FILED
United States Court of Appeals
Tenth Circuit

October 24, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JAMES D. BUCHANAN,

Plaintiff - Appellant,

v.

TURN KEY HEALTH CLINICS, LLC; ANDY SIMMONS, in his official capacity as Muskogee County Sheriff; BOARD OF COUNTY COMMISSIONERS OF MUSKOGEE COUNTY; DR. WILLIAM COOPER; KATIE MCCULLAR, LPN,

Defendants - Appellees.

No. 22-7029
(D.C. No. 6:18-CV-00171-JFH)
(E.D. Okla.)

ORDER AND JUDGMENT*

Before **MATHESON**, **EID**, and **ROSSMAN**, Circuit Judges.

James Buchanan suffered multisystem trauma after being hit by a car. Six weeks later, he was booked into the Muskogee County Jail as a pre-trial detainee. He

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

was ambulatory then, but after 11 days in jail, he was unable to walk. He also suffered from a decreased range of motion in his upper extremities. He was transported to a hospital, where he was diagnosed with quadriplegia and a cervical epidural abscess.

Mr. Buchanan later filed this civil rights suit under 42 U.S.C. § 1983 against the Muskogee County Sheriff[1] and medical providers at the jail, contending they were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the defendants. Mr. Buchanan appeals. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm in part, reverse in part, and remand for further proceedings.

I. BACKGROUND

A. *Factual History*[2]

1. Car-Bicycle Crash

In mid-September 2016, a car struck Mr. Buchanan while he was riding his bicycle. The crash caused multisystem trauma, including a large hematoma in the prevertebral or retropharyngeal region. He was admitted to the intensive care unit at

[1] Sheriff Andy Simmons, currently named as a defendant in his official capacity, was not the sheriff during Mr. Buchanan's incarceration but was substituted in district court for the originally named sheriff. *See* Fed. R. Civ. P. 25(d).

[2] The extensive summary judgment record includes depositions; expert reports and declarations; medical, traffic, and jail records; interrogatory answers; document request responses; and video footage. We present the facts in the light most favorable to Mr. Buchanan, resolving all factual disputes and drawing all reasonable inferences in his favor. *Helvie v. Jenkins*, 66 F.4th 1227, 1231 (10th Cir. 2023).

Saint John's Medical Center in Tulsa. After two weeks of treatment, he was discharged in stable condition. He returned to the St. John's emergency department on October 14, 2016, complaining of neck pain. He was diagnosed with neck injury, cervical strain, and neck pain. Throughout October, he received medical and chiropractic treatment for neck, back, and arm pain; spasms with paresthesia; stiffness; and restricted movement. He was prescribed painkillers and muscle relaxers.

2. **Jail Booking; Turn Key Medical Services**

On November 3, 2016, Mr. Buchanan was booked into the Muskogee County Jail based on conduct unrelated to the car crash. A booking medical questionnaire noted Mr. Buchanan was suffering from broken ribs, a collapsed lung, burnt fingers, and a neck problem, and that he was taking anti-inflammatory muscle relaxers. A separate medical intake form recorded that he had been in a motor vehicle crash.

The County had contracted with Defendant Turn Key Health Clinics, LLC to provide medical services at the jail. Two defendants—Dr. William Cooper and Nurse Katie McCullar—were Turn Key employees. Mr. Buchanan asserted that he was not told how to access health care services at the jail and was unaware he could make a written request for medical care.

Nurse McCullar testified that if inmates had medical needs, they needed to contact the medical unit through a kiosk. Medical staff would then place the inmate on a "sick call" list. App., Vol. X at 2705. Eventually detention staff would take the inmate to the nurse's office. *Id.* All nurses regularly on site at the jail were licensed

practical nurses ("LPNs") with limited responsibilities. App., Vol. XIV at 3735-38; App., Vol. X at 2705.[3]

During a "sick call," an LPN was supposed to assess the inmate and consult a book of "standing orders"—a document "put in place by a physician or a medical provider, such as a nurse practitioner"—stating how to address the issue. App., Vol. X at 2705. The book is "like a standing prescription" for common ailments. *Id.* The LPNs were expected to call the doctor if the inmate's concern presented "something atypical." *Id.* at 2707.

3. **Medical Services for Mr. Buchanan – November 4-13, 2016**

On November 4, Mr. Buchanan was placed on the jail's "sick call" list. He claims that during the ensuing sick call, he told Nurse Delena Ayers that he needed to go to the hospital due to severe pain. She told him to lie down and that he would be given Naproxen. Dr. Cooper received a call from the jail and ordered the Naproxen. Mr. Buchanan claims the Naproxen was ineffective. Also on November 4, Mr. Buchanan signed a medical records release form for records about his earlier treatment. The form was not faxed to his previous medical provider until 10 days later, after his condition had deteriorated.

[3] "An LPN designation does not require an associate's or bachelor's degree . . . . " *Est. of Jensen v. Clyde*, 989 F.3d 848, 852 (10th Cir.), *cert. denied*, 142 S. Ct. 339 (2021). LPNs are generally "prohibited from prescribing medications, conducting health assessments, and diagnosing medical conditions." *Id.*

On November 6, Nurse McCullar placed Mr. Buchanan on the sick call list for shoulder pain complaints. She does not recall seeing him that day, and no record shows any nurse saw him that day.

On November 7, Mr. Buchanan was moved to a general population pod, where he slept on the common area floor. According to Mr. Buchanan, he had lost the use of his left arm by then. Due to his increasing paralysis and pain, two other inmates assisted him with his meals and getting him to the bathroom.

Around November 9, Mr. Buchanan began losing range of motion and feeling in his right arm. Each time a nurse or detention officer came by the pod, he told them he was losing feeling in his arm, was in pain, and needed to see the doctor. Mr. Buchanan stated that during the entire time he was in the pod, he was lying on a thin mat on the floor and crying out in pain.

On November 11, Mr. Buchanan called his brother Stan. He claims that a video recording of the call "clearly shows that [he] had no use of his left arm and limited use of his right arm." Aplt. Br. at 11. Our review of the video call shows he had limited use of each hand. During the call, Mr. Buchanan told Stan he could not use his left arm and was about to lose the use of his right hand and right arm. He complained he could barely talk because he was in so much pain. During the call, he began to cry.

During the night shift on November 11, Mr. Buchanan complained to Nurse Rosemary Kotas of decreased range of motion in his upper and lower extremities, limited range of motion in his neck, and pain. Nurse Kotas did not complete a

medical assessment but scheduled him for a doctor's appointment on November 15. According to Mr. Buchanan, around November 12 or 13, he lost feeling in his legs.

4. **Medical Services for Mr. Buchanan – November 14, 2016**

On the morning of November 14, Nurse McCullar was called to Mr. Buchanan's pod because he could not walk. He complained about worsening pain, inability to move his lower extremities, and tingling in his legs. Nurse McCullar did not recall taking his vital signs. She called Dr. Cooper and told him Mr. Buchanan was complaining that he could not walk. In response, Dr. Cooper scheduled Mr. Buchanan for an appointment the next day. Nurse McCullar also requested the medical records from Mr. Buchanan's earlier hospitalization.

On the evening of November 14, fellow inmates carried Mr. Buchanan to the dinner table, where he urinated on himself. Another inmate asked a jailer to call in a medical emergency. When the jailer ordered Mr. Buchanan to get up and take a shower, Mr. Buchanan said he could not get up and could not walk. The jailer argued with Mr. Buchanan, but after watching video footage of other inmates helping Mr. Buchanan move around the pod for the previous 24 hours, the jailer contacted Nurse Kotas.

Around 8:10 p.m., Nurse Kotas observed Mr. Buchanan sitting with his head on a table. He reported pain of "10" on a one-to-ten scale and complained of decreased range of motion in his extremities and neck. Nurse Kotas took his vital signs and reported an elevated heart rate of 116, blood pressure of 139/93, and oxygen saturation of 84 to 90 percent. She called Dr. Cooper, who told her to have

him transported to a hospital for evaluation. Within a half hour, Mr. Buchanan was sent to Hilcrest Medical Center in Tulsa.

At Hilcrest, Mr. Buchanan was diagnosed with quadriplegia and a cervical epidural abscess. He was hospitalized for an extended period and received multiple surgeries, physical and occupational therapy, and intravenous antibiotics. Although he significantly recovered from his quadriplegia symptoms, he continued to experience physical deficits.

B. ***Procedural History***

Mr. Buchanan filed this § 1983 action on May 31, 2018. He sued Nurse McCullar and Dr. Cooper in their individual capacities and brought municipal liability claims against Turn Key, the Sheriff (in his official capacity), and the Board of County Commissioners of Muskogee County.

Each defendant moved for summary judgment. Before entry of summary judgment, Mr. Buchanan moved for sanctions against the Sheriff for alleged spoliation of video evidence from the jail's surveillance cameras. The district court granted the summary judgment motions,[4] entered judgment against Mr. Buchanan, and denied his motion for sanctions as moot.

In granting summary judgment, the district court reasoned that Mr. Buchanan had failed to show that either Nurse McCullar or Dr. Cooper knew of and disregarded

[4] Mr. Buchanan conceded the Board of County Commissioners' motion for summary judgment.

an excessive risk of harm. Because Mr. Buchanan failed to establish a violation of his constitutional rights, the court held his § 1983 municipal liability claims against Turn Key and the Sheriff also failed. The court also rejected Mr. Buchanan's claim against the Sheriff because it found no causal relationship between overcrowding and understaffing at the jail and Mr. Buchanan's alleged constitutional violation. And it rejected his claims of systemic understaffing or other deficiencies against Turn Key for similar reasons, concluding Mr. Buchanan received timely treatment when jail staff believed emergent care was necessary.

II. **DISCUSSION**

"We review the grant of summary judgment de novo, and apply the same legal standard used by the district court under Federal Rule of Civil Procedure 56[a]." *Est. of Beauford v. Mesa County*, 35 F.4th 1248, 1261 (10th Cir. 2022). "The court shall grant summary judgment if the movant shows that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). We may review the record to determine whether any genuine issue of material fact was in dispute. *Est. of Beauford*, 35 F.4th at 1261. In doing so, "we must construe the facts in the light most favorable to the nonmovant and to draw all reasonable inferences in its favor." *Id.* But "[w]e do not have to accept versions of the facts contradicted by objective evidence, such as video surveillance footage." *Id.*

A. *Individual Defendants Nurse McCullar and Dr. Cooper*

1. **Legal Background**

"A prison official's deliberate indifference to an inmate's serious medical needs violates the Eighth Amendment." *Sealock v. Colorado*, 218 F.3d 1205, 1209 (10th Cir. 2000). "Pretrial detainees . . . are entitled to the same standard of medical care under the Due Process Clause of the Fourteenth Amendment." *Prince v. Sheriff of Carter Cnty.*, 28 F.4th 1033, 1043 (10th Cir. 2022). "Deliberate indifference involves both an objective and a subjective component." *Sealock*, 218 F.3d at 1209 (quotations omitted).

"The objective component is met if the deprivation is sufficiently serious," that is, "it is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Id.* (quotations omitted). Here, Nurse McCullar and Dr. Cooper do not contest that Mr. Buchanan satisfies the objective component. App., Vol. XIV at 3857; *see* Aplee. Br. (Turn Key) at 15-30.

"The subjective component is met if a prison official knows of *and* disregards an excessive risk to inmate health or safety." *Sealock*, 218 F.3d at 1209 (emphasis added) (quotations omitted). As to knowledge, "[t]he official must be aware of the facts from which the inference of a substantial risk of serious harm could be drawn and also draw that inference." *Lucas v. Turn Key Health Clinics, LLC*, 58 F.4th 1127, 1137 (10th Cir. 2023). "[K]nowledge of a substantial risk is a question of fact" and may be shown by circumstantial evidence. *Id.* (quotations omitted).

As to disregard, we consider whether the defendant (1) "failed to properly treat a serious medical condition" or (2) failed "as a gatekeeper [by preventing] an inmate from receiving treatment or [by denying] access to someone capable of evaluating the inmate's need for treatment." *Id.* "The inquiry under a gatekeeper theory is not whether the [defendant] provided *some* care but rather whether they fulfilled their sole obligation to refer or otherwise afford access to medical personnel capable of evaluating a patient's treatment needs when such an obligation arises." *Id.* at 1139. The same defendant may act both as a treatment provider and a gatekeeper. *See id.* at 1143 ("[A] physician's role often involves treating the patient while simultaneously considering the need for referral to someone with more specialized training at the same time.").

We may consider a defendant's medical training when analyzing whether that defendant knew of and disregarded a substantial risk to the plaintiff's health or safety. *Id.* at 1139-40.

2. **Application**

a. *Nurse McCullar*

Mr. Buchanan claims Nurse McCullar knew of the serious risk to his health and disregarded it by failing to treat him or by failing to act as a gatekeeper. *See* Aplt. Br. at 14, 37-38 & n.14. Because the record does not support his arguments on disregard, we affirm summary judgment for Nurse McCullar.

i. Treatment

Mr. Buchanan contends that Nurse McCullar should have applied the standing order for "muscular skeletal / sprains." Aplt. Br. at 14.[5] But the record shows the circumstances did not call for application of a standing order. Dr. Cooper testified that if a nurse did not believe a standing order fit the situation "but yet also didn't think it was an emergency," the proper course was to "[s]chedule [the patient] to see the provider." App., Vol. IV at 1097. Nurse McCullar testified that she was supposed to consult a physician for unusual situations, App., Vol. X at 2707, and that "this was not a sick call" that would have involved the use of standing orders because she had been called to see Mr. Buchanan in the pod, *id.* at 2714. No reasonable jury could find Nurse McCullar failed to properly treat Mr. Buchanan within her limited LPN role when she called Dr. Cooper instead of relying on the "muscular skeletal / sprains" standing order. Also, Mr. Buchanan has not shown that application of the standing order would have addressed his condition.

Mr. Buchanan also argues Nurse McCullar should have taken his vital signs before calling Dr. Cooper. But Mr. Buchanan has not explained how taking his vitals in the morning on November 14 would have treated his condition or given Nurse McCullar information that would have helped inform her or Dr. Cooper about the

[5] This contention is directly opposite to his statement that standing orders are "typically neither 'legal' nor 'appropriate'" and that an LPN "act[s] outside the scope of her training and practice by 'actually making diagnoses,' 'practicing medicine,' and doing 'prescriptive care,'" by using them. Aplt. Br. at 7 n.3 (quoting deposition of Todd Wilcox, App., Vol. X at 2649-51).

severity of his condition. A reasonable jury thus could not find Nurse McCullar's failure to take Mr. Buchanan's vitals was deliberately indifferent.

ii. Gatekeeper

Nurse McCullar fulfilled her gatekeeper role because she did not "deny [Mr. Buchanan] access to medical personnel capable of evaluating the need for treatment." *Crowson v. Washington County*, 983 F.3d 1166, 1180 (10th Cir. 2020) (quotations omitted).

A nurse fulfills the gatekeeping role by promptly and accurately reporting an inmate's serious symptoms to a physician and following the physician's instructions. *See, e.g.*, *id.* at 1180-81 (holding nurse fulfilled gatekeeper role by placing a call to a doctor describing the patient's symptoms, even though nurse "could have done more"); *Mata v. Saiz*, 427 F.3d 745, 759-60 (10th Cir. 2005) (holding nurses fulfilled gatekeeper role by reporting EKG results to a third party, even though they provided no other treatment). Nurse McCullar did that here.

When Nurse McCullar saw Mr. Buchanan on the morning of November 14, he told her he could not walk, had worsening pain, could not move his lower extremities, and had tingling in his legs. She requested his medical records, noted she would "continue to monitor" him, and called Dr. Cooper. App., Vol. X at 2608. She told Dr. Cooper that Mr. Buchanan "was saying he couldn't walk."[6] *Id.* at 2716.

[6] Although it is not clear from the record if Nurse McCullar communicated all of Mr. Buchanan's symptoms to Dr. Cooper, Mr. Buchanan does not allege that she

She also followed Dr. Cooper's "instruct[ion] to place [Mr. Buchanan]" on his appointment list for the "upcoming week." *Id.* at 2608. We agree with the district court that "Nurse McCullar fulfilled her gatekeeping role by relaying to Dr. Cooper the symptoms [Mr. Buchanan] complained of" and following his instructions. App., Vol. XIV at 3856-57.

Mr. Buchanan argues that Nurse McCullar's call to Dr. Cooper was insufficient because she should have recognized his "emergent need of medical treatment," Aplt. Br. at 40, and "sen[t] him to the hospital" to receive immediate care, *see id.* at 14. Dr. Cooper testified that a nurse could send a patient to the hospital without his permission, *see* App., Vol. IV at 1095, but Nurse McCullar's failure to do so was not deliberately indifferent. Although Mr. Buchanan may have been able to show Nurse McCullar had knowledge of a serious risk to Mr. Buchanan's health, he has not shown that Nurse McCullar believed his situation presented an emergency that would require him to be sent directly to the hospital. In *Mata*, we found a nurse did not "*consciously* disregard a *known* medical risk to [the inmate]" when she only told the inmate to "return to the infirmary if her pain worsened" because the nurse's contemporaneous statements showed she did not think the inmate was having a heart attack. 427 F.3d at 760. Here, Nurse McCullar testified that Mr. Buchanan did not show any "outward manifestations of paralysis."

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failed to relay the information properly. We find no genuine dispute that Nurse McCullar promptly and accurately communicated what she had seen to Dr. Cooper.

App., Vol. X at 2608, 2714. Nurse McCullar thus did not consciously disregard a risk by calling Dr. Cooper instead of sending Mr. Buchanan to the hospital directly.

The district court properly granted summary judgment for Nurse McCullar on Mr. Buchanan's deliberate indifference claim.

b. *Dr. Cooper*

The district court granted summary judgment to Dr. Cooper, reasoning he "could only make treatment decisions based on the information available to him, which was limited." App., Vol. XIV at 3857. It stated, "[T]he clarity of hindsight makes it easy to say Dr. Cooper should have inquired further of Plaintiff's self-described 'neck problems' or the symptoms Nurse McCullar reported." *Id.* And it contrasted Dr. Cooper's failure to take immediate action after the November 14 morning call from Nurse McCullar with his actions once he "learned of the severe nature of Plaintiff's condition during the evening of November 14." *Id.* at 3858. We disagree with the district court.[7]

A deliberately indifferent delay in treatment that causes a detainee to experience several hours of severe, untreated pain (as Mr. Buchanan alleges) may be a constitutional violation. *See Mata*, 427 F.3d at 755. Thus, a reasonable jury could find deliberate indifference based on Dr. Cooper's actions on the morning of

[7] Mr. Buchanan focuses his appellate argument on Dr. Cooper's actions on November 14. *See* Aplt. Br. at 42-43. He does not, for example, argue that Dr. Cooper was deliberately indifferent in prescribing Naproxen at the outset of his incarceration in response to the information available to Dr. Cooper at that time.

November 14 when Nurse McCullar informed him of Mr. Buchanan's condition. *See Lucas*, 58 F.4th at 1142 (stating deliberate indifference is determined at the time a medical professional fails to treat an individual).

Mr. Buchanan has sufficiently shown that Dr. Cooper subjectively knew of and disregarded a substantial risk. Dr. Cooper knew from Nurse McCullar that Mr. Buchanan complained that he could not walk. *See* App., Vol. X at 2716. A reasonable jury could find Dr. Cooper was aware of a substantial risk to Mr. Buchanan's health based on Nurse McCullar's report. Mr. Buchanan's medical expert, Dr. Wilcox, opined that Mr. Buchanan's worsening pain and inability to move his lower extremities were "red-flag findings." *Id.* at 2653-54. On November 4, Dr. Cooper prescribed Naproxen, a painkiller, for Mr. Buchanan. App., Vol. IV at 1093; App., Vol. X at 2717. Mr. Buchanan did not need to show Dr. Cooper was consciously aware that Mr. Buchanan suffered from a specific ailment, but "rather that he was aware [that Mr. Buchanan] faced a substantial risk of harm to [his] health and safety." *Lucas*, 58 F.4th at 1141.[8]

A reasonable jury could also find that Dr. Cooper disregarded these serious risks by merely "placing [Mr.] Buchanan on the provider list[] for the very next day," Aplee. Br. (Turn Key) at 26, instead of sending Mr. Buchanan to the hospital or,

[8] Dr. Cooper claims he believed that "until the night of November 14, 2016, [Mr.] Buchanan's symptoms were typical of either arthritis or [the discomfort suffered by] someone who was post bicycle versus motor vehicle accident." Aplee. Br. (Turn Key) at 24 (citing App., Vol. VIII at 2046-47).

since Dr. Cooper was on-call, coming to the jail to evaluate him.[9] Dr. Wilcox explained that, given Mr. Buchanan's reported symptoms, it was "just not appropriate at all for the response from the doctor to be to put him on the list to be seen in the next few days." App., Vol. X at 2654.

In sum, the district court improperly granted summary judgment to Dr. Cooper on whether he was deliberately indifferent to Mr. Buchanan's serious medical needs. A reasonable jury could find Dr. Cooper was informed on the morning of November 14 that Mr. Buchanan "was suffering from a medical issue that demanded attention," specifically that Mr. Buchanan had "complained to [Nurse McCullar] about his paralysis," but that Dr. Cooper "failed to act on his obvious need for medical attention," costing Mr. Buchanan several hours of severe, essentially untreated pain. *Burke v. Regalado*, 935 F.3d 960, 994-95 (10th Cir. 2019). We therefore reverse the district court's entry of summary judgment in favor of Dr. Cooper.

[9] Dr. Cooper argues he also ordered Nurse McCullar to obtain Mr. Buchanan's previous medical records to determine whether there was an additional injury that would necessitate further care. *See* Aplee Br. (Turn Key) at 26. Although the record citations he provides indicate Nurse McCullar ordered the records (but did not remember reviewing them), they do not show she did so at Dr. Cooper's instruction. Instead, she said it was "pretty standard" for her to order records from a recent hospitalization to determine if there were follow-up recommendations to be followed and to understand Mr. Buchanan's medical history. App., Vol. VIII at 2008.

B. *Turn Key and Sheriff – Municipal Liability*

1. **Legal Background**

Under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), a municipality "is a 'person' subject to § 1983 liability." *Burke*, 935 F.3d at 998 (quotations omitted). Mr. Buchanan's § 1983 official-capacity claim against the Sheriff "represent[s] only another way of pleading an action against an entity of which an officer is an agent." *Id.* (alteration in original) (quotations omitted). *Monell* has also been extended to "private entities acting under color of state law," such as medical contractors. *Lucas*, 58 F.4th at 1144 (quotations omitted). Turn Key does not argue that it cannot be sued under a municipal liability theory, so we assume it can be. *See* Aplee. Br. (Turn Key) at 31-40.

Municipal liability requires an underlying constitutional violation. "A core principle of *Monell* liability is that municipal entities are liable for only their own actions and not vicariously liable for the actions of their employees." *Crowson*, 983 F.3d at 1191. But "[b]ecause municipalities act through officers, ordinarily there will be a municipal violation only where an individual officer commits a constitutional violation." *Id.*

We have created a "limited exception" to the requirement of individual unconstitutional action "[w]here the sum of multiple officers' actions taken pursuant to municipal policy results in a constitutional violation, the municipality may be directly liable[; i.e.,] the municipality may not escape liability by acting through twenty hands rather than two." *Id.* Thus, "municipal liability may exist without

individual liability; for example, for a systemic failure of medical policies and procedures." *Lucas*, 58 F.4th at 1144. A systemic failure in policymaking alone, though, is not enough, because "there must be a constitutional violation, not just an unconstitutional policy, for a municipality to be held liable." *Crowson*, 983 F.3d at 1191. We have thus recognized a claim of "a systemic violation carried out by multiple actors" pursuant to a defective municipal policy. *Lucas*, 48 F.4th at 1145.

In addition to a constitutional violation, a plaintiff must satisfy three elements to succeed on a *Monell* claim: "(1) an official policy or custom, (2) causation, and (3) deliberate indifference." *Id.*

An official policy or custom may include:

> (1) a formal regulation or policy statement; (2) an informal custom amounting to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law; (3) the decisions of employees with final policymaking authority; (4) the ratification by such final policymakers of the decisions—and the basis for them—of subordinates to whom authority was delegated subject to these policymakers' review and approval; or (5) the failure to adequately train or supervise employees, so long as that failure results from deliberate indifference to the injuries that may be caused.

Id. (quotations omitted). "For causation . . . the challenged policy or practice must be closely related to the violation of the plaintiff's federally protected right." *Hinkle v. Beckham Cnty. Bd. of Cnty. Comm'rs*, 962 F.3d 1204, 1241 (10th Cir. 2020) (quotations omitted). The policy or custom must be "the moving force behind the injury alleged." *Schneider v. City of Grand Junction Police Dept.*, 717 F.3d 760, 770

(10th Cir. 2013) (quotations omitted). And "[a] local government policymaker is deliberately indifferent when he deliberately or consciously fails to act when presented with an obvious risk of constitutional harm [that] will almost inevitably result in constitutional injury of the type experienced by the plaintiff." *Burke*, 935 F.3d at 997-98 (quotations omitted). "In the municipal liability context," deliberate indifference "is an objective standard" that may be "satisfied if the risk is so obvious that the official should have known of it." *Barney v. Pulsipher*, 143 F.3d 1299, 1307 n.5 (10th Cir. 1998).

2. **District Court's Opinion**

The district court held that Mr. Buchanan did "not establish[] that an individual employee of Turn Key—such as Dr. Cooper or Nurse McCullar—was deliberately indifferent to Plaintiff's medical needs," so there was no "predicate violation." App., Vol. XIV at 3849. This holding therefore defeated Mr. Buchanan's *Monell* claims against Turn Key and the Sheriff. *Id.* at 3851. The court acknowledged that Mr. Buchanan had also claimed a "systemic failure" against the Sheriff based on overcrowding and understaffing by detention officers. *Id.* at 3851. But it rejected this claim for lack of causation between those policies and Mr. Buchanan's injury. *Id.* at 3849-50.

3. **Application**

a. Municipal Liability Claim Based on Dr. Cooper's Deliberate Indifference

Unlike the district court, we have determined a reasonable jury could find Dr. Cooper committed a constitutional violation. Nonetheless, Mr. Buchanan has

still failed to establish a viable *Monell* claim. He does not show an official policy or custom of either Turn Key or the Sheriff was the moving force behind Dr. Cooper's alleged deliberate indifference to his serious medical needs based on the events of November 14. The closest he comes to such a policy or custom is his allegation that he lacked appropriate access to a physician because Dr. Cooper worked at seven different facilities and was at the Muskogee jail only two to four hours a week. App., Vol. XIII at 3430-31; Aplt. Br. at 48. But his assertion fails the causation element. Dr. Cooper was on call and was informed of Mr. Buchanan's condition on November 14 and could have ordered him transported immediately to a hospital. Mr. Buchanan has therefore not shown that Dr. Cooper's failure to do so was the result of a municipal policy or custom.

b. Municipal Claim Based on Other Employees' Conduct, Individual or Aggregate

Mr. Buchanan also asserts that, even before November 14, his deteriorating condition and severe pain were obvious to other jailers and medical staff at the Jail, most notably Nurse Kotas. *See* Aplt. Br. at 8-9, 44-46. Although he has not named these jailers and medical providers or Nurse Kotas as individual defendants, he contends that Turn Key or the Sheriff can be held liable for policies that were the moving force behind either (1) Nurse Kotas's alleged deliberately indifferent conduct when she saw him on November 11, or (2) the alleged failure of jailers and medical staff to provide treatment throughout his incarceration.

Even if the foregoing contentions have evidentiary support sufficient to establish an underlying constitutional violation,[10] Mr. Buchanan has failed to satisfy the elements of a municipal liability claim. He points to several policies or customs, but he cannot show they may establish the causation or deliberate indifference elements of a *Monell* claim. The district court therefore properly granted summary judgment for both municipal defendants.[11]

Mr. Buchanan's municipal liability claims against Turn Key and the Sheriff rely on (1) Turn Key's policy deficiencies identified in Dr. Wilcox's report,[12]

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[10] We question whether Mr. Buchanan has adequately argued a violation by Nurse Kotas or "systemic failure" violation, but we need not make that determination because we can resolve the municipal liability issue on appeal based on the causation element of a *Monell* claim.

[11] We may affirm on any grounds supported by the record, *e.g.*, *Ross v. U.S. Marshal*, 168 F.3d 1190, 1194 n.2 (10th Cir. 1999).

[12] The deficiencies Dr. Wilcox identified included the following:

a. LPN's were working unsupervised in this system as the[] only on-site healthcare staff
b. Outside medical records were not reviewed
c. There was no reasonable access to a physician or mid-level provider in this system
d. The on-call process was deficient
e. The medical records in this system are grossly inadequate
f. The system utilizes nursing protocols to avoid having patients see providers
g. The nursing protocols are illegal and they create a situation where an LPN is practicing medicine
h. Access to healthcare was compromised
i. Officers did not interface adequately with the healthcare staff to advocate for Mr. Buchanan

App., Vol. X at 2665 [p. 120].

(2) overcrowding coupled with understaffing of detention officers, and (3) "failure to supervise the jail's medical delivery system." Aplt. Br. at 46-50.

i. Turn Key policies

Mr. Buchanan points to Dr. Wilcox's report detailing failures in the jail's health care program. Aplt. Br. at 48. He argues Turn Key relied on nurses to see patients and to refer them to the doctor when necessary, rather than involving the doctor directly at an earlier stage of patient care. Relatedly, he claims he lacked appropriate access to a physician because Dr. Cooper worked at seven different facilities and was at the Muskogee jail only two to four hours a week. App., Vol. XIII at 3430-31; Aplt. Br. at 48.

Even if the foregoing met the policy or custom element of a *Monell* claim, Mr. Buchanan has not shown how the Turn Key deficiencies that Dr. Wilcox listed caused an underlying constitutional violation. Dr. Wilcox's report was wholly conclusory in that regard. *See* App., Vol. X at 2657-66. Nor has Mr. Buchanan shown how Dr. Wilcox's deposition testimony cures this shortcoming. Thus, Mr. Buchanan's municipal liability claims regarding these policies fail on the second *Monell* element.

ii. Overcrowding and understaffing

Mr. Buchanan argues the combination of overcrowding in the jail and "understaffing of detention officers" "is causally connected to the absence of medical care provided to [him] for 11 days." Aplt. Br. at 49. He cites a nurse's complaints that detention officers at the jail would not provide "backup" to ensure the nurses'

safety, *see id.* at 24-25, and describes several instances when nurses were unable to provide a sick call or deliver medication to inmates because of inadequate staffing or fears for their personal safety, *see id.* at 25-26. Mr. Buchanan says the Turn Key contract contemplated 350 inmates, but the jail routinely had more, and thus the jail lacked enough nurses to handle the volume of medical complaints. *See* Aplt. Br. at 22-26. He also alleges the nurses did not evaluate inmates when they did their "pill pass." *Id.* at 49.

The Sheriff responds that Mr. Buchanan has failed to show that alleged understaffing caused any constitutional violation, and these claims therefore fail at the second *Monell* element. Turn Key argues that any policy decisions related to overcrowding and understaffing of detention officers "should not be imputed to Turn Key." Aplee. Br. (Turn Key) at 39. Even assuming these policies could be imputed to Turn Key, we agree with the Sheriff that Mr. Buchanan has not shown causation.

In particular, Mr. Buchanan does not show how overcrowding and understaffing caused his delayed diagnosis. Although he plausibly alleges overcrowding and understaffing caused him not to be seen on November 6 despite being placed on the "sick call" list for that day, he never alleges that being seen by a nurse on that day would have led to an earlier diagnosis. At that point, Mr. Buchanan had complained only of "shoulder pain," and he did not lose feeling or range of motion in his arms until a few days later. Aplt. Br. at 7, 9. He does not show he could not access a nurse using Turn Key's procedures after he started having paralysis symptoms. When Nurse Kotas saw Mr. Buchanan on November 11, she did

not find his condition sufficiently serious to send him to the hospital. And on the morning of November 14, Nurse McCullar was summoned outside of a sick call to see Mr. Buchanan in his pod, and she did. As the district court explained, the problem was not understaffing; it was that the nurses, rightly or wrongly, simply did not believe that Mr. Buchanan presented "an emergency situation." App., Vol. XIV at 3850 (quotations omitted).

iii. Supervision

Mr. Buchanan's argues the Sheriff "fail[ed] to supervise the Jail's medical delivery system." Aplt. Br. at 47. A "failure to adequately . . . supervise employees" may give rise to a *Monell* claim, *see, e.g.*, *Crowson*, 983 F.3d at 1184, but Mr. Buchanan fails to argue that the Sheriff's supervision of the entire delivery system establishes a *Monell* claim. *Kelley v. City of Albuquerque*, 542 F.3d 802, 819 (10th Cir. 2008) ("[P]erfunctory" allegations of error that "fail[] to frame and develop an issue" are insufficient "to invoke appellate review." (quotations omitted)).

* * * *

The district court properly granted summary judgment for both Turn Key and the Sheriff on his municipal liability claims.

C. ***Spoliation Motion***

1. **Standard of Review**

"We generally review a district court's ruling on a motion for spoliation sanctions for an abuse of discretion." *Helget v. City of Hays*, 844 F.3d 1216, 1225 (10th Cir. 2017). "A district court abuses its discretion when it (1) fails to exercise

meaningful discretion, such as acting arbitrarily or not at all, (2) commits an error of law, such as applying an incorrect legal standard or misapplying the correct legal standard, or (3) relies on clearly erroneous factual findings." *Farmer v. Banco Popular of N. Am.*, 791 F.3d 1246, 1256 (10th Cir. 2015).

2. **Additional Procedural Background**

On November 23, 2016, nine days after Mr. Buchanan left the jail for the hospital, his attorneys sent a letter to the Sheriff and the jail, both by fax and certified mail. The letter demanded they preserve evidence—including video recordings—that was potentially relevant to legal claims related to Mr. Buchanan's incarceration. Despite this letter, the Sheriff's Office did not save the video data from the jail's surveillance cameras to an external hard drive, as they typically did when it was necessary to preserve such data. Instead, the video was recorded over or lost.

On the same day the defendants filed their summary judgment motions, Mr. Buchanan filed a motion seeking sanctions against the Sheriff's Office for the spoliation of video evidence. Mr. Buchanan claimed the Sheriff's Office had acted recklessly or in bad faith in losing the evidence. And he argued this data "would have captured [his] movements and actions, or lack thereof, at the Jail." App., Vol. VI at 1572-73; *see also* Aplt. Br. at 20. According to Mr. Buchanan, a jailer said she would call for an ambulance after seeing surveillance video of inmates dragging Mr. Buchanan around the pod. App., Vol. VI at 1574. He therefore sought "spoliation sanctions against the Sheriff, specifically a mandatory adverse inference instruction at trial, the ability to inquire in front of the jury as to the missing video

evidence[,] and an award of fees and costs." *Id.* at 1581. In its summary judgment order, the district court summarily denied this motion as moot.

3. **Analysis**

Mr. Buchanan argues that (1) the district court should have considered his spoliation motion before granting summary judgment, and (2) the court should not have summarily dismissed his motion as moot. We disagree. Also, the adverse inference sanction he requested, even if granted, would not change our affirmance of summary judgment.

"[A]s a matter of best practices, [a] district court should . . . rule[] on [a] motion [seeking spoliation sanctions] before, or in the process of, deciding summary judgment." *Helget*, 844 F.3d at 1227. But a party may "forfeit[] her right to seek refuge in her undecided motion for spoliation sanctions by failing to raise the argument in any meaningful way in opposing summary judgment." *Id.* at 1226. A party seeking sanctions must "alert the district court that [his] pending spoliation motion could affect the summary judgment motions." *Id.* at 1227. Without proper notification by the nonmovant, the district court does not reversibly err in failing to rule on the motion. *See id.*

In *Helget*, we held it was insufficient for the spoliation motion to "only reference in over 100 pages of briefing . . . a vague comment in the introduction of [the brief in] opposition to the [summary judgment] motion." *Id.* at 1225. The motion stated that "the documentary evidence that remains after the [opposing party's] well-documented spoliation and failure to put a litigation hold in place

demonstrates, at a minimum, that there are disputed issues of material fact which necessitates a trial." *Id.* (alterations and quotations omitted).

Mr. Buchanan did not mention summary judgment in his spoliation motion, and his references to spoliation in his responses to the summary judgment motions are as cursory as those in *Helget*. *See* App., Vol. IX at 2504 n.4; App., Vol. XI at 2846-47 n.3; App., Vol. XII at 3135 n.3, 3146 n.7; App., Vol. XIII at 3415-16, 3420. He argued that:

> Unfortunately, this is the only video of Mr. Buchanan that exists. There was extensive surveillance video of Mr. Buchanan that no longer exists due MCSO's blatant destruction and spoliation of the video evidence. The spoliation issue is detailed in Plaintiff's Motion for Sanctions. *See* Dkt. #135. The Tenth Circuit has noted that "as a matter of best practices, [a] district court should . . . rule[] on [a] motion [for spoliation sanctions] before, or in the process of, deciding summary judgment." *Helget v. City of Hays, Kansas*, 844 F.3d 1216, 1227 (10th Cir. 2017). Plaintiff requests that the Court to [sic] rule on the Motion for Sanctions (Dkt. #135) before, or in the process of, deciding summary judgment in this case. Granting summary judgment in this matter would unjustly reward Defendants for MCSO's egregious misconduct in destroying highly relevant video evidence.

App., Vol. IX at 2504 n.4 (emphasis omitted). Mr. Buchanan's assertion that the Sheriff's Office would be "unjustly reward[ed]" without a sanction hardly "raise[s] the argument in [a] meaningful way in opposing summary judgment." *Id.* The district court thus did not abuse its discretion in ruling on the motion for spoliation sanctions when it granted summary judgment.

We also affirm the district court's dismissal of the motion as moot. "An issue becomes moot when it becomes impossible for the court to grant any effectual relief whatsoever on that issue . . . ." *Smith v. Plati*, 258 F.3d 1167, 1179 (10th Cir. 2001) (quotations omitted). In *Black Hills Aviation, Inc. v. United States*, 34 F.3d 968 (10th Cir. 1994), we held that where adverse factual inferences would do nothing to save a claim subject to dismissal for independent legal reasons, a spoliation claim is moot insofar as it seeks such inferences. *Id.* at 977. Even if an adverse inference against the Sheriff would support an underlying constitutional violation, we have concluded the *Monell* claim against the Sheriff fails on other grounds.

In dismissing the spoliation motion, the district court necessarily rejected Mr. Buchanan's request for fees and costs associated with the motion. We find no abuse of discretion in doing so.

We affirm the district court's dismissal of Mr. Buchanan's motion for sanctions.

III. **CONCLUSION**

We affirm the district court's grant of summary judgment in favor of Nurse McCullar, the Sheriff in his official capacity, and Turn Key. We reverse the grant of summary judgment in favor of Dr. Cooper and remand for further proceedings.

We affirm the district court's dismissal of Mr. Buchanan's motion for spoliation sanctions.[13]

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

[13] We grant Mr. Buchanan's motion to seal appendix exhibits in part. The exhibits containing Turn Key policies and procedures, Aplt. App. (sealed) at 31-75, shall remain under seal. We deny the motion as to Mr. Buchanan's response in opposition to Turn Key's motion for summary judgment, *id.* at 1-30.