No. 21-3755

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JAMIE LEONARD,
Plaintiff/Appellant,

v.

ST. CHARLES COUNTY, STEVEN HARRIS, DONTE FISHER, LISA BAKER, and THERESA MARTIN,
Defendants/Appellees.

PLAINTIFF-APPELLANT'S OPENING BRIEF

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RULE 28A(i)(1) SUMMARY OF THE CASE AND STATEMENT IN SUPPORT OF ORAL ARGUMENT

Plaintiff Jamie Leonard was severely mentally ill and had a debilitating eye condition. After he was booked into the St. Charles County Jail, Defendants withheld prescription medications for his eye and psychiatric conditions. They pepper-sprayed him in the eye and refused to help him treat the resulting pain. They then watched him dig his own eyeball out of its socket over the course of nine minutes without doing anything to stop him. As a result, Mr. Leonard was blinded in one eye. The district court granted summary judgment to Defendants.

This appeal presents core Constitutional issues, including the right to be free from excessive force and the right to medical care that is not deliberately indifferent. It also involves a long and complex record and numerous claims against several different Defendants. For those reasons, Mr. Leonard respectfully requests twenty minutes of oral argument.

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STATEMENT OF JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1331 and 42 U.S.C. § 1983. Final judgment was entered on November 5, 2021. Plaintiff Jamie Leonard timely filed a notice of appeal on December 1, 2021, which was docketed the same day. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES

I. Does an officer violate clearly established law when he pepper-sprays a handcuffed, naked, surrounded, and nonviolent detainee in the face from close distance for committing a minor transgression during an unnecessary cell search? *Tatum v. Robinson*, 858 F.3d 544 (8th Cir. 2017); *Hickey v. Reeder*, 12 F.3d 754 (8th Cir. 1993); *Walker v. Bowersox*, 526 F.3d 1186 (8th Cir. 2008).

II. Does an officer violate clearly established law when she watches a mentally ill detainee dig his own eye out of its socket in front of her for nine minutes and fails to stop him? *Olson v. Bloomberg*, 339 F.3d 730 (8th Cir. 2003).

III.A. Does a jail nurse violate clearly established law when she withholds a detainee's known and necessary prescribed psychiatric

medications during an ongoing psychiatric episode? *Dadd v. Anoka Cnty.*, 827 F.3d 749 (8th Cir. 2016).

III.B. Does an officer violate clearly established law when he fails to provide, and in fact actively prevents, a detainee with a preexisting eye condition from receiving an eye wash after he is pepper-sprayed in the eye? *E.g., Danley v. Allen*, 540 F.3d 1298, 1311 (11th Cir. 2008).

III.C. Does a municipality violate the Constitution when it establishes a custom of not treating the known serious medical needs of its detainees, resulting in a detainee receiving none of his prescription psychiatric medications and receiving no medical care after being pepper-sprayed in his diseased eye? *Wever v. Lincoln Cnty.*, 388 F.3d 601 (8th Cir. 2004).

STATEMENT OF THE CASE

Plaintiff-Appellant Jamie Leonard gouged his own eye out after St. Charles County jail staff pepper-sprayed him in the face, then stood by and watched him decompensate and self-mutilate. AA481 R. Doc. 101-23, at 24. Mr. Leonard's expert, a former correctional administrator who regularly testifies for jail and prison defendants, called this the "most egregious failure" he had ever reviewed in a correctional setting. AA174

R. Doc. 101-6, at 15. Daniel Keen, Defendants' new jail director, agreed with the expert report. AA255 R. Doc. 101-8, at 32.

Ten days after the incident, the Assistant Director for the County's Department of Corrections commended jail staff for their handling of it:

> A huge "THANK YOU!" for your response and assistance with inmate Leonard on 7/22/17….the teamwork displayed was great to see. Everyone did an exceptional job.

AA387 R. Doc. 101-12, at 53; AA607 R. Doc. 101-39, at 2.

Mr. Leonard was rendered permanently blind in his left eye and the eye was surgically removed. AA101 R. Doc. 101, at 36.

I. Factual Background

At the time of this incident, Plaintiff Jamie Leonard was a licensed real estate broker who battled both physical and psychological ailments. AA124 R. Doc. 101-1, at 1. Physically, Mr. Leonard had Reiter's syndrome, which caused a painful, inflammatory eye condition called uveitis. *Id.* Psychologically, Mr. Leonard struggled with mental illness that caused psychotic episodes, depression, and anxiety. AA124-25 R. Doc. 101-1, at 1-2. Mr. Leonard was prescribed several pain medications and five psychiatric medications, and received monthly psychiatric care. *Id.*

A. The County failed to treat Mr. Leonard when he was admitted to its jail after a psychotic episode.

On July 19, 2017, Mr. Leonard was arrested during a psychotic episode and booked into the St. Charles County Jail. AA154 R. Doc. 101-4, at 2; AA157 R. Doc. 101-5 at 3. At intake, County staff documented that Mr. Leonard had "mental health concerns." AA154 R. Doc. 101-4, at 2; AA159 R. Doc. 101-5, at 5. Indeed, Defendants admit they knew that Mr. Leonard was mentally ill and took psychiatric medications. AA156 R. Doc. 101-5, at 2; AA159 R. Doc. 101-5, at 5.

In fact, Mr. Leonard's mother, Michele Manoli, gave the County extensive guidance on Mr. Leonard's care. Ms. Manoli is a nurse. AA273 R. Doc. 101-9, at 1. When she learned of Mr. Leonard's arrest, she contacted the jail's Medical Department to advise them of Mr. Leonard's mental illness and his Reiter's syndrome, his prescriptions and treatment plan, and how to contact his pharmacy. *Id.* She then delivered Mr. Leonard's psychiatric medications and eye prescriptions to the Medical Department, and again instructed the Medical Department on the details of his medical care. AA274 R. Doc. 101-9, at 2. Despite Ms. Manoli's best efforts to ensure her son's health and safety, the County never

administered any of Mr. Leonard's medications. AA23 R. Doc. 88, at 9; AA52 R. Doc. 91, at 7.

As a result, Mr. Leonard began to behave erratically. Mr. Leonard spent his time at the jail completely naked, pacing around, and trying to get into other detainees' beds. AA548 R. Doc. 101-27, at 6. Two days after he was incarcerated, Mr. Leonard—who, again, was naked for the entirety of the incidents described herein—attempted suicide by sticking his fist down his throat. AA402 R. Doc. 101-13, at 9. He also stuck his fingers so far into his nose that it bled. *Id.* When the County's nurse, Defendant Theresa Martin, asked Mr. Leonard why he was behaving that way, he responded "I have to get my soul out because it is time for me to die." AA277 R. Doc. 101-10, at 2; AA404 R. Doc. 101-13, at 11; AA408 R. Doc. 101-13, at 15.

The County did not treat Mr. Leonard's psychosis. It conceded that it had all of Mr. Leonard's prescribed psychiatric medications on file. AA279 R. Doc. 101-10, at 4. Defendant Martin, the nurse, was aware of Mr. Leonard's medications and his diagnoses, and could tell that he needed treatment because of his erratic behavior. AA400-06 R. Doc. 101-13, at 7-13; *see* AA279 R. Doc. 101-10, at 4. Yet, although Mr. Leonard

was displaying clear and worsening psychiatric symptoms, Defendant Martin did not administer his prescription medications. AA277 R. Doc. 101-10, at 2; AA406 R. Doc 101-13, at 13.

The jail also had in stock the effective and common anti-psychotic Haldol. AA369 R. Doc. 101-12, at 35. But Defendant Martin did not administer Haldol, either. AA406 R. Doc. 101-13, at 13. Mr. Leonard's medical expert testified that Haldol would have "no question" addressed Mr. Leonard's psychosis. AA324 R. Doc. 101-11, at 45. And even Director Keen testified that Haldol "very possibl[y]" could have calmed Mr. Leonard. AA259-61 R. Doc. 101-8, at 36-38.

B. Defendant Harris pepper-sprayed Mr. Leonard in the face while he was handcuffed and posing no threat.

Around 6:00 a.m. on July 22, three officers—Defendants Steven Fisher and Donte Harris, and non-party Kristian Scott—decided to search Mr. Leonard's cell. AA535-35 R. Doc. 101-26, at 3-4. The search was apparently initiated under a County policy that required cell searches at the end of each shift. AA496-97 R. Doc. 101-24, at 6-7. But Director Keen admitted that the search was unnecessary because Mr.

Leonard's cell had been searched earlier in the same shift.[1] AA256-57 R. Doc. 101-8, at 33-34.

Before conducting the search, Defendant Fisher, the on-duty suicide-prevention officer, instructed Defendant Harris to unholster his pepper spray and have it ready for use. AA554 R. Doc. 101-27, at 12. Yet none of the officers contacted the Medical Department to ascertain whether Mr. Leonard could be safely pepper-sprayed, although County policy required them to do so and Officer Harris admitted that they "should have" done so. AA423 R. Doc. 101-14, at 12; AA557 R. Doc. 101-27, at 15. If they had, the Medical Department would have advised them that pepper spray should not be used on Mr. Leonard due to his eye condition. AA401 R. Doc. 101-13, at 8. The Medical Department was eighty feet away from Mr. Leonard's cell and could also have been reached by radio. AA411 R. Doc. 101-13, at 18.

Having opted not to contact the Medical Department, the officers began the search by handcuffing Mr. Leonard without difficulty. AA511

[1] In fact, Director Keen agreed with materially *all* of Mr. Leonard's expert report and opinions concerning breaches of correctional practice here. AA255 R. Doc. 101-8, at 32.

R. Doc. 101-24, at 21; AA602 R. Doc. 101-35, at 1:25-2:12. As all three officers concede, Mr. Leonard was fully compliant and kneeled when directed to do so. AA536 R. Doc. 101-26, at 4; AA547 R. Doc. 101-27, at 5. Video of Mr. Leonard's cell shows that he was naked and had his face pressed up against the back cell wall, his hands cuffed, and three officers surrounding him. AA602 R. Doc. 101-35, at 2:13.

One minute after he was handcuffed, Mr. Leonard stood up. AA602 R. Doc. 101-35, at 1:17-2:17. That should not have surprised the officers: By their own admission, Mr. Leonard had, until their entrance, been "pacing floors . . . naked, standing on top of the bunk, standing on top of the commode, things of that nature." AA498 R. Doc. 101-24, at 8. Yet the officers testified that, around the time Mr. Leonard stood up, one of them told him that he would be pepper-sprayed if he moved. AA536 R. Doc. 101-26, at 4. Director Keen admitted that the officers should have known that Mr. Leonard's psychosis would prevent him from processing, much less obeying, their command, particularly given his erratic behavior at the time. AA250-51 R. Doc. 101-8, at 27-28.

Mr. Leonard was not threatening at the moment he stood up. He was handcuffed and not behaving aggressively. AA555-56 R. Doc. 101-27,

at 13-14. In fact, Defendant Harris believed that Mr. Leonard stood up so that he could walk around, not toward, the officers. AA555 R. Doc. 101-27 at 13. Thus, Defendant Harris did not perceive Mr. Leonard as a "serious physical threat." AA555-56 R. Doc. 101-27, at 13-14. And the video demonstrates that Mr. Leonard never even stood a chance of escaping the cell; he was handcuffed and all three officers were between him and the door when he stood up. AA602 R. Doc. 101-35, at 2:18.

Indeed, within three seconds after Mr. Leonard stood up, both Defendant Fisher and Officer Scott had subdued him with just their hands. AA602 R. Doc. 101-35, at 2:20. Video demonstrates that one of these officers had *both* of his hands on Mr. Leonard and that Mr. Leonard was no longer moving toward the cell door. *Id.* At that point, then, Mr. Leonard was handcuffed, subdued by two officers, and had been on his feet for less than three seconds.

Nonetheless, Defendant Harris shot a stream of pepper spray into Mr. Leonard's diseased eye from far less than the three feet that the County's policy and industry standards require. AA171-72 R. Doc. 101-6, at 12-13. Pepper-spraying from such close distance causes the "hydraulic needle effect," whereby spray particles are driven into the soft tissue of

the face and the eye. AA309-10 R. Doc. 101-11, at 30-31. And pepper spray is particularly dangerous to people, like Mr. Leonard, who have Reiter's syndrome. AA150 R. Doc. 101-3, at 8; AA312-13 R. Doc. 101-11, at 33-34. It is also extremely dangerous when used on people, like Mr. Leonard, who are in the midst of a psychotic episode. AA299 R. Doc. 101-11, at 20.

The parties' experts agreed that this infliction of pain was unnecessary. Director Keen conceded that Defendant Harris's use of pepper spray was unjustified. AA255 R. Doc. 101-8, at 32; AA262 R. Doc. 101-8, at 39. And Mr. Leonard's expert Ken Katsaris, a longtime correctional administrator who frequently testifies for jail and prison defendants, confirmed that Defendant Harris's decision to pepper-spray Mr. Leonard was unjustified. AA173 R. Doc. 101-6, at 14.

Indeed, given that Mr. Leonard was not threatening, the experts concluded that Defendants may have pepper-sprayed Mr. Leonard as revenge for his behavior. In Mr. Katsaris's view, Defendants likely used the pepper spray to punish Leonard for his erratic behavior. AA451 R. Doc. 101-22, at 12. And Director Keen confirmed that, had he been in charge at the time, he would have investigated whether the officers

pepper-sprayed Mr. Leonard in revenge. AA264-64 R. Doc. 101-8, at 41-42.

C. Defendants Martin and Fisher failed to treat Mr. Leonard after Defendant Harris pepper-sprayed him in the face.

The pepper-spraying caused Mr. Leonard "an indescribable amount of pain." AA125 R. Doc. 101-1, at 2. Indeed, the video shows that Mr. Leonard immediately recoiled and crumpled onto his cot after he was pepper-sprayed. AA602 R. Doc. 101-35, at 2:21. Of course, being pepper-sprayed in the face would cause anyone pain. *See* AA401 R. Doc. 101-13, at 8. But Mr. Leonard's Reiter's syndrome made his eyes particularly vulnerable to pepper spray. AA151 R. Doc. 101-3, at 9; AA171-72 R. Doc. 101-6, at 12-13.

Yet the officers made little effort to help Mr. Leonard. They did not assist him in decontaminating his diseased, pepper-sprayed eye, nor did they bring him to the facility's eye wash station. AA30 R. Doc. 88, at 16; AA56 R. Doc. 91, at 11. In fact, Defendant Harris left the scene less than a minute after he pepper-sprayed Mr. Leonard. AA561-62 R. Doc. 101-27, at 19-20.

Mr. Leonard was then seen by Defendant Theresa Martin, a nurse. AA404 R. Doc. 101-13, at 11. She directed that Mr. Leonard be given a shower, but Defendant Fisher refused. AA405 R. Doc. 101-13, at 11. She also directed that Mr. Leonard be kept in the Medical Department for further monitoring, but again Defendant Fisher refused. *Id.* And while Defendant Martin told Mr. Leonard to clean his eye out on his own, it was obvious that he could not do so properly: Defendant Martin told Mr. Leonard not to touch other parts of his body while washing his eye, but he immediately thereafter "started rubbing his face and he started rubbing his genitals."[2] *Id.* In any event, Mr. Leonard's sink did not even have soap. *See* AA602 R. Doc. 101-35; AA603 R. Doc. 101-36.

After failing to ensure that Mr. Leonard's eyes were acceptably washed out, Defendant Fisher simply left Mr. Leonard—a mentally ill man who was deprived of his psychiatric medication, had recently self-harmed, had a preexisting eye condition, and had just been pepper-

[2] Mr. Leonard was naked for the entirety of this incident, including his interaction with Defendants Martin and Fisher. *See* AA404 R. Doc. 101-13, at 11; AA602 R. Doc. 101-35; AA603 R. Doc. 101-36.

sprayed in the eye—to his own devices. AA531-32 R. Doc. 101-25, at 20-21.

Likewise, Defendant Martin admitted that she was aware that Mr. Leonard had an eye condition, that he had been sprayed in his diseased eye, that he had exhibited self-harming behaviors throughout his stay at the jail, and that he was prescribed anti-psychotic medications that the jail had not administered to him. AA402 R. Doc. 101-13, at 9; AA405 R. Doc. 101-13, at 12. Yet she, too, did no follow-up care to confirm that Mr. Leonard's diseased eyes were properly washed. AA405 R. Doc. 101-13, at 12.

Mr. Leonard was thus left in his cell unrestrained, unsedated, and unmedicated. The pepper spray remained in Mr. Leonard's eye, where, due to his pre-existing eye condition, it became especially irritating. AA218 R. Doc. 101-7, at 14; AA150 R. Doc. 101-3, at 8; AA312-13 R. Doc. 101-11, at 33-34.

D. Defendant Baker watched Mr. Leonard dig his own eyeball out of its socket and did nothing to stop him.

At this point, the County and its staff committed what Mr. Katsaris called "the most egregious failure" he had ever reviewed in a correctional facility. AA174 R. Doc. 101-6, at 15. For a nine-minute period between

when Mr. Leonard was returned to his cell and when officers re-entered his cell, Mr. Leonard was left unattended—although observable by both officers and cameras—as his mental state increasingly deteriorated. *See* AA603 R. Doc. 101-36. For almost five minutes, Mr. Leonard paced his cell, yelling, grimacing, shaking his head, and trying to clear the pepper spray from his face. AA603 R. Doc. 101-36, at 0:00-4:39. For another two minutes and twenty seconds, he tore at his left eye, using his fingers to dig into his eye socket. AA603 R. Doc. 101-36, at 4:39-7:00. He then fell to the floor where, almost immediately, blood leaked onto the floor. AA603 R. Doc. 101-36, at 7:00-7:40. And yet Mr. Leonard continued to dig at his eye. *Id.* Two minutes later, as he continued to pry out his eye, more blood leaked onto the floor. AA603 R. Doc. 101-36, at 7:00-9:15. And thirty seconds after that, Mr. Leonard's eyeball fell from its socket. AA603 R. Doc. 101-36, at 9:45-10:00.

Over the nine minutes that Mr. Leonard visibly struggled to rip out his own eye, officers—in particular, Defendant Lisa Baker, the suicide-prevention unit supervisor—stood by and watched. AA216 R. Doc. 101-7, at 12. Anyone present could have seen what was happening; all of the suicide-prevention unit's cells were visible from anywhere in the unit.

AA500 R. Doc. 101-24, at 10. Indeed, the officer on duty saw what was happening and summoned Defendant Baker. AA216 R. Doc. 101-7, at 12. But Defendant Baker admitted that, after she arrived on the scene, she idly stood outside of Mr. Leonard's cell and watched him yell and tear his eye out without trying to stop him. *Id.*

The testimony below was unequivocal that Defendant Baker could have stopped Mr. Leonard from harming himself. Defendant Martin testified that when she arrived at Mr. Leonard's cell she found "four or five" officers present and was "surpris[ed]" that no one had "tried to prevent [Mr. Leonard] from self-harm[ing]." AA397 R. Doc. 101-13, at 4. According to Defendant Martin, those officers—Defendant Baker among them—"knew that he was clawing at his eye at that time" because "they could see it through the window." *Id.* Defendant Baker confirmed this account: She testified that she could "see some blood on the floor" while watching Mr. Leonard from outside his cell, but "waited for [more] officers to respond" instead of intervening. AA215-16 R. Doc. 101-7, at 11-12. Director Keen, similarly, testified that "plenty of officers were there [such] that we could have stepped in to stop him or attempt to stop him from injuring himself more." AA245 R. Doc. 101-8, at 22. And Mr.

Katsaris, after reviewing the video of the incident, found it "abundantly clear" that "officers simply watched" as Mr. Leonard gouged his own eye out. AA174 R. Doc. 101-6, at 15. Defendants deleted their surveillance video of the exterior of Mr. Leonard's cell, which would have shown the officers watching Mr. Leonard self-harm and failing to stop him. *See* AA270 R. Doc. 101-8, at 47.

After watching for nine minutes and failing to stop Mr. Leonard from injuring himself, and once his eye was out of its socket, officers finally entered his cell and subdued him. AA603 R. Doc. 101-36, at 9:10. Paramedics administered Haldol, the sedative and anti-psychotic medication that the County had in stock but had not previously used on Mr. Leonard despite his unstable and self-harming earlier behavior. AA406 R. Doc. 101-13, at 13; AA300 R. Doc. 101-11, at 21. The Haldol immediately sedated Mr. Leonard. *Id.* Mr. Leonard was then taken to a hospital, where his eye was declared permanently lost. AA132-34 R. Doc. 101-2, at 7-9.

The County never held any officer accountable for this incident. Director Keen testified that, under his watch, the officers involved would have been immediately questioned by internal affairs as to "why, why,

why." AA236 R. Doc. 101-8, at 13; AA254 R. Doc. 101-8, at 31. But the County never investigated, much less disciplined, any officer for their conduct toward Mr. Leonard. AA231-32 R. Doc. 101-8, at 8-9; AA237 R. Doc. 101-8, at 14; AA581 R. Doc. 101-31, at 8. Nor did the County change or even review any policies after the incident. AA240-41 R. Doc. 101-8, at 17-18. To the contrary, a County supervisor congratulated staff on doing a "great job" during the incident. AA387 R. Doc. 101-12, at 53; AA607 R. Doc. 101-39.

II. Procedural Background

Mr. Leonard sued Defendants St. Charles County, Steven Harris, Donte Fisher, Lisa Baker, and Theresa Martin.[3] Doc. 1 at 1. He asserted claims for excessive force, deliberate indifference, and municipal liability. AA37-44 R. Doc. 88, at 23-30. After discovery, both sides moved for summary judgment. Doc. 92; Doc. 99.

The district court denied Mr. Leonard's motion and granted Defendants' motion in full. AA692 R. Doc. 124, at 1. The district court

[3] Remarkably, another federal appellate court recently heard the case of a mentally ill prisoner allowed to gouge his own eyes out. *See Sawyers v. Norton*, 962 F.3d 1270, 1277 (10th Cir. 2020). The plaintiff's core claims survived summary judgment. *See id.* at 1279-80, 1289.

began its opinion with a disclaimer that, "at first blush, a listener hearing about the events that transpired could possibly conclude that the government officials involved in the case could partially be at fault and are partially to blame." *Id.* Instead, the district court concluded that Defendants were not liable.

The district court first rejected Mr. Leonard's excessive-force claim. It held that Defendant Harris was entitled to qualified immunity because it was not clearly established that unnecessarily spraying a detainee while he is "handcuffed, but disobeying directions by standing up and moving away," is unconstitutional. AA705 R. Doc. 124, at 14.

The district court also rejected Mr. Leonard's deliberate-indifference claims against Defendant Baker, the supervisor who was concededly present for Mr. Leonard's self-harm. The district court opined that Defendant Baker "did not have apathy toward [Mr. Leonard] or unconcern for him." AA714 R. Doc. 124, at 23. The district court added that its review of the video indicated that the nine-minute period during which Mr. Leonard dug his eye out of its socket was "relatively short—too short to establish deliberate indifference." AA715 R. Doc. 124, at 24.

The district court rejected Mr. Leonard's other deliberate-indifference claims, too. As to Defendant Martin, the nurse, the district court opined that the "record plainly shows that she had concern for [Mr. Leonard's] well-being." AA712-13 R. Doc. 124, at 21-22. As to Defendant Fisher, the officer who failed to ensure that Mr. Leonard's eye was properly washed, the district court held that he could not have been deliberately indifferent to Mr. Leonard's medical needs because he was "not [a] medical professional[]." AA711 R. Doc. 124, at 20. And as to the County, the district court held that Mr. Leonard could not prove any unconstitutional municipal customs because, in its account, "almost all" the prior similar incidents that Mr. Leonard pointed to "occurred *after* the incident in question" and Mr. Leonard "provided no evidence that the County and its officials ignored the alleged misconduct." AA722-23 R. Doc. 124, at 31-32.

Mr. Leonard timely appealed. AA726 R. Doc. 127.

SUMMARY OF ARGUMENT

I. Mr. Leonard stated a valid excessive-force claim. **A.** Defendant Harris violated the Constitution by pepper-spraying Mr. Leonard when he was restrained by two officers, handcuffed, and non-violent. The only

justification the officers gave for pepper-spraying Mr. Leonard was that he disobeyed an order not to move, but the "use of pepper spray will not be justified every time an inmate questions orders." *Treats v. Morgan*, 308 F.3d 868, 872-73 (8th Cir. 2002). Here, Mr. Leonard's failure to follow orders caused no threat, as Defendant Harris himself conceded. **B.** Defendant Harris is not entitled to qualified immunity. It was clearly established at the time of the incident that a surrounded, handcuffed, and non-violent detainee cannot constitutionally be pepper-sprayed. *Tatum v. Robinson*, 858 F.3d 544, 550 (8th Cir. 2017); *Walker v. Bowersox*, 526 F.3d 1186, 1189 (8th Cir. 2008); *Hickey v. Reeder*, 12 F.3d 754, 759 (8th Cir. 1993).

II. Mr. Leonard stated a valid deliberate-indifference claim against Defendant Baker. **A.** Defendant Baker violated the Constitution. A jailer exhibits deliberate indifference when she is aware of a substantial risk of serious harm and fails to reasonably address that risk. *Olson v. Bloomberg*, 339 F.3d 730, 735 (8th Cir. 2003). Defendant Baker was aware of a substantial risk of serious harm because she watched Mr. Leonard dig his own eye out in front of her. And she failed to reasonably address the risk because she failed to stop him until he had pulled his

eyeball out. **B.** Defendant Baker is not entitled to qualified immunity. First, this Court's precedent clearly established at the time of the incident that a jailer must act to prevent a prisoner from a known risk of self-harm. *Olson*, 339 F.3d at 735. Second, a robust consensus of authority from other circuits clearly established that officers must intervene when they observe ongoing self-harm. *See, e.g.*, *Short v. Smoot*, 436 F.3d 422, 429 (4th Cir. 2006). Third, the constitutional violation was obvious. *See Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020)

III. Mr. Leonard stated valid claims of deliberate indifference to his serious medical needs against Defendants Theresa Martin, Donte Fisher, and St. Charles County. **A.** Defendant Martin was deliberately indifferent to Mr. Leonard's serious medical needs because she failed to administer his prescription psychiatric medications despite observing his ongoing psychiatric crisis. She is not entitled to qualified immunity because this Court's caselaw clearly established at the time of the incident that jail medical staff must administer prescription medications when the need for them is known. *Dadd v. Anoka Cnty.*, 827 F.3d 749, 755 (8th Cir. 2016). **B.** Defendant Fisher was deliberately indifferent to Mr. Leonard's serious medical needs because he prevented Mr. Leonard

from receiving an effective eye wash after he was pepper-sprayed. He is not entitled to qualified immunity because a robust consensus of other circuits clearly established that an officer must administer at least minimal medical care after a detainee is pepper-sprayed. *See, e.g.*, *Danley v. Allen*, 540 F.3d 1298, 1311 (11th Cir. 2008). **C.** St. Charles County was deliberately indifferent to Mr. Leonard's serious medical needs because it maintained a custom of refusing treatment for detainees' known medical needs. This custom is evidenced by at least eleven prior similar incidents. The County was deliberately indifferent because these eleven incidents were brought to the County's attention through public lawsuits and grievances and because Director Keen admitted that lapses of medical care were abundant when he took over after this incident. And the County's unconstitutional custom was the moving force behind Mr. Leonard's injury because it caused Defendant Martin and Defendant Fisher to disregard Mr. Leonard's need for prescription medication and post-pepper-spray eye care.

ARGUMENT

This Court reviews *de novo* a grant of summary judgment. *Green Plains Otter Tail, LLC v. Pro-Envtl., Inc.*, 953 F.3d 541, 545 (8th Cir.

2020). Summary judgment is only proper "if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." *Id.*

This case should have gone to a jury on three claims. First, a reasonable juror could conclude that Defendant Harris used excessive force when he pepper-sprayed a handcuffed and surrounded Mr. Leonard for disobeying an order. Second, a reasonable juror could conclude that Defendant Baker was deliberately indifferent because she failed to take reasonable measures to abate a known risk of serious harm to Mr. Leonard by failing to intervene as he gouged his eye out in front of her. Third, a reasonable juror could conclude that several Defendants were deliberately indifferent to Mr. Leonard's medical needs: Defendant Martin by failing to provide him with his known prescription medications, Defendant Fisher by returning him to his cell without proper aftercare after he was pepper-sprayed, and Defendant St. Charles County by fostering a longstanding custom of denying inmates medical care that is known to be necessary. For any and all of these reasons, the judgment below should be vacated.

I. Defendant Harris Used Excessive Force When He Pepper-Sprayed Mr. Leonard—Who Was Handcuffed, Surrounded, Naked, and Nonviolent—for Standing Up.

The Court erred in rejecting Mr. Leonard's excessive-force claim. A reasonable juror could conclude from this record that Mr. Leonard was pepper-sprayed despite neither actively resisting nor posing an immediate threat to Defendants. And it is clearly established in this Circuit that an officer violates the Constitution by pepper-spraying a plaintiff under those circumstances. *Tatum v. Robinson*, 858 F.3d 544, 551 (8th Cir. 2017). Therefore, summary judgment is inappropriate on Mr. Leonard's excessive-force claim against Defendant Harris.

A. Defendant Harris's use of pepper spray on Mr. Leonard while he was handcuffed, surrounded, naked, and non-threatening was objectively unreasonable and unconstitutional.

An officer violates the Constitution when he deploys objectively unreasonable force against a pretrial detainee. *Davis v. White*, 794 F.3d 1008, 1011-12 (8th Cir. 2015). The reasonableness of force turns on factors including "the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived

by the officer; and whether the plaintiff was actively resisting." *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). Each factor cuts in Mr. Leonard's favor here.

First, consider "the relationship between the need for force and the amount of force used." *Id.* at 397. Here, viewing the record in the light most favorable to Mr. Leonard, a jury could conclude that the force used significantly outweighed any need. For one thing, the search itself was, according to correctional expert Mr. Katsaris, "totally unnecessary." AA448-50 R. Doc. 101-22, at 9-11. And once the search began, Mr. Leonard was harmless. He was handcuffed. AA602 R. Doc. 101-35, at 2:00. He was naked. *Id.* He did not pose a physical threat: Even by Defendant Harris's own account, he attempted to walk *around*, not at, the officers. AA545 R. Doc. 101-27, at 3. Two officers stood between Mr. Leonard and the door at all times. *See* AA602 R. Doc. 101-35, at 1:50-2:20. And in the four seconds that elapsed between Mr. Leonard standing up and Defendant Harris pepper-spraying him in the face, those two officers had already managed to stop Mr. Leonard in his tracks and had both hands on him. AA602 R. Doc. 101:35, at 2:16-2:20.

Indeed, the need for force was so paltry here that Mr. Leonard's expert thought it could only be explained as retaliation for Mr. Leonard's psychotic behavior. AA451 R. Doc. 101-22, at 12. Likewise, Director Keen confirmed that he would have investigated whether the officers were seeking "revenge" against Mr. Leonard. AA264-65 R. Doc. 101-8, at 41-42. That theory is supported by Defendant Harris's decision to unholster his pepper spray before even entering the cell. AA510 R. Doc. 101-24, at 20; AA172-73 R. Doc. 101-6, at 13-14.

Defendants only offer one excuse for the use of pepper spray: Mr. Leonard disobeyed an order, i.e., the officers told him that he would be pepper sprayed if he moved. AA536 R. Doc. 101-26, at 4. But the "use of pepper spray will not be justified every time an inmate questions orders." *Treats v. Morgan*, 308 F.3d 868, 872-73 (8th Cir. 2002). Where a detainee "poses no threat," as Defendant Harris conceded was the case here, AA545 R. Doc. 101-27, at 3, his mere refusal to obey orders cannot justify the use of pepper spray, *see Treats*, 308 F.3d at 873. Thus, Mr. Leonard's decision to stand is of no moment to the analysis here because, as the officers admit, he in no way threatened anyone's safety.

Second, "the extent of [Mr. Leonard's] injury" demonstrates the force used was excessive. *See Kingsley*, 576 U.S. at 397. This Court has found a constitutional violation where pepper spray caused "burning" and then, when it was not washed off, "continued to [cause] painful effects for several days." *Foulk v. Charrier*, 262 F.3d 687, 701 (8th Cir. 2001). Here, of course, Mr. Leonard's injury was far worse: The pepper spray so irritated his diseased eye, which was particularly vulnerable to pepper spray, *see* AA150 R. Doc. 101-3, at 8; AA289 R. Doc 101-11, at 10, that he tore it out of its socket, AA603 R. Doc 101-36, at 9:00. A jury could therefore conclude that pepper-spraying Mr. Leonard caused him severe pain. This factor, then, also cuts in Mr. Leonard's favor.

Third, the record, viewed in a light most favorable to Mr. Leonard, demonstrates no "effort made by [Defendant Harris] to temper or to limit the amount of force." *Kingsley*, 576 U.S. at 397. Before Defendant Harris pepper-sprayed Mr. Leonard, the other two officers had subdued him, vitiating the need for any force at all. But far from tempering or limiting his force, Defendant Harris deployed the pepper spray to inflict maximal damage. He fired the pepper spray directly into Mr. Leonard's diseased eye. AA537 R. Doc. 101-26, at 5; AA545 R. 101-27, at 3. He did so from

twelve to eighteen inches away, even though national standards—standards that the County, too, had adopted—dictate that pepper spray should not be used on someone closer than three feet. AA595 R. Doc. 101-34, at 14; AA573 R. Doc. 101-30, at 3. The officers did not attempt to consult with medical or a supervisor before entering Mr. Leonard's cell with the pepper spray unholstered, even though County policy required them to do so. AA171-72 R. Doc. 101-6, at 12-13; AA423 R. Doc. 101-14, at 12. And after they pepper-sprayed Mr. Leonard, the officers refused to let him shower off the spray. AA405 R. Doc. 101-13, at 12. For all these reasons, a jury could find this factor, too, cuts in Mr. Leonard's favor.

Fourth, the circumstances leading up to Defendant Harris's use of pepper spray did not present a "security problem" warranting such force. *See Kingsley*, 576 U.S. at 397. Merely disobeying orders does not create a security problem sufficient to justify a use of force. *Walker v. Bowersox*, 526 F.3d 1186, 1189 (8th Cir. 2008); *Treats*, 308 F.3d at 872-73. Here, there is no evidence, much less undisputed evidence, that Mr. Leonard posed *any* threat to *any* person other than himself at the time he stood up: he was handcuffed; he was naked; he did not move toward the officers; and there is no evidence that any other person was anywhere near Mr.

Leonard's cell. AA602 R. Doc. 101-35, at 2:00-2:25. Meanwhile, there was no reason to even conduct the search in the first place. AA256-57 R. Doc. 101-8, at 33-34. Thus, a jury could reasonably find that no security threat justified using force against Mr. Leonard.

Fifth, consider "the threat reasonably perceived by [Defendant Harris]." *Kingsley*, 576 U.S. at 397. Only a serious threat would justify the use of force here, *Walker*, 526 F.3d 1186, yet Defendant Harris expressly admitted that he perceived *no* physical threat from Mr. Leonard, AA545 R. Doc. 101-27, at 3. Indeed, Defendant Harris unholstered his pepper spray before even entering Mr. Leonard's cell, suggesting that he expected to pepper-spray Mr. Leonard regardless of his behavior. AA554 R. Doc. 101-27, at 12. Defendants' only ostensible security concern was that Mr. Leonard would walk out the cell door—but that concern was implausible because there were three officers between Mr. Leonard and the door, he was not running or dodging, and they subdued him with their bare hands within seconds. *See* AA602 R. Doc. 101-35, at 2:16-2:20. For all these reasons, a jury could easily conclude that a reasonable officer would have perceived Mr. Leonard as posing no threat at all.

Sixth, the force was inappropriate here because Mr. Leonard was not "actively resisting." *Kingsley*, 576 U.S. at 397. Although Mr. Leonard disobeyed Defendant Harris's order not to move, the record reflects that the officers should have known his psychosis would make it impossible to obey orders, such that a jury could conclude that Mr. Leonard's movement was not resistance at all. AA250-52 R. Doc. 101-8, at 27-29. And, regardless, resistance only justifies the use of force when it creates "a concern for the safety of the institution and for those within its walls." *Hickey v. Reeder*, 12 F.3d 754, 759 (8th Cir. 1993). Even assuming that Mr. Leonard's three seconds of standing and moving along the back wall of his cell, all while naked and handcuffed and surrounded by three officers, constituted "active resistance," a jury could easily find that such resistance created no serious safety concerns.

Because each of these factors suggests that Defendant Harris's use of force was unreasonable, his pepper-spraying of Mr. Leonard violated the Fourth Amendment.

B. It was clearly established in July 2017 that pepper-spraying a handcuffed pretrial detainee who posed no serious threat violates the Constitution.

Defendant Harris is not entitled to qualified immunity because, at the time of the incident, several of this Circuit's cases clearly established that it is unconstitutional to pepper-spray an individual in custody who does not pose an immediate threat and is not actively resisting.

One such case is *Tatum v. Robinson*, 858 F.3d 544 (8th Cir. 2017).[4] There, an officer apprehended a shoplifting suspect and informed him that "he was a police officer, told him he was under arrest, told him to put his hands on a clothes rack, [and] warned him he would use pepper spray if he did not calm down." *Id.* at 550. Although the suspect "was given an opportunity to comply," he "did not, instead arguing angrily." *Id.* The officer then pepper-sprayed him. *Id.* This Court held that it was "not reasonable for [the officer] to immediately use pepper spray." *Id.* It explained that although the suspect was disobeying orders, he had not committed a serious crime, did not pose an immediate threat to anyone's safety, and was not actively resisting arrest. *Id.* at 548-49. And it noted

[4] The *Tatum* opinion was filed on May 30, 2017, two months before this incident took place.

that the use of force was less justified because the officer "was not alone—another security officer was close by, as were at least two [store] employees." *Id.* at 550.

This case is worse than *Tatum*. Like the plaintiff there, Mr. Leonard allegedly received a warning, was given an opportunity to comply, did not, and was then pepper-sprayed. AA536 R. Doc. 101-26, at 4; AA602 R. Doc. 101-35, at 2:20. Also like the *Tatum* plaintiff, Mr. Leonard had not committed a serious crime, concededly did not pose an immediate threat to anyone's safety, and was not actively resisting the officers. *See* AA602 R. Doc. 101-35, at 2:00-2:25. Moreover, as in *Tatum*, Defendant Harris here was not alone—he was accompanied by two other officers. *Id.* And unlike in *Tatum*, Mr. Leonard was handcuffed, did not yell angrily at anyone, and was naked. *Id.*; AA250-52 R. Doc. 101-8, at 27-29. Those facts take this case even beyond the already unconstitutional facts of *Tatum*. Therefore, *Tatum* clearly established that pepper-spraying Mr. Leonard was unreasonable.

Next, take *Hickey v. Reeder*, 12 F.3d 754 (8th Cir. 1993). There, the plaintiff was ordered to clean his cell. *Id.* at 756. He refused. *Id.* Several other officers arrived and repeated the order, and he still refused. *Id.* One

officer "warned [him] that if he did not voluntarily sweep his cell, the officers would make him do it." *Id.* He "still refused." *Id.* An officer then shot him with a stun gun.[5] *Id.* This Court held that the use of force was unconstitutional because the plaintiff had not threatened "prison security and order, or the safety of other inmates or officers." *Id.* at 759.

Hickey, too, clearly established that Defendant Harris's pepper-spraying of Mr. Leonard was unconstitutional. As in *Hickey*, Mr. Leonard allegedly disobeyed an order and was warned of the consequences. AA536 R. Doc. 101-26, at 4. Like the plaintiff there, Mr. Leonard did not otherwise threaten prison security or the safety of others. AA545 R. Doc. 101-27, at 3. And like the plaintiff there, Mr. Leonard was nonetheless subjected to a serious use of force. AA602 R. Doc. 101-35, at 2:20. Thus, like *Tatum*, *Hickey* gave Defendant Harris notice at the time of the incident that pepper-spraying Mr. Leonard was unconstitutional.

Walker v. Bowersox also clearly established Mr. Leonard's right not to be pepper-sprayed while handcuffed, surrounded, naked, and

[5] This Circuit considers pepper-spray and stun guns "equivalent" uses of force. *Brown v. City of Golden Valley*, 574 F.3d 491, 500 n.6 (8th Cir. 2009).

nonviolent. *See* 526 F.3d 1186 (8th Cir. 2008). There, the plaintiff was "pepper-sprayed for refusing orders to give officers a food tray." *Id.* at 1188. The plaintiff had "refused three orders to give [the defendant] his cell mate's tray and refused to move away from the food port." *Id.* at 1189. Still, this Court concluded that the defendant's decision to pepper-spray the plaintiff was unreasonable, particularly in light of the fact that, just like Mr. Leonard, the plaintiff "was not allowed to shower . . . and could only wash in his cell sink," worsening his reaction to the spray. *Id.* at 1189.

Those facts are nearly identical to the ones here. As in *Walker*, Mr. Leonard allegedly failed to follow an order. AA536 R. Doc. 101-26, at 4. As in *Walker*, Mr. Leonard otherwise posed no threat to the officers or anyone else. AA545 R. Doc. 101-27, at 3. And as in *Walker*, Mr. Leonard was prevented from properly washing his eyes after his pepper-spraying. AA406 R. Doc. 101-13, at 12. There is only one superficial distinction from *Walker* here—unlike in *Walker*, Mr. Leonard was given a warning before he was sprayed, *see Walker*, 526 F.3d at 1189—and that distinction is illusory. That is because the record establishes that the officers knew or should have known that Mr. Leonard would be unable to understand that

warning because of his mental illness. AA250-52 R. Doc 101-8, at 27-29. And in just about every area of the law, courts recognize that notice is not adequately provided if the recipient cannot understand it. *See, e.g.*, *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010) (*Miranda* warning); *Harvey v. United States*, 850 F.2d 388, 395 (8th Cir. 1988) (guilty plea); *Thomforde v. Int'l Bus. Machines Corp.*, 406 F.3d 500, 503-04 (8th Cir. 2005) (release of claims). So, in all material respects, *Walker*, too, clearly established Mr. Leonard's right against excessive force here.

Moreover, at the time of this incident, this Court had held in many different contexts that an officer could not use more-than-de-minimis force against a nonthreatening subject. *See Small v. McCrystal*, 708 F.3d 997, 1005 (8th Cir. 2013); *Montoya v. City of Flandreau*, 669 F.3d 867, 873 (8th Cir. 2012); *Shekleton v. Eichenberger*, 677 F.3d 361, 367 (8th Cir. 2012); *Johnson v. Carroll*, 658 F.3d 819, 828 (8th Cir. 2011); *Shannon v. Koehler*, 616 F.3d 855, 864 (8th Cir. 2010); *Brown*, 574 F.3d at 498; *Rorhbough v. Hall*, 586 F.3d 582, 586-87 (8th Cir. 2009); *Henderson v. Munn*, 439 F.3d 497, 503 (8th Cir. 2006); *Kukla v. Hulm*, 310 F.3d 1046, 1050 (8th Cir. 2002); *Guite v. Wright*, 147 F.3d 747, 750 (8th Cir. 1998). Those cases put Defendant Harris on notice that he could not pepper-

spray Mr. Leonard—who was nonthreatening by Defendant Harris's own admission, AA545 R. Doc. 101-27, at 3—at the time of this incident.

Finally, numerous out-of-Circuit cases establish the right to not be subjected to force while not posing an immediate threat or actively resisting. This Court has regularly relied on a "robust consensus of cases of persuasive authority" in finding clearly established law for qualified-immunity purposes. *See Bus. Leaders In Christ v. Univ. of Iowa*, 991 F.3d 969, 980, 984-86 (8th Cir. 2021) (relying on two circuits); *Z.J. by and through Jones v. Kan. City Bd. of Police Comm'rs*, 931 F.3d 672, 684 & n.5 (8th Cir. 2019) (same). And at least three circuits have held that the use of force against people who are nonviolent and either handcuffed or surrounded by officers—not to mention both, like Mr. Leonard—is unconstitutional even if the person is disobeying orders. *See Santini v. Fuentes*, 795 F.3d 410, 419-20 (3d Cir. 2015); *Cordell v. McKinney*, 759 F.3d 573, 585-86 (6th Cir. 2014); *Jones v. Buchanan*, 325 F.3d 520, 529-30 (4th Cir. 2003). Thus, even if this Court had not repeatedly made clear that pepper-spraying an individual while he was handcuffed, surrounded by officers, and nonviolent was unconstitutional, other circuits' caselaw clearly established that proposition at the time of the incident.

II. Defendant Baker Failed to Take Reasonable Measures to Abate a Known Risk of Serious Harm to Mr. Leonard When She Failed to Intervene as He Gouged His Own Eye Out in Front of Her.

Defendant Baker, the suicide-prevention unit supervisor who watched Mr. Leonard gouge his own eye out without intervening, was deliberately indifferent to Mr. Leonard's medical needs. And the caselaw on this point is sufficiently clear to defeat Defendant Baker's claim of qualified immunity at this juncture.

A. Defendant Baker violated the Constitution.

It is black-letter law that a jailer exhibits deliberate indifference in violation of the Eighth Amendment when she is aware that an inmate "faces a substantial risk of serious harm and fails to take reasonable measures to abate that risk." *Olson v. Bloomberg*, 339 F.3d 730, 735 (8th Cir. 2003) (cleaned up). Both prongs of this test are satisfied here.

Defendant Baker was aware of the "substantial risk of serious harm" to Mr. Leonard. She literally watched as he tore his eye out. AA216 R. Doc. 101-7, at 12. By her own account, she was summoned to the unit because one of her officers was concerned about Mr. Leonard's behavior, and she immediately could "see some blood on the floor" next to Mr. Leonard. *Id.* The video shows that Mr. Leonard was bloody, squirming on

the ground, and digging at his eye for two full minutes. AA603 R. Doc. 101-36, at 7:06-9:06. A jury could reasonably conclude that Defendant Baker witnessed all or most of this behavior. *See* AA216 R. Doc. 101-7, at 12.

Yet Defendant Baker "fail[ed] to take reasonable measures to abate th[e] risk" to Mr. Leonard. She did not enter his cell. AA216 R. Doc. 101-7, at 12. She did not direct other officers to do so. *Id.* She simply watched as he fell to the ground and scraped his eyeball out of its socket as blood poured out of his eye. *See* AA603 R. Doc. 101-36.

The district court concluded that Defendant Baker did not violate the Constitution because jail policy required additional backup before she could enter Mr. Leonard's cell. But a jury could surely conclude otherwise. For starters, the district court cited no caselaw for the proposition that a jail policy can trump the requirements of the Constitution. And even if it could, the policy here merely required an officer to have "appropriate backup" before entering a cell. AA605 R. Doc. 101-38, at 2. A reasonable juror could certainly conclude that having another officer present, as Defendant Baker did, constituted having "appropriate backup." *See* AA216 R. Doc. 101-7, at 12. And, even if the

policy required Defendant Baker to wait for even more officers to arrive, those officers *did* arrive: Defendant Martin, the nurse, testified that there were at least "four or five" officers present when she came to the cell to render aid, yet none had entered the cell. AA397 R. Doc. 101-13, at 4; *see* AA398 R. Doc. 101-13, at 5 ("[T]here was sufficient help outside the cell."). Director Keen likewise testified that "plenty of officers were there [such] that we could have stepped in to stop him." AA245 R. Doc. 101-8, at 22. In short, a reasonable jury could conclude that Defendant Baker could have safely stopped Mr. Leonard from self-harming but declined to do so.

In light of this evidence, there is more than enough in the record for a jury to find that Defendant Baker's failure to take any action while watching Mr. Leonard dig his eye out was not a "reasonable effort to abate the risk." But there is yet another reason a jury could make that finding: Defendants possessed video footage of the exterior of Mr. Leonard's cell, which would have shown Defendant Baker and other officers observing Mr. Leonard's self-mutilation and failing to intervene. That video was the most direct evidence establishing whether and when

Defendant Baker could have entered the cell, and Defendants deleted it. AA270 R. Doc. 101-8, at 47.

The district court declined to sanction Defendants for this deletion and held that no adverse inference about the video's contents should be drawn, AA695 R. Doc. 124, at 4, but that ruling was erroneous. A party's deletion of discoverable material in its control gives rise to an adverse-inference instruction where the party knows litigation is probable, has the means to preserve the evidence, and yet prejudices the other party by deleting it anyway. *Stevenson v. Union Pacific R.R. Co.*, 354 F.3d 739, 748 (8th Cir. 2004). Here, Defendants admitted they "underst[ood] the potential for future litigation" immediately after the incident, Doc. 66 at 5; they were able to preserve contemporaneous video of the interior of the cell and simply declined to do the same for video of its exterior, *see* AA602 R. Doc. 101-35; and Mr. Leonard was prejudiced because the video would have demonstrated "who was outside of the cell" while he was digging his own eye out, Doc. 98-3 at 6-7.

The district court's only rationale for denying sanctions was that the deletion was not "nefarious." AA695 R. Doc. 124, at 4. But that conclusion failed to acknowledge key facts in Mr. Leonard's favor:

Defendants received a timely preservation request, Doc. 60-1 at 3; Director Keen—the current head of the jail—admitted that the video should have been preserved, AA270 R. Doc. 101-8, at 47; and Mr. Katsaris, the correctional expert, opined that the video "obviously" should have been preserved and that the failure to preserve it was "inconceivable," Doc. 98-3 at 5, 8. A district court abuses its discretion when it relies on an incomplete view of the facts, *Sentis Grp. Inc. v. Shell Oil Co.*, 559 F.3d 888, 901 (8th Cir. 2009), so the district court erred in not requiring an adverse inference about the video's deletion.

Anyhow, even if sanctions were not appropriate here, a reasonable juror could certainly infer that the deletion demonstrated Defendants' awareness that the video was damning as to Defendant Baker's liability. Courts routinely allow parties to present evidence of spoliation even where they decline to give an adverse-inference instruction. *See, e.g.*, *Booker v. Mass. Dep't of Pub. Health*, 612 F.3d 34, 45 (1st Cir. 2010) (discussing extensive trial testimony on spoliation despite district court's denial of discovery sanctions); *Russell v. Univ. of Tex. of Permian Basin*, 234 F. App'x 195, 208 (5th Cir. 2007) (same). Even without such evidence,

it is clear that Defendant Baker was liable on this record; with it, her liability is even clearer.

B. Defendant Baker is not entitled to qualified immunity.

Defendant Baker is not entitled to qualified immunity for three reasons.

First, this Court's precedents make clear that officers violate the Constitution when they have reason to know that the prisoner is at risk of self-harming but declines to prevent him from doing so. *Olson*, 339 F.3d at 735-36; *Coleman v. Parkman*, 349 F.3d 534, 539-40 (8th Cir. 2003). In *Olson*, for instance, an inmate informed a jailer that he planned to commit suicide. 339 F.3d at 734. The jailer expressed uninterest and did not return for twenty-five minutes, at which point the inmate had hanged himself. *Id.* This Court held that the jailer exhibited deliberate indifference because he knew of the threat to the inmate's health and intentionally delayed his response. *Id.* at 736-37.

This case involves demonstrably greater deliberate indifference than *Olson*: In *Olson* the inmate *said* he planned to commit suicide without taking any steps to do so while the officer was present. *Id.* at 735. Here, Mr. Leonard actively pulled his own eyeball out of its socket while

Defendant Baker watched. AA216 R. Doc. 101-7, at 12. If it is clearly established that officers violate the Constitution when they do not prevent a prisoner from self-harming it is *a fortiori* clearly established that they do so when they not only have reason to know the prisoner is at risk of doing so but is in fact doing so in front of their very eyes.

Second, at the time of the incident, a robust consensus of persuasive authority clearly established that officers must prevent ongoing acts of self-harm. This Court has held that as few as two other circuits can create a "robust consensus" clearly establishing a right for qualified-immunity purposes. *Bus. Leaders*, 991 F.3d at 980, 984-86; *Z.J.*, 931 F.3d at 684 & n.5. Here, at least three circuits had clearly held at the time of this incident that officers must prevent inmates from committing ongoing acts of self-harm. *See Lemire v. Cal. Dep't of Corr. & Rehab.*, 726 F.3d 1062, 1083 (9th Cir. 2013) (holding that officers exhibited deliberate indifference by failing to take "life saving action while waiting for [another officer] to arrive" during suicide attempt); *Est. of Miller ex rel. Bertram v. Tobiasz*, 680 F.3d 984, 991 (7th Cir. 2012) (reversing summary judgment where officers "waited to assemble an entry team and then applied restraints" before providing medical attention to the plaintiff);

Short v. Smoot, 436 F.3d 422, 429 (4th Cir. 2006) (holding that officer exhibited deliberate indifference by failing to "make any attempt to stop an ongoing suicide attempt").

Third, the Supreme Court recently reaffirmed the longstanding principle that clearly established law is not necessary to defeat qualified immunity where "no reasonable correctional officer" could conclude that her conduct was constitutional. *Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020); *see also McCoy v. Alamu*, 141 S. Ct. 1364 (2021). Here, Defendant Baker stood by and allowed an inmate under her care to pull his own eyeball out of its socket in front of her. *See* AA216 R. Doc. 101-7, at 12; AA603 R. Doc. 101-36. Mr. Katsaris, the veteran prison administrator, described her inaction as the "most egregious failure" he had ever reviewed in a correctional setting. AA174 R. Doc. 101-6, at 15. Defendant Baker's conduct so obviously violated the Constitution that qualified immunity is inappropriate.

For all these reasons, Defendant Baker is not entitled to qualified immunity.

III. Defendant Martin, Defendant Fisher, and Defendant St. Charles County Were Deliberately Indifferent to Mr. Leonard's Serious Medical Needs by Failing to Treat His Abundantly Clear Serious Medical Needs.

Defendant Martin, Defendant Fisher, and Defendant St. Charles County were each deliberately indifferent to Mr. Leonard's serious medical needs.

A. Defendant Martin was deliberately indifferent to Mr. Leonard's serious medical needs— treatment for his psychosis—by failing to provide him with his prescribed medication.

Nurse Martin was deliberately indifferent to Mr. Leonard's serious medical needs—i.e., his untreated, ongoing psychiatric crisis—because she failed to administer either his prescription psychiatric medication or the effective, in-stock sedative Haldol. And she is not entitled to qualified immunity because this Court's caselaw clearly established that she was required to provide Mr. Leonard with his prescribed medication or an alternative.

1. Defendant Martin violated the Constitution.

A medical provider is deliberately indifferent where (1) a prisoner has a "serious medical need," and (2) she has "knowledge of such serious medical need," but (3) she "nevertheless disregard[s] it." *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 529 (8th Cir. 2009).

First, Mr. Leonard had serious medical needs because he was experiencing an ongoing psychiatric crisis. A serious medical need is "one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." *Pool v. Sebastian Cnty.*, 418 F.3d 934, 944 (8th Cir. 2005) (citation omitted). From the moment he was incarcerated, Mr. Leonard displayed clear signs of a serious psychotic episode. He tried to choke himself by sticking his fist down his throat. AA19 R. Doc. 88, at 5; AA402 R. Doc. 101-13, at 9. He pulled on his genitals. AA402 R. Doc. 101-13, at 9. He stuck his fingers so deep into his nose that it bled. *Id.* He told Defendant Martin, "I have to get my soul out because it is time for me to die." AA404 R. Doc. 101-13, at 11. And he was naked throughout the entirety of this behavior. *Id.*; AA602 R. Doc. 101-35; AA603 R. Doc. 101-36. A reasonable juror could conclude, without hesitation, that these actions suggested an "obvious" need for "a doctor's attention." *Pool*, 418 F.3d at 944.

Second, Defendant Martin undoubtedly had "knowledge of such serious medical need." *Nelson*, 583 F.3d at 529. She personally witnessed Mr. Leonard put his fist down his throat, blow his nose so hard that it bled, and pull on his genitals. AA402 R. Doc. 101-13, at 9. She was also

the person to whom Mr. Leonard remarked, "I have to get my soul out because it is time for me to die." AA404 R. Doc. 101-13, at 11. Moreover, Defendant Martin knew that Mr. Leonard's mother had advised the jail's Medical Department of Mr. Leonard's mental illness and had delivered his prescribed psychiatric medications to the Medical Department. AA400-02 R. Doc. 101-13, at 7-9. Thus, Defendant Martin knew both that Mr. Leonard was experiencing a psychological crisis before her eyes, and that he was undergoing continuing and intensive treatment for mental illness.

Third, Defendant Martin disregarded this serious medical need. She failed to provide Mr. Leonard with any of his prescription medications. AA406 R. Doc. 101-13, at 13. She failed to make "any request to administer" those medications. *Id.* In fact, she failed to even ascertain what each of his medications was for until after he had pulled out his own eyeball. *See* AA407-08 R. Doc. 101-13, at 14-15. A reasonable juror could conclude that, having observed Mr. Leonard behaving extremely erratically and having been notified that he took five different psychiatric medications, Defendant Martin disregarded Mr. Leonard's

medical needs when she failed to make any effort to give him his prescriptions.

There is more. At the very least, if Defendant Martin was not going to give Mr. Leonard his prescribed medications, she had an obligation to treat him once he started self-harming and giving delusional explanations for his behavior. To that end, the jail stocked the common and effective sedative and anti-psychotic medication Haldol. AA369 R. Doc. 101-12, at 35. Defendant Martin had administered Haldol in the past. AA406 R. Doc. 101-13, at 13. According to Mr. Leonard's medical expert, "Haldol is very commonly used for people who are . . . acutely psychotic [and] in danger of harming themselves," such that the sort of behavior Mr. Leonard exhibited "would generally be treated with Haldol." AA402-03 R. Doc. 101-11, at 9-10. Therefore, Haldol would likely have been effective in calming Mr. Leonard. *Id.*[6] Yet, as with Mr. Leonard's prescription medications, Defendant Martin did not even "request to administer" Haldol to him. AA406 R. Doc. 101-13, at 13. Thus,

[6] Haldol's effectiveness on Mr. Leonard was later decisively demonstrated: it calmed him when it was administered to him after he gouged his own eye out. AA369 R. Doc. 101-12, at 35.

as with her failure to administer Mr. Leonard's prescribed medications, Defendant Martin's failure to administer Haldol evinced deliberate indifference to Mr. Leonard's medical needs.

2. Mr. Leonard's right to medical care under these circumstances was clearly established.

Before this incident occurred, this Court held that "[d]elay in the provision of treatment or in providing examinations can violate inmates' rights when the inmates' ailments are medically serious or painful in nature." *Dadd v. Anoka Cnty.*, 827 F.3d 749, 755 (8th Cir. 2016) (citation omitted). In *Dadd*, this Court allayed any doubt as to that proposition by reiterating its holding—"When an official denies a person treatment that has been ordered or medication that has been prescribed, constitutional liability may follow"—and citing seven Eighth Circuit cases that support that proposition.[7] Thus, Mr. Leonard's right to be provided his

[7] *Phillips v. Jasper Cnty. Jail*, 437 F.3d 791, 795-96 (8th Cir. 2006) ("[T]he knowing failure to administer prescribed medicine can itself constitute deliberate indifference."); *see also Foulks v. Cole Cnty.*, 991 F.2d 454, 455-57 (8th Cir. 1993); *Johnson v. Hay*, 931 F.2d 456, 462 (8th Cir. 1991); *Ellis v. Butler*, 890 F.2d 1001, 1004 (8th Cir. 1989); *Crooks v. Nix*, 872 F.2d 800, 805 (8th Cir. 1989); *Cummings v. Roberts*, 628 F.2d 1065, 1068 (8th Cir. 1980); *Majors v. Baldwin*, 456 F. App'x 616, 617 (8th Cir. 2012) (per curiam).

prescription psychiatric medication was clearly established well before this incident.

In *Dadd*, the plaintiff suffered from severe jaw pain from a dental surgery conducted the day before his arrest. *Id.* at 753. He expressed his pain to jail staff and asked to be provided with his prescribed Vicodin. *Id.* at 755. Jail staff knew of his prescription, his recent surgery and attendant pain prognosis, and his complaints of pain. *Id.* Still, they failed to provide him with his prescribed Vicodin. *Id.* This Court held that both the jail deputies and the jail nurse were deliberately indifferent in failing to provide him with the prescribed Vicodin. *Id.*

This case is materially indistinguishable. Here, like the *Dadd* plaintiff, Mr. Leonard entered custody with prescriptions for his self-evident medical needs. AA125 R. Doc. 101-1, at 2; *see Long v. Nix*, 86 F.3d 761, 765 n.3 (8th Cir. 1996) ("A psychological disorder may constitute a serious medical need."). Like the *Dadd* defendants, Defendant Martin was aware of both this prescription and Mr. Leonard's diagnoses, AA400-02 R. Doc. 101-13, at 7-9, and also knew from her own observations that Mr. Leonard was in serious need of treatment, AA402 R. Doc. 101-13, at 9. Yet, like the *Dadd* defendants, Defendant Martin failed to provide Mr.

Leonard with his prescribed anti-psychotic medication or, alternatively, with Haldol. AA406 R. Doc. 101-13, at 13. Thus, under *Dadd*, she was deliberately indifferent: she was "aware[] of the medication" and of Mr. Leonard's self-evident serious medical problems—i.e., his propensity to engage in active self-harm—yet failed to provide him with the medication to treat those problems. *Dadd*, 827 F.3d at 755. And because *Dadd* clearly established Mr. Leonard's right to be provided with known prescription medication for his ongoing medical needs, Defendant Martin is not entitled to qualified immunity.

The district court concluded that Defendant Martin was entitled to qualified immunity because she "provided medical care" by moving Mr. Leonard to the suicide-prevention unit. AA712 R. Doc. 124, at 21. But Defendant Martin herself testified that Mr. Leonard continued to behave erratically after he was moved to the suicide-prevention unit, so this "care" hardly sufficed. AA404 R. Doc. 101-13, at 11. And, in any event, this Court held in *Dadd* that providing "minimal medical attention" cannot vitiate a defendant's failure to adequately treat a plaintiff's medical needs. 827 F.3d at 755. Here, a reasonable juror could conclude that moving Mr. Leonard from one cell to another without administering

any of his medication constituted no more than "minimal medical attention." In short, Defendant Martin is not entitled to qualified immunity.

B. Defendant Fisher was deliberately indifferent in failing to provide even minimal aftercare after Mr. Leonard was pepper-sprayed in the face.

Likewise, Defendant Fisher, the officer supervising and directing Mr. Leonard's pepper-spraying, was deliberately indifferent to Mr. Leonard's severe eye pain and concomitant psychiatric crisis when he failed to ensure that Mr. Leonard washed his eye out at all after he was pepper-sprayed in the face from close distance. Again, a jailer is deliberately indifferent where (1) a prisoner has a serious medical need that (2) he knows of but (3) disregards. *Nelson*, 583 F.3d at 529.

First, Mr. Leonard had a serious medical need for eye treatment after he was pepper-sprayed in the eye at close distance. Substantial pain constitutes a serious medical need. *Logan v. Clarke*, 119 F.3d 647, 649 (8th Cir. 1997). Here, Mr. Leonard was pepper-sprayed directly in an eye afflicted by Reiter's syndrome—which causes eye problems including conjunctivitis and uveitis, AA290 R. Doc. 101-11, at 11—from less than two feet away, AA171 R. Doc. 101-6, at 12. His pain was "indescribable."

AA125 R. Doc. 101-1, at 2. At that point, he was experiencing a serious medical need.

Second, Defendant Fisher was aware of this serious medical need. He was present when Mr. Leonard reacted in severe pain to the pepper-spraying. AA602 R. Doc. 101-35, at 2:22. And he knew that detainees can "have a reaction to" pepper spray and experience "medical difficulties," including "extreme eye irritation," when sprayed in the face. AA503 R. Doc. 101-25, at 19. Moreover, Mr. Leonard had observable "eye irritation" and stated that he was "burning all over" after he was pepper-sprayed, facts that a reasonable juror could conclude were noticeable to Defendant Fisher. AA401 R. Doc. 101-13, at 8; AA405 R. Doc. 101-13, at 12.

Third, Defendant Fisher failed to ensure that Mr. Leonard washed his diseased and pepper-sprayed eye. Indeed, worse than failing to treat Mr. Leonard's eye, Defendant Fisher actively prevented treatment. The only qualified medical professional on the scene, Defendant Martin, testified that she "asked [the officers] to give [Mr. Leonard] a shower." AA405 R. Doc. 101-13, at 12. And Director Keen testified that Mr. Leonard "should have been" given a shower to "decontaminate[]" because there was no suitable "wash station" in Mr. Leonard's unit. AA236 R. Doc.

101-8, at 13. But—even though the officers' training advised that "copious amounts of cool water" should be poured into a subject's "open eyes" after he is pepper-sprayed, AA597 R. Doc. 101-34, at 16—the officers refused to give Mr. Leonard a shower. AA405 R. Doc. 101-13, at 12. Moreover, Defendant Martin also "asked [the officers] to bring [Mr. Leonard] down to medical" for further observation, but the officers refused this request too. *Id.* A reasonable juror could conclude that Defendant Fisher, as the lead officer on the scene, was the officer responsible for that refusal. *See* AA514 R. Doc. 101-25, at 3. Thus, in preventing Mr. Leonard from receiving treatment suggested by a medical professional, Defendant Fisher disregarded Mr. Leonard's serious medical needs.

Defendant Fisher is not entitled to qualified immunity for his failure to ensure that Mr. Leonard's eye was washed out. Although this Court had not confronted an identical factual scenario at the time of the incident, a "robust consensus of cases of persuasive authority" clearly established Mr. Leonard's right to at least minimal aftercare once he was inappropriately pepper-sprayed. *See Bus. Leaders*, 991 F.3d at 980; *Quraishi v. St. Charles Cnty.*, 986 F.3d 831, 838-39 (8th Cir. 2021). In

Danley v. Allen, for instance, the Eleventh Circuit held that officers who saw the plaintiff be pepper-sprayed and then experience difficulty breathing and eye irritation were deliberately indifferent in not decontaminating him promptly. 540 F.3d 1298, 1311 (11th Cir. 2008), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009). In *Danley*, unlike in this case, the defendants did eventually give the plaintiff a shower, and yet the court still held that "the jailers forced [the plaintiff] to wait for too long before allowing him to shower and the shower that finally was allowed was too short." *Id.* Numerous other cases have reached the same result. *See Iko v. Shreve*, 535 F.3d 225, 242 (4th Cir. 2008); *Stewart v. Stewart*, 60 F. App'x 20, 22-23 (9th Cir. 2003); *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002); *McNeeley v. Wilson*, 649 F. App'x 717, 722-23 (11th Cir. 2016); *Reyes v. McGrath*, 444 F. App'x 126, 126-27 (9th Cir. 2011). Thus, at the time of the incident here, a robust consensus of circuit-court authority clearly established that Defendant Fisher was deliberately indifferent in failing to ensure that Mr. Leonard's eye was adequately washed after he was pepper-sprayed.

C. Defendant St. Charles County is liable for adhering to its custom of not providing inmates with medical care known to be necessary.

Finally, a reasonable juror could find that Defendant St. Charles County's custom of denying inmates medical care for their known medical needs caused Mr. Leonard's injuries here. A municipality is liable for a plaintiff's constitutional injury where (1) there is a pattern of misconduct; (2) the municipality is deliberately indifferent to that pattern; and (3) that pattern is the moving force behind the plaintiff's injury. *Ware v. Jackson Cnty.*, 150 F.3d 873, 880 (8th Cir. 1998). "[I]naction or laxness can constitute government custom if it is permanent and well settled." *Tilson v. Forrest City Police Dep't*, 28 F.3d 802, 807 (8th Cir. 1994). Here, the County's custom of refusing medical care for known medical needs caused both Defendants' denial of Mr. Leonard's prescription medications and Defendants' failure to wash Mr. Leonard's eye after he was pepper sprayed. A reasonable juror could thus conclude that Mr. Leonard satisfied all three prongs of the municipal-liability inquiry.

1. The record, when viewed in a light most favorable to Mr. Leonard, demonstrates a pattern of unconstitutional misconduct.

Mr. Leonard demonstrated that the County established a pattern of unconstitutional misconduct. A "pattern" of misconduct sufficient to

establish municipal liability does not always require a multitude of prior incidents or that the prior incidents be identical to the instant one. *See Wever v. Lincoln Cnty.*, 388 F.3d 601, 607-08 (8th Cir. 2004); *Ware*, 150 F.3d at 882. The "pattern" need not reflect written policies; indeed, written policies "are of no moment in the face of evidence that such policies are neither followed nor enforced." *Ware*, 150 F.3d at 882.

For example, in *Wever*, this Court held that just two previous jail suicides were enough to demonstrate a pattern sufficient to prove municipal liability. 388 F.3d at 607-08. In doing so, it did not identify any particular similarities between the two prior suicides and the case at bar beyond that all three involved preventable jail suicides. *See id.*; *see also Stearns v. Inmate Servs. Corp.*, 957 F.3d 902, 910 (8th Cir. 2020) (holding that municipal liability claim could go to jury based largely on unspecified "affidavits by other prisoners" establishing existence of alleged unconstitutional custom).

Here, the pattern is far longer-standing than the pattern that the *Wever* plaintiffs put forth. In this case, the County had an extensive history of incidents in which medical professionals and guards at the jail knew what care was medically necessary yet refused to provide it to

inmates. In some cases, the County denied medical treatment to detainees suffering from chronic conditions that began before they were incarcerated but were known to medical personnel, just as Defendant Martin denied Mr. Leonard the prescription medications his mother dropped off at the jail. *See, e.g.*, AA656 R. Doc 101-40, at 49; *Ramsey v. St. Charles Cnty.*, No. 4-15-cv-00776-JAR (E.D. Mo. 2015). In other cases, the County denied prisoners medical care for injuries inflicted in prison—often injuries inflicted by guards themselves—just as Defendant Fisher denied Mr. Leonard the medically recommended treatment after pepper-spraying his eye. *See, e.g.*, AA631 R. Doc. 101-40, at 24 & n.1; *Breeding v. St. Charles Cnty.*, No. 4:15-cv-00539-RWS (E.D. Mo. Mar. 27, 2015)

First, for years before Defendant Martin failed to administer Mr. Leonard's known and necessary prescription medications to him, County personnel had similarly refused to treat other inmates' known chronic medical needs. For instance, in an incident similar to this case, a detainee was pepper-sprayed in the face by County personnel after they refused to treat her known mental-health conditions following her admission from a mental healthcare facility. AA656-57 R. Doc 101-40, at 49-50; *Ramsey v. St. Charles Cnty.*, No. 4-15-cv-00776-JAR (E.D. Mo. 2015). Likewise,

the County caused a fatal stroke by failing to administer a detainee his usual prescription medication, just as it failed to do here. AA644-45 R. Doc. 101-40, at 37-38. The County also caused a detainee "severe pain" and "vomiting" by refusing to provide him with known, effective medication for his diagnosed ulcers, AA612-13 R. Doc. 101-40, at 4-5; refused to provide a pregnant detainee with medical care, AA639 R. Doc. 101-40, at 32; and repeatedly served a detainee food to which it knew he was allergic, AA640 R. Doc. 101-40, at 33.

Second, for years before Defendant Fisher failed to ensure any eye care for Mr. Leonard after he was pepper-sprayed in his diseased eye from close distance, the County had similarly refused to treat other detainees' known acute medical needs. These incidents included the following: the County refused to provide a detainee with medical attention after, just as in this case, officers unnecessarily escalated a minor disagreement and thereby caused him to "hit [his] head on [a] toilet, reinjur[ing] his left shoulder, and slam[ming] [him] on his back," AA625 R. Doc. 101-40, at 18; the County refused to administer prescribed pain medication to a detainee who was beaten in its custody, just as it failed to administer prescribed medication to Mr. Leonard here, *see*

Smith v. St. Charles Cnty., No. 4:18-cv-171-JCH (E.D. Mo. 2018); on four separate occasions, the County refused to transfer detainees to the hospital after they were severely beaten by other detainees, *see* AA631 R. Doc. 101-40, at 24 & nn.2 & 4 (two incidents); *Manzo v. St. Charles Cnty.*, No. 4:20-cv-01527-DDN, 2021 WL 2209324 (E.D. Mo. June 1, 2021); *Qandah v. St. Charles Cnty.*, No. 4:20-cv-00053-JCH (E.D. Mo. Jan. 13, 2020); *Terrill v. St. Charles Cnty.*, No. 19-cv-01897-MTS (E.D. Mo. Aug. 8, 2019); and the County refused to provide a detainee treatment for abdominal pain, again leading to his death, *see* AA631 R. Doc. 101-40, at 24 & n.1; *Breeding v. St. Charles Cnty.*, No. 4:15-cv-00539-RWS (E.D. Mo. Mar. 27, 2015).

In total, Mr. Leonard adduced eleven incidents in which the County refused to provide medically appropriate care despite knowing that a detainee was suffering serious harm—far more incidents than this Court has previous found necessary to establish a "pattern" of prior misconduct. *See Wever*, 388 F.3d at 608 (two prior incidents); *Ware*, 150 F.3d at 885 (five prior incidents).

2. St. Charles County was deliberately indifferent to its widespread practice of refusing to provide care for detainees' serious medical needs.

Turning, then, to the second element of municipal liability, the County was deliberately indifferent to its pattern of refusing to provide care for detainees' obvious medical needs. "Notice is the touchstone of deliberate indifference in the context of § 1983 municipal liability," such that deliberate indifference is established by evidence that the municipality was on notice of the misconduct but did nothing to stop it. *Atkinson v. City of Mountain View*, 709 F.3d 1201, 1216 (8th Cir. 2013). For example, public complaints can put a municipality on notice. *Harris v. City of Pagedale*, 821 F.2d 499, 504-05 (8th Cir. 1987). So can a pattern of lawsuits against the municipality. *See Perkins v. Hastings*, 915 F.3d 512, 522 (8th Cir. 2019). This Court has even held that low-level staff members witnessing misconduct can suffice without any evidence that the information was communicated to a policymaker. *S.M. v. Lincoln Cnty.*, 874 F.3d 581, 588-89 (8th Cir. 2017).

The number of instances of misconduct of which a municipality must be aware before it can be said to be deliberately indifferent "depend[s] on the seriousness of the incident and its likelihood of

discovery." *Wever*, 388 F.3d at 607. Where, as here, the misconduct in question involves serious bodily injury, even "one or two" incidents can establish deliberate indifference. *Id.*

Here, the County was well aware of each of the eleven incidents described above. In some cases, the detainee or their family sued the County, undoubtedly putting the County on notice; the County settled some of those cases, and others remain pending.[8] At the very least, in each case, the detainee filed an administrative grievance, putting the County on notice of the incident.[9] Given this notice alone, the County was deliberately indifferent to detainees' serious medical needs.

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[8] *Ramsey v. St. Charles Cnty.*, No. 4-15-cv-00776-JAR (E.D. Mo. 2015) (settled); *Breeding v. St. Charles Cnty.*, No. 4:15-cv-00539-RWS (E.D. Mo. 2015) (settled); *Terrill v. St. Charles Cnty.*, No. 19-cv-01897-MTS (E.D. Mo. 2019) (settled); *Manzo v. St. Charles Cnty.*, No. 4:20-cv-01527-DDN (E.D. Mo. 2020) (pending); *Qandah v. St. Charles Cnty.*, No. 4:20-cv-00053-JCH (E.D. Mo. 2020) (pending); *Smith v. St. Charles Cnty.*, No. 4:18-cv-171-JCH (E.D. Mo. 2018) (pending); *Burnett v. St. Charles Cnty. Jail*, No. 4:13-cv-01990 (E.D. Mo. 2013); *Goodson v. Cnty. of St. Charles Dep't of Corr.*, No. 4:14-cv-1845-NCC (E.D. Mo. 2014).

[9] AA611-12 R. Doc. 101-40, at 4-5; AA625 R. Doc. 101-40, at 18; AA633 R. Doc. 101-40, at 26; AA640 R. Doc. 101-40, at 33; *S.M.*, 874 F.3d at 588-89 (holding that awareness of municipal personnel of incidents suffices to establish deliberate indifference regardless of whether policymaker was aware).

Yet the record below has still more evidence of deliberate indifference: Director Keen—the current director of St. Charles County's jail and Defendants' own expert—testified that there was "obviously" a "problem with adhering [to] policy" related to medical treatment before he took over and admitted that he had to retrain his officers because they so frequently disregarded inmates' medical needs. AA240-41 R. Doc. 101-8, at 17-18; AA262-63 R. Doc. 101-8, at 39-40. If the incoming director of the County's jail recognized that there were widespread failures in medical treatment when he assumed his role, a reasonable juror could certainly infer that the previous County leadership knew of these failures, too.

Moreover, a reasonable juror could conclude that the County's resounding endorsement of defendants' conduct in this particular case demonstrates its deliberate indifference to the broader pattern of refusing to provide medical care to detainees with known medical needs. *See Cordova v. Aragon*, 569 F.3d 1183, 1194 (10th Cir. 2009) (holding that failure to create accountability "might provide circumstantial evidence that the city viewed the policy as a policy in name only and routinely encouraged contrary behavior"); *Grandstaff v. City of Borger*, 767 F.2d

161, 171 (5th Cir. 1985) ("The disposition of the policymaker may be inferred from his conduct after the [incident]."). After this incident, the County disciplined no one. AA538 R. Doc. 101-26, at 6; AA566-67 R. Doc. 101-27, at 24-25; AA35 R. Doc. 88, at 21; AA59 R. Doc. 91, at 14. It did not even conduct an investigation into the events that led to Mr. Leonard losing his eye. AA231-32 R. Doc. 101-8, at 8-9; AA237 R. Doc. 101-8 at, 14; AA35 R. Doc. 88, at 21; AA59 R. Doc. 91, at 14; AA399 R. Doc. 101-13, at 6; AA207 R. Doc. 101-7, at 3; AA581 R. Doc. 101-31, at 8. In fact, a jail supervisor gave the staff involved a "huge THANK YOU" for their "exceptional job" handling Mr. Leonard. AA607 R. Doc. 101-39, at 2. This exultant inaction following Mr. Leonard's injury is enough to support the county's liability alone. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (holding that policymaker's ratification of a subordinate's decision establishes municipal liability); *see also Parrish v. Luckie*, 963 F.2d 201, 204 (8th Cir. 1992) (holding that policymaker's apathy to known violation establishes deliberate indifference).

3. The County's unconstitutional practice and custom was the moving force behind the violation of Mr. Leonard's rights.

Finally, a reasonable juror could undoubtedly find that the County's custom of denying inmates medical care that the County knows to be necessary was the moving force behind Defendant Martin's and Defendant Fisher's actions. This Court has recognized that tolerance of prior misconduct is the moving force behind future misconduct: "It is axiomatic that unpunished crimes tend to breed more criminal behavior." *Ware*, 150 F.3d at 885. Here, the County ignored nearly a dozen prior similar incidents in the years leading up to Mr. Leonard's gouging out of his own eye. *See supra*, Part C-I. It is therefore unsurprising that neither Defendant Martin nor Defendant Fisher bothered to treat Mr. Leonard's abundantly obvious physical and psychological pain. If they had, he would not have dug his own eyeball out. Thus, the County is liable.

CONCLUSION

This Court should reverse and remand for further proceedings.

Dated: March 14, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)

1. This Brief complies with type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because, according to the word count function of Microsoft Word 2019, the Brief contains 12,927 words excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure.

2. This Brief complies with the typeface and type style requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2019 in 14-point Century Schoolbook font for the main text and 14-point Century Schoolbook font for footnotes.

Dated: March 14, 2022 */s/ David F. Oyer*

CERTIFICATE OF COMPLIANCE WITH 8TH CIR. R. 28A(h)

The undersigned hereby certifies that I have filed electronically, pursuant to Circuit Rule 28A(h), a version of the brief and addendum in non-scanned PDF format. I hereby certify that the file has been scanned for viruses and that it is virus free.

Dated: March 14, 2022 */s/ David F. Oyer*

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2022, I electronically filed the foregoing document through the court's electronic filing system, and that it has been served on all counsel of record through the court's electronic filing system.

/s/ David F. Oyer