367(c):

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

## STATEMENT OF THE CASE

Petitioner Kenneth Greenway is a former deputy sheriff and correctional officer. He and his wife Tammy were arrested after a domestic disturbance, when Tammy – who has long suffered from mental illness – made the statement that she wanted to die. At the jail, Kenneth and Tammy's grown daughter, Crystal Beauchamp, told several staff members that they believed Tammy was suicidal, but neither the officers or the nurse took appropriate suicide precautions despite her history of mental illness and a previous suicide attempt. On the day she died, Mrs. Tammy threw her thyroid pills on the floor because jailers refused to give her an extra blanket, and she was placed in disciplinary segregation for being disruptive. However, she was not placed on either medical observation or suicide even though family members had expressed concerns that she was a suicide risk, and an hour later she committed suicide by hanging herself in the cell.

The Court of Appeals decision conceded the following facts but concluded as a matter of law that Defendants had the right to disregard them:

- "Kenneth told one of the jailers, Sergeant Jason Muse, that Tammy was suicidal and needed to be placed on suicide watch." (App. 5).
- "Kenneth also told Nurse Armenti that Tammy had attempted suicide in the past and needed to be on suicide watch." (*Id.*)
- The next day, "Kenneth made bail. As he left, he and [Tammy's daughter] told Sergeant Chapman that Tammy was suicidal." (App. 6).

Under a proper view of this evidence, a jury could find that Defendants had actual knowledge of a suicide risk as well as an opportunity to do something about it. But instead of crediting those facts, the Court of Appeals crawled into the jury box and weighed the evidence in favor of Defendants rather than allowing jurors to judge the credibility of the witnesses themselves.

Dr. Lawrence Mendel, Plaintiff's expert in correctional medicine, expressed many criticisms of the care provided by the jail's contract medical provider, Southern Health Partners, Inc. (SHP), and its nurse, Defendant Armenti, offering unrebutted expert testimony that they violated the applicable standard of care. SHP and Nurse Armenti conceded that there was jury question as to negligence by not filing a motion for summary judgment on that issue, focusing instead on causation. Dr. Mendel's opinions would not only enable a jury to find that SHP's nurse was negligent under state law for failing to meet the standard of care, but also to infer that she was deliberately indifferent under federal law.

Dr. Mendel also provided the following expert testimony on the issue of causation:

- "The death of Tammy Greenway in the custody of the Banks County Jail was preventable." A jury could infer from this testimony that Mrs. Greenway's death would have been prevented had Defendants acted appropriately.

- "Multiple jail and SHP policies designed to protect vulnerable individuals were not followed." This testimony authorizes the inference that Mrs.

Greenway would have been protected from suicide had those policies been followed.

- The nurse's "actions caused Tammy Greenway to run out of her prescribed antidepressant, putting her at risk of withdrawal and decompensation of her serious mental illness."[1] Jurors can infer from this testimony that the nurse's care, or lack thereof, caused Mrs. Greenway to have a worse outcome.

- "Greenway's untreated mental illness likely contributed to her volatile state leading ultimately to her arrest in January and ultimately to her suicide." This testimony authorizes the conclusion that Mrs. Greenway's suicide was proximately caused by the discontinuation of her mental health treatment, which began when her pills were not returned to her when she left the jail in December and when Nurse Armenti did not restart the medication after her January 23 arrest, leading to her suicide on January 26.

- Dr. Mendel further testified that Nurse Armenti's failure "to notify Muse about Greenway's serious and untreated mental illness… once disciplinary isolation was planned … would have helped the custody staff assure her placement into a cell that could be observed. Her failure to provide this

[1]'Decompensation' is "deterioration of mental health in a patient with previously well managed psychological problems, leading to a diminished ability to think and carry on daily activities … and subsequent worsening of symptoms." https://psychology.wikia.org/wiki/Decompensation

notification created a substantial risk of harm." That risk in fact came to fruition.

- "According to the statement of Nurse Armenti, Greenway had a faint pulse suggesting a more rapid and coordinated response could have resulted in a different outcome." (Doc. 56-1, p. 7) (emphasis added). This testimony by an expert that the outcome could have been different with a proper response further supports an inference of causation.

Nonetheless, the court below refused to credit these inferences on causation, just as it failed to view the evidence in the light most favorable of Mr. Greenway on the deliberate indifference issue.

## REASONS FOR GRANTING THE PETITION

### A. The Eleventh Circuit is trying to reinvent the deliberate indifference standard by ruling as a matter of law that jail officials who claim to have disbelieved statements that an inmate was suicidal were not deliberately indifferent, which not only adds an impermissible gloss to that standard but violates this Court's mandate in *Tolan v. Cotton*, 572 U.S. 650 (2014) that all inferences be drawn in favor of the nonmoving party and that the credibility of self-serving statements be decided by the jury.

#### 1. The Eleventh Circuit's attempt to redefine 'deliberate indifference'

The Constitution imposes a duty upon jail and prison officials not to be deliberately indifferent to an inmate's serious medical needs. *Estelle v. Gamble*, 42 U.S. 97 (1976); *Mandel v. Doe*, 888 F. 2d 783 (11th Cir. 1989); *Waldrop v. Evans*, 871 F. 2d 1030, 1033 (11th Cir. 1989). The "deliberate indifference" standard applies to

both pretrial detainees (under the Fourteenth Amendment) and convicted prisoners (under the Eighth Amendment). *Lancaster v. Monroe County*, 116 F. 3d 1419 (11th Cir. 1997); *Hill v. Dekalb Regional Youth Detention Ctr.,* 40 F. 3d 1176, n. 19 (11th Cir. 1994). The Eighth and Fourteenth Amendments also require that jail and prison staff members not be deliberately indifferent to a known risk of serious harm. *See Farmer v. Brennan*, 511 U.S. 825, 833 (1994); *see also Marsh v. Butler County, Ala.*, 268 F. 3d 1014, 1028 (11th Cir. 2001) (*en banc*) (quoting *Farmer*, 511 U.S. at 844)).

The duty is no different where the risk of serious harm is self-inflicted. Accordingly, jail and prison officials cannot act with deliberate indifference to an inmate's suicidal threats under the Eighth Amendment (which applies to convicted prisoners) or the Fourteenth Amendment (which applies the same "deliberate indifference" standard in a pretrial detention context). *See Greason v. Kemp*, 891 F. 2d 829 (11th Cir. 1990) (deliberate indifference to inmate's suicide threats violated clearly established constitutional rights in 1985). It is clearly established law that jail employees cannot be deliberately indifferent to an inmate's attempts or threats to kill herself. *Edwards v. Gilbert*, 867 F. 2d 1271 (11th Cir. 1989). Whether Tammy Greenway's suicidal ideation is viewed as a risk of serious harm or as a serious medical condition, the same deliberate indifference standard applies. A jury could infer deliberate indifference from the fact that members of the jail staff were repeatedly told that Tammy was suicidal, and they chose not to take it seriously.

In *Marsh v. Butler*, the full Eleventh Circuit embraced this Court's analysis in

*Farmer v. Brennan* and defined "deliberate indifference" as where there is "a substantial risk of serious harm, of which the official is subjectively aware, … **and the official does not respond reasonably** to the risk." *Id.* (emphasis added). *Marsh* was not only an *en banc* decision, but it implicitly overruled Eleventh Circuit cases requiring that the defendant's response demonstrate a higher level of culpability than unreasonableness. For example, the Eleventh Circuit ruled in *McElligot v. Foley*, 182 F. 3d 1248 (11th Cir. 1999) that deliberate indifference requires (1) "subjective knowledge of a risk of serious harm" and (2) **disregard of that risk … by conduct that is *more than negligence*.**" (emphasis added). More recent Eleventh Circuit decisions have gone as far as to require "conduct that is **more than *gross* negligence**," adding yet another layer of gloss to the standard. *See, e.g., Bozeman v. Orum*, 422 F.3d 1265, 1272 (11th Cir. 2005) (*per curiam*); *Andujar v. Rodriguez*, 486 F.3d 1199, 1204 (11th Cir. 2007). These inconsistent articulations of the standard raise the question of whether the Eleventh Circuit is, as previously eluded, consciously moving the goalposts by sneaking more stringent requirements into the standard, or are they are merely confused over what the standard is?

Perhaps the addition of the phrases "by conduct that is more than negligence" and "by conduct that is more than gross negligence" are mere redundancies to emphasis the point that neither negligence or gross negligence, without more, rises to the level of deliberate indifference – which is already implicit in the other elements of the standard: i.e., disregard of a known risk of serious harm. In other words, the

phrases "by conduct that is more than negligence" or "more than gross negligence" could be descriptive of the standard as a whole, and not intended to modify the specific requirement that the defendant's response be unreasonable – after all, an unreasonable response to a known risk of harm is inherently a conscious disregard for health and safety that is more culpable that negligence because it is the failure to exercise reasonable care in the face of a *known* risk, not merely a risk that *should* have been known. But the same cannot be said for the latest revision of the standard, in which the court below held that the Defendants were not deliberately indifferent as a matter of law because they did not believe the threat presented to them was real, essentially adding a new requirement that the risk of harm be credible and allowing a trial court to resolve the credibility issue without a jury.

Before this ruling, the Eleventh Circuit's clearest articulation of the standard was that deliberate indifference is established by (1) a substantial risk of harm (2) subjective awareness of that risk, (3) failure to respond reasonably to the risk, and (4) resulting injury. *Marsh,* 268 F.3d at 1028. The court's latest departure from that standard is the suggestion that "subjective awareness" means that the defendant believes what he is told, which completely begs the question because a jury could find that refusing to believe what one is told is the very essence of deliberate indifference. If 'subjective awareness' means the defendant must believe the threat before he has a duty to respond to it, that would turn deliberate *indifference* into deliberate *intent to cause a bad outcome*, which is a level of

culpability tantamount to criminal. When an inmate is perceived as suicidal by those who know her best, and a jailer is aware of but fails to act on that information because he chooses not to believe it, there is clearly a jury question as to whether the jailer was deliberately indifferent – particularly when the information turns out to be true. The fact that the risk came to fruition is itself evidence that the suicide was reasonably foreseeable based on information provided by those who indeed foresaw it, yet the Court of Appeals decision invades the province of the jury by holding as a matter of law that lack of belief equates to lack of awareness.

Under *Marsh* and *Farmer*, deliberate indifference means an objectively unreasonable response to a subjectively known risk of harm. The only subjective requirement of deliberate indifference is that the defendant have actual knowledge of a risk of serious harm, while the disregard of that risk is an objective fact that can be inferred from the evidence. By this decision, however, the Eleventh Circuit evidences an intent to make both elements subjective.

This revisionist interpretation of deliberate indifference – that a defendant cannot be deliberately indifferent to a serious risk of harm unless he believes the risk to be credible – essentially turns the standard into one of deliberate intent, not indifference. By definition, "indifference" would include a choice not to act on information to determine whether it is credible or not. It literally means not caring one way or the other: in this case, a former deputy sheriff who has himself worked in a jail tells deputies that he is afraid his wife will harm herself, and they choose

not to believe him. That choice to be indifferent is a deliberate choice to ignore rather than act upon information which, if true, poses a risk of serious harm which in this case turned out to be real.

"Deliberate" is an adjective that modifies the word that immediately follows it: "indifference." It does not mean that there must be deliberate intent for a bad outcome; it simply means that there is a deliberate intent to be indifferent. In this case, it means a decision not to act on information that someone's life may be in danger simply because you choose not to believe that information. Absent a confession that someone believed a threat and decided not to act on it – which would elevate such conduct from civil to criminal culpability –there would never be any way to prove "deliberate indifference" if there were a requirement that the defendant believe that his behavior is wrong as opposed to merely indifferent. Because deliberate indifference has a subjective component, and because it is impossible to look inside someone's head for direct evidence of what they were thinking, it can be proven by inference from circumstantial evidence. In fact, that is the only way it can be proven; otherwise, no defendant with actual knowledge of a reported risk could ever be liable as long as he testified that he or she did not believe the report to be true.

Deliberate indifference is more akin to recklessness or conscious disregard than to specific intent, which is the direction in which the Eleventh Circuit is trying to move the goalposts. Clearly an inmate who is perceived by those who know her best as a suicide risk has a serious psychiatric need, and the failure to act on such

information that later turns out to be true because you do not believe it is true raises a jury question as to whether you were deliberately indifferent to a known risk. In this case, "risk" refers to the possibility that the person you have just been told is a suicide risk is at risk of serious harm, and your failure to reasonably respond to that risk – and ironically, you will never know for certain whether the risk is real or not if you take proper precautions, and the only way you will know for certain is if you ignore the risk and see what happens. The fact that the risk ultimately came to fruition is itself evidence that the suicide was reasonably foreseeable based on information provided by those who indeed foresaw it.

**2. The Eleventh Circuit's defiance of *Tolan v. Cotton***

"Summary judgment is appropriate only if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. In making that determination, a court must view the evidence in the light most favorable to the opposing party" rather than accepting an officer's self-serving account at face value. *Tolan v. Cotton*, 572 U.S. 650, 1865-1866 (2014) (internal citations and punctuation omitted). The Court of Appeals decision defies *Tolan* by acknowledging but downplaying the fact that Defendants were repeatedly told that Tammy Greenway was a suicide threat. The decision shades those facts in Defendants' favor to advance what can only be described as a redefinition of 'deliberate indifference' – under which a defendant cannot be deliberately indifferent to a serious risk of harm unless he believes the risk to be credible,

thereby substituting the court for the jury as the sole judge of credibility and turning the standard into one of deliberate intent, not indifference.

In *Tolan,* this Court admonished courts to view all facts and inferences in the light most favorable to the plaintiff's position in ruling on the qualified immunity issue. Both the trial court and the Court of Appeals repeatedly failed to do that in this case.

For instance, the trial court order acknowledged the testimony of both Mr. Greenway and Crystal Beauchamp that they told Deputy Boyer that Tammy Greenway was suicidal, but it refused to credit that testimony on a motion for summary judgment because they made a credibility judgment that "it is inconsistent with video and audio recordings of events at the house." (App. 26-27). That inconsistency, however, is explained by the fact that the recordings did not capture every conversation and are not always audible where they did. In any event, this testimony is not "blatantly contradicted by the record as with a video recording of the incident" as stated by the court below. *Glasscox v. City of Argo*, 903 F. 3d 1207, 1213 (11th Cir. 2018). Inconsistencies in the record are not the same thing as "blatant" contradictions, and it is up to the jury to discern the difference. The fact that Greenway and Beauchamp made similar statements to the Georgia Bureau of Investigation (GBI) on the day of Tammy's death – long before retaining counsel and filing this lawsuit – tends to corroborate their credibility, which is a matter for the jury. The trial court's arguments against this testimony go to its weight, not its

admissibility at trial or whether it can be considered on summary judgment.

The trial court went on to mischaracterize Ms. Beauchamp's statements to the GBI that Mrs. Greenway said she 'wanted to die,' 'would kill herself,' and 'was going to hang herself' as "inadmissible hearsay." (App. 27). In fact, those statements could be admitted under several exceptions to the hearsay rule, most notably as statements of present state of mind. Fed. R. Evid. 803(3).

The trial court did credit Mr. Greenway's testimony that he personally told Defendant Langston that Tammy was "a suicide risk" and "needed to be put on suicide watch." (App. 28). However, the trial court refused to consider this as evidence from which jurors could infer actual knowledge, even though Greenway himself had worked in jails as a deputy sheriff and reasonable jurors could view that as credible information which no reasonable jailer would have disbelieved. The trial court went on to make the same credibility judgment about every communication between Greenway's family and the jail staff about Tammy being suicidal. (App. 28-30, 45, 47, 50, 52, 54-55, 57).

Similarly, the trial court acknowledged the testimony of Ms. Beauchamp that she had several conversations with Defendant Muse about putting Tammy on suicide watch (App. 28) but went on to rule that this information was insufficient to authorize an inference that Muse had actual knowledge of a suicide risk, concluding that "Defendant Langston had good reason to view Plaintiff's statement with suspicion." (App. 47). The trial court based that conclusion on a case previously handled by the undersigned counsel which declined to fault a jailer for disbelieving a manipulative

inmate with whom he was familiar who was known to use "idle threats of suicide to get his way," when there is no such evidence in this case. *Fowler v. Chattooga County, Ga.*, 307 F. App'x 363, 365 (11th Cir. 2009). The clearly distinguishable facts of that case in no way give rise to a rule that a jailer is not deliberately indifferent to a risk of serious harm if he chooses to disbelieve it.

Ignoring obvious conflicts in the evidence, the trial court jumped to the following conclusions:

> (1) The Defendant jail officers were never told anything about Tammy being suicidal because they claimed that they did not recall being told anything; and
>
> (2) But even if they were told that, they had a right to disbelieve it, in which case they had no actual knowledge of the risk.

Those are not only fallacious inferences, but they are improperly drawn in favor of moving parties who are entitled to no inferences whatsoever on summary judgment. A proper view of the same evidence would have led the court to the following conclusions:

> (1) Because the officers do not "recall" being told that Tammy was suicidal, their testimony does not rebut – let alone negate – the testimony of Greenway and Beauchamp that they in fact made such statements, but even if the officers had flatly denied being told that rather than simply been unable to recall it, there would still be a factual

dispute about whether the statements were made; and

(2) If the officers were told that Tammy was suicidal, there is a jury question as to whether the threat was credible, and whether the officers themselves are credible when they claim they did not believe it.

Such a perversion of Rule 56 violates *Tolan* and cannot be allowed to seep into other cases.

### 3. The Eleventh Circuit's failure to follow clearly established law that jailers cannot ignore reports that an inmate is suicidal.

The doctrine of qualified immunity protects individual state actors from monetary liability under 42 U.S.C. §1983 for conduct that does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, (1982); *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). The law is clearly established if a reasonable officer had fair warning of what the law required at the time of the subject incident in January 2016.

One way to show 'fair warning' is by pointing to a prior case with similar facts, but that is not the only way to do so. *See, e.g., United States v. Lanier*, 520 U.S. 259, 271 (1997) (recognizing that a general rule may apply with "obvious clarity to the specific conduct in question," even though the challenged conduct has not previously been held unlawful); *accord Hope,* 536 U.S. at 741. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640

(1987). All that is required is that "in the light of pre-existing law, the unlawfulness must be apparent." *Id.* The "salient question" is not whether there is a binding precedent which is factually on "all fours" with the case at bar, but whether the contours of the law which existed at the time of the incident were sufficiently clear to give a reasonable law enforcement officer "fair warning" that he or she could be liable under the circumstances. *Hope*, 536 U.S. at 741 (citing *Lanier*, *supra*).

Where "the official's conduct lies so obviously at the very core of what the [Constitution] prohibits that the unlawfulness of the conduct was readily apparent to the official, notwithstanding the lack of case law," the official is not entitled to the defense of qualified immunity." *Priester v. City of Riviera Beach*, 208 F. 3d 919, 924 (11th Cir. 2000), citing *Smith v. Mattox*, 127 F. 3d 1416, 1419 (11th Cir. 1997). Factually similar precedent is not required if "a general constitutional rule already identified by the decisional law" is articulated with sufficient clarity that is not limited to the peculiar facts of the case from which it arose. *Hope,* 536 U.S. at 741.

> [I]f some authoritative judicial decision decides a case by determining that "X Conduct" is unconstitutional without tying that determination to a particularized set of facts, the decision on "X Conduct"can be read as having clearly established a constitutional principle: put differently, the precise facts surrounding "X Conduct"are immaterial to the violation. **These judicial decisions can control "with obvious clarity" a wide variety of later factual circumstances.**"

*Vinyard v. Wilson*, 311 F.3d 1340, 1351 (11th Cir. 2002) (citing *Hope* and *Lanier, supra*) (emphasis added).

Applying the above principles in the factual context of this case, it is clearly established law in the Eleventh Circuit that jail employees cannot be deliberately indifferent to an inmate's suicidal or self-harming behavior. *Edwards v. Gilbert*, 867 F. 2d 1271 (11th Cir. 1989). There are exactly two material facts encompassed in that rule: 1) Knowledge that the inmate is suicidal or self-harming; and 2) The choice not to act on that knowledge. While there are an infinite number of factual scenarios in which the rule might apply, those are the only two facts that matter, and no reasonable jailer would be confused about the rule. The existence of those facts is clearly a jury question, which means that qualified immunity cannot be granted as a matter of law.

It is also clearly established "that an official acts with deliberate indifference when [he or she] delays providing an inmate with access to medical treatment, knowing that the inmate has a life-threatening condition **or** an urgent medical condition that would be exacerbated by delay." 116 F. 3d 1419. Deliberate indifference may be inferred when jail personnel ignore without explanation a prisoner's serious medical condition that is known or obvious to them. *Thomas v. Town of Davie,* 847 F.2d 771, 772-73 (11th Cir. 1988). Accordingly, jailers have a duty not to ignore any life-threatening condition or behavior that is called to their attention by anyone.

As the Court instructed in *Tolan v. Cotton*, 572 U.S. 650 (2014),

> Our qualified-immunity cases illustrate the importance of drawing inferences in favor of the nonmovant, even when, as here, a court decides only the clearly-established prong of the standard... [While] we have instructed that courts should define the "clearly established" right at issue on the basis of the "specific context of the case"[,] ... **courts must take care not to define a case's "context" in a manner that imports genuinely disputed factual propositions.**

572 U.S. at 657 (emphasis added, internal citations omitted). Construing the evidence in the proper light, Defendants Boyer, Langston, Muse, Chapman, and Rice were all told by concerned family members that Tammy Greenway was suicidal, but they took no action on that information. The tower officer, Deputy Brooks, was not aware of the report that she was suicidal but was aware that she was engaging in self-harming behavior by beating on her cell door in the hour leading up to her suicide, yet he chose not to do anything about it until after the banging subsided, which was too late.

It is the *risk* of suicide, or the *risk* of self-harm, that these officers were aware of under Plaintiff's version of the facts, and it is deliberate indifference toward that risk that the law prohibits. Such examples of deliberate indifference to the threat of self-harm violate clear legal principles of which any reasonable jailer should have been aware, and thus the Defendant jail officers are not entitled to qualified immunity.

#### 4. The Eleventh Circuit's failure to credit expert medical testimony as to either deliberate indifference or causation

As for the Fourteenth Amendment claim against the jail medical providers,

deliberate indifference means that it is necessary to prove more than mere negligence or medical malpractice, but subjective bad intent is not required. It is clearly established law in the Eleventh Circuit "that an official acts with deliberate indifference when [he or she] delays providing an inmate with access to medical treatment, knowing that the inmate has a life-threatening condition **or** an urgent medical condition that would be exacerbated by delay." *Lancaster v. Monroe County*, 116 F. 3d at 1425. Deliberate indifference may be inferred when jail personnel ignore without explanation a prisoner's serious medical condition that is known or obvious to them. *Thomas v. Town of Davie,* 847 F.2d 771, 772-73 (11th Cir. 1988). While deliberate indifference requires "more than mere negligence," it is not necessary to prove the absence of any care at all. "Grossly incompetent or inadequate medical care can violate the … Amendment." *Rogers v. Evans*, 792 F.2d 1052, 1062 (11th Cir. 1986).

> Medical treatment that is 'so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness' constitutes deliberate indifference…. Additionally, when the need for medical treatment is obvious, **medical care that is so cursory as to amount to no treatment at all may constitute deliberate indifference**….

*Adams v. Poag*, 61 F.3d 1537, 1543-44 (11th Cir. 1995) (emphasis added)*; see also McElligott*, 182 F.3d at 1256-57 (jail doctor and nurse could be found liable for Eighth Amendment violation where jury could conclude that their grossly negligent conduct in failing to diagnose inmate's terminal cancer might rise to the level of deliberate indifference).

It is well settled law that in a prison or jail setting, privately employed contract medical providers are state actors who can be liable under the Eighth and Fourteenth Amendments for "deliberate indifference" to a "serious medical need."[2] *West v. Atkins,* 487 U.S. 42 (1988); *Farrow v. West,* 320 F.3d 1235,1244-45 (11th Cir. 2003) (private doctor who contracted with prison to provide medical services for inmates was "state actor" and "deliberately indifferent" to inmate's "serious medical needs" for unreasonable fifteen-month delay in providing plaintiff with dentures); *Carswell v. Bay County*, 854 F.2d 454, 456-57 (11th Cir. 1988) (private doctor under contract to provide medical services in a county jail was liable for deliberate indifference for his failure, in conjunction with the nurse he supervised, to treat a diabetic inmate); and *Ancata v. Prison Health Services, Inc.,* 769 F.2d 700, 704 (11th Cir. 1985) (complaint against private medical service provider was sufficient to survive dismissal for "deliberate indifference" under 42 U.S.C. § 1983). Based on the testimony of Plaintiff's expert, Nurse Armenti not only failed to meet the standard of care, but her conduct fell so far below the standard of care as to constitute "medical care that is so cursory as to amount to no treatment at all," which would authorize a finding of deliberate indifference. *Adams*, 61 F.3d at 1544.

In the words of the Hon. Ashley Royal, a Middle District of Georgia senior judge and author of the state's leading treatise on medical malpractice, "a plaintiff

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[2] Even though private contractors acting under color of state law can be sued under Section 1983, it should be noted that they cannot assert the defense of qualified immunity. *Richardson v. McKnight*, 521 U.S. 399 (1997); *Hinson v. Edmond*, 192

may establish deliberate indifference by offering testimony of medical experts opining that "the official's actions were so grossly contrary to accepted medical practices as to amount to deliberate indifference." *Robinson v. Integrative Det. Health Servs.*, No. 3:12-CV-20 (CAR), 2014 U.S. Dist. LEXIS 41688, at *39 (M.D. Ga. Mar. 28, 2014). That is consistent with Eleventh Circuit rulings that "grossly incompetent or inadequate medical care" amounts to deliberate indifference where it is tantamount "to no care at all." *Rogers*, 792 F.2d at 1062; *Adams v. Poag*, 61 F.3d 1537, 1543-44 (11th Cir. 1995). It is up to the jury to draw the distinction between negligence and deliberate indifference when the evidence supports a finding of either.

**B. 28 U.S.C. §1367 requires a district court to exercise its discretion – and to articulate the process by which such factors were weighed in the course of that exercise – in deciding whether to retain or decline supplemental jurisdiction over state law claims after all federal claims are dismissed pretrial, especially when there are substantive differences between state and federal law, and the interests of federalism dictate that state courts be the ultimate arbiter of state law.**

Petitioner respectfully submits that the trial court erred by taking up the state law claims at all once it made the decision to grant summary judgment on the Fourteenth Amendment claim. This Court has instructed the federal courts deciding whether to exercise supplemental jurisdiction over a state law claim—after all the federal claims in the case have been dismissed—to consider these four

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F.3d 1342, 1347 (11th Cir. 1999), *op. amended by* 205 F.3d 1264 (11th Cir. 2000).

factors: comity, convenience, fairness, and judicial economy in deciding whether to retain jurisdiction to decide the state law claims. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966). Based on *Gibbs* and the language of 28 U.S.C. §1367(c), the Eleventh Circuit has recognized that state law claims should generally be dismissed for lack of jurisdiction where all federal claims are dismissed pretrial, but it declined to follow that rule in this case. *Estate of Owens v. GEO Grp., Inc.*, 660 F. App'x 763, 775 (11th Cir. 2016).

While a trial court's exercise of supplemental jurisdiction over state law claims under 28 U.S.C. §1367 is reviewed only for an abuse of discretion, the Eleventh Circuit has held that "[w]e decide pure law issues *de novo*, which is another way of saying that a ruling based on an error of law is an abuse of discretion." *Ewing Indus. Corp. v. Bob Wines Nursery, Inc.*, 795 F.3d 1324, 1326 (11th Cir. 2015) (*quoting Young v. New Process Steel, LP*, 419 F.3d 1201, 1203 (11th Cir. 2005) (internal cites omitted). The misapplication of Georgia law in this case was a pure error of law. Moreover, there is nothing in the language of the trial which indicates that the trial court engaged in the exercise of discretion by expressly weighing the *Gibbs* factors or other salient concerns. It is axiomatic that it is an abuse of discretion where "the trial court fails to exercise its discretion." *Whiteman v. Pitrie*, 220 F.2d 914, 918 (5th Cir. 1955). In other words, the court below abused its discretion under §1367 by not weighing the factors at all.

Under *Estate of Owens*, the Eleventh Circuit announced a policy that state

law claims should generally be dismissed for lack of jurisdiction where all the federal claims are dismissed pretrial, but it failed to enforce that policy in this case. That policy should not only be enforced in this case, but it should be adopted by the Court as the presumptive nationwide policy under §1367(c) unless it is outweighed by other *Gibbs* factors. Said policy notwithstanding, however, dismissal of the state claims without prejudice was mandated by the substantive differences between the state and federal law at issue.

Under Georgia law, liability for suicide is governed by a negligence standard. It is not necessary to show deliberate indifference – or actual knowledge of suicidal intent – to establish negligence, because the foreseeability of the suicide bears on the issue of proximate cause rather than the existence of a duty to protect and whether it was negligently breached. *See, e.g.*, *City of Richmond Hill v. Maia*, 301 Ga. 257, 800 S.E.2d 573 (2017) (collecting cases). While suicide is generally an unforeseeable intervening cause which cuts off the tortfeasor's liability for his negligence, Georgia law recognizes two longstanding exceptions: (1) where the tortfeasor causes the decedent to go into a rage or frenzy that supersedes the will of the decedent and becomes the proximate cause of the death; or (2) where there is a special relationship between the decedent and the tortfeasor which imposes a duty to protect, such as a patient-doctor relationship or the custodial relationship between a jailer and an inmate. *Id.; see also Brandvain v. Ridgeview Inst., Inc.*, 188 Ga. App. 106, 112–18, 372 S.E.2d 265, 270–75 (1988), *aff'd*, 259 Ga. 376, 382 S.E.2d

597 (1989). Both exceptions find support in the facts of this case, and the fact that Defendants were aware of the suicidal risk but took no action is an intervening cause that negates the will of the decedent as proximate cause of her demise.

There are also differences between federal and state law on proof of medical causation. Nurse Armenti and SHP moved for summary judgment on the issue of proximate cause under both federal and state law, but they cited no authority with respect to causation on the federal claim, which is governed by federal common law. The trial court and panel decisions failed to recognize differences between federal and state law in this regard, relying upon Georgia medical malpractice law even as to the federal claims and then misconstruing that.

As for the federal deliberate indifference claim against Nurse Armenti, a state law rule requiring Plaintiff to introduce expert testimony on all elements of a state law tort of medical malpractice under O.C.G.A. §51-1-27 is clearly not a requirement of the federal common law applicable to Section 1983 cases. Applying common law rules as a matter of federal law underscores the interest in uniform treatment in federal statutory interpretation which should not be undermined by different statutory rules among the different states. *See, generally, Carey v. Piphus*, 435 U.S. 247 (1977) (the common law rule of fair compensation to those who suffer constitutional injury presumptively outweighs state statutory schemes); *accord Wright v. Shepherd*, 919 F.2d 665 (11th Cir. 1990). There is no comparable federal authority requiring that an expert be called to testify about deliberate indifference,

causation, or damages to prove a violation of the Fourteenth Amendment. Nonetheless, there is ample expert testimony from which a jury could find proximate cause on both the federal and state claims.

The court below correctly observed that Georgia's substantive law of medical malpractice requires expert testimony in support of each element of a medical negligence claim, including proximate cause. *Zwiren v. Thompson*, 276 Ga. 498, 578 S.E.2d 862 (2003). However, it overlooked the fact that it is up to *the jury* to consider and decide whether the expert testimony establishes all elements of the tort, since the holding of *Zwiren* requires that a particular jury charge be given – *not* that the issue be taken away from the jury. *Id.*[3]

While it is also true that Georgia law requires expert testimony where the question of medical causation is beyond the ken of laypersons, it is only necessary that the testimony be sufficient to show a reasonable probability that the negligence caused the injury. *Pilzer v. Jones,* 242 Ga. App. 198, 529 S.E.2d 205 (2000). To

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[3] In *Zwiren*, the Georgia Supreme Court approved the following jury charge verbatim:

> In order for the plaintiff to show that the defendant's alleged negligence was the proximate cause of the plaintiff's injury, the plaintiff must present expert medical testimony. An expert's opinion on the issue of whether the defendant's alleged negligence caused the plaintiff's injury cannot be based on speculation or possibility. It must be based on reasonable medical probability or reasonable medical certainty. **If you find** that the expert's testimony regarding causation is not based on reasonable medical probability or reasonable medical certainty, then the plaintiff has not proven that the plaintiff's injury was proximately caused by the defendant's alleged negligence, and you would return a verdict for the defendant.

276 Ga. at 503-04, 578 S.E.2d at 867 (emphasis added).

make a showing of reasonable probability, it is not necessary for an expert to use the magic words "reasonable degree of medical certainty," but it must be clear that the expert testimony is based upon more than mere chance or speculation. *Anthony v. Chambless,* 231 Ga. App. 657, 500 S.E.2d 402 (1998). The required level of proof by expert testimony, which is reasonable degree of medical probability, "has no greater meaning than a preponderance of the evidence." *Estate of Patterson v. Fulton-DeKalb Hosp. Authority***,** 233 Ga. App. 706, 708, 505 S.E.2d 232, 234 (1998).

The Court of Appeals decision acknowledges that causation can be established under Georgia law by expert testimony that "in the absence of the alleged negligence, patient's condition could have been prevented from worsening." (App. 20-21, quoting *Swint v. Alphonse*, ___ Ga. App. ___, 820 S.E. 2d 312, 317 (2018). But the decision goes on two sentences later to say that "the expert testified generally that Tammy's death was *preventable*," somehow implying that "preventable" does not mean the same thing as "could have been prevented from worsening." *Id.* Here, as in the *Swint* case cited by the court below, "we cannot say that the evidence regarding causation was so clear, plain, palpable, and undisputed as to demand the entry of summary judgment in favor of [Defendant]." 820 S.E. 2d at 3:20.

There is nothing in the language of the trial court's order indicating that it actually engaged in any exercise of discretion by weighing the *Gibbs* factors or other salient concerns despite circuit precedent requiring it to do so. *Palmer v. Hosp.*

*Auth. of Randolph Cty*., 22 F.3d 1559, 1569 (11th Cir. 1994) (holding that it was error not to consider the factors set forth by *United Mine Workers of Am. v. Gibbs*) prior to exercising its discretion to dismiss or retain jurisdiction under 28 U.S.C. §1367(c)(4)); *see also, generally, Whiteman*, 220 F.2d at 918 (it is an abuse of discretion where "the trial court fails to exercise its discretion."). Since the trial court abused its discretion by not using any, it committed reversible error. Moreover, until that discretion was abused, the parties had no duty to anticipate it and preserve it as error in the trial court, so it was timely to raise it for the first time on appeal. Because the failure to follow *Gibbs, Palmer,* and *Estate of Owens, supra,* resulted in the misapplication of Georgia law which made a difference in the outcome, the trial court order should have been reversed as an abuse of discretion.

If the Court is loath to delve into the vagaries of Georgia law, that is all the more reason for the courts below to have declined supplemental jurisdiction. Arcane issues of state law are best decided by the courts which deal with them daily.

## CONCLUSION

Certiorari should be granted for the following reasons:

- The Eleventh Circuit is attempting to rewrite the definition of deliberate indifference by adding an impermissible gloss that the deliberate indifference standard is only met where the defendant believes the risk of serious harm is real, which can only be established by a confession that the defendant believed a threat but consciously chose to ignore it. That not only raises the level of

culpability to one of criminal intent, but it would be impossible to prove unless the defendant admitted what was inside his or her head. If that were the standard, then any defendant fortunate to live in the Eleventh Circuit could simply claim that they did not believe a threat to be credible, even if it later turned out to be true, and that would end the case against them as a matter of law.

- There is a strong need for the Court to reiterate its admonition in *Tolan v. Cotton* that all reasonable inferences be construed in favor of the nonmoving party on summary judgment, particularly when deciding purely legal questions such as qualified immunity based on assumptions of fact that are legitimately disputed. It is impermissible to gloss over disputed facts in order to create a narrative that supports the desired outcome – for example, by giving the moving party the benefit of an inference that being unable to recall a fact asserted by the opposing party constitutes a denial of that fact, or that choosing to disbelieve an alleged fact is not the same thing as being deliberately indifferent to it – when inferences may only be drawn in favor of the nonmoving party and the credibility of a fact, as well as the credibility of the testimony denying belief of that fact, is the sole province of the court. Rule 56 not only requires that such self-serving testimony be subject to a credibility determination by jurors, but it does not permit any inferences at all in favor of the moving party.

- There is a need for consistency in the exercise of supplemental jurisdiction under 28 U.S.C. §1367 by requiring courts to explicitly weigh the factors of comity, convenience, fairness, and judicial economy in deciding whether to retain jurisdiction to decide state law claims when there is no longer any independent basis for federal jurisdiction, there are substantive differences between federal and state law, and state courts are better suited to decide questions of state law.

Accordingly, the Court should grant the writ and reverse the judgment below.

Respectfully submitted,

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December 16, 2020

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 20-11147
Non-Argument Calendar

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D.C. Docket No. 1:17-cv-05420-MLB

KENNETH GREENWAY,
As Surviving Spouse of Tammy Sue Greenway as administrator
of the estate of Tammy Sue Greenway,

Plaintiff-Appellant,

versus

SOUTHERN HEALTH PARTNERS, INC.,
NURSE ALYSSA ARMENTI,
DEPUTY CHRISTOPHER A. BOYER,
SERGEANT KENNETH LANGSTON,
SERGEANT JASON MUSE, et al.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Georgia

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(September 15, 2020)

Before NEWSOM, BRANCH, and LUCK, Circuit Judges.

PER CURIAM:

This case arises from the tragic suicide of Tammy Greenway while in custody at the Banks County Jail. Her husband, Kenneth Greenway, brought section 1983 deliberate indifference claims against the officer that arrested the Greenways, Tammy's jailers, the County, the Sheriff, and her medical providers and a state-law negligence claim against the medical providers. The district court granted summary judgment for all defendants, and Kenneth now appeals. Because we conclude, like the district court, that there was no genuine dispute that the defendants did not have knowledge of a strong likelihood that Tammy was a suicide risk or that the County and the medical providers did not cause Tammy's death, we affirm.

## FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Kenneth and Tammy Greenway had a volatile, on-again off-again marriage. They had discussed divorce and had romantic relationships outside of the marriage. Around 2008, Tammy began to have paranoid delusions and became violent towards Kenneth. That year, she attempted suicide by overdosing on pills. Between 2008 and 2015, Tammy suffered from intermittent bouts of mental illness and drug addiction. On December 19, 2015, Tammy kicked in the door to Kenneth's bedroom and attacked him. Tammy was arrested and went to jail for a few days. While in jail, Tammy did not attempt suicide or make any threats of self-harm.

On January 23, 2016, Tammy and Kenneth had another violent domestic incident, and a relative called the police. Deputy Christopher Boyer andSergeant Jim Clay responded.[1] The officers interviewed the Greenways separately and had them fill out witness statements. Tammy wrote that Kenneth attacked her unprovoked and that she did not want further trouble. For his part, Kenneth wrote

that Tammy attacked him and threatened to kill him. Deputy Boyer signed off on Tammy's witness statement, and neither witness statement mentioned self-harm or suicide. While discussing the incident with Deputy Boyer, Kenneth told him that

[1] We "view the facts and draw reasonable inferences in the light most favorable to the party opposing the summary judgment motion." Jackson v. West, 787 F.3d 1345, 1352 (11th Cir. 2015). The parties debate the existence and admissibility of various pieces of evidence that the district court did not consider: 1) statements made by Tammy's daughter, Crystal Beauchamp, and Kenneth at the time of the Greenways' arrest; 2) statements made by Beauchamp's relatives about Tammy's suicide risk; 3) statements documented in a Georgia Bureau of Investigation report about Tammy's death; and 4) testimony about what Kenneth told the jail's nurse. Because we conclude that, even assuming this evidence is properly before us, summary judgment is appropriate, we consider all the evidence presented by Kenneth with the exception of the statements he and Beauchamp purportedly made at the time of the Greenways' arrest.

We agree with the district court that video evidence contradicts Kenneth's assertions that he and Beauchamp told Deputy Boyer at the scene of the arrest that Tammy was suicidal. "When opposing parties tell two different stories, one of which is blatantly contradicted by the record [as with a video recording of the incident], so that no reasonable jury could believe it, a court should not adopt that version of the facts." Manners v. Cannella, 891 F.3d 959, 967 (11th Cir. 2018) (internal quotation marks omitted). Kenneth testified that while he was in the yard with Beauchamp, before Deputy Boyer placed him in the patrol car, he and Beauchamp told Deputy Boyer that Tammy was threatening to hurt herself and that she had attempted suicide before. But the video directly contradicts that testimony. Though Kenneth now contends that the video did not record all of his interactions with Deputy Boyer and parts of it are unintelligible, the video is clear when Kenneth and Beauchamp were talking to Deputy Boyer in the yard before he was arrested. And there is no evidence they told him Tammy was suicidal. Therefore, we will not adopt Kenneth's version of the facts on that point.

Tammy was bipolar. The officers conferred and arrested both Tammy and Kenneth for aggravated assault.

In her interactions with the officers, Tammy did not threaten to harm herself. When Deputy Boyer told her she was going to be arrested, she did not protest or argue with him. Tammy appeared "fine" to Deputy Boyer. After the officers arrested both Greenways, Deputy Boyer transported Kenneth to the Banks County Jail, and Sergeant Clay drove Tammy. After transferring Kenneth to the jail, Deputy Boyer had no further involvement with the Greenways.

Sergeants Kenneth Langston and Sharon Chapman booked Kenneth at the jail. Kenneth told Sergeant Langston that Tammy was suicidal, had attempted suicide previously, and needed to be watched. Sergeant Langston and Sergeant Chapman also booked Tammy. Sergeant Chapman did an initial screening of Tammy. She recorded that Tammy appeared calm and cooperative, was not under the influence of alcohol or drugs, and did not show signs of trauma. Sergeant Chapman then asked Tammy a series of questions, including whether she had a history of psychiatric treatment, whether she had ever had thoughts of harming herself, and whether she currently had thoughts of harming herself. Tammy responded "no" to each question. But she reported that she was under a doctor's care and needed various medications. Sergeant Chapman testified that Tammy appeared upset at being arrested but became

cheerful after that. While incarcerated, Sergeant Chapman had a "good rapport" with Tammy, discussed Tammy's new boyfriend with her, and they shared a laugh.

That same day, Sergeant Langston asked Tammy more in-depth questions. That screening included twelve questions regarding suicide risk. Tammy responded that she had not experienced marital separation, death of a loved one, loss of business, arrest of a loved one, divorce, or major financial loss; she was not a first-time offender and did not have unusual home-family problems; and she had never been in a mental institution or under psychiatric care, had never attempted suicide, and was not currently contemplating suicide. Sergeant Langston recorded that he did not believe Tammy was a suicide risk. He also documented that Tammy had issues with thyroid disease, panic attacks, depression, and hormones. Sergeant Langston testified that Tammy did not say or do anything out of the ordinary.

The next day, while both Greenways remained in jail, Kenneth told one of the jailers, Sergeant Jason Muse, that Tammy was suicidal and needed to be placed on suicide watch. Kenneth repeatedly tapped on the glass window of his cell to get Sergeant Muse's attention. Sergeant Muse thought Kenneth was having an anxiety attack and eventually came in with Nurse Alyssa Armenti, who worked at the jail as an employee of Southern Health Partners, Inc., to give Kenneth anti-anxiety medication. Kenneth also told Nurse Armenti that Tammy had attempted suicide in the past and needed to be on suicide watch. Sergeant Muse then placed Kenneth on

suicide watch and told others he thought Kenneth was "crazy." That same day, Beauchamp called Sergeant Muse and told him that Tammy was suicidal.

On the morning of January 25, 2016, Nurse Armenti conducted a medical screening of Tammy. Tammy reported that she had never considered or attempted suicide. Nurse Armenti similarly observed that Tammy did not exhibit any signs suggesting a risk of suicide, assault, or abnormal behavior in January 2016. Nurse Armenti reported that Tammy was "sweet." Tammy identified her medical conditions as relating to her thyroid and to depression. She had been prescribed a thyroid medicine and an anti-depressant but told Nurse Armenti that she had been without her medications for two weeks and did not bring them with her to the jail. That day, after a consult with the jail's doctor, Nurse Armenti administered Tammy her thyroid medicine and faxed her pharmacy to request her medication records. Tammy did not ask to take an anti-depressant, and Nurse Armenti did not provide one to her, because Tammy had not been taking the medication regularly.

Early in the morning of January 26, 2016, Kenneth made bail. As he left, he and Beauchamp told Sergeant Chapman that Tammy was suicidal. Later that morning, Nurse Armenti went with Sergeant Muse to give Tammy her next dose of thyroid medication. Tammy asked Sergeant Muse if she could have another blanket, but he told her he did not have one to give to her. In response, Tammy refused to

take her medicine and threw it on the ground. Sergeant Muse then placed Tammy in lockdown in her cell.

While locked down, Tammy screamed and banged on her cell door on and off from 8:30 a.m. to 9:30 a.m. In the jail's command tower, Officer Tim Brooks observed the banging but saw through the cell's window that Tammy was not trying to hurt herself. Officer Brooks noticed that Tammy became quiet after about an hour. At 10:30 am, he talked to Sergeant Muse, who instructed him to have someone check on Tammy. Officer Brooks asked another inmate to check on Tammy; the inmate looked through Tammy's cell window and screamed. Officer Brooks radioed Sergeant Muse, who reported to Tammy's cell. Nurse Armenti also responded to the call. They found Tammy hanging from a bedsheet. Nurse Armenti found that Tammy still had a faint pulse. Sergeant Muse cut Tammy down and helped Nurse Armenti with CPR. Another officer called an ambulance. The ambulance took Tammy to the hospital where she was pronounced dead.

Kenneth, on behalf of Tammy's estate, sued Deputy Boyer, Sergeant Langston, Sergeant Chapman, Sergeant Muse, Officer Brooks, jail administrator Captain Scott Rice, Nurse Armenti, Southern Health Partners, Banks County, and Sheriff Carlton Speed under 42 U.S.C. section 1983, alleging deliberate indifference claims under the Fourteenth Amendment. He also brought a Georgia-law medical

malpractice claim against Nurse Armenti and Southern Health Partners. All defendants moved for summary judgment, which the district court granted.

## STANDARD OF REVIEW

We review de novo a grant of summary judgment, applying the same legal standards as the district court. Snow ex rel. Snow v. City of Citronelle, 420 F.3d 1262, 1268 (11th Cir. 2005). "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). We review a district court's decision to keep supplemental jurisdiction under 28 U.S.C. section 1367(c) for abuse of discretion. Lucero v. Trosch, 121 F.3d 591, 598 (11th Cir. 1997).

## DISCUSSION

On appeal, Kenneth argues that: (1) genuine issues of material fact precluded summary judgment for the officers and Nurse Armenti on his deliberate indifference claims; (2) genuine issues of material fact existed regarding whether the County and Sheriff had municipal liability for policies that led to inadequate medical care for Tammy; (3) the district court erroneously exercised supplemental jurisdiction over the state-law medical malpractice claim after dismissing the federal section 1983 claims; and (4) genuine issues of material fact foreclosed summary judgment on his state-law medical malpractice claim.

*Deliberate indifference claims*

"[P]retrial detainees . . . plainly have a Fourteenth Amendment due process right to receive medical treatment for illness and injuries, which encompasses a right to psychiatric and mental health care, and a right to be protected from self-inflicted injuries, including suicide." Cook ex rel. Est. of Tessier v. Sheriff, 402 F.3d 1092, 1115 (11th Cir. 2005) (internal quotation marks omitted). "In a prisoner suicide case, to prevail under section 1983 for violation of substantive rights, under . . . the . . . [F]ourteenth [A]mendment, the plaintiff must show that the jail official displayed deliberate indifference to the prisoner's taking of his own life." Edwards v. Gilbert, 867 F.2d 1271, 1274–75 (11th Cir. 1989) (internal quotation marks omitted).

"To establish a defendant's deliberate indifference, the plaintiff has to show that the defendant had (1) subjective knowledge of a risk of serious harm; and (2) disregarded that risk; (3) by conduct that is more than mere negligence." Snow, 420 F.3d at 1268 (alterations adopted). "[I]n a prison suicide case, deliberate indifference requires that the defendant deliberately disregard a strong likelihood rather than a mere possibility that the self-infliction of harm will occur." Cook, 402 F.3d at 1115 (internal quotation marks omitted). "The mere opportunity for suicide, without more, is clearly insufficient to impose liability on those charged with the care of prisoners." Cagle v. Sutherland, 334 F.3d 980, 986 (11th Cir. 2003)

(alteration adopted). "Absent knowledge of a detainee's suicidal tendencies, . . . failure to prevent suicide has never been held to constitute deliberate indifference." Popham v. City of Talladega, 908 F.2d 1561, 1564 (11th Cir. 1990). In a deliberate indifference case, "[e]ach individual Defendant must be judged separately and on the basis of what that person knows." Jackson v. West, 787 F.3d 1345, 1353 (11th Cir. 2015).

**Deputy Boyer**: Deputy Boyer responded to the Greenways' domestic disturbance. Kenneth told Deputy Boyer that Tammy had attacked him, threatened to burn down their home, threatened to kill him, was bipolar, and had a drug addiction. Deputy Boyer observed Tammy firsthand after the fight. She appeared "fine" to him, did not protest her arrest, did not threaten to hurt herself, and gave no other indication to Deputy Boyer that she was suicidal. Neither Kenneth's nor Tammy's witness statement made any mention of suicide. And Deputy Boyer did not know that Tammy had attempted suicide in 2008. Though he knew Tammy was bipolar, Deputy Boyer also knew that Tammy would be screened for mental health issues once she arrived at the jail. In any event, "[a]nti-social, aggressive behavioral problems do not rise to the level of a strong risk of suicide." Jackson, 787 F.3d at 1354 (internal quotation marks omitted). Though Tammy was violent, knowledge of "homicidal tendencies" did not give Deputy Boyer belief of "a strong, or any,

likelihood of suicide." See Williams v. Lee Cnty., Ala., 78 F.3d 491, 493 (11th Cir. 1996).

**Sergeant Chapman**: Sergeant Chapman conducted the initial screening of Tammy at the jail. Tammy was calm, cooperative, and cheerful and exhibited no signs of trauma. Tammy told Sergeant Chapman that she had not previously had thoughts of suicide and did not currently have any such thoughts. And Tammy said that she had no history of psychiatric treatment. Sergeant Chapman also testified that she observed Tammy in a holding cell during booking, and Tammy made no attempt to hurt herself. Neither arresting officer told Sergeant Chapman that Tammy was suicidal or mentally ill.

Kenneth and Beauchamp told Sergeant Chapman on January 26 that Tammy was suicidal. By that point, however, Sergeant Chapman had "quite a few conversations" with Tammy that were all positive. She had a good rapport with Tammy and shared a laugh with her. Tammy never asked Sergeant Chapman to see a doctor, sought drugs, exhibited mental problems, or appeared suicidal. Given the screening she conducted, her interactions with Tammy, and her lack of knowledge of any issues with Tammy, we cannot say that one warning by two relatives gave Sergeant Chapman knowledge of a strong likelihood of a suicide risk. See Burnette v. Taylor, 533 F.3d 1325, 1332 (11th Cir. 2008) (holding that a jailer was not

deliberately indifferent to the risk of a fatal drug overdose in part because the jailer "observed [the inmate] 'laughing and talking' with his cellmates").

**Sergeant Langston**: Kenneth told Sergeant Langston that Tammy was suicidal, had attempted suicide previously, and needed to be watched. But Sergeant Langston gave Tammy an in-depth screening with numerous questions to gauge any potential for suicide. Tammy reported no previous or current thoughts of self-harm. Though Tammy may have given false answers to some of the questions in the screening, Kenneth has pointed to no evidence to show that Sergeant Langston would think Tammy was lying about not having suicidal thoughts. Sergeant Langston observed that Tammy neither said nor did anything out of the ordinary while he booked her. Tammy also told Langston that she wanted to go live with her boyfriend after her release from jail.

The only knowledge Sergeant Langston had of a suicide risk was Kenneth's statements, but Langston also knew that Kenneth was in jail because of a domestic dispute with Tammy. Placing an inmate on suicide watch requires taking away anything an inmate could use to hurt herself, clothing her in a "turtle" suit that cannot be used for self-harm, and placing her in isolation and under observation. The statements of a domestic violence defendant against his accuser attempting to place her under restrictive and invasive observation would not give Sergeant Langston knowledge of a strong likelihood of suicide. Moreover, Sergeant Langston knew

Tammy "had attempted suicide in the past, but [he] did not know when the attempt had taken place . . . [which,] without more, is not sufficient to put [Sergeant Langston] on notice of a strong likelihood rather than a mere possibility that the self-infliction of harm will occur." See Snow, 420 F.3d at 1269. Given Sergeant Langston's screening of Tammy, observation of her behavior, and conversation with her, Kenneth's warning did not give him notice of a strong likelihood of suicide.

**Sergeant Muse**: While incarcerated, Kenneth told Sergeant Muse that Tammy was suicidal and needed to be watched. And Beauchamp and other relatives called the jail and told Sergeant Muse that Tammy was suicidal. The relatives did not explain why they thought Tammy was suicidal or give any other supporting detail. And there is no evidence that Sergeant Muse thought Tammy needed to be under observation. Sergeant Muse believed Tammy did not pose a risk to herself based on the medical team's evaluation and decision to place her in the jail's general population. He also thought that Kenneth was having an anxiety attack when he told Sergeant Muse Tammy was suicidal and that Kenneth was otherwise "crazy."

Sergeant Muse observed Tammy throw down her thyroid medication after being denied an extra blanket. He also knew that she began banging on her cell door when he placed her in lockdown. But Sergeant Muse understood that inmates commonly became upset and acted out when placed in lockdown. And "[a]nti-social, aggressive behavioral problems do not rise to the level of a strong risk of

suicide." Jackson, 787 F.3d at 1354 (internal quotation marks omitted). Given Sergeant Muse's knowledge of Tammy's behavior and mental health evaluation and Kenneth's state of mind, neither the relatives' statements nor Tammy's outburst presented Sergeant Muse with a strong likelihood that Tammy would commit suicide. See Snow, 420 F.3d at 1265–66, 1269 (holding that an officer was not deliberately indifferent when he observed a health screening of the inmate that did not report any current suicidal ideation but he knew the inmate was taking prescription medications, had attempted suicide in the past, and was crying and upset at the time).

**Officer Brooks**: Officer Brooks had no contact with Kenneth and had no information about Tammy's mental health status or her medical or arrest history. He knew that Tammy had been put into lockdown and observed her screaming and banging on her cell door for an hour. Though his view into Tammy's cell was limited, Officer Brooks saw that she was not harming herself while banging on the door. Tammy then became quiet in her cell for about an hour, and Officer Brooks had someone check on her. "There is no evidence that [Officer Brooks] suspected that [Tammy] was suicidal." See id. at 1269.

**Captain Rice**: The only evidence linking Captain Rice to Tammy is that a relative told him at the time of her arrest in December 2015 and again in January 2016 that she posed a suicide risk. The relative did not elaborate on the risk or give

any supporting information. Captain Rice knew that the jail had measures instituted by healthcare professionals to screen inmates for mental health issues during the booking process. And he did not talk with either Kenneth or Tammy while they were incarcerated. The assertions of suicide risk here by a relative, unsupported by any detail, show only a "mere possibility" of suicide. See id. Given that Captain Rice also knew Tammy would be screened for mental health issues, he did not have "notice of a strong likelihood . . . that the self-infliction of harm will occur." See id.

**Nurse Armenti**: Kenneth brought a slightly different deliberate indifference claim against Nurse Armenti. He alleged that she acted with deliberate indifference by providing cursory medical care. The deliberate indifference analysis is the same as that for prisoner suicides. See Goebert v. Lee Cnty., 510 F.3d 1312, 1327 (11th Cir. 2007).

Kenneth has not met his burden. He told Nurse Armenti that Tammy was a suicide risk. But during a medical screening after Kenneth's warning, Tammy told Nurse Armenti that she had never considered or attempted suicide. And Tammy appeared "sweet" to Nurse Armenti. Though Nurse Armenti knew about Tammy's previous suicide attempt, she also knew that attempt had occurred four years earlier. During Tammy's incarceration in 2015, she reported no thoughts of self-harm and did not attempt suicide. Further, in January 2016, Tammy did not exhibit any signs suggesting a risk of suicide, assault, or abnormal behavior. Even after Tammy

refused to take her thyroid medication, Nurse Armenti testified that she did not think Tammy was experiencing a mental health crisis, posed a danger to herself, or needed to be observed. After Sergeant Muse placed Tammy on lockdown, Nurse Armenti did not see her or hear her banging on her cell door. When she received word of Tammy's suicide, she acted as quickly as possible to access her cell, cut her down, and perform CPR.

Kenneth argues that his expert report provided evidence of deliberate indifference. The expert opined that Nurse Armenti should have taken various actions, such as a more probing mental health screening. But the report offers nothing to show that Nurse Armenti had subjective knowledge of the risk that Tammy would harm herself. The district court did not err in granting Nurse Armenti summary judgment on the deliberate indifference claim.

*Municipal liability claim*

Kenneth argues that the County and Sheriff Speed have responsibility for Southern Health's policy that led to inadequate medical care for Tammy because Southern Health acted as the County's final policymaker. The County and Sheriff respond that sovereign immunity bars Kenneth's claim as to the Sheriff, but that we need not rule on sovereign immunity because the merits of his municipal liability claim fail in any event. We agree.

"Because the Eleventh Amendment represents a constitutional limitation on the federal judicial power established in Article III, federal courts lack jurisdiction to entertain claims that are barred by the Eleventh Amendment." McClendon v. Ga. Dep't of Cmty. Health, 261 F.3d 1252, 1257 (11th Cir. 2001) (citation omitted). But "sovereign immunity can be waived, [so] our precedent allows us to 'bypass' the threshold question whether an entity is entitled to sovereign immunity where it only 'conditional[ly] assert[s]' the defense." Silberman v. Miami Dade Transit, 927 F.3d 1123, 1137 (11th Cir. 2019) (quoting McClendon, 261 F.3d at 1259). Because the Sheriff and County urge us to affirm the district court's decision without reaching sovereign immunity, we examine the merits of Kenneth's municipal liability claim.

"A county is liable under [section] 1983 if one of its customs, practices, or policies was the moving force behind a constitutional injury." Grochowski v. Clayton Cnty., 961 F.3d 1311, 1321 (11th Cir. 2020) (internal quotation marks omitted). "[A] plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." McDowell v. Brown, 392 F.3d 1283, 1289 (11th Cir. 2004). "A plaintiff has two methods by which to establish a municipality's policy: identify either (1) an officially promulgated policy or (2) an unofficial custom or practice shown through the repeated acts of a final policymaker for the municipality."

Walker v. City of Calhoun, 901 F.3d 1245, 1255 (11th Cir. 2018) (alterations adopted).

Here, Kenneth has not shown any underlying violation of Tammy's constitutional rights. That is dispositive of his claim for municipal liability. See Knight ex rel. Kerr v. Miami-Dade Cnty., 856 F.3d 795, 821 (11th Cir. 2017) (affirming grant of summary judgment for a county and supervising officers because "[t]here can be no policy-based liability . . . when there is no underlying constitutional violation").

Even assuming that he has shown an underlying violation and that Southern Health acted as the County's final policymaker, Kenneth has not pointed to any specific custom or policy that caused Tammy's death. To the contrary, his expert referenced applicable Southern Health policies but opined only that Nurse Armenti had failed to follow these policies. That testimony forecloses any argument that Southern Health had a policy that caused Tammy's death. No causation exists when the policies were not followed. See Snow, 420 F.3d at 1271 ("It is only when the execution of the government's policy or custom inflicts the injury that the municipality may be held liable under section 1983." (internal quotation marks omitted; alterations adopted)). The district court did not err in granting summary judgment for the County and Sheriff.

*Supplemental jurisdiction over state law claim*

Kenneth next contends that the district court abused its discretion when it exercised supplemental jurisdiction over his state-law medical malpractice claim after dismissing his federal claims. If a district court has original jurisdiction over an action, it "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). A district court, however, "may decline to exercise supplemental jurisdiction" if one of four statutory requirements is met, including after "the district court has dismissed all claims over which it has original jurisdiction." Id. § 1367(c).

Kenneth, however, never raised the supplemental jurisdiction issue to the district court and has therefore waived it. "[T]he district court is in the best position to weigh the competing interests . . . in deciding whether it is appropriate to exercise supplemental jurisdiction," and it should have the chance to exercise its discretion "in the first instance." Lucero, 121 F.3d at 598. Without the district court's ruling on the matter, "[i]t would be difficult for us to review the issue." Id. For those reasons, we will not "overlook [Kenneth's] failure to present [his section] 1367(c) arguments to the district court." See id.

*State-law medical malpractice claim*

Finally, Kenneth argues that the district court erred in finding no genuine dispute of fact on the causation element of his medical malpractice claim. Kenneth alleged that Nurse Armenti was negligent in her care of Tammy and Southern Health had respondeat superior liability.

"In order to prove medical malpractice in Georgia," a plaintiff must show "(1) the duty inherent in the health care provider-patient relationship; (2) breach of that duty by failing to exercise the requisite degree of skill and care; and (3) that this failure is the proximate cause of the injury sustained." McDowell, 392 F.3d at 1295. "In order to establish proximate cause by a preponderance of the evidence in a medical malpractice action, the plaintiff must use expert testimony . . . ." Zwiren v. Thompson, 578 S.E.2d 862, 865 (Ga. 2003). "Instead of speaking in terms of possibilities, the expert's testimony must show as an evidentiary threshold that the expert's opinion regarding causation is based, at the least, on the determination that there was a reasonable probability that the negligence caused the injury." Id.(internal quotation marks omitted). "An expert may satisfy this requirement in one of several ways, including testimony that the only apparent cause of the plaintiff's injury was the defendant's action" or testimony that "based upon the expert's extensive experience in the field, that, in the absence of the alleged negligence, the

patient's condition could have been prevented from worsening." Swint v. Alphonse, 820 S.E.2d 312, 317 (Ga. Ct. App. 2018) (internal quotation marks omitted).

Here, Kenneth's expert offers nothing more than the possibility that Nurse Armenti proximately caused Tammy's death. The expert testified generally that Tammy's death was preventable and that the County's and Southern Health's policies were not followed. Those opinions do not show that Nurse Armenti caused Tammy's suicide. The expert does offer more specific opinions tied to Nurse Armenti, including that she should have consulted the jail doctor given Tammy's history of mental illness, caused Tammy to run out of her medications by not returning them when Tammy was released from jail in 2015, failed to notify jail staff about Tammy's special health needs, and delayed inappropriately in responding to the suicide. These opinions go to Nurse Armenti's negligence, but none of them provide any testimony that there was a reasonable probability Nurse Armenti's purported failures caused Tammy's death.

Moreover, as the district court pointed out, the expert testified in his deposition that Nurse Armenti's actions did not cause Tammy's suicide. He said that, though Nurse Armenti caused Tammy to run out of her medication, she would not have suffered withdrawal from her medications while incarcerated in January 2016. He also testified that a few extra doses of Tammy's anti-depressant would not have affected the outcome. Nurse Armenti's mental health screening was deficient,

said the expert, but it did "not proximately" cause Tammy's suicide and a more searching screening would "not necessarily" have indicated a suicide risk. The expert thought it was "purely hypothetical" that Tammy would have been fine had Nurse Armenti given her an extra blanket. And the expert could not conclude that it was "more likely than not" that Nurse Armenti's response to Tammy's hanging caused her to die. The district court did not err in granting summary judgment on that basis. See Mann v. Taser Int'l, Inc., 588 F.3d 1291, 1304 (11th Cir. 2009) (Under Georgia law "if the plaintiff medical expert cannot form an opinion with sufficient certainty so as to make a medical judgment, there is nothing on the record with which a jury can make a decision with sufficient certainty so as to make a legal judgment."). And because the evidence did not show that Nurse Armenti caused Tammy's death, Kenneth cannot hold Southern Health liable under a theory of respondeat superior. See Trabue v. Atlanta Women's Specialists, LLC, 825 S.E.2d 586, 584 (Ga. Ct. App. 2019) ("[W]here a defendant employer's liability is entirely dependent on principles of vicarious liability, such as respondeat superior, . . . a verdict exonerating the employee also exonerates the employer.").

## CONCLUSION

Deliberate indifference cases present "a difficult burden for a plaintiff to meet," Popham, 908 F.2d at 1563, and Kenneth has not met it here. He failed to establish a genuine issue of fact that any defendant had knowledge of a strong

likelihood that Tammy would commit suicide. He also did not show a genuine dispute that the County and Sheriff had an unconstitutional policy that caused

Tammy's death or that Nurse Armenti's negligence caused Tammy's death. And he never objected to the district court's exercise of supplemental jurisdiction. For these reasons, we affirm the district court's grant of summary judgment.

**AFFIRMED.**

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF GEORGIA**
**ATLANTA DIVISION**

Kenneth Greenway, As Surviving Spouse of Tammy Sue Greenway, and as Administrator of the Estate of Tammy Sue Greenway,

Plaintiff,

Case No. 1:17-cv-05420

Michael L. Brown
United States District Judge

v.

Southern Health Partners, Inc., et al.,

Defendants.

_____/

**ORDER**

Tammy Sue Greenway committed suicide while in pretrial custody at Banks County Jail. After she died, her husband, Plaintiff Kenneth Greenway, filed this lawsuit against Defendants Southern Health Partners, Inc., Nurse Alyssa Armenti, Deputy Christopher A. Boyer, Sergeant Kenneth Langston, Sergeant Jason Muse, Sergeant Sharon Chapman, Captain Scott Rice, Deputy James T. Brooks, Banks County, Georgia, and Sheriff Carlton Speed. Plaintiff asserts deliberate indifference claims under 42 U.S.C. § 1983, as well as a medical

negligence claim under Georgia law. Defendants now move for summary judgment. (Dkts. 63; 69.) The Court grants Defendants' motions.

## I. Background

Plaintiff was married to Mrs. Greenway at the time of her death, though they lived in separate rooms, had discussed divorce, and had romantic relationships with other people. (Dkt. 80 at 9, 29–30, 74–77.) Defendant Speed was the Sheriff of Banks County. (Dkt. 69-3 ¶ 224.) Defendant Rice was a Jail Administrator for the Banks County Sheriff's Office. (*Id.* ¶ 215.) Defendant Southern Health was hired by the Banks County Sheriff's Office to provide medical care to inmates at the Banks County Jail. (*Id.* ¶ 236.) Defendant Armenti, a licensed practical nurse, was employed by Defendant Southern Health to provide medical services at the jail. (Dkt. 63-1 ¶ 6.) Defendant Boyer was in the patrol division of the Banks County Sheriff's Office. (Dkt. 69-3 ¶ 21.) Defendants Langston, Chapman, Muse, and Brooks were officers at the jail. (*Id.* ¶¶ 93–94, 116, 154, 195.)

In 2008, Mrs. Greenway tried to kill herself by overdosing on pills. (*Id.* ¶ 1.) About seven years later, on December 19, 2015, she attacked Plaintiff at their home. (*Id.* ¶ 6.) Plaintiff called the police, who arrested

her for battery and put her in the Banks County Jail. (*Id.* ¶¶ 7–8.) Plaintiff bonded her out a few days later. (*Id.* ¶ 11.) Mrs. Greenway exhibited no intent to harm herself during that incarceration. (*Id.* ¶ 8.)

On January 23, 2016, Plaintiff and his wife got into another fight. (*Id.* ¶ 17.) They both called Crystal Beauchamp (Mrs. Greenway's daughter) to tell her about it. (Dkt. 70 at 74–75.) Another relative eventually called the police. (Dkt. 69-3 ¶ 20.) Defendant Boyer and another officer responded to the call and went to the Greenways' home. (*Id.* ¶ 22.) Mrs. Beauchamp arrived at the house shortly thereafter. (Dkt. 67, Ex. 1.) The fight apparently broke out after Mrs. Greenway's boyfriend threatened to end their relationship if she did not move to England to be with him. (Dkts. 70 at 18–19, 73; 80 at 92.)

The officers interviewed Plaintiff and his wife separately. (Dkt. 69-3 ¶ 25.) Each claimed the other was the aggressor. (*Id.* ¶¶ 28, 34, 36, 41.) Plaintiff said Mrs. Greenway had a drug addiction, was bipolar, attacked him, threatened to burn down their house, threatened to kill him, and alienated her family. (*Id.* ¶¶ 28–30, 38, 48.) Mrs. Greenway said Plaintiff attacked her. (*Id.* ¶ 36.) Both parties filled out witness statements. (Dkt. 69-1 at 3–4.) Neither said Mrs. Greenway was

suicidal. (*Id.*; Dkt. 69-3 ¶¶ 46, 65.) Nor is there other evidence anyone told Defendant Boyer that Mrs. Greenway was suicidal.[1] The officers arrested Plaintiff and Mrs. Greenway for aggravated assault and took them both to the Banks County Jail. (Dkts. 69-1 at 1–2; 69-3 ¶¶ 67, 87–88.)

Defendants Langston and Chapman booked Plaintiff and Mrs. Greenway into the jail. (Dkt. 69-3 ¶¶ 94, 116, 134.) As part of the booking process, they screened Mrs. Greenway for any suicide risk. (*Id.*

[1] Plaintiff and Mrs. Beauchamp both claim they told Defendant Boyer that Mrs. Greenway was suicidal. (*See* Dkts. 70 at 66, 80; 80 at 95–98.) The Court, however, cannot credit this claim because it is inconsistent with video and audio recordings of events at the house. (Dkt. 67, Ex. 1); *see Glasscox v. City of Argo*, 903 F.3d 1207, 1213 (11th Cir. 2018) ("[W]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record as with a video recording of the incident, so that no reasonable jury could believe it, a court should not adopt that version of the facts."). A Georgia Bureau of Investigation report also states that Mrs. Beauchamp reported hearing Mrs. Greenway say "she wanted to die," "she would kill herself," "she was going to hang herself," and "I'm just gonna kill myself." (Dkt. 63-6 at 18–21.) But these statements are inadmissible hearsay and inconsistent with the video and audio recordings. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1278 (11th Cir. 2009) ("[P]lacing otherwise inadmissible hearsay statements by third-parties into a government report does not make the statements admissible."); *Macuba v. Deboer*, 193 F.3d 1316, 1322 (11th Cir. 1999) ("The general rule is that inadmissible hearsay cannot be considered on a motion for summary judgment."). Even if the Court considered these statements, there is no evidence that they were made to (or heard by) Defendant Boyer.

¶¶ 97–98; Dkt. 69-1 at 5–7.) They asked her (among other things) whether she was contemplating suicide, had ever attempted suicide, or ever thought about harming herself. (*Id.*) Mrs. Greenway answered no to all of these questions and did not otherwise "present any problems or give any indication of suicidal intention." (*Id.*; Dkt. 69-3 ¶¶ 99, 101, 132–133.)

Plaintiff, on the other hand, told Defendant Langston that Mrs. Greenway was "a suicide risk" and "needed to be put on suicide watch." (Dkt. 69-3 ¶ 110.) When Defendant Langston asked whether *Plaintiff* was going to commit suicide, Plaintiff said "no, but ya'll need to watch Tammy." (*Id.* ¶ 108; Dkt. 80 at 182–83.) He explained, "I've never attempted [suicide] but she has and that's why I'm telling you you need to keep an eye on her." (Dkts. 69-3 ¶ 109; 80 at 183.)

The next day, Mrs. Beauchamp called Defendant Muse and told him Mrs. Greenway was "suicidal" and had "threatened to kill herself." (Dkt. 70 at 82.)[2] Plaintiff also told Defendant Muse that Mrs. Greenway "had

[2] To the extent Mrs. Beauchamp claims her aunt and sister told her they spoke to Defendants about Mrs. Greenway's suicidal intent, this testimony is inadmissible hearsay and Plaintiff has not shown it can be considered on summary judgment. (Dkt. 70 at 85–86); *see Robertson v.*

mental problems, that she'd had an argument with her boyfriend, and that she was a danger to herself and others, that . . . the whole time she was hitting on me she had nothing to live for, nothing left to live for," and that she "needed to be put on suicide watch." (Dkts. 80 at 102–03; 91 ¶ 12.) Plaintiff asked Defendant Muse several times throughout the day: "have you done anything with her? Have you put her on suicide watch? She's a danger to herself." (Dkt. 80 at 103.)

Defendant Muse eventually brought a nurse to see Plaintiff. (*Id.* at 103–06.) Plaintiff told the nurse — whose name he did not know — that Mrs. Greenway "was a suicide risk, that she had tried in the past, that[] all she had been saying the whole time that the fight was going on was she had nothing left to live for [and that] she needed to be on suicide watch." (Dkts. 80 at 104; 91 ¶ 12.) The nurse concluded Plaintiff was having an anxiety attack, and gave him medication that put him to sleep. (Dkt. 80 at 106.) Defendant Muse said Plaintiff was "crazy," and placed him on suicide watch. (*Id.*) Later that day, Defendant Langston asked

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*Interactive Coll. of Tech./Interactive Learning Sys., Inc.*, 743 F. App'x 269, 274 (11th Cir. 2018) (excluding hearsay testimony on summary judgment where "nothing in the record indicates that [the declarant] was going to testify at trial so as to reduce the hearsay testimony into an admissible form").

Plaintiff if he was suicidal, to which Plaintiff replied "no, I'm not. I keep trying to tell you Tammy is." (*Id.* at 107.) Defendant Langston took Plaintiff off suicide watch. (*Id.* at 109.)

Plaintiff bonded out of jail on January 25, 2016. (*Id.* at 119.) As he was bonding out, he and Mrs. Beauchamp told Defendant Chapman that Mrs. Greenway "was suicidal and needed to be put on suicide watch." (*Id.* at 122; Dkt. 91 ¶ 16.) Mrs. Beauchamp also said Mrs. Greenway "needed help with her drug addiction and the family wanted to leave her in jail to sober up." (Dkt. 69-3 ¶ 125; *see also id.* ¶ 118.)

On the morning of January 25, 2016, Defendant Armenti examined Mrs. Greenway and found that she "was not exhibiting any signs that suggested the risk of suicide, assault, or abnormal behavior." (Dkt. 63-1 ¶¶ 10–11.) Mrs. Greenway told Defendant Armenti she had never considered or attempted suicide. (*Id.* ¶ 11.) She also reported prior treatment for thyroid issues, depression, and bipolar disorder. (*Id.* ¶ 14.) She said she had been prescribed antidepressant and thyroid medications, but that she did not have them with her and had not taken them for two weeks. (*Id.* ¶¶ 14–15.) Defendant Armenti gave her a dose of thyroid medication, and then sent a records request to

Mrs. Greenway's pharmacy to determine whether she had other current prescriptions. (*Id.* ¶ 16.)

On January 26, 2016, at about 7:40 a.m., Defendant Armenti tried to administer another dose of thyroid medication to Mrs. Greenway. (*Id.* ¶ 18.) Defendant Muse was in the room. (*Id.* ¶ 19.) Mrs. Greenway asked him for a blanket. (*Id.*) Defendant Muse said he did not have one. (*Id.*) Mrs. Greenway became angry and threw her medication on the floor. (*Id.* ¶¶ 19–20.) Defendant Armenti filled out a "Refusal of Medical Treatment and Release of Responsibility" form. (*Id.* ¶ 20.) She did not believe that Mrs. Greenway was experiencing a mental crisis or otherwise presented a danger to herself. (*Id.* ¶ 23.) Nor did Defendant Muse believe Mrs. Greenway was mentally unstable or required ongoing observation, including because the medical team expressed no concerns about her being held in the general jail population. (Dkt. 69-3 ¶¶ 165, 174.)

At about 8:30 a.m., Defendant Muse put Mrs. Greenway on lockdown for throwing her pills on the ground and disrupting the pod. (*Id.* ¶ 171.) He made this decision in consultation with Defendant Rice. (*Id.* ¶¶ 172, 221.) Defendant Armenti was not involved in the decision.

(*Id.* ¶ 173.) After Mrs. Greenway was locked in her cell, she banged on the door — on and off — until approximately 9:30 a.m. (Dkt. 75 at 58 & Ex. 1.) About an hour later, Defendant Brooks called Defendant Muse and told him Mrs. Greenway was "exceptionally quiet." (Dkts. 69-3 ¶¶ 178, 209; 75 at 43.) Defendant Muse told him to ask an inmate in the cell next to Mrs. Greenway's to check on her. (Dkt. 69-3 ¶ 209.) Defendant Brooks complied. (*Id.* ¶ 210.) The inmate looked into Mrs. Greenway's cell and screamed. (*Id.* ¶ 211.) Defendant Brooks immediately called Defendant Muse and told him to send officers to Mrs. Greenway's cell. (*Id.* ¶ 212.) Defendant Brooks could not go to the cell himself because he was assigned to the jail's central tower station and was not authorized to leave his post. (*Id.* ¶¶ 196–199, 213.) Defendants Muse and Armenti (and two other officers) rushed to Mrs. Greenway's cell. (*Id.* ¶¶ 181–184, 214.) They found her hanging from a bed sheet. (*Id.* ¶ 185.) She still had a faint pulse. (Dkt. 79 at 18.) Defendants Muse and Armenti called for an ambulance and performed CPR. (Dkts. 69-3 ¶¶ 186–187; 91 ¶ 22.) Mrs. Greenway died shortly thereafter. (Dkt. 63-1 ¶ 27.)

Plaintiff filed this lawsuit in December 2017, alleging Defendants are liable for Mrs. Greenway's suicide. In Count 1 of his complaint, Plaintiff claims Defendant Armenti was deliberately indifferent to Mrs. Greenway's medical needs in violation of the Eighth and Fourteenth Amendments. (Dkt. 1 ¶¶ 41–44.)[3] Count 2 claims Defendants Banks County and Speed (in his official capacity as Sheriff of Banks County) are liable under *Monell v. Department of Social Services of City of New York*, 436 U.S. 658 (1978), for Defendant Southern Health's deliberate indifference to Mrs. Greenway's medical needs. (Dkts. 1 ¶¶ 45–51; 83 at 33–40.) Count 3 claims Defendants Boyer, Langston, Muse, Chapman, Rice, and Brooks (together, "Individual Officers") were deliberately indifferent to Mrs. Greenway's medical needs in violation of the Eighth and Fourteenth Amendments. (Dkt. 1 ¶¶ 52–56.) Count 4 asserts medical negligence claims against Defendant Armenti and, under the doctrine of respondeat superior, Defendant Southern Health. (Dkt. 1 ¶¶ 57–61.)

[3] Count 1 asserts the same claim against Defendant Southern Health but Plaintiff has since withdrawn that claim. (Dkt. 83 at 21.)

The Individual Officers move for summary judgment based on qualified immunity. Defendants Armenti and Southern Health move for summary judgment on the grounds that Defendant Armenti did not know Mrs. Greenway was a suicide risk and, even if she did, there is no evidence that her conduct proximately caused Mrs. Greenway's death. Defendants Banks County and Speed seek summary judgment on several grounds, including that their customs and policies did not cause Mrs. Greenway's death.

## II. Legal Standard

Rule 56 of the Federal Rules of Civil Procedure provides that a 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). A fact is material if "it might affect the outcome of the suit under the governing law." *W. Grp. Nurseries, Inc. v. Ergas*, 167 F.3d 1354, 1360 (11th Cir. 1999). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* at 1361.

The party moving for summary judgment bears the initial burden of showing a court, by reference to materials in the record, that there is

no genuine dispute as to any material fact. *Hickson Corp. v. N. Crossarm Co.*, 357 F.3d 1256, 1260 (11th Cir. 2004). A moving party meets this burden by "showing—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). The movant, however, need not negate the other party's case. *Id.* at 323.

Once the movant has adequately supported its motion, the nonmoving party then has the burden of showing that summary judgment is improper by coming forward with "specific facts" showing a genuine dispute. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Ultimately, there is no "genuine issue for trial" when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Id.* "[T]he mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48.

Throughout its analysis, the court must "resolve all reasonable doubts about the facts in favor of the non-movant, and draw all justifiable

inferences in his or her favor." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993). "It is not the court's role to weigh conflicting evidence or to make credibility determinations; the non-movant's evidence is to be accepted for purposes of summary judgment." *Mize v. Jefferson City Bd. of Educ.*, 93 F.3d 739, 742 (11th Cir. 1996).

## III. Plaintiff's Claims against the Individual Officers (Count 3)

Plaintiff claims the Individual Officers were deliberately indifferent to Mrs. Greenway's suicide risk. The Individual Officers say they are protected by qualified immunity.

### A. Qualified Immunity

"Section 1983 allows persons to sue individuals or municipalities acting under the color of state law for violations of federal law." *Hill v. Cundiff*, 797 F.3d 948, 976 (11th Cir. 2015).[4] "When defending against a § 1983 claim, a government official may assert the defense of qualified immunity." *Moore v. Sheriff of Seminole Cty.*, 748 F. App'x 229, 232 (11th

[4] Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . 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 [or] suit in equity . . . ." 42 U.S.C. § 1983.

Cir. 2018). An official asserting this defense must show that he "engaged in a discretionary function when he performed the acts of which the plaintiff complains." *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004). The burden then "shifts to the plaintiff to show that the defendant is *not* entitled to qualified immunity." *Id.* This requires the plaintiff to show that "(1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." *Id.* The plaintiff's two-part burden need not be "analyzed sequentially; if the law was not clearly established, [the court] need not decide if the Defendants actually violated the Plaintiff's rights." *Fils v. City of Aventura*, 647 F.3d 1272, 1287 (11th Cir. 2011).

To establish a violation of clearly established law, plaintiff must show "the preexisting law was so clear that, given the specific facts facing a particular officer, one must say that every reasonable official would have understood that what he is doing violates the Constitutional right at issue." *Gates v. Khokhar*, 884 F.3d 1290, 1302 (11th Cir. 2018). "The critical inquiry is whether the law provided the [officials] with fair warning that their conduct violated the Fourth Amendment." *Coffin v. Brandau*, 642 F.3d 999, 1013 (11th Cir. 2011). "Fair warning is most

commonly provided by materially similar [binding] precedent from the Supreme Court, [the Eleventh Circuit], or the highest state court in which the case arose." *Gates*, 884 F.3d at 1296; *see J W by & through Tammy Williams v. Birmingham Bd. of Educ.*, 904 F.3d 1248, 1260 n.1 (11th Cir. 2018) (only binding cases can create clearly established law).

> [A] pre-existing precedent is materially similar to the circumstances facing the official when the specific circumstances facing the official are enough like the facts in the precedent that no reasonable, similarly situated official could believe that the factual differences between the precedent and the circumstances facing the official *might* make a difference to the conclusion about whether the official's conduct was lawful or unlawful, in the light of the precedent.

*Merricks v. Adkisson*, 785 F.3d 553, 559 (11th Cir. 2015). "Exact factual identity with a previously decided case is not required," *Coffin*, 642 F.3d at 1013, but "[m]inor variations between cases may prove critical," *Youmans v. Gagnon*, 626 F.3d 557, 563 (11th Cir. 2010); *see Merricks*, 785 F.3d at 559 ("Minor variations in some facts . . . might be very important and, therefore, be able to make the circumstances facing an official materially different than the pre-existing precedents."). Ultimately, the unlawfulness of defendant's conduct must be "apparent" from the binding precedent on which plaintiff relies. *Coffin*, 642 F.3d at 1013.

If the plaintiff cannot point to a materially similar binding precedent, he can establish fair warning only if the defendant's conduct violated federal law "as a matter of obvious clarity." *Id.* at 1014; *see Gaines v. Wardynski*, 871 F.3d 1203, 1208–09 (11th Cir. 2017). This requires the plaintiff to show that (1) "the words of the federal statute or constitutional provision at issue are so clear and the conduct so bad that case law is not needed to establish that the conduct cannot be lawful," or (2) "the case law that does exist is so clear and broad (and not tied to particularized facts) that every objectively reasonable government official facing the circumstances would know that the official's conduct did violate federal law when the official acted." *Gaines*, 871 F.3d at 1209; *see Gates*, 884 F.3d at 1296–97 ("Authoritative judicial decisions may establish broad principles of law that are clearly applicable to the conduct at issue," or "it may be obvious from explicit statutory or constitutional statements that conduct is unconstitutional").

Obvious clarity cases are "rare" and constitute "a narrow exception to the normal rule that only case law and specific factual scenarios can clearly establish a violation." *Coffin*, 642 F.3d at 1014–15; *Fils*, 647 F.3d at 1291. This is because "[a] reasonable official's awareness of the

existence of an abstract right . . . does not equate to knowledge that *his* conduct infringes the right." *Coffin*, 642 F.3d at 1015. And "public officials are not obligated to be creative or imaginative in drawing analogies from previously decided cases." *Id.* "Thus, if case law, in factual terms, has not staked out a bright line, qualified immunity almost always protects the defendant." *Id.*

Properly applied, "[t]he qualified immunity defense provides ample protection to all but the plainly incompetent or those who knowingly violate the law." *Merricks*, 785 F.3d at 558. It "recognizes the problems that government officials like police officers face in performing their jobs in dynamic and sometimes perilous situations." *Id.* It gives those officials "breathing room to make reasonable but mistaken judgments," *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011), and allows them to "carry out their discretionary duties without the fear of personal liability or harassing litigation," *Carruth v. Bentley*, 942 F.3d 1047, 1054 (11th Cir. 2019). Given these policy goals and the broad scope of the defense, "courts should think long and hard before stripping defendants of immunity." *Ray v. Foltz*, 370 F.3d 1079, 1082 (11th Cir. 2004).

### B. Analysis

Plaintiff does not dispute — nor could he — that the Individual Officers acted within their discretionary authority during Mrs. Greenway's arrest and incarceration at Banks County Jail. The burden therefore lies with Plaintiff to show "(1) the defendant[s] violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." *Holloman*, 370 F.3d at 1264. Plaintiff has met neither prong.

#### 1. Whether the Individual Officers Violated a Constitutional Right

"In a prisoner suicide case, to prevail under section 1983 for violation of substantive rights, under the eighth or fourteenth amendment, the plaintiff must show that the jail official displayed *deliberate indifference* to the prisoner's taking of his [or her] own life." *Salter for Estate of Salter v. Mitchell*, 711 F. App'x 530, 537 (11th Cir. 2017). This requires the plaintiff to show the defendant "had subjective knowledge of a serious risk that the inmate would commit suicide and he [or she] disregarded that known risk." *Jackson v. West*, 787 F.3d 1345, 1359 (11th Cir. 2015).

"This is a difficult standard for a plaintiff to meet." *Salter*, 711 F. App'x at 537. The defendant must "deliberately disregard a *strong likelihood* rather than a mere possibility that the self-infliction of harm will occur." *Id.* (emphasis added). "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of [suicide] exists, *and he [or she] must also draw the inference*." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (emphasis added). "[A]n official's failure to alleviate a significant risk that he [or she] should have perceived but did not, while no cause for commendation" does not violate the Constitution. *Id.* at 838.

As a threshold matter, Plaintiff has not met his burden to show deliberate indifference here because he devotes only *one sentence* to arguing otherwise. After citing to his "statement of material facts" (much of which is copied and pasted from his medical expert's report), he baldly asserts: "Because there is a genuine factual dispute as to whether the Defendant deputies knew that Tammy Greenway was a suicide risk who had threatened to commit suicide in the jail, [their deliberate indifference] cannot be decided as a matter of law." (Dkt. 83 at 28–29.) He says nothing more about the issue. This is insufficient.

"It is well-settled that to determine whether a specific defendant was deliberately indifferent, each individual Defendant must be judged separately and on the basis of what that person knows." *Salter*, 711 F. App'x at 538. Plaintiff has not even tried to separate out the Individual Officers and show that each one "had subjective knowledge of a serious risk that the inmate would commit suicide and . . . disregarded that known risk." *Jackson*, 787 F.3d at 1359. Because "[i]mputed or collective knowledge cannot serve as the basis for a claim of deliberate indifference," and because a single sentence of argument would be insufficient in any event, Plaintiff has not met his burden to show a constitutional violation. *Nam Dang by & through Vina Dang v. Sheriff, Seminole Cty. Fla.*, 871 F.3d 1272, 1280 (11th Cir. 2017).

Even if Plaintiff had tried to meet his burden in the appropriate way, the Court finds, based on the facts properly in the record, that he could not do so.[5] Given the evidence of what each Individual Officer knew

[5] The record in this case is voluminous. Pursuant to Local Rule 56.1, the Court generally disregards any evidence or facts not included — in the required format — in the parties' statement of material facts. *See* LR 56.1, NDGa.; *Reese v. Herbert*, 527 F.3d 1253, 1268 (11th Cir. 2008) (compliance with Local Rule 56.1, which the Eleventh Circuit holds in "high esteem," is "the only permissible way . . . to establish a genuine

and believed, no reasonable jury could find that they consciously perceived and disregarded a "strong likelihood" that Mrs. Greenway would kill herself.

**a) Defendant Boyer**

On January 23, 2016, Defendant Boyer arrested Plaintiff and his wife for assaulting one another at their home. During the arrest, Plaintiff told Defendant Boyer that Mrs. Greenway had a drug addiction, was bipolar, attacked him, threatened to burn down their house, threatened to kill him, and had alienated her family. This information was insufficient to establish a "strong likelihood" of suicide. *See Jackson v. West*, 787 F.3d 1345, 1354 (11th Cir. 2015) ("Anti-social, aggressive behavioral problems do not rise to the level of a strong risk of suicide."); *Williams v. Lee Cty., Ala.*, 78 F.3d 491, 493 (11th Cir. 1996) (inmate's "homicidal tendencies" insufficient to establish "a strong, or any, likelihood of suicide"); *Bryant v. Greene Cty., Ala.*, 2014 WL 3689792, at

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issue of material fact"); *see also Chavez v. Sec'y Fla. Dep't of Corr.*, 647 F.3d 1057, 1061 (11th Cir. 2011) ("[D]istrict court judges are not required to ferret out delectable facts buried in a massive record."). The Court also declines to "distill every potential argument that could be made based upon the materials before it on summary judgment. . . . [T]he onus is upon the parties to formulate arguments." *Resolution Tr. Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995).

*7 (N.D. Ala. July 23, 2014) ("Knowledge that the detainee is or may be mentally ill does not, by itself, provide subjective knowledge of a strong likelihood of suicide.").

After Defendant Boyer drove Plaintiff to jail, he had no further involvement with Mrs. Greenway or her family. He was not present when Plaintiff and Mrs. Greenway were booked into jail. (Dkt. 69-3 ¶ 92.) And there is no cognizable evidence that anyone told him Mrs. Greenway was suicidal. Given the undisputed facts here, Plaintiff has not shown Defendant Boyer was deliberately indifferent to Mrs. Greenway's suicide risk.

**b) Defendant Langston**

Defendant Langston booked Plaintiff and Mrs. Greenway into Banks County Jail on January 23, 2016. During the bookings, Plaintiff told Defendant Langston (1) "ya'll need to watch Tammy"; (2) "I've never attempted [suicide] but she has and *that's why I'm telling you you need to keep an eye on her*"; and (3) Mrs. Greenway was "a suicide risk" and "needed to be put on suicide watch." Taken together, these statements indicated Mrs. Greenway was a suicide risk because she previously tried to kill herself. But Plaintiff did not say *when* Mrs. Greenway attempted

suicide. And "knowledge of a previous suicide attempt" at "some unspecified time in the past" is insufficient to establish deliberate indifference. *Johnson v. Conner*, 2015 WL 668030, at *7 (M.D. Ala. Feb. 17, 2015); *see Snow ex rel. Snow v. City of Citronelle, AL*, 420 F.3d 1262, 1269 (11th Cir. 2005) ("[Defendant] overheard [the deceased] tell the medical personnel that she had attempted suicide in the past, but [defendant] did not know when the attempt had taken place. . . . [T]his knowledge, without more, is not sufficient."). Mrs. Greenway's prior suicide attempt also was in 2008, which is too long ago to demonstrate the strong likelihood of another attempt. *Fowler v. Chattooga Cty., Ga.*, 307 F. App'x 363, 365 (11th Cir. 2009) (no deliberate indifference because "[t]he 1 July 2005 [suicide attempt] of which Sgt. Boyd was aware was, by 27 August [2005], remote in time").

Defendant Langston knew Plaintiff was in jail for assaulting (and being assaulted by) his wife only a few hours earlier. So when Plaintiff claimed his wife "needed to be put on suicide watch" — a highly invasive

and restrictive form of incarceration[6] — Defendant Langston had good reason to view Plaintiff's statement with suspicion.[7] *See* 307 F. App'x at 366 (potentially suicidal statement did not establish strong likelihood of suicide where officer "knew . . . that [the inmate] used idle threats of suicide to get his way"). Moreover, Defendant Langston booked Mrs. Greenway into the jail that night, and specifically screened her for suicide risk. She told him she had never attempted and was not contemplating suicide. She did not "present any problems or give any indication of suicidal intention." This information — obtained directly from Mrs. Greenway — flatly contradicted Plaintiff's assertion that she was a "suicide risk."

Defendant Langston's only other interaction with Mrs. Greenway's family was the next day, when Defendant Langston found Plaintiff on suicide watch. (*See* Dkt. 69-3 ¶¶ 113–115.) Defendant Langston asked him whether he was suicidal, to which Plaintiff replied "no, I'm not. I

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[6] Inmates placed on suicide watch are held in an isolation cell, checked every fifteen minutes, deprived of anything that could be used for self-harm, and required to wear a "turtle suit." (Dkt. 69-3 ¶¶ 247–249.)

[7] Mrs. Beauchamp testified, for example, that Plaintiff initially was "mad" at his wife, "wanted her to stay in jail," and "refuse[d] to help" her when she was incarcerated for assaulting him in December 2015. (Dkt. 70 at 65.)

keep trying to tell you Tammy is." This essentially repeated, by reference, what Plaintiff had told Defendant Langston the day before. Defendant Langston heard nothing further about Mrs. Greenway and was not on duty when she hung herself. (Dkt. 69-3 ¶¶ 113–115.) Plaintiff has not shown Defendant Langston knew there was a "strong likelihood" that Mrs. Greenway would kill herself.

**c) Defendant Chapman**

Defendant Chapman also booked Mrs. Greenway into the jail and screened her for suicide risk. (*Id.* ¶¶ 116, 130.) Mrs. Greenway was "calm and cooperative" and stated that she was not thinking — and had never thought — about harming herself. (Dkt. 69-1 at 5.) She also stated she had no history of psychiatric treatment. (*Id.*) When they put her in a holding cell, Mrs. Greenway did not try to hurt herself. (Dkt. 69-3 ¶ 136.) Defendant Chapman was present when Defendant Langston booked Plaintiff into the jail but did not hear Plaintiff say anything about Mrs. Greenway possibly hurting herself. (*Id.* ¶ 134.) The arresting officers who brought Plaintiff and his wife to the booking area also said nothing about Mrs. Greenway being suicidal. (*Id.* ¶ 141.)

Defendant Chapman had several conversations with Mrs. Greenway — with whom she "had a good rapport" — during Mrs. Greenway's incarceration. (Dkt. 73 at 9–10, 18–19.) Defendant Chapman never saw any signs of suicidality, mental problems, drug problems, or "anything like that." (*Id.* at 19, 58–59.) Defendant Chapman believed Mrs. Greenway "was actually pretty cheerful" and "perfectly fine" once she settled into the jail. (Dkts. 73 at 19, 50; 69-3 ¶ 129.) Mrs. Greenway shared a laugh with the officers, including Defendant Chapman, on at least one occasion in the jail. (Dkt. 73 at 11–12.)

Defendant Chapman helped process Plaintiff's release from jail on January 25, 2016. Plaintiff and Mrs. Beauchamp told her that Mrs. Greenway "was suicidal and needed to be put on suicide watch." Mrs. Beauchamp also said Mrs. Greenway "needed help with her drug addiction and the family wanted to leave her in jail to sober up." Defendant Chapman did not discuss Mrs. Greenway with any medical personnel. (Dkt. 69-3 ¶ 127.) She never saw Mrs. Greenway interacting with the jail nurse. (*Id.* ¶ 139.) And she was not on duty when Mrs. Greenway hung herself. (*Id.* ¶ 119.)

That Mrs. Greenway allegedly had a drug problem did not establish a strong likelihood of suicide. *See Bowens v. City of Atmore*, 171 F. Supp. 2d 1244, 1254 (S.D. Ala. 2001) (no deliberate indifference where defendant "knew or understood that Bowens used alcohol, was a drug addict, was HIV positive, and had experienced a seizure and heard voices telling her to kill herself"); *see also Fowler v. Chattooga Cty., Ga.*, 2008 WL 11432089, at *9 (N.D. Ga. Apr. 25, 2008) ("The fact that an inmate may fit the profile of a high suicide risk is not sufficient.").

The Court is therefore left with the statement by Plaintiff and Mrs. Beauchamp that Mrs. Greenway "was suicidal and needed to be put on suicide watch." This bald assertion is insufficient to establish a strong likelihood of suicide given the lack of any accompanying detail, the results of the suicide screening conducted by Defendant Chapman, and Defendant Chapman's own positive interactions with and observations of Mrs. Greenway. *See Bowens*, 171 F. Supp. 2d at 1257 (no deliberate indifference where inmate was seen "smiling, laughing and joking, and . . . gave no indication of being under the influence of drugs"). There is no evidence that Plaintiff and Mrs. Beauchamp explained the basis for their assertion, otherwise elaborated on it, or said anything about

Mrs. Greenway previously attempting or threatening to kill herself. *See Fowler*, 2008 WL 11432089, at *9 ("[T]he only circumstance recognized as providing a sufficiently strong likelihood of an imminent suicide attempt is a prior attempt or threat."). Defendant Chapman also knew the jail's medical team had only recently screened Mrs. Greenway for suicide risk. (Dkt. 73 at 21.)

"[I]nformation from family members that a detainee may be suicidal does not mean an officer knew of a strong likelihood of self-harm." *Bryant v. Greene Cty., Ala.*, 2014 WL 3689792, at *7 (N.D. Ala. July 23, 2014). The family's statements to Defendant Chapman at most "allow[] an inference that [she] was aware [Mrs. Greenway] entertained some thought of suicide." *Fowler*, 307 F. App'x at 366 (family member's statement to jail officer was insufficient). But, given other facts in the record, the statements "allow[] an inference of no more than a mere possibility of a suicide attempt," which is insufficient to prove deliberate indifference. *Id.*

**d) Defendant Muse**

Defendant Muse was a detention officer at Banks County Jail during Mrs. Greenway's incarceration. (Dkt. 69-3 ¶ 154.) He did not

book Mrs. Greenway (or Plaintiff) into the jail and was not involved in Plaintiff's release. (*Id.* ¶¶ 156, 161.) On January 24, 2016, Mrs. Beauchamp called him and said her mother was "suicidal" and had "threatened to kill herself." The same day, Plaintiff told Defendant Muse that Mrs. Greenway "had mental problems, that she'd had an argument with her boyfriend, and that she was a danger to herself and others, that . . . the whole time she was hitting on me she had nothing to live for, nothing left to live for," and that she "needed to be put on suicide watch."

These statements come close to establishing a strong likelihood of suicide. But, given other undisputed evidence in the record, the Court finds they demonstrate no more than a possibility of suicide. First, the statements conflicted with the medical staff's determination that Mrs. Greenway was not a suicide risk. Defendant Muse knew that the jail's medical team had recently screened and cleared Mrs. Greenway for placement in the jail's general population. (Dkt. 69-3 ¶ 165.) He was entitled to rely on the medical team's assessment. *See Acosta v. Watts*, 281 F. App'x 906, 908 (11th Cir. 2008) (prison official "cannot be held liable for a constitutional tort when his administrative decision was grounded in a decision made by medical personnel"); *Williams v.*

*Limestone Cty., Ala.*, 198 F. App'x 893, 897 (11th Cir. 2006) ("[O]fficials are entitled to rely on medical judgments made by medical professionals responsible for prisoner care.").

Second, there is no evidence that Mrs. Beauchamp explained or otherwise elaborated on her bald assertion that Mrs. Greenway was "suicidal" and "threatened to kill herself." It is not the law that "any prior suicide attempt or threat establishes a strong likelihood that a detainee will commit suicide." *Bowens v. City of Atmore*, 171 F. Supp. 2d 1244, 1255 (S.D. Ala. 2011). Absent further information about Mrs. Greenway's threat or suicidal ideation, Mrs. Beauchamp's generalized assertion does not show Defendant Muse viewed the suicide risk as substantial.[8]

Third, Plaintiff's statement essentially indicated that Mrs. Greenway should be put on suicide watch because, in their fight the day before, she said she had "nothing left to live for" after arguing with

[8] To the extent Mrs. Beauchamp told Defendant Muse that Mrs. Greenway "threatened to kill herself *if she couldn't go back to see [her boyfriend in England]*" — which is unclear from the record — this made the threat conditional, more remote, and overall less likely to result in imminent suicide. (Dkt. 70 at 83.) It had to do with some future event and personal relationship, not her immediate incarceration.

her boyfriend. But Mrs. Greenway's statement was ambiguous, uttered in the heat of the moment, and was already a day old. Defendant Muse knew she had since been booked into the jail — and undergone the required suicide risk screening — without incident. Defendant Muse also knew Plaintiff made these allegations about his wife's condition around the time he had an anxiety attack and needed medication. Shortly after Plaintiff's statement, Defendant Muse put Plaintiff on suicide watch and told others he was "crazy." Under these circumstances, Plaintiff's assertion gave Defendant Muse little reason to believe Mrs. Greenway's suicide risk was significant.

Fourth, even assuming the statements *should* have made Defendant Muse aware of a substantial risk of suicide, the undisputed evidence is that they did *not*. Plaintiff admits that Defendant Muse "did not view Tammy as having a mental problem because she was in general population, which indicated that the medical staff had not viewed her as being at risk." (Dkts. 69-3 ¶ 165; 83-1 ¶ 165.) Plaintiff further admits that Defendant Muse did not "feel like [Mrs. Greenway] needed to be under observation or anything." (Dkt. 74 at 33; *see* Dkts. 69-3 ¶ 174; 83-1 ¶ 174.) This is essentially an admission that Defendant Muse

did not believe Mrs. Greenway was significantly likely to kill herself, even if that belief was unjustified or unreasonable. This admission is dispositive because what matters is not that Defendant Muse was aware of "underlying facts indicating a sufficiently substantial danger" of suicide but that he *actually believed* the suicide risk was substantial. *See Farmer*, 511 U.S. at 837 ("[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of [suicide] exists, *and he must also draw the inference*." (emphasis added)). The undisputed evidence here is that Defendant Muse did not hold that belief. It is true, of course, that a factfinder typically may "conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* at 842. But that conclusion is foreclosed where, as here, it is undisputed that the official "knew the underlying facts but believed (albeit unsoundly) that the risk to which the facts gave rise was insubstantial or nonexistent." *Id.* at 844.[9]

[9] Defendant Muse also knew that, shortly before she hung herself, Mrs. Greenway (1) threw her medication on the floor and (2) intermittently banged on her cell door. Neither of these facts demonstrate a strong risk of suicide. Defendant Muse believed she threw her pills on the floor not because she was suicidal but "because she was mad about being denied an extra blanket." (Dkt. 69-3 ¶ 167.) Defendant

Plaintiff has not presented evidence from which a jury could conclude that Defendant Muse subjectively perceived and disregarded a "substantial likelihood" that Mrs. Greenway would commit suicide.

**e) Defendant Brooks**

Defendant Brooks worked in the jail's tower station on the day of Mrs. Greenway's suicide. He was not authorized to leave the tower because he was responsible for observing inmates and controlling doors in several portions of the jail. (Dkt. 69-3 ¶¶ 198–199.) He never received information about Mrs. Greenway's mental status, medical history, or arrest history. (*Id.* ¶ 201.) He was not on duty during her first two days at the jail. (*Id.* ¶ 200.) And he never spoke with Plaintiff. (*Id.* ¶ 200.)

He knew about, but had no role in, the decision to put Mrs. Greenway on lockdown. (*Id.* ¶¶ 197, 202.) He heard Mrs. Greenway bang on her cell door after she was locked down. (*Id.* ¶ 203.) His only view into Mrs. Greenway's cell was through a small window on her door. (*Id.* ¶ 204.) He could not see the bed from which she eventually hung herself. (*Id.* ¶ 205.) He saw her face and hands through the window

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Muse also knew it was not unusual for inmates to get "upset" and "act out" when they are put in lockdown. (Dkt. 74 at 73.)

when she was banging. (Dkt. 75 at 42.) She did not look like she was harming herself. (*Id.*) When Mrs. Greenway stopped banging and became quiet, he informed Defendant Muse, asked a nearby inmate to check on her, and ultimately instructed other officers to visit her cell. There is no evidence that Defendant Brooks acted with deliberate indifference.

**f) Defendant Rice**

Defendant Rice was a Jail Administrator for the Banks County Sheriff's Office when Mrs. Greenway committed suicide. (Dkt. 69-3 ¶ 215.) He never spoke with Plaintiff or Mrs. Greenway during their incarceration in January 2016. (*Id.* ¶ 216.) Mrs. Beauchamp never told him Mrs. Greenway was suicidal. (Dkts. 70 at 85; 76 at 60–62.)[10] He was

[10] A Georgia Bureau of Investigation report states that Mrs. Beauchamp reported telling Defendant Rice in December 2015 that Mrs. Greenway was "suicidal and needed a mental health evaluation." (Dkt. 63-6 at 20.) The Court disregards this evidence because it is inadmissible hearsay and conflicts directly with Mrs. Beauchamp's deposition testimony that she "didn't tell anybody at the jail [in December 2015] that [her mother] was suicidal . . . [n]ot until she got locked up again" in January 2016. (Dkt. 70 at 67); *see Lewis v. Residential Mortg. Sols.*, 2020 WL 584059, at *4 (11th Cir. Feb. 6, 2020) ("We also don't allow courts to consider hearsay at the summary judgment stage when the declarant has given sworn testimony during the course of discovery that contradicts the hearsay statement.").

not at the jail when Mrs. Greenway hung herself. (Dkt. 69-3 ¶ 222.) There is no evidence that he deliberately disregarded a strong likelihood of suicide.

**g) Conclusion**

Plaintiff has not shown that a reasonable jury could find the Individual Officers were deliberately indifferent to a strong likelihood that Mrs. Greenway would kill herself. Because Plaintiff has not met his burden to establish a constitutional violation, his claims against the Individual Officers are barred by qualified immunity.

**2. Whether the Individual Officers Violated Clearly Established Law**

Even if Plaintiff had shown the Individual Officers acted with deliberate indifference, his claims would still fail because he has not shown a violation of *clearly established* law. Plaintiff does not claim a materially similar precedent gave the Individual Officers fair warning that their conduct was unlawful. He instead invokes the obvious clarity doctrine. (Dkt. 83 at 32.) But he does so only in conclusory and generalized terms. After describing the legal standard for qualified immunity, he writes:

> Applying the above principles in the factual context of this case, it is clearly established law in the Eleventh Circuit that jail employees cannot be deliberately indifferent to an inmate's suicidal or self-harming behavior. *Edwards v. Gilbert*, 867 F.2d 1271 (11th Cir. 1989). It is clearly established "that an official acts with deliberate indifference when [he or she] delays providing an inmate with access to medical treatment, knowing that the inmate has a life-threatening condition **or** an urgent medical condition that would be exacerbated by delay." 116 F.3d 1419. Deliberate indifference may be inferred when jail personnel ignore without explanation a prisoner's serious medical condition that is known or obvious to them. *Thomas v. Town of Davie*, 847 F.2d 771, 772-73 (11th Cir. 1988). Because Plaintiff's factual allegations against [the Individual Officers], if proven, would constitute a violation of legal principles of which any reasonable jailer should have been aware, said Defendants are not entitled to summary judgment on the issue of qualified immunity.

(Dkt. 83 at 32–33.)

This is insufficient to meet Plaintiff's burden. "The burden of showing that an officer violated clearly established law falls on the plaintiff, and a plaintiff's citation of general rules or abstract rights is insufficient to strip a 1983 defendant of his qualified immunity." *Salter*, 711 F. App'x at 537. "[T]he plaintiff must *persuade* the court that the law was clearly established that the defendant's conduct *in the circumstances* amounted to deliberate indifference." *Jackson*, 787 F.3d at 1353 (emphasis added). In other words, "the clearly established law must be

particularized to the facts of the case" and not "defined at a high level of generality." *White v. Pauly*, 137 S. Ct. 548, 552 (2017). This is because "the dispositive question is whether the violative nature of [each defendant's] *particular* conduct is clearly established." *Birmingham Bd. of Educ.*, 904 F.3d at 1260 ("[T]he inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition."). Plaintiff has done exactly what these cases caution against. He cites general rules but does not even try to explain how they "clearly establish[] the law as to [the] specific set of facts" faced by each Individual Officer here. *Coffin*, 642 F.3d at 1015. He, therefore, fails to meet his burden.

Even if Plaintiff had tried to meet his burden in the appropriate way, the Court believes he could not have done so. Mrs. Greenway never exhibited to the Individual Officers any suicidal tendencies during her incarceration. She repeatedly told officers she was not suicidal. She did not attempt suicide (nor had she for several years). The jail's medical staff evaluated her and determined she was not suicidal. Plaintiff does not cite, and the Court has not found, any case in which qualified immunity was denied under similar circumstances. To the contrary, the

Eleventh Circuit recently noted there is "no case law that says 'beyond debate' that jail staff is not allowed to rely on a general practitioner's determination about an inmate's mental health." *Salter*, 711 F. App'x at 542.

The Eleventh Circuit has also upheld qualified immunity in cases worse than this one. In *Haney v. City of Cumming*, 69 F.3d 1098 (11th Cir. 1995), officers "found [the inmate] standing on the toilet in her cell and noticed that she had torn up her mattress and pillow." *Id.* at 1100. When they questioned her about her conduct, she replied that she "might as well kill" herself. *Id.* She then started crying. *Id.* The inmate was transferred to another jail a few hours later. *Id.* The officers never told anyone at the new jail about her suicidal behavior, and she hung herself less than an hour after the transfer. *Id.* The court found the officers were protected by qualified immunity because they did not violate clearly established law. *Id.* at 1103. If a suicidal statement made by an inmate directly to the defendant (hours before she kills herself) is insufficient to defeat qualified immunity, the concerns expressed by the third parties in this case are likely insufficient as well — especially since those concerns

were contradicted by a contemporaneous medical determination and the inmate's own statements and behavior.[11]

Plaintiff has not pointed to materially similar binding precedent under which the unlawfulness of the Individual Officers' conduct was apparent or beyond debate. And he has not shown this is "the exceptional case in which a defendant officer's acts are so egregious that preexisting, fact-specific precedent was not necessary to give clear warning." *Rodriguez v. Farrell*, 280 F.3d 1341, 1351 n.18 (11th Cir. 2002); *see Willingham v. Loughnan*, 321 F.3d 1299, 1302 (11th Cir. 2003) (absent materially similar precedent, "official conduct [must] be so egregious that further warning and notice beyond the general statement of law found in the Constitution or the statute or the caselaw is unnecessary"). The Individual Officers are entitled to qualified immunity — and

[11] Cases in which the Eleventh Circuit has denied qualified immunity likewise bear no resemblance to the facts here. In *Snow*, 420 F.3d 1262, for example, the court found that an officer was not entitled to qualified immunity because (among other things) (1) "a jailor told him that, sometime in the last month, [the inmate] had tried to cut her wrist while in custody there and had given them a lot of trouble"; and (2) *the officer himself* repeatedly told the inmate's family that the inmate "was suicidal." *Id.* at 1270. Here, there is no evidence that Mrs. Greenway recently attempted suicide or that any Defendant said she was suicidal. On the contrary, Defendants claim they did not believe or have information indicating that Mrs. Greenway was a suicide risk.

therefore summary judgment — because Plaintiff has not shown they violated clearly established law.

## IV. Plaintiff's Claims Against Defendants Armenti and Southern Health (Counts 1 and 4)

### A. Plaintiff's Deliberate Indifference Claim (Count 1)

Plaintiff claims Defendant Armenti was deliberately indifferent to Mrs. Greenway's medical needs in violation of the Eighth and Fourteenth Amendments. No reasonable jury could agree. There is no evidence Defendant Armenti believed Mrs. Greenway was a significant suicide risk. On the contrary, Defendant Armenti evaluated Mrs. Greenway a day before she hung herself and found she "was not exhibiting any signs that suggested the risk of suicide, assault, or abnormal behavior." (Dkt. 63-1 ¶ 11.) Defendant Armenti also spoke with her just hours before she died. Defendant Armenti "did not believe, based on Mrs. Greenway's behavior, that she was experiencing a mental crisis, or otherwise presented a danger to herself." (*Id.* ¶ 23.) Defendant Armenti was not involved in the decision to put Mrs. Greenway on lockdown, was not responsible for checking her cell, and did not see or hear her banging on the door. (*Id.* ¶¶ 22, 24.) When Defendant Armenti was told about Mrs. Greenway's hanging, she "acted as quickly as possible in gaining

access to the cell, assisting Sgt. Muse in cutting the sheet from Ms. Greenway's neck, and in attempting to resuscitate Ms. Greenway to the best of her nursing skills and training." (*Id.* ¶ 26.) These facts are undisputed and dispositive.

In his brief, Plaintiff says he told Defendant Armenti that Mrs. Greenway was suicidal. (Dkt. 83 at 4.) This claim finds no support in the record. Although Plaintiff did express concerns to a female nurse during his anxiety attack on January 24, 2016, he testified that he did not know the nurse's name. (Dkt. 80 at 103–06.) And it is undisputed that Defendant Armenti was not at the jail that day. (Dkt. 63-1 ¶ 7.) Defendant Armenti, for her part, testified that she never discussed Mrs. Greenway with Plaintiff or anyone else in Mrs. Greenway's family. (Dkt. 63-3 ¶¶ 9, 21.) This testimony stands uncontradicted.

Defendant Armenti is entitled to summary judgment on Plaintiff's deliberate indifference claim because no reasonable jury could find she deliberately disregarded a significant risk that Mrs. Greenway would kill herself.

## B. Plaintiff's Medical Negligence Claims (Count 4)

Plaintiff asserts Georgia negligence claims against Defendants Armenti and Southern Health. He alleges Defendant Armenti's treatment of Mrs. Greenway "fell below the standard of care applicable to the medical profession" and proximately caused her death. (Dkt. 1 ¶ 57.) He further alleges that Defendant Southern Health is jointly and severally liable for this negligence under the doctrine of respondeat superior. (*Id.* ¶ 60.) No reasonable jury could agree.

"To recover in a medical malpractice case, a plaintiff must show not only a violation of the applicable medical standard of care but also that the purported violation or deviation from the proper standard of care is the proximate cause of the injury sustained." *Swint v. Mae*, 798 S.E.2d 23, 25 (Ga. Ct. App. 2017). "To meet this burden, a medical malpractice plaintiff must present expert testimony because the question of whether the alleged professional negligence caused the plaintiff's injury is generally one for specialized expert knowledge beyond the ken of the average layperson." *Edokpolor v. Grady Mem'l Hosp. Corp.*, 819 S.E.2d 92, 94 (Ga. Ct. App. 2018). "In presenting an opinion on causation, the expert is required to express some basis for both the confidence with

which his conclusion is formed, and the probability that his conclusion is accurate." *Zwiren v. Thompson*, 578 S.E.2d 862, 865 (Ga. 2003). Ultimately, "[t]he expert must state his or her opinion regarding proximate causation in terms stronger than that of medical possibility—e.g., a reasonable degree of medical certainty or reasonable medical probability." *Swint*, 798 S.E.2d at 25.

Plaintiff's medical expert, Dr. Lawrence Mendel, has not offered the required causation testimony. Plaintiff relies on the following assertions in Dr. Mendel's expert report and deposition testimony:

- "The death of Tammy Greenway in the custody of the Banks County Jail was preventable."
- "Multiple jail and SHP policies designed to protect vulnerable individuals were not followed."
- Defendant Armenti's "actions caused Tammy Greenway to run out of her prescribed antidepressant [after her December 2015 incarceration], putting her at risk of withdrawal and decompensation of her serious mental illness."
- "[Mrs.] Greenway's untreated mental illness likely contributed to her volatile state leading ultimately to her arrest in January and ultimately to her suicide."
- Defendant Armenti failed "to notify Muse about [Mrs.] Greenway's serious and untreated illness . . . once disciplinary isolation was planned." Had she done so, this "would have helped the custody staff assure her placement into

> a cell that could be observed. Her failure to provide this notification created a substantial risk of harm."
>
> - "According to the statement of Nurse Armenti, [Mrs.] Greenway had a faint pulse suggesting a more rapid and coordinated response could have resulted in a different outcome."
>
> - "I think there were multiple opportunities to at the very least consider where [Mrs. Greenway] should be housed and reconsider whether she should be moved to another location."

(Dkt. 83 at 26–27.)

None of these statements indicate that Defendant Armenti's conduct proximately caused Mrs. Greenway's death, much less with the requisite degree of certainty. The law requires causation experts "to present a realistic assessment of the likelihood that the defendant's alleged negligence caused the plaintiff's injuries" and an "expression of probability that the expert's conclusion is accurate." *Beasley v. Northside Hosp., Inc.*, 658 S.E.2d 233, 236–37 (Ga. Ct. App. 2008). Dr. Mendel has not done this. Most of his assertions are not tied specifically to Defendant Armenti or to Mrs. Greenway's death. Of those that are, none causally links the two (certainly not proximately) with anything approaching a reasonable degree of medical certainty.

It is therefore unsurprising that Dr. Mendel repeatedly declined to say at his deposition that Defendant Armenti caused Mrs. Greenway's

death — and sometimes suggested affirmatively that she did not. For example, he testified that Mrs. Greenway "would not have been experiencing withdrawal symptoms during her January [2016] incarceration," even if Defendant Armenti negligently caused her to run out of antidepressants in December 2015. (Dkt. 63-1 ¶ 28.) He also said that, even if Defendant Armenti negligently failed to give Mrs. Greenway antidepressants in January 2016, "it was probably too late for [the antidepressants] alone to make a difference." (Dkts. 63-1 ¶ 29; 81 at 73.) He testified that Mrs. Greenway's bipolar disorder and prior suicide attempt did not require her to be put on suicide watch. (Dkt. 63-1 ¶ 30.) And he testified that, even if Defendant Armenti was negligently slow in her response to the hanging, he could not say a faster response would have prevented Mrs. Greenway's death. (*Id.* ¶ 33.)[12]

Plaintiff's expert, at best, raises the "possibility" that Defendant Armenti's conduct proximately caused Mrs. Greenway's death. *Swint*,

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[12] Dr. Mendel also testified that any deficiencies in Defendant Armenti's mental health screening of Mrs. Greenway did "not proximately" cause her suicide — and that a better screening would "not necessarily" have identified a suicide risk. (Dkt. 63-1 ¶ 31.) He further testified that, even if Defendant Armenti had ensured Mrs. Greenway received the extra blanket she requested based on an allegedly "legitimate medical need," he could not say this would have prevented the suicide. (*Id.* ¶ 32.)

798 S.E.2d at 25. But he never establishes the required causal link with "a reasonable degree of medical certainty or reasonable medical probability." *Id.* This is fatal to Plaintiff's negligence claim against Defendant Armenti, which in turn dooms Plaintiff's respondeat superior claim against Defendant Southern Health. *See Lewis v. Stewart*, 2018 WL 6046832, at *6 (M.D. Ga. Nov. 19, 2018) ("Under the doctrine of respondeat superior, an employer's liability is purely derivative of its employee's liability; thus, where the claim against the employee fails, so must the claim against the employer."); *Zwiren*, 578 S.E.2d at 865 ("[I]f the plaintiff medical expert cannot form an opinion with sufficient certainty so as to make a medical judgment [about causation], there is nothing on the record with which a jury can make a decision with sufficient certainty so as to make a legal judgment.").

Defendants Armenti and Southern Health are entitled to summary judgment on Plaintiff's medical negligence claims because, given the expert testimony here, no reasonable jury could find Defendant Armenti's alleged negligence proximately caused Mrs. Greenway's death.

## V. Plaintiff's Claims Against Defendants Banks County and Speed (Count 2)

Plaintiff asserts *Monell* claims against Defendant Banks County and Defendant Speed in his official capacity as Sheriff of Banks County. Plaintiff says Defendant Southern Health established customs and policies for inmate medical care on behalf of Defendants Banks County and Speed. He then says Defendant Armenti exhibited deliberate indifference to Mrs. Greenway's health needs as a result of these customs and policies — and that Defendant Banks County and Speed are liable for that indifference under *Monell*. No reasonable jury could agree.

As a threshold matter, Plaintiff's official capacity claim against Defendant Speed — a county sheriff — is barred by sovereign immunity. Plaintiff claims the Sheriff is liable for Defendant Armenti's deliberate indifference to Mrs. Greenway's medical needs. But "under Georgia law, a sheriff acts as an arm of the state when he provides medical care to inmates in a county jail and is therefore entitled to Eleventh Amendment immunity." *Brooks v. Wilkinson Cty., Ga.*, 393 F. Supp. 3d 1147, 1160 (M.D. Ga. 2019); *see Nesbitt v. Long*, 2019 WL 7842546, at *3 (M.D. Ga. Nov. 5, 2019) ("Because Butts County Sheriff's Office acted as an arm of the state in . . . providing medical care, Defendants are entitled to

immunity from Plaintiff's § 1983 official-capacity claims."); *Palmer v. Correct Care Sols., LLC*, 291 F. Supp. 3d 1357, 1366 (M.D. Ga. 2017) ("[F]or purposes of Eleventh Amendment immunity, . . . Sheriff Darr and Commander Collins acted as arms of the State in providing medical care to Muscogee County jail detainees.").

Plaintiff's claim against Defendant Banks County also fails from the get-go. "[L]ocal governments can never be liable under § 1983 for the acts of those whom the local government has no authority to control." *Turquitt v. Jefferson Cty., Ala.*, 137 F.3d 1285, 1292 (11th Cir. 1998); *see Teagan v. City of McDonough*, 949 F.3d 670, 675 (11th Cir. 2020) ("To prove municipal liability under § 1983, a plaintiff must show that the local government entity has authority and responsibility over the governmental function at issue."). "Georgia's Constitution precludes the county from exercising any authority over the sheriff," *Manders v. Lee*, 338 F.3d 1304, 1311 (11th Cir. 2003), who "enjoy[s] exclusive control over the provision of medical care," *Lake v. Skelton*, 840 F.3d 1334, 1341 (11th Cir. 2016); *see Benson v. Gordon Cty., Ga.*, 2012 WL 12952716, at *8 (N.D. Ga. Feb. 2, 2012) ("Gordon County has no control over the provision of medical care to inmates in the Gordon County Jail beyond its funding

obligations."). Because Banks County had no authority to control the Sheriff's allegedly deficient administration of inmate medical care to Mrs. Greenway, it cannot be liable for the injuries caused by that care.

Plaintiff's *Monell* claims also fail on the merits. "To establish municipal liability under § 1983, a plaintiff must show that: (1) his constitutional rights were violated, (2) the municipality had a custom or policy that constituted deliberate indifference to that constitutional right, and (3) the policy or custom caused the violation." *Henning v. Walmart Stores Inc.*, 738 F. App'x 992, 999 (11th Cir. 2018). Plaintiff has not shown any of these things.

First, the Court has already found that the Individual Officers and Defendant Armenti were not deliberately indifferent to Mrs. Greenway's medical needs. And Plaintiff himself concedes that Defendant Southern Health is not liable for any "federal civil rights violations." (Dkt. 83 at 21.) Because Plaintiff has not established an underlying constitutional violation, his *Monell* claims fail as a matter of law. *See Taffe v. Wengert*, 775 F. App'x 459, 467 (11th Cir. 2019) ("Because Taffe has not established that Thompson's constitutional rights were violated, neither the supervisory liability claim nor the municipal liability claim can succeed

as a matter of law."); *Aracena v. Gruler*, 347 F. Supp. 3d 1107, 1120 (M.D. Fla. 2018) ("[A] *Monell* claim is derivative of—and thus requires—an underlying constitutional violation.").

Second, even assuming Defendant Southern Health established customs and policies for medical care at the jail, Plaintiff has not pointed to a specific "policy" or "custom" that was adopted with "the requisite degree of culpability." *McDowell v. Brown*, 392 F.3d 1283, 1291 (11th Cir. 2004); *see Hurt v. Shelby Cty. Bd. of Educ.*, 198 F. Supp. 3d 1293, 1319 (N.D. Ala. 2016) ("The policy or custom must evince the requisite degree of culpability."). "A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality." *Kraus v. Martin Cty. Sheriff's Office*, 753 F. App'x 668, 674 (11th Cir. 2018). "[A] custom is a practice that is so settled and permanent that it takes on the force of law." *Id.* Plaintiff has not even identified the alleged custom or policy at issue here, much less shown that it qualifies as one or that it demonstrates the requisite culpability.

Third, Plaintiff has not shown that Defendant Southern Health's customs or policies caused Mrs. Greenway's death. "[I]t is only when the

execution of the government's policy or custom inflicts the injury that the municipality may be held liable under section 1983." *Snow*, 420 F.3d at 1271. In other words, "there must be a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *Id.* Plaintiff claims that Defendant Southern Health's "policies and protocols were *not* followed." (Dkt. 83 at 21 (emphasis added).) He further claims that this noncompliance — rather than any "defect in the policy itself" — resulted in Mrs. Greenway's death. (*Id.*) But this is a tacit admission that Mrs. Greenway's injury was not caused by "the execution of [Defendant Southern Health's] policy or custom." *Snow*, 420 F.3d at 1271. Plaintiff's *Monell* claims thus fail under his own theory.

No reasonable jury could find that Defendants Bank County and Speed are liable for Defendant Armenti's — or anyone else's — alleged deliberate indifference to Mrs. Greenway's health needs. Defendants Bank County and Speed are therefore entitled to summary judgment.

## VI. Conclusion

The Court **GRANTS** the Motion for Summary Judgment (Dkt. 63) filed by Defendants Southern Health Partners, Inc. and Nurse Alyssa Armenti.

The Court **GRANTS** the Motion for Summary Judgment (Dkt. 69) filed by Defendants Deputy Christopher A. Boyer, Sergeant Kenneth Langston, Sergeant Jason Muse, Sergeant Sharon Chapman, Captain Scott Rice, Deputy James T. Brooks, Banks County, Georgia, and Sheriff Carlton Speed.

**SO ORDERED** this 20th day of March, 2020.

MICHAEL L. BROWN
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 20-11147-CC

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KENNETH GREENWAY,
As Survivng Spouse of Tammy Sue Greenway as administrator
of the estate of Tammy Sue Greenway,

Plaintiff - Appellant,

versus

SOUTHERN HEALTH PARTNERS, INC.,
NURSE ALYSSA ARMENTI,
DEPUTY CHRISTOPHER A. BOYER,
SERGEANT KENNETH LANGSTON,
SERGEANT JASON MUSE, et al.,

Defendants - Appellees.

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Appeal from the United States District Court
for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: NEWSOM, BRANCH and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)