No. 22-2958

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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

Plaintiff-Appellant,

v.

SHERIFF OF WINNEBAGO COUNTY, ILLINOIS, in his official capacity, and

JEFF VALENTINE, Individually and as Agent,

Defendants-Appellees.

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

REPLY BRIEF FOR APPELLANT BETTYE JACKSON

Antonio Romanucci
Bhavani K. Raveendran
Sam Harton
ROMANUCCI BLANDIN
321 N. Clark Street,
Suite 900
Chicago, IL 60654
(312) 458-1000

Monica Kofron
Chase Woods
Student Counsel

Brian Wolfman
Esthena Barlow
Madeline Meth
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6582
wolfmanb@georgetown.edu

Counsel for Appellant Bettye Jackson

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Introduction and Summary of Argument

Eugene Washington spent his final minutes struggling to breathe without the prompt medical attention he urgently needed. Lamar Simmons, Washington's cellmate, tried desperately to report the emergency. But correctional officer Jeff Valentine, who was responsible for monitoring emergency calls, 2 App. 394-95, 397, took more than a minute to answer Simmons' first call. 1 App. 251. When Valentine finally picked up, Simmons said twice that his cellmate could not breathe. 2 App. 449. Valentine's only response was to chastise Simmons for using the emergency intercom. *Id.* Within thirty seconds, Valentine hung up without doing anything to help Washington. 1 App. 251; 2 App. 461. Valentine took even longer—about a minute and a half—to answer Simmons' second call making the same plea for help. 1 App. 251. In his answering brief, as in the district court, Valentine does not deny that he received these calls or provide any explanation for his intolerable delays in answering.

Valentine's attempts to excuse the fatal consequences of his callous disregard for duty fail. First, in seeking to justify the district court's causation ruling, he artificially narrows the scope of medical evidence that a finder of fact may consider in determining a nexus between a defendant's actions and a plaintiff's harm. In fact, this Court authorizes consideration of any evidence that "tends to confirm or corroborate" that connection. *Williams v. Liefer*, 491 F.3d 710, 715 (7th Cir. 2007). And, contrary to Valentine's assertion, no expert opinion is needed when the causal relationship—such as the need

here for prompt resuscitation efforts when Washington was deprived of oxygen—is well within a jury's "common experiences or observations." *Roe v. Elyea*, 631 F.3d 843, 865 n.23 (7th Cir. 2011) (quoting *Hendrickson v. Cooper*, 589 F.3d 887, 892 (7th Cir. 2009)).

Second, in an attempt to escape responsibility under the Fourteenth Amendment, Valentine maintains that his repeated delays in answering Simmons' calls were justified. But he nowhere accepts the reasonable inferences that must be drawn in Washington's favor: that Valentine understood Simmons' first report that Washington could not breathe but did nothing about it until roughly twelve minutes later, only after other officers were present to monitor Valentine's behavior. This Court should reject Valentine's attempt to apply an upside-down summary-judgment standard, seeking to draw inferences in his favor instead of viewing the facts, as the Court must, in the light most favorable to Washington. *See, e.g.*, *Est. of Perry v. Wenzel*, 872 F.3d 439, 446 (7th Cir. 2017).

Valentine is not entitled to summary judgment, and this Court should reverse and remand for trial.

Argument

I. A reasonable jury could conclude that Valentine's failure to respond while Washington struggled to breathe caused him harm.

To survive summary judgment, Washington needed to provide only sufficient evidence for a reasonable jury to conclude that Valentine's conduct (1) "unnecessarily prolonged and exacerbated [his] pain," *Williams v. Liefer*,

491 F.3d 710, 716 (7th Cir. 2007); *see Gil v. Reed*, 381 F.3d 649, 662 (7th Cir. 2004), or (2) left him with "a diminished chance of survival," up to or including causing his death, *Miranda v. County of Lake*, 900 F.3d 335, 347-48 (7th Cir. 2018); *see* Resp. Br. 19 (acknowledging loss-of-chance doctrine); Comm. on Pattern Civ. Jury Instructions, Federal Civil Jury Instructions of the Seventh Circuit 171-72 (2017) (same).[1] Washington has provided sufficient evidence for a reasonable jury to find causation on both grounds.

A. Washington provided valid medical evidence of causation.

Valentine is mistaken that Washington has cited only "a 'timeline of events' and 'common sense'" but not "any medical evidence." *See* Resp. Br. 26. This Court's understanding of valid medical evidence of causation is broad and flexible. In a delay-of-medical-care case, it includes, for example, a plaintiff's non-expert "testimony, his medical records, and his treatment" so long as they "tend[] to confirm or corroborate … that the [defendant's] delay was detrimental." *See Williams*, 491 F.3d at 715-16; Opening Br. 22. "[O]nly in the rare instance that a plaintiff can proffer *no* evidence that a delay … exacerbated an injury should summary judgment be granted on the issue of causation." *Gayton v. McCoy*, 593 F.3d 610, 624 (7th Cir. 2010) (emphasis added); *see* Opening Br. 21. Washington's evidence comfortably surpasses this threshold.

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[1] Available at https://www.ca7.uscourts.gov/pattern-jury-instructions/7th_cir_civil_instructions.pdf.

1. "[M]edical records," such as the responding EMTs' emergency medical report, Dr. Peters' autopsy report, and his testimony on the duration and disease progression of cardiac arrhythmia, are the kinds of evidence that this Court has considered valid in delay-of-medical-care cases. *See Miranda*, 900 F.3d at 347-48; *Williams*, 491 F.3d at 715; Opening Br. 22. These records and testimony support Washington's claim because they would "assist the jury in determining whether [Valentine's] delay exacerbated [Washington's] condition or otherwise harmed him," *see Williams*, 491 F.3d at 715, including by reducing his chance of survival, *see Miranda*, 900 F.3d at 347.

Dr. Peters' autopsy report, which Valentine acknowledges is "medical evidence," Resp. Br. 23-24, describes Washington's "single deep gasping breaths with long pauses between each followed by a series of fast shallow breaths." 1 App. 216; *see also* 2 App. 485 (EMT report). Dr. Peters provided further context, testifying that Washington's cardiac arrhythmia was "likely due to … lack of oxygen in the blood that causes the heart to go into an abnormal rhythm," which leads to the "absence of a heart rate"—that is, to death. 1 App. 213-14. But, as Dr. Peters explained, death is not instantaneous; it can occur after "many minutes." 1 App. 213. And, as we now explain, other medical evidence demonstrates that Washington's death did, in fact, occur over many minutes—minutes in which Valentine could have acted to bring life-saving medical care to Washington but did not.

First, at 4:52 a.m., fifteen minutes after Simmons' first call to Valentine, a defibrillator administered to Washington indicated "shock advised,"

meaning that the defibrillator still detected cardiac activity. *See* Opening Br. 14; ECF 55-3 at 58 (Heinzeroth Dep.) (relying on defibrillator to conclude that Washington "still had a chance" because "the [defibrillator] will only shock if there's electrical activity in the heart"). Indeed, Valentine has conceded the key points in this regard. He acknowledges both that the defibrillator called for a shock to Washington at about 4:52 a.m., "one to two minutes after the Code 100" was issued, *see* Resp. Br. 8; 1 App. 251, and that a defibrillator directs first responders to administer a shock only when it "detects a heartbeat," 1 App. 69 (Defs.' Statement of Material Facts).

Second, the EMTs who responded to the emergency estimated that Washington's heart did not stop until between 4:52 a.m. and 4:54 a.m. Opening Br. 15; *see* 2 App. 485 (EMT report). The medical evidence thus demonstrates that Washington continued to show signs of life for at least fifteen minutes after Simmons' initial call for help.

2. Valentine maintains that Dr. Peters' statement that death from cardiac arrhythmia "can happen either 'very fast or very slowly'" is not medical evidence supporting Washington's claim because it would require a jury to speculate as to when Washington died. *See* Resp. Br. 24 (quoting 1 App. 213). But Dr. Peters' statement must be viewed in the light most favorable to Washington and considered in conjunction with the other evidence. Alongside the evidence just reviewed, as well as Dr. Peters' related statement that death by cardiac arrhythmia *can* occur over the course of "many minutes," Dr. Peters' statement that Washington's death could have

happened "very fast or very slowly" would allow a jury to conclude that Washington remained alive at least fifteen minutes after Simmons' first call. *See* 1 App. 213.

3. Valentine criticizes our citation of online medical sources. Resp. Br. 15, 29. But we cite those sources only to underscore the common-sense meaning of the medical evidence in the record, just as this Court has done in other cases involving delayed medical care to prisoners. In *Glisson v. Indiana Department of Corrections*, 849 F.3d 372, 376 (7th Cir. 2017), this Court cited Medicine Net to explain that an inmate experiencing "loss of weight and muscle mass" was "starving." In *Grieveson v. Anderson*, 538 F.3d 763, 769-70 (7th Cir. 2008), it cited WebMD.com to explain that a particular drug is a "narcotic-like pain reliever." And in *Greeno v. Daley*, 414 F.3d 645, 651, 654 & n.3 (7th Cir. 2005), it cited the American Gastroenterological Association's website to explain that because ibuprofen can cause ulcers, the drug is not recommended for patients who, like the plaintiff in that case, suffer from ulcers.

It therefore makes sense to cite, for example, an informational web page about defibrillators to explain why a defibrillator administers a shock, *see* Opening Br. 8—particularly when, as here, Valentine has acknowledged the same evidence, and it appears in the record, *see* 1 App. 69 (Defs.' Statement of Material Facts); *see also* ECF 55-3 at 58 (Heinzeroth Dep.). It is appropriate to consult a medical journal explaining the common-sense understanding that timely CPR and defibrillation can improve survival chances, *see*

Opening Br. 24-25; *infra* at 11-12, which, again, is reflected in the record, *see* 1 App. 68-69 (Defs.' Statement of Material Facts) (describing CPR and defibrillation as "used to resuscitate an unresponsive individual"); 2 App. 485 (EMT report) (EMTs attempting CPR and defibrillation on Washington upon their arrival).

4. Valentine concedes that a pretrial detainee's evidence that delayed medical treatment caused a due-process violation need not include expert testimony. Resp. Br. 18; *see, e.g.*, *Miranda*, 900 F.3d at 347. Valentine nonetheless argues that, in this case, Washington was required to present an expert opinion on the ultimate issue of causation. Resp. Br. 31.

That is incorrect. "[N]o expert testimony is required to assist jurors in determining the cause of injuries that are within their common experiences or observations." *Roe v. Elyea*, 631 F.3d 843, 865 n.23 (7th Cir. 2011) (quoting *Hendrickson v. Cooper*, 589 F.3d 887, 892 (7th Cir. 2009)); *see* Opening Br. 22, 26-27. If, as Valentine acknowledges, "the delayed administration of nitroglycerine that instantly relieves painful angina" presents a "simple question[]" of causation not requiring expert proof, *see* Resp. Br. 31-32 (discussing *Williams*, 491 F.3d 710), then so, too, does the delayed administration of resuscitation efforts to an inmate who cannot breathe. Lay jurors understand that a patient who cannot breathe requires resuscitation without delay—whether because they know that seconds count when a lifeguard rescues an unresponsive drowning victim, or because they intuitively understand that immediate CPR was required to resuscitate

National Football League player Damar Hamlin when he collapsed on the field earlier this year, *see NFL Trainer Who Rushed to Damar Hamlin's Aid Lauded as 'Real Hero,'* The Guardian (Jan. 8, 2023), https://perma.cc/A36C-R47R.

In light of the "non-expert verifying medical evidence" outlined above (at 4-6), *see Ortiz v. City of Chicago*, 656 F.3d 523, 535 (7th Cir. 2011), and the common-sense nature of Washington's urgent medical need, no expert testimony was required to support the basic principle that resuscitation efforts, when they are needed, are needed as soon as possible. *See* Opening Br. 26-27.

B. Based on Washington's evidence, a reasonable jury could conclude that Valentine's conduct increased Washington's suffering, reduced his chance of survival, and caused his death.

1. Valentine "unnecessarily prolonged and exacerbated" Washington's suffering.

When Simmons placed his first call, Washington was experiencing medical distress during which he was "lifting his back up off the bed and trying to get some air." 2 App. 451 (Simmons Dep.); 2 App. 485 (EMT report) (noting that Washington was "gasping for air"); 1 App. 216 (autopsy report). A reasonable jury could find that Valentine's failure to respond to Simmons' calls for help "unnecessarily prolonged and exacerbated" Washington's suffering. *Williams*, 491 F.3d at 716.

Valentine relies on the distinction between a delay in the provision of medical care and an outright denial of medical care, arguing that

Washington is limited to claiming delay alone because prison staff provided medical care when they eventually attempted resuscitation. *See* Resp. Br. 18-19. But on the question of prolongation of Washington's pain and suffering, which is distinct from the question of his survival, Washington has effectively shown an outright denial of medical care. Valentine undisputedly did nothing to alleviate Washington's observable suffering until at least the end of Simmons' second call. *See* 2 App. 449-51 (Simmons Dep.) (describing Washington's labored breathing from the moment Simmons awoke until after Simmons' second call). Washington's suffering was ongoing, and each moment it persisted was another moment in which Valentine denied Washington the care he needed. Under these circumstances, as Valentine acknowledges, *see* Resp. Br. 18, "the causation inquiry is quite broad," *Ortiz*, 656 F.3d at 535, and a jury can infer that "the denial of … treatment, *in a specified period*, resulted in an injury," *Roe*, 631 F.3d at 867 (emphasis added); *see Williams*, 491 F.3d at 714-15.

To further explain: when a standard treatment exists and is denied "in a specified period," "a jury reasonably could infer that some of [the plaintiff's] injury and discomfort during the relevant period is attributable to the failure of [the prison] to treat him consistent with that standard." *Roe*, 631 F.3d at 866-67. Withholding the standard treatment, therefore, establishes the requisite causal connection to a plaintiff's ongoing suffering. *See id.* at 867. In other words, even if the standard treatment is not guaranteed to eliminate a plaintiff's suffering, the total *absence* of any treatment in the relevant time

period is guaranteed to allow that suffering to persist. *See id.* at 866-67; *see also Est. of Perry v. Wenzel*, 872 F.3d 439, 459 (7th Cir. 2017).

The standard treatment at the Winnebago County Jail, as anywhere, for an unresponsive person like Washington is to perform CPR immediately. 1 App. 130 (Posada Dep.) ("He was not responding, so you go directly to CPR."). Yet CPR was provided to Washington at the earliest at 4:50 a.m., at least twelve minutes later than it would have been available had Valentine answered Simmons' first call and immediately dispatched correctional officers. *See* 1 App. 251. For those twelve minutes, Washington was denied "the general standard of care." *Roe*, 631 F.3d at 866-67; *see* 1 App. 130 (Posada Dep.); 2 App. 325-26 (Heinzeroth Dep.). A reasonable jury could conclude that Valentine's decision to "actively ignore[]" Washington's plight during that time caused additional, unnecessary suffering. *Gayton*, 593 F.3d at 624-25; *see Roe*, 631 F.3d at 866-67.

2. Valentine's delay reduced Washington's chance of survival and caused his death.

a. Valentine asserts that the evidence "strongly suggests Washington was dead long before the guards arrived." Resp. Br. 26. That is just not true. Viewed in the light most favorable to Washington, the record indicates that Washington lived for at least fifteen minutes after Simmons' first call for help at 4:37 a.m. *See supra* at 4-6; Opening Br. 14; 2 App. 485 (EMT report).

The record also shows that immediately following Simmons' second call Washington's breathing pattern continued to change, drawing into question

Valentine's equivocal assertion that "Washington *may* have been in the fatal arrhythmic state Dr. Peters described the moment Simmons found him." *See* Resp. Br. 25 (emphasis added). Simmons testified that even after the second call disconnected (twelve minutes after Simmons placed his first call), 1 App. 251, Washington was still breathing, but his breathing pattern began noticeably "slowing down." 2 App. 458. In any case, Valentine's inconsistent view of what "may" have happened does not help him at summary judgment, when the Court "must give [Washington] the benefit of all conflicts in the evidence and all reasonable and favorable inferences." *Berry v. Peterman*, 604 F.3d 435, 438 (7th Cir. 2010).

b. Valentine's reliance on Washington's "unconscious and totally unresponsive" state to imply that his death was inevitable, *see* Resp. Br. 25-26, ignores the common-sense point that an unconscious and unresponsive person may be resuscitated. *See, e.g.*, *Bozeman v. Orum*, 422 F.3d 1265, 1273 (11th Cir. 2005). That is why "prison officials have a duty to administer life-saving care even in the absence of a pulse or respiration." *DiPace v. Goord*, 308 F. Supp. 2d 274, 284 (S.D.N.Y. 2004).

Given the purpose of CPR—to improve survival chances, even for unresponsive victims, *see DiPace*, 308 F. Supp. 2d at 284; 1 App. 130 (Posada Dep.); 1 App. 69 (Defs.' Statement of Material Facts) (recognizing CPR as a "life-saving measure[]")—Valentine's suggestion that this suit cannot succeed without precisely quantifying the likelihood that Washington would have survived is misplaced. *See* Resp. Br. 26. Evidence that expresses

chance of survival as a percentage range provides one indicator of causation that may be considered alongside other evidence. *See Bass ex rel. Lewis v. Wallenstein*, 769 F.2d 1173, 1183-84 (7th Cir. 1985). But it is neither determinative nor required. *See id.* at 1183 (citing percentage chance of survival alongside at least three other indicators of causation); *Miranda*, 900 F.3d at 347-48 (sufficiently demonstrating causation without citing percentage chance of survival). All that is required is evidence—whether from medical records, expert and non-expert testimony, or a combination thereof—that a defendant's delay left a plaintiff less likely to survive. *See Miranda*, 900 F.3d at 347. This Court has therefore cautioned that a plaintiff need not show "his chance for survival would have been 100%" with a swifter response because "[t]he law does not require and medicine cannot provide such exactitude." *Bass*, 769 F.2d at 1184.

c. This Court's causation analysis in *Miranda* is particularly useful. There, as here, the cause of death identified by autopsy—the plaintiff's starvation and dehydration—was the medical emergency that the defendants had ignored, supporting an inference that their "inaction diminished [the plaintiff's] chances of survival." *Miranda*, 900 F.3d at 341-42, 347; *see* 1 App. 221 (autopsy report).

And in *Miranda*, as here, the prompt action of other jail staff compared to the defendants was "relevant to the causation question" because it illustrated what the defendants could have done to help the plaintiff. *See* 900 F.3d at 348. Thus, in *Miranda*, a doctor returning from vacation

"immediately" recognized the medical emergency that his colleagues had ignored and "promptly acted," *id.* at 342, 348; here, after hearing Simmons' second emergency call, Officers Arbisi and Posada "took off to the pod" despite Valentine's earlier inaction, 2 App. 343 (Posada Dep.). Valentine ignores this significant overlap between the evidence demonstrating causation in *Miranda* and the evidence produced by Washington here.

Lemire v. California Department of Corrections & Rehabilitation, 726 F.3d 1062, 1085 (9th Cir. 2013), is also instructive. There, CPR-trained correctional officers responding to an "unconscious and unresponsive" inmate allegedly did nothing for five minutes. *Id.* at 1068-69, 1071-72, 1083. Despite testimony that the inmate was "beyond resuscitation" and that a defibrillator "produced a flat line," the court held that a jury could find that the officers' failure to give CPR caused the inmate's death. *Id.* at 1073, 1083. Because paramedics later attempted CPR for nearly twenty minutes, a reasonable jury, the court observed, could infer that "starting CPR earlier might have had a benefit." *Id.* at 1084. And because the inmate was estimated to have died "any time" during a twenty-four-minute period, much of which the officers spent in his cell, a jury could find that he "would not have been beyond revival" if the officers "had started CPR immediately." *Id.*

Likewise, here, the paramedics who responded to Washington kept trying to save his life more than forty minutes after Simmons' first call, 1 App. 251; 2 App. 484 (EMT report), suggesting that, in their professional judgment, "starting … earlier might have had a benefit," *see Lemire*, 726 F.3d

at 1084. Such prolonged efforts at resuscitation support a finding that Washington's fate was not sealed in the first few minutes of his cardiac arrhythmia. And, unlike the flatlined defibrillator in *Lemire*, which was not enough to support summary judgment for the officers, *see id.* at 1073, 1084-85, the defibrillator administered to Washington indicated "shock advised" at 4:52 a.m., *see* Opening Br. 14, well after Simmons placed his first emergency call. The "many minutes" during which Washington remained alive after Simmons found him and tried to notify Valentine, 1 App. 213; *see supra* at 4-5, would permit a reasonable jury to infer that Valentine could have reduced Washington's suffering, increased his chance of survival, and prevented his death by intervening right after Simmons' first call.

II. A reasonable jury could find that Valentine acted purposefully, knowingly, or recklessly and that his conduct was therefore objectively unreasonable.

Valentine acted purposefully, knowingly, and recklessly because he either was "aware" or "strongly suspected" that his deliberate failure to respond to Simmons' plea and his decision to ignore incoming calls would cause a detainee harm. *Pittman ex rel. Hamilton v. County of Madison*, 970 F.3d 823, 828 (7th Cir. 2020). Valentine's conduct was therefore objectively unreasonable. *See Miranda v. County of Lake*, 900 F.3d 335, 354 (7th Cir. 2018).[2]

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[2] If Valentine's disregard for the likely dire consequences of his actions was knowing, purposeful, or reckless, his conduct would necessarily be objectively unreasonable. Valentine himself equates a finding of knowing, purposeful, or reckless conduct with objective unreasonableness. *See* Resp. Br. 34; *see also Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 70 (2007) (holding that

A. Valentine's failure to act after hearing Simmons' urgent report that Washington could not breathe

Simmons' first call to Valentine presented a critical opportunity for Valentine to take reasonable steps that could have lessened Washington's pain and suffering, increased his chance of survival, and prevented his death. Instead, without explanation, Valentine chose not to respond to Simmons' pressing call to save his cellmate's life.

Valentine never addresses the facts on Washington's terms, as he must at this stage. That is, Valentine never argues that he acted reasonably if, in fact, he heard Simmons tell him that Washington could not breathe. But because the facts must be construed in favor of the non-moving party, *see, e.g.*, *Est. of Perry v. Wenzel*, 872 F.3d 439, 446 (7th Cir. 2017), a jury could conclude that Valentine *did* hear Simmons tell him that Washington could not breathe and then did not lift a finger to help. That behavior is objectively unreasonable, as Valentine effectively concedes by not contending otherwise. The Court should stop its due-process analysis there and remand for trial.

Valentine's gambit is to pretend the facts are different. That is of course impermissible on summary judgment. But even adopting Valentine's inverted approach to summary judgment and accepting his factual preferences, Valentine's conduct was still unreasonable.

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conduct that was not "objectively unreasonable" fell "well short" of recklessness); Model Penal Code § 1.13(16) (Am. L. Inst. 1962) (defining a "reasonable belief" as one that "is not reckless").

First, Valentine suggests that he had trouble hearing Simmons. Resp. Br. 36. But Winnebago County Jail guards are trained to ask detainees to step back and calmly repeat themselves when a guard has difficulty understanding a detainee over the emergency intercom. *See* Opening Br. 33; 2 App. 305 (Arbisi Dep.); 2 App. 327-28 (Heinzeroth Dep.). And officers are not permitted to hang up without first understanding the nature of the call. *See* 2 App. 302 (Arbisi Dep.); 2 App. 312-13 (Lolli Dep.); 2 App. 431 (Jacobson Dep.). Yet whether Valentine even asked Simmons to repeat himself before hanging up is disputed, 1 App. 161 (Valentine Dep.); 1 App. 196 (Simmons Dep.), and Valentine concedes that he did not inquire into the specific topic of Simmons' call, 1 App. 166 (Valentine Dep.).

Second, and perhaps paradoxically, Valentine maintains not that Simmons was hard to understand, but that he was reporting a problem with a "toilet" or "sink." *See* Resp. Br. 36, 38. But if this (fantastical) assertion were true, Valentine's decision to end the call immediately, before inquiring into the nature of the plumbing problem, would have deliberately flouted jail policy because certain plumbing problems constitute emergencies demanding a prompt response, as Valentine's colleagues and Valentine himself acknowledge. 2 App. 320 (Lolli Dep.); 2 App. 329 (Heinzeroth Dep.); 2 App. 406 (Valentine Dep.).

In any case, because a jury could conclude that Simmons said nothing resembling the words "toilet" or "sink," *see* Opening Br. 11-12, 31, it could also conclude that Valentine is lying in maintaining that he did not hear

Simmons report the emergency that took Washington's life. At least, a jury should have an opportunity to decide whether he is.

B. Valentine's failure to answer the intercom immediately

Valentine separately tries to justify his sixty- and ninety-second delays in responding to Simmons' calls. Resp. Br. 33-34. It should go without saying that any excuse for Valentine's delays in picking up the calls would be insufficient to justify summary judgment if, as just discussed, he heard Simmons report on the first call that Washington could not breathe.

Regardless, Valentine's delays were objectively unreasonable. First of all, there is no question about what happened: Valentine concedes that, after recognizing that Simmons' calls were incoming, he waited to answer for sixty and ninety seconds, respectively. *See* 1 App. 64-66 (Defs.' Statement of Material Facts); 2 App. 399 (Valentine Dep.). And unlike a physician negligently confusing two patients' medical charts or forgetting to provide medical coverage for a colleague on vacation, *see* Resp. Br. 40 (citing *Miranda*, 900 F.3d at 354), Valentine deliberately delayed answering, even though, by his own admission, he knew that the person on the other end could be reporting a potentially deadly emergency, 1 App. 159 (Valentine Dep.). That conduct was objectively unreasonable.

And that's not all. Even after the ninety-second delay in answering the second call, another officer, not Valentine, issued the jail-wide medical code to alert others to the crisis. 1 App. 67 (Defs.' Statement of Material Facts).

Indeed, whether Valentine himself took *any* action after learning that Washington was struggling to breathe is in serious doubt. Valentine says that after he understood the nature of the emergency on the second call, he hung up. Then, upon Officer Posada's and Arbisi's arrival, Valentine says he explained the situation to them. ECF 55-6 at 60-61.

This sequence of events is contested, however. Officer Posada testified that, as he approached the control desk, he did not hear Valentine communicating with anyone. ECF 55-4 at 26. And he first became aware of an emergency in Washington's cell because *he* saw the flashing green emergency button. 2 App. 333 (Posada Dep.). He then saw Valentine answer the call and heard Simmons explain that Washington could not breathe. ECF 55-4 at 19, 23 (Posada Dep.). And Officer Posada maintains that he, not Valentine, said that he and Officer Arbisi should go to Washington's cell. ECF 55-4 at 25. He did not recall Valentine saying anything at all. *See id.*

Valentine's only rejoinder is to fight the facts. Valentine suggests that his multiple responsibilities at the control desk, the other detainees' purported misuse of the intercom, and the intercom's low volume all somehow provide a legitimate reason for not promptly picking up Simmons' calls. *See* Resp. Br. 35. But each assertion is immaterial for the same reason: Valentine has never maintained that any of these things was the actual reason he did not respond to Simmons' calls promptly. 2 App. 403 (Valentine acknowledging that "[nothing] at the actual floor control desk … prevented" him from responding to Simmons); 1 App. 170-71 (Valentine acknowledging that he

did not delay answering Simmons' second call because he suspected Simmons was calling for a non-emergency); 2 App. 399 (Valentine acknowledging that he heard the audio alert but waited a full minute before answering). In fact, Valentine has never given any justification for not answering Simmons' calls immediately. *See* Opening Br. 30.

* * *

Like other jail officials who this Court has held acted unconstitutionally, when duty called, Valentine was a no-show. A nurse may not refuse an inmate treatment because her shift is about to end. *Gayton v. McCoy*, 593 F.3d 610, 613, 624 (7th Cir. 2010). Jail officials may not ignore a detainee's worsening condition after he suffers seizures because they prefer "passing the buck to" others. *Est. of Perry*, 872 F.3d at 456. An officer may not withhold life-saving medication and refuse to check on a detainee because the officer believes that is "not her job." *Ortiz v. City of Chicago*, 656 F.3d 523, 529, 533 (7th Cir. 2011). Here, too, when the emergency line rings, the officer on duty must pick up immediately. And when that officer is told that "my cellie can't breathe," because a person's life is at stake, the Constitution demands an instant response.

Conclusion

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

Respectfully submitted,

Antonio Romanucci
Bhavani K. Raveendran
Sam Harton
ROMANUCCI BLANDIN
321 N. Clark Street,
Suite 900
Chicago, IL 60654
(312) 458-1000

Monica Kofron
Chase Woods
Student Counsel

Brian Wolfman
Esthena Barlow
Madeline Meth
GEORGETOWN LAW APPELLATE COURTS IMMERSION CLINIC
600 New Jersey Ave., NW,
Suite 312
Washington, D.C. 20001
(202) 661-6582

Counsel for Appellant Bettye Jackson

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Certificate of Compliance

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

(i) complies with the type-volume limitation of Rule 32(a)(7)(B) and Circuit Rule 32(c) because it contains 4,759 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

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/s/ Brian Wolfman
Brian Wolfman