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.

On Appeal from the United States District Court
for the Eastern District of Missouri – Eastern Division
Cause No. 4:19-cv-00927-MTS

PLAINTIFF-APPELLANT'S REPLY BRIEF

Amy E. Breihan
W. Patrick Mobley
Shubra Ohri
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
906 Olive Street, Suite 420
St. Louis, MO 63101

Easha Anand
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
2443 Fillmore St., Suite 380-15875
San Francisco, CA 94115

David F. Oyer*
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H St. NE, Suite 275
Washington, DC 20002
(202) 869-3434
david.oyer@macarthurjustice.org

Steven A. Donner
Thomas R. Applewhite
DONNER APPLEWHITE, ATTORNEYS AT LAW
906 Olive Street, Suite 1110
St. Louis, MO 63101

Gary K. Burger
BURGER LAW, LLC
500 N. Broadway, Suite 1860
St. Louis, MO 53101

**Admitted only in California; not admitted in D.C. Practicing under the supervision of the Roderick & Solange MacArthur Justice Center.*

Counsel for Plaintiff-Appellant Jamie Leonard

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INTRODUCTION[1]

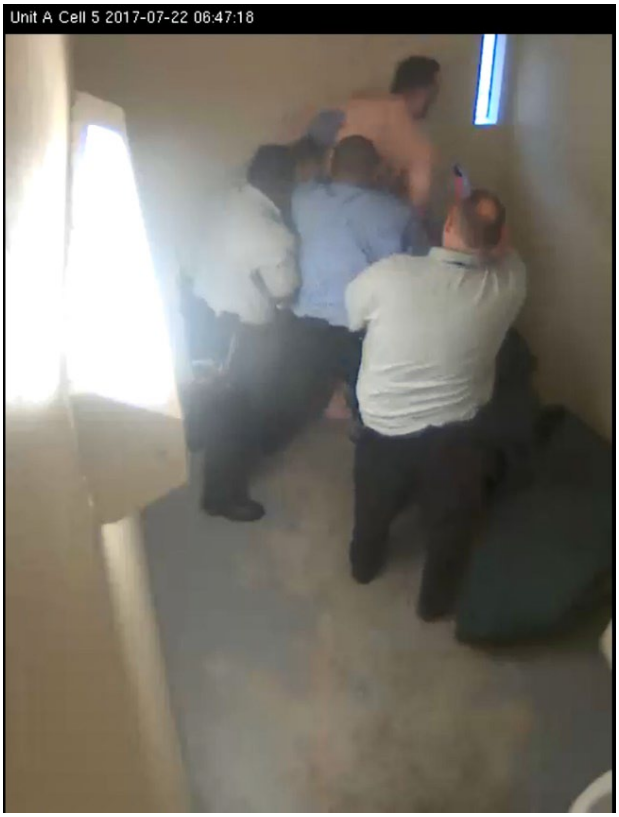
Plaintiff Jamie Leonard, a 30-year-old licensed real estate agent, was admitted to the St. Charles County Jail in the midst of a psychological crisis. Three days later, he no longer had a left eye. According to Defendants, no one is liable for Mr. Leonard's injuries—not the officer who needlessly pepper-sprayed a nonviolent and nonthreatening Mr. Leonard in his infected eye, not the officer who watched Mr. Leonard dig his eyeball out of its socket and declined to intervene, not the nurse who withheld psychiatric medications from Mr. Leonard despite his obvious psychiatric problems and his mother's pleas that he be treated, not the officer who denied Mr. Leonard a shower after he was pepper-sprayed, and not the County itself for allowing this tragedy to happen by repeatedly ignoring similar catastrophes at the very same jail. But Defendants are wrong, and all of them are liable.

[1] Defendants insist that Mr. Leonard's version of the facts is "sensationalized," "misleading," and "blatantly contradicted by the evidence in the record." AB3 n.1. But Mr. Leonard is content to rest on his account of the facts. The record shows that Mr. Leonard was admitted to Defendants' jail with known mental-health issues, AA402, R. Doc. 101-13 at 9; that Defendant Harris pepper-sprayed Mr. Leonard in his diseased eye as Defendant Fisher and another officer held him against the wall in the corner of his cell, AA602, R. Doc. 101-35 at 2:19; that Defendant Fisher and the rest of the officers prevented Mr. Leonard from showering, AA405, R. Doc. 101-13 at 12; that Mr. Leonard spent nine minutes digging his eye out in full view of numerous officers, including Defendant Baker, the suicide-prevention unit supervisor, AA603, R. Doc. 101-36 at 6:54; and that Defendants' only reaction to these tragic events was to congratulate the officers involved on a job well done, AA607, R. Doc. 101-39 at 1. If these facts seem "sensationalized," AB3 n.1, it's because they are indeed sensational.

ARGUMENT

I. DEFENDANT HARRIS VIOLATED CLEARLY ESTABLISHED LAW BY PEPPER-SPRAYING A NONVIOLENT AND NONTHREATENING MR. LEONARD IN THE FACE.

At the time Defendant Steven Harris pepper-sprayed Mr. Leonard in the face, a jury could reasonably find that Mr. Leonard was nonthreatening, nonviolent, naked (and thus obviously unarmed), handcuffed, and subdued by two other officers in the corner of his cell in the suicide-prevention unit. Here is the scene that Defendant Harris confronted at the moment he decided to deploy his pepper-spray directly into Mr. Leonard's face from 12-18 inches away:



AA602, R. Doc. 101-35 at 2:19.

Defendant Harris' use of force under these circumstances was unreasonable. The reasonableness of force is determined by factors including the relationship between the need for force and the amount of force used, the extent of the injury, the extent of efforts to limit the force, the severity of the security problem, the officer's reasonable perception of the threat, and whether there was active resistance. *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). As Mr. Leonard explained, OB[2] 24-30, all of these factors cut in his favor. There was so plainly no need for force—Mr. Leonard was handcuffed, naked, and did not pose a physical threat, AA602, R. Doc. 101-35 at 2:00-2:19—that both sides' experts suspected that the spraying was retaliatory. AA450-51, R. Doc. 101-22 at 11-12; AA264-66, R. Doc. 101-8 at 41-43; OB25. Mr. Leonard's injury was severe. *See* AA289, R. Doc. 101-11 at 10; AA603, R. Doc. 101-36 at 9:00; OB27. Far from trying to limit his use of force, Defendant Harris sprayed directly into Mr. Leonard's infected eye from 12-18 inches away, a much closer distance than jail policy recommended. AA602, R. Doc. 101-35; AA309, R. Doc. 101-11 at 30; AA545, R. Doc. 101-27 at 3; OB27-28. Mr. Leonard posed no security problem. AA602, R. Doc. 101-35 at 2:00-2:25; OB28-29. Even Defendant Harris admitted that he did not feel threatened. AA545, 555, 560, R. Doc. 101-27 at 3, 13, 18; OB29. Mr. Leonard was not resisting, but rather pinned up against a wall by two

[2] As used herein, "OB" connotes Opening Brief and "AB" connotes Answering Brief.

correctional officers. AA250-52, R. Doc. 101-8 at 27-29; AA602, R. Doc. 101-35 at 2:19; OB30.

Defendants' primary counterargument is that the use of force was justified because, in their telling, Mr. Leonard was resisting the officers. But the video shows that he wasn't. AA602, R. Doc. 101-35 at 2:19; OB30. And regardless, this Court has held that the use of force is justified only when resistance rises to the level of creating "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). No one, not even Defendant Harris or Defendants' own expert—Daniel Keen, the current director of the jail—thought Mr. Leonard ever showed aggression or posed a physical threat to the officers in his cell. AA545, 555, R. Doc. 101-27 at 3, 13; AA252, 262, R. Doc. 101-8 at 29, 39. Rather, the only safety concern Defendants purport to identify is Defendant Harris' testimony that he was worried Mr. Leonard was "trying to run out of the cell at the time." AB22. But a jury could discount that testimony based on the video, which showed that a naked, handcuffed Mr. Leonard was nowhere close to getting out of the cell and was in fact being restrained by two other officers, AA602, R. Doc. 101-35 at 2:19, and the testimony of Director Keen (Defendants' expert) that there was no apparent reason to pepper-spray Mr. Leonard, AA252, R. Doc. 101-8 at 29; AA173, R. Doc. 101-6 at 14. In short, a reasonable jury could find that Mr. Leonard did not resist at all, much less that he resisted to an extent that would justify pepper-spraying him in the face from

12-18 inches away.[3] At the very least, a jury should be allowed to watch the video and decide for itself. *See Michael v. Trevena*, 899 F.3d 528, 533 (8th Cir. 2018) (holding that ambiguous video evidence presents a dispute of material fact inappropriate for summary judgment).

The law deeming this use of force unconstitutional was clearly established at the time of the incident. This Court has squarely held that its precedents give "fair warning" to officers that they cannot use force against "a nonviolent, nonthreatening suspect who [is] not actively resisting," even if no existing precedents "involve a fact pattern precisely like the one at issue." *Rokusek v. Jansen*, 899 F.3d 544, 548 (8th Cir. 2018). For that reason, the minor distinctions Defendants proffer from the cases Mr. Leonard cited in his opening brief are immaterial. *See* AB25-30. Regardless, none of those distinctions hold up on inspection.

Defendants first contend that *Tatum v. Robinson*, 858 F.3d 544 (8th Cir. 2017), is distinguishable because the officer there "deployed pepper spray for fourteen

[3] Mr. Leonard also pointed out that the officers should have known that Mr. Leonard would struggle to obey orders. Op. Br. 29. In response, Defendants contend that they reasonably assumed Mr. Leonard could follow orders because he allowed himself to be handcuffed and moved to the back wall. AB23-24 n.9. But Director Keen, Defendants' expert, disagreed, testifying that there were "a lot of indications of him not following directions prior to the officers entering his cell for that cell inspection" and that he would have investigated whether the officers "should have anticipated that Mr. Leonard would have had problems obeying simple directions when they went into that cell." AA247, R. Doc. 101-8 at 24. Where Defendants' own expert agreed that officers should have known Mr. Leonard could not follow directions, a jury could believe as much, too.

seconds." AB26. But that's a flagrant misreading of *Tatum*, which says that the officer pepper-sprayed the plaintiff "14 seconds after walking up to" him, but only pepper-sprayed him "for one second." 858 F.3d at 546. Defendants also argue that, whereas the plaintiff in *Tatum* was committing a "nonviolent misdemeanor," Mr. Leonard was arrested for burglary and assault. AB27. But *Tatum* addressed the "suspected crime *at the time of pepper-spraying*," 858 F.3d at 548 (emphasis added), not the plaintiff's criminal history, and Mr. Leonard was not suspected of committing any "crime at the time of pepper-spraying." And Defendants entirely ignore that the officer in *Tatum* was denied qualified immunity, even though—unlike Mr. Leonard—the plaintiff there wasn't handcuffed and was yelling back at the officers. *Id.* at 546.

Defendants next contend that *Hickey v. Reeder*, 12 F.3d 754 (8th Cir. 1993), is distinguishable because Mr. Leonard, unlike the plaintiff there, was "actively resisting." But, as explained above, *see supra* p. 3, Mr. Leonard was not resisting and certainly was not physically threatening the officers. Rather, Mr. Leonard was handcuffed, naked, surrounded by officers, and not perceived as a physical threat by any officer. AA602, R. Doc. 101-35 at 2:19; AA545, 555, R. Doc. 101-27 at 3, 13; AA252, 262, R. Doc. 101-8 at 29, 39; AA173, R. Doc. 101-6 at 14.

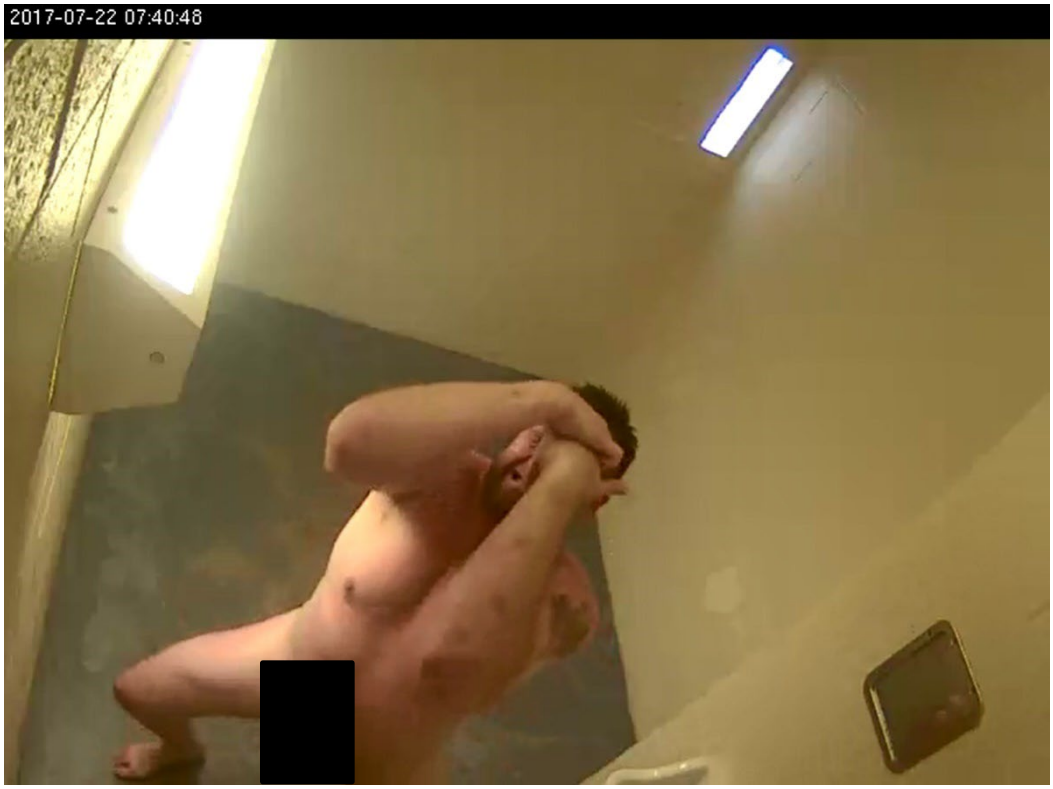
Defendants next contend that *Walker v. Bowersox*, 526 F.3d 1186 (8th Cir. 2008), is distinguishable because the officer there used a "super soaker" pepper-spray canister. AB28. But none of the cases *Walker* relied upon in finding a violation of

clearly established law involved use of a "super soaker," either, so that fact couldn't have controlled the result. *See* 526 F.3d at 1189. Defendants also contend that, unlike in *Walker*, they did not leave Mr. Leonard "in a cell with no clean clothes or bedding for three days." AB28. But Defendants' conduct after the use of force has little bearing on the reasonableness of the force at the time it was used—and, regardless, Defendants left Mr. Leonard in such severe pain that he dug out his own eyeball. *See* AA139, R. Doc. 101-2 at 14; AA174, R. Doc. 101-6 at 15; AA314, R. Doc. 101-11 at 35.

In short, the clearly established law at the time of this incident forbade Defendant Harris from pepper-spraying Mr. Leonard.

II. DEFENDANT BAKER VIOLATED CLEARLY ESTABLISHED LAW BY LETTING MR. LEONARD DIG HIS EYEBALL OUT IN FRONT OF HER WITHOUT INTERVENING.

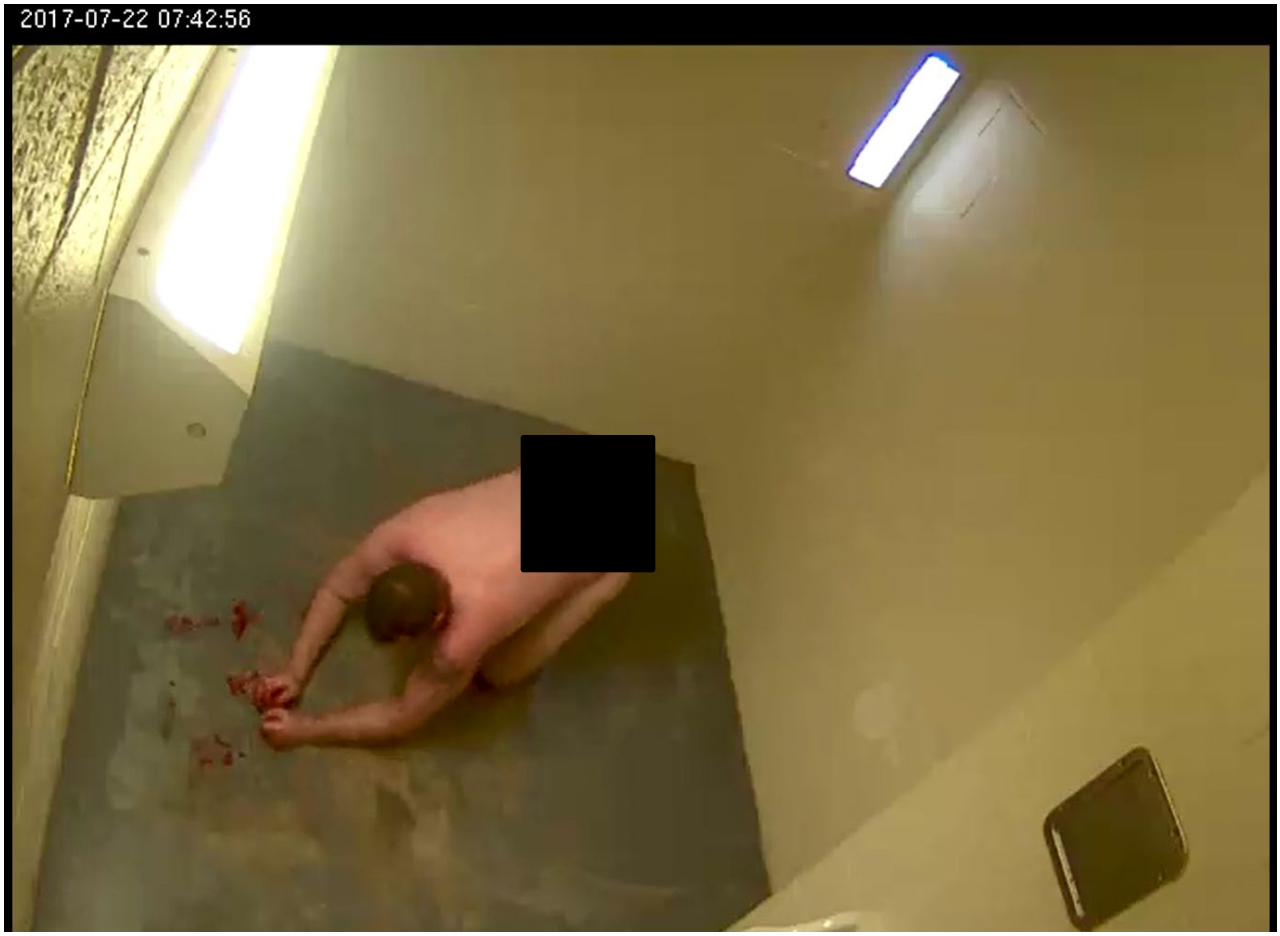
Director Daniel Keen, Defendants' expert and the County's current jail director, opined that, as Mr. Leonard dug his eye out, "plenty of officers were there [such] that we could have stepped in to stop him." AA245, R. Doc. 101-8 at 22. Most notable among those officers who "could have stepped in to stop him" was Defendant Lisa Baker, the suicide-prevention unit supervisor, who stood outside of Mr. Leonard's cell while he dug his eye out as seen here:



AA603, R. Doc. 101-36 at 6:54.[4]

As Defendant Baker watched, Mr. Leonard then writhed on the ground and dug at his eye as he bled more and more profusely, as seen here:

[4] The images in this section are edited to preserve Mr. Leonard's privacy.



AA603, R. Doc. 101-36 at 9:03. Defendant Baker was accompanied by four to five other officers outside of Mr. Leonard's cell in the suicide-prevention unit and still did not intervene. AA397-398, R. Doc. 101-13 at 4-5. Instead, Defendant Baker and the other officers watched as Mr. Leonard tore his eye out in full view, AA208, R. Doc. 101-7 at 4, and then bled onto the floor for two full minutes, *id.*; AA603, R. Doc. 101-36 at 7:06-9:06. Defendants do not contest any of this.

Instead, Defendants argue that Mr. Leonard's right to have Defendant Baker intervene while he dug his own eyeball out in front of her was not clearly established

at the time. But they are wrong—Defendant Baker is not entitled to qualified immunity for three reasons.

First, this Court's decision in *Olson v. Bloomberg*, 339 F.3d 730 (8th Cir. 2003), clearly established the unconstitutionality of Defendant Baker's conduct. In *Olson*, the plaintiff told the officer he was going to commit suicide and the officer then left for fifteen minutes; when he returned, the plaintiff had committed suicide. *Id.* at 736-37. Defendants argue that *Olson* is distinguishable because Defendant Baker "did not ignore any calls regarding Mr. Leonard's emergency nor did she deliberately fail to respond to a call." AB31. But that is exactly what Defendant Baker did—there's no other way to describe watching someone remove their own eye and choosing to do nothing. Regardless, that's not a material distinction from *Olson*, because *watching* someone actively harm himself and doing nothing is an even worse dereliction of duty than believing someone *might* harm himself and walking away. Defendants also contend that Defendant Baker's inaction, unlike in *Olson*, was justified by the need to await "appropriate backup, in accordance with department policy." AB31-32. But a reasonable jury could find—based on the testimony of Defendants' expert (Director Keen), as well as other evidence that several officers were on the scene well before Defendant Baker entered the cell—that Defendant Baker had appropriate backup and still chose to do nothing. *See* AA396-97, R. Doc. 101-13 at 3-4; *see also* OB38-39.

Second, a "robust consensus of cases of persuasive authority," *Bus. Leaders In Christ v. Univ. of Iowa*, 991 F.3d 969, 986 (8th Cir. 2021), clearly established the same proposition as *Olson*: that an officer commits a constitutional violation by failing to reasonably intervene in an ongoing self-harm attempt. Of the three cases Mr. Leonard relies upon, Defendants only seriously attempt to distinguish *Lemire v. Calif. Dep't of Corr. and Rehab.*, where the court held two officers liable for taking no action when they encountered an inmate hanging and unconscious. 726 F.3d 1062, 1068 (9th Cir. 2013). Defendants argue that *Lemire* is distinguishable because Mr. Leonard was conscious and did not need "life-saving" aid. AB33. But neither *Lemire* nor any other decision has ever conditioned an officer's obligation to render emergency medical care on whether the detainee is unconscious or dying. *See* 726 F.3d at 1083 (holding that the inquiry should focus on the "full context of the situation"); *Gordon v. Cnty. of Orange*, 6 F.4th 961, 973 (9th Cir. 2021) (applying *Lemire* and holding that *all* pretrial detainees have a "right to direct-view safety checks sufficient to determine whether their presentation indicates the need for medical treatment"). In any event, Defendant Baker couldn't have known at the time that Mr. Leonard would survive (albeit with the permanent loss of an eye). Defendants also argue that the Ninth Circuit sometimes permits officers to withhold emergency medical care, but the *Lemire* court was clear that the exception only applies where the officer is "busy with other tasks," *id.*, whereas Defendant Baker was doing nothing other than standing outside of Mr.

Leonard's cell in the suicide-prevention unit and watching him pull out his eyeball, AA208, R. Doc. 101-7 at 4.

Beyond *Lemire*, Defendants baldly assert that "[t]he other two cases to which Mr. Leonard cites are similarly distinguishable," but they do not explain how or why. *See* AB34 (citing *Estate of Miller ex rel. Bertram v. Tobiasz*, 680 F.3d 984 (7th Cir. 2012) and *Short v. Smoot*, 436 F.3d 422 (4th Cir. 2006)). On the contrary, officers in both cases were held to be deliberately indifferent for failing to intervene in ongoing self-harm, so both cases contribute to the same "robust consensus" as *Lemire*. *See* 680 F.3d at 991; 436 F.3d at 429. Defendants give no reason to think otherwise.[5]

Third, irrespective of prior caselaw, Defendant Baker's inaction here is an obvious constitutional violation that is not suited for qualified immunity. The Supreme Court has repeatedly held that clearly established law is not required to defeat qualified immunity if "no reasonable correctional officer" could believe her conduct to be constitutional. *Taylor v. Riojas*, 141 S. Ct. 52, 53-54 (2020); *McCoy v. Alamu*, 141 S. Ct. 1364, 1364 (2021). And here, a correctional expert testified that Defendant Baker's conduct constituted the "most egregious failure to intervene in a medical/

[5] Defendants cite to two cases that they say contradict *Lemire*, *Miller*, and *Short*, but both cases turned on the fact that the officers were alone when they encountered a self-harming inmate. *Arenas v. Calhoun*, 922 F.3d 616, 621 (5th Cir. 2019); *Rich v. City of Mayfield Heights*, 955 F.2d 1092, 1095-96 (6th Cir. 1992). Here, by contrast, there was at least one other officer present the whole time, and eventually there were four or five other officers present. AA397, R. Doc. 101-13 at 4.

physical crisis" he had ever reviewed over decades in the corrections industry. AA174, R. Doc. 101-6 at 15. That is unsurprising: Defendant Baker's decision to simply watch as a detainee in her care dug out his eye and bled profusely from his eye socket shocks the conscience.[6] Defendants do not respond to this argument at all. For all these reasons, Defendant Baker is not entitled to summary judgment on qualified-immunity grounds.

III. DEFENDANTS WERE DELIBERATELY INDIFFERENT TO MR. LEONARD'S SERIOUS MEDICAL NEEDS.

A. Defendant Martin Violated Clearly Established Law By Withholding Mr. Leonard's Prescription Psychiatric Medications From Him.

Within twenty-four hours of Mr. Leonard's admission to the St. Charles County Jail, his mother, a medical professional, provided his prescription psychiatric medications to the jail's medical department and explained his medical diagnoses to jail staff. AA402, R. Doc. 101-13 at 9. Soon after, Mr. Leonard manifested obvious

[6] The evidence against Defendant Baker would be even more damning had Defendants not deleted video that would have shown Defendant Baker and other officers standing outside the cell and failing to intervene. Defendants defend the deletion on the grounds that Mr. Leonard sent his preservation request to the wrong St. Charles County entity. AB35-36 n.11. But Defendants do not explain why a preservation request would have been necessary given that they immediately "underst[ood] the potential for future litigation," R. Doc. 66 at 5, Director Keen, Defendants' own expert, testified that the video should have been preserved, R. Doc. 98-2 at 9, and another correctional expert testified that the failure to preserve the video was "inconceivable," R. Doc. 98-3 at 8. On those facts, an adverse-inference instruction was appropriate—but even if not, a reasonable jury could surely draw its own conclusions from the deletion of a video showing Defendant Baker and several other officers standing around while Mr. Leonard was removing his own eye.

psychiatric needs. AA402-404, R. Doc. 101-13 at 9-11. Yet the nurse who was repeatedly assigned to treat him, Defendant Theresa Martin—who knew Mr. Leonard's mother had dropped off his medications and explained his needs—never gave him any of his prescription medications. AA406, R. Doc. 101-13 at 13. That consequential choice constituted deliberate indifference to Mr. Leonard's serious medical needs under clearly established law.

A deliberate indifference claim typically requires proof of both objective and subjective components, *see Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 529 (8th Cir. 2009), but Defendants do not contest that Mr. Leonard established the objective component here, *see* AB35-42 (discussing only Defendant Martin's mental state). And for good reason—anyone would have recognized that Mr. Leonard was in the midst of a severe psychological crisis after he tried to choke himself, pulled on his genitals, made his own nose bleed, and exclaimed that he had to "get his soul out because it is time for me to die." AA402-404, R. Doc. 101-13 at 9-11; *see* OB46.

Defendants argue only that Defendant Martin lacked the requisite mental state to be liable for deliberate indifference—i.e., that Defendant Martin did not disregard a known risk to Mr. Leonard's health.[7] *See Nelson*, 583 F.3d at 529. But when mental state is at issue, "summary judgment must be granted with caution, as usually such

[7] Defendants formulate the standard as "criminal recklessness," AB39, but that standard is equivalent to "disregarding a known risk to the inmate's health," *Vaughn v. Gray*, 557 F.3d 904, 908 (8th Cir. 2009).

issues raise questions for determination by a factfinder." *U.S. v. One 1989 Jeep Wagoneer*, 976 F.2d 1172, 1176 (8th Cir. 1992).

That is the case here. Defendant Martin witnessed firsthand all of Mr. Leonard's disturbing behavior: the attempt to choke himself; the self-inflicted nosebleed; the tugging on his genitals; and the statement that he had to get his soul out because it was time for him to die. AA402, R. Doc. 101-13 at 9, 11. And she testified expressly that she read a note about Mr. Leonard's prescription medications prior to treating him during his psychiatric episode. AA402, R. Doc. 101-13 at 9; *see also* AA156, R. Doc. 101-5 at 2- 4 (intake questionnaire listing five psychiatric medications and noting recent suicidal thoughts); *id.* at 5 ("nursing documentation" form dated two days prior to incident listing Mr. Leonard's "mental health disorder" and daily need for opiate-withdrawal medication). Put simply, Defendant Martin knew of a risk to Mr. Leonard's health because he was exhibiting disturbing behavior right in front of her. She then disregarded that risk by failing to provide him the psychiatric medication that likely would have calmed him enough to avoid the tragic outcome here. *See* AA369, R. Doc. 101-12 at 35 (noting that Mr. Leonard was immediately calmed when he received a sedative after digging his own eye out). Based on these facts, a reasonable jury could conclude that Defendant Martin disregarded a known risk of harm. Therefore, she was not entitled to summary judgment.

Defendants' only argument against this conclusion is that the "treatment" Defendant Martin did offer demonstrated her regard for Mr. Leonard's health. AB42-43. But that is, at best, a question for a jury to decide. Defendant Martin's only apparent "treatment" for Mr. Leonard's mental health, as Defendants admit, was transferring him to the suicide-prevention unit. AB42 (citing AA404, R. Doc. 101-13 at 11). When she did so, she did not leave a note in her accompanying "segregation report" indicating that Mr. Leonard had an eye condition, *see* AA78, R. Doc. 101 at 13, even though the officers wouldn't have pepper-sprayed him if she had, AA506-07, R. Doc. 101-24 at 37-38. And while Defendant Martin knew that Mr. Leonard was continuing to "act[] out" after he was transferred to the suicide-prevention unit, she didn't treat him again until he had been pepper-sprayed. AA404, R. Doc. 101-13 at 11. At that point, Defendant Martin even admitted, she considered that Mr. Leonard had a significant risk of self-harm and that the pepper spray might affect Mr. Leonard's eye differently given his eye condition, yet she still took no apparent action to address these issues. AA405, R. Doc. 101-13 at 12.

Perhaps most importantly, Defendants do not contest that Mr. Leonard had been prescribed numerous psychiatric medications that were on file at the jail. AA402, R. Doc. 101-13 at 10; AA156, R. Doc. 101-5 at 2-4. And this Court had clearly established before this incident that "[w]hen an official denies a person . . . medication that has been prescribed, constitutional liability may follow." *Dadd v. Anoka Cnty.*,

827 F.3d 749, 755 (8th Cir. 2016); *see also 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."). Constitutional law hardly gets more clearly established for qualified-immunity purposes than that. Defendants insist that *Dadd* is distinguishable because it involved a wholesale lack of medical care provided to the plaintiff, unlike Defendant Martin's putative "treatment" of Mr. Leonard here. AB41. But *Dadd* says the opposite—it rejected the defendants' argument that their provision of "minimal medical attention . . . was adequate to support . . . qualified immunity" and held that the defendants evinced a conscious disregard for the plaintiff's health by failing to provide him with his prescription medication. 827 F.3d at 755. So too here. Even if Defendant Martin's transfer of Mr. Leonard to the suicide-prevention unit—i.e., the unit where he was allowed to dig his eyeball out while jail staff stood by and watched—could be said to constitute "minimal medical attention," her failure to provide him his prescription medication violated the Constitution. *Dadd*, 827 F.3d at 755. At the very least, her inaction created a genuine issue of material fact as to whether her mental state constituted deliberate indifference. In short, because Defendant Martin withheld Mr. Leonard's prescription medications in violation of clearly established law, she was not entitled to qualified immunity.

B. Defendant Fisher Violated Clearly Established Law By Failing To Provide Any Care After Mr. Leonard Was Pepper-Sprayed In His Diseased Eye.

When Defendant Harris pepper-sprayed Mr. Leonard in the face in the suicide-prevention unit, Defendant Donte Fisher was the senior officer on the scene. AA514, R. Doc. 101-25 at 3 (Fisher was "officer in charge"); *id.* at 4 (Harris took instructions from Fisher); AA493, R. Doc. 101-24 at 3 (Fisher was Harris's training instructor). After Mr. Leonard was pepper-sprayed, neither Defendant Fisher nor any other officer helped him wash out his eye or took him to an eyewash station. AA173, R. Doc. 101-6 at 14-15. Defendant Martin, a nurse, testified that she asked the officers to "give Mr. Leonard a shower" and "to bring him down to medical," but that they refused both requests. AA405, R. Doc. 101-13 at 12. A reasonable jury could conclude that it was Defendant Fisher who refused Defendant Martin's requests, given that he was in the senior position of authority at the time.[8] *See* AA514, Doc 101-25 at 3, 14; AA493, R. Doc. 101-24 at 3. As a direct consequence of Defendant Fisher's refusal to give Mr. Leonard a shower or take him to the medical unit, Mr. Leonard experienced extreme eye pain and ultimately dug his left eye out of its socket. AA401, R. Doc. 101-13 at 8.

[8] In addition, a page of deposition testimony inadvertently omitted from the record made clear that Defendant Fisher was present for Defendant Martin's post-pepper-spray interaction with Mr. Leonard.

Defendants also contend that, even if Defendant Fisher prevented Mr. Leonard from receiving proper aftercare, Defendant Fisher would not have violated clearly established law in doing so. AB46. But, yet again, Defendants support their argument only with immaterial distinctions from the "robust consensus of cases of persuasive authority," *Bus. Leaders*, 991 F.3d at 980, that clearly established Mr. Leonard's right not to have officers prevent him from receiving appropriate pepper-spray aftercare.

For instance, Defendants contend that *Danley v. Allen* is distinguishable because the plaintiff there was not placed under close observation and didn't have access to water for twenty minutes. *See* AB48 (discussing 540 F.3d 1298, 1312 (11th Cir. 2008), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009)). But the supposedly "close observation," AB48, under which Mr. Leonard was placed was obviously ineffective, because he tore his own eye out without the slightest staff intervention. AA174, R. Doc. 101-6 at 15; AA383, R. Doc. 101-12 at 49; AA401, R. Doc. 101-13 at 8. And Defendants ignore that, in *Danley*, the plaintiff got access to a shower—precisely what the medical professional on the scene recommended for Mr. Leonard—yet the defendants still were not entitled to qualified immunity. *See* 540 F.3d at 1305; AA236, R. Doc. 101-8 at 13-14; AA405, R. Doc. 101-13 at 12.

Mr. Leonard also cited numerous other cases holding that jailers expressed deliberate indifference to serious medical needs by failing to provide proper pepper-spray aftercare. OB55. Defendants contend that they are all "inapposite," but they do

not explain their contention. AB48. In short, then, Defendant Fisher was not entitled to qualified immunity because a reasonable jury could find that he was responsible for Mr. Leonard's aftercare and that he refused to provide Mr. Leonard with the medical care and the shower that the medical professional on the scene recommended. AA520, R. Doc. 101-25 at 9.

C. St. Charles County Is Liable For Causing Mr. Leonard's Injury Through Its Pattern Of Disregarding Detainees' Known Medical Needs.

Finally, St. Charles County is liable because it had a custom of disregarding its detainees' known medical needs, its policymakers knew of that custom, and the custom was a moving force behind Mr. Leonard's injuries. *See Ware v. Jackson Cnty.*, 150 F.3d 873, 880 (8th Cir. 1998).

1. St. Charles County had a custom of disregarding its detainees' known medical needs.

In the years leading up to Mr. Leonard's loss of his eye in Defendant St. Charles County's custody, the County had a custom of repeatedly disregarding its detainees' known medical needs. *See generally* AA608, R. Doc. 101-40. A custom can be established by as few as two similar incidents. *See Wever v. Lincoln Cnty.*, 388 F.3d 601, 607-08 (8th Cir. 2004). Mr. Leonard presented evidence of many times that number of incidents, all making clear that the County had a longstanding practice of denying medical treatment to detainees suffering from known, chronic conditions—just as the County denied Mr. Leonard treatment for his mental illness. *See* OB58-59

(collecting incidents). Mr. Leonard also presented evidence that the County had previously failed to handle medical emergencies with appropriate care—just as it failed to handle Mr. Leonard's eye pain after he was pepper-sprayed. *See id.* 59-60.

Defendants seem to argue that prior incidents of misconduct do not support municipal liability unless ratified by judicial opinions in the plaintiffs' favor. *See* AB53-56. But Defendants don't cite any caselaw from this Court or elsewhere to support that misguided contention. Nor could they: This Court has repeatedly held that a plaintiff can prove a custom without pointing to a favorable judicial opinion. *See, e.g.*, *Stearns v. Inmate Servs. Corp.*, 957 F.3d 902, 910 (8th Cir. 2020) (upholding municipal-liability claim based on "affidavits by other prisoners"); *Perkins v. Hastings*, 915 F.3d 512, 522 (8th Cir. 2019) (noting that lawsuits against a municipality can support municipal liability). Indeed, an actionable custom needn't even be comprised of prior constitutional violations at all. *See City of Canton v. Harris*, 489 U.S. 378, 387 (1989). And, in any event, the large majority of the judicial opinions implicated in this case didn't exculpate the County on the merits of the constitutional violations at issue.[9] That Defendants have escaped liability in the past

[9] *Smith v. St. Charles Cnty.*, No. 21-1349, 2022 WL 200663, at *1 (8th Cir. Jan. 24, 2022) (per curiam) (qualified immunity granted without reaching question of constitutional violation); *Goodson v. St. Charles Cnty.*, No. 4:14-cv-1845-NCC, Doc. 8 (E.D. Mo. Feb. 18, 2015) (dismissal for *pro se* plaintiff's failure to comply with filing conditions); *Burnett v. St. Charles Cnty.*, No. 4:13-cv-1990-RWS, Doc. 10 (E.D. Mo. Mar. 20, 2014) (summary dismissal without prejudice of *pro se* plaintiff's claim

based on one technicality or another is not proof that they didn't repeatedly deny necessary medical care to their detainees.

Defendants also seem to believe that the prior incidents are "inapposite." AB54. But that's wrong. In fact, the prior incidents fit cleanly within the pattern of unconstitutional neglect toward detainees that Mr. Leonard has described.

For instance, just two months before Mr. Leonard was admitted to the County's jail, detainee Michael Manzo lost his eye when County staff ignored his bruised and swollen face for three days after he was beaten by his cellmate—just as they ignored Mr. Leonard's escalating mental illness and subsequent attempts to tear his own eye out. *Manzo v. St. Charles Cnty.*, No. 4:20-cv-1527-DDN, Doc. 1 at 8-9 (E.D. Mo. Oct. 23, 2020). Mr. Manzo's lawsuit is still pending.[10] *See Manzo v. St. Charles Cnty.*, No. 4:20-cv-1527-DDN (E.D. Mo. 2020).

Likewise, the County refused to give detainee Steve Algire the blood-pressure medication he was prescribed—just as it refused to provide Mr. Leonard with the psychiatric medication he had been prescribed. *Terrill v. St. Charles Cnty.*, No. 4:19-cv-1897-MTS, Doc. 29 at 4-5 (E.D. Mo. May 5, 2021). As with the failure to medicate

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at screening stage); *Potter v. Echele*, No. 4:19-cv-148-CDP, Doc. 44 (E.D. Mo. Dec. 21, 2018) (dismissal for failure to prosecute).

[10] The County argues that this incident and others should be disregarded because the lawsuit was brought after Mr. Leonard's incident. *See* AB55. But the *incident* occurred before Mr. Leonard's and is therefore evidence of the County's custom of disregarding detainees' known medical needs at the time Mr. Leonard lost his eye.

Mr. Leonard, this failure had immediate negative implications: Mr. Algire had a stroke, the County delayed Mr. Algire's transfer to a medical facility, and he died. *Id.* The County eventually settled the case for six figures. *Id.* Doc. 88 at 1.

Similarly, the County ignored detainee Robert Breeding's complaints of abdominal pain—just as it ignored Mr. Leonard's obvious pain and increasingly disturbed behavior. *Breeding v. St. Charles Cnty.*, No. 4:15-cv-539-RWS, Doc. 1 at 4 (E.D. Mo. Mar. 27, 2015). As in Mr. Leonard's case, the County's failure to treat Mr. Breeding had grave repercussions: Mr. Breeding died after five days in custody of a ruptured peptic ulcer. *Id.* The County settled the case for an undisclosed amount. *Id.* Doc. 27 at 1.

As a final example, detainee Patsha Ramsey's mental-health issues were known to County staff from the moment she was admitted to the jail—just as Mr. Leonard's mental-health needs were known to County staff from the moment he was admitted to the jail. *Ramsey v. St. Charles County*, No. 4:15–CV–00776 JAR, 2017 WL 2843574, at *1 (E.D. Mo. June 30, 2017). And just as it failed to treat Mr. Leonard's psychosis, the County failed to treat Ms. Ramsey's psychosis; instead, the County restrained, assaulted, and starved her. *Id.* at *3. A district court denied summary judgment on Ms. Ramsey's excessive-force claim, finding that jail staff did not act reasonably in

chaining a mentally ill detainee to a table.[11] *See id.* at *3-4. The County settled Ms. Ramsey's claim for an undisclosed amount. *See Ramsey v. St. Charles Cnty.*, No. 4:15-cv-00776, Doc. 65 at 1 (E.D. Mo. July 19, 2017).

In short, Mr. Leonard adduced evidence of numerous sufficiently similar prior incidents to establish the County's custom of disregarding detainees' known medical needs.

2. St. Charles County was deliberately indifferent because its policymakers knew of the custom of disregarding detainees' known medical needs.

Mr. Leonard also established that the County was deliberately indifferent because it had notice of the custom. Even "one or two" prior incidents can establish deliberate indifference in cases involving serious bodily injury. *Wever*, 388 F.3d at 607. Here, Mr. Leonard pointed to nearly a dozen incidents in which detainees brought County employees' disregard for their known medical needs to the County's attention by making public complaints. *See Harris v. City of Pagedale*, 821 F.2d 499, 504-05 (8th Cir. 1987). And Defendants' own expert—the current jail director, Daniel Keen—further established the County's deliberate indifference by testifying that there

[11] The court granted summary judgment on Ms. Ramsey's claim that the County failed to provide her with psychiatric care generally over the course of her detention. 2017 WL 2843574, at *5. Mr. Leonard does not rely on that claim. Rather, he contends that County employees' severe physical mistreatment of the mentally ill Ms. Ramsey, who attempted suicide as a result of the mistreatment, evinced a disregard for her known psychiatric needs.

were clearly problems with adhering to jail policy when he took over and that one of his initial priorities had been to "make sure the medical unit [was] up to par." AA263, R. Doc. 101-8 at 40.

Defendants' arguments against a finding of deliberate indifference here fail. Defendants do not cite any caselaw suggesting that Mr. Leonard's showing was insufficient to establish the County's deliberate indifference. Indeed, one of the cases they do cite expressly notes that the mere existence of prior incidents, coupled with the municipality's failure to investigate or punish the behavior involved—and here, the County congratulated its staff on their assault of Mr. Leonard, AA607, R. Doc. 101-39 at 1—is enough to establish deliberate indifference. *See* AB57 (citing *Harris*, 821 F.2d at 505). And while Defendants contend that Mr. Leonard misleadingly presented Director Keen's testimony, AB58, Mr. Leonard did no such thing. Director Keen (Defendants' expert) testified that it was a "fair assumption" that there were problems with adhering to policy before he took over—i.e., at the time Mr. Leonard dug his own eye out. AA262-63, R. Doc. 101-8 at 39-40. Director Keen testified further that he needed to get the County "in line to make sure we're . . . calling medical department prior to any use of force" and that he had to re-establish "best practices" because "it's not the eighties anymore" and "[y]ou can't just go in and do whatever." AA240, R. Doc. 101-8 at 17. Defendants also contend that Director Keen's testimony is irrelevant because he was "not the director at the time of any of the prior alleged

incidents," AB58, but a reasonable jury could conclude from the fact that these problems were apparent to Director Keen that they were also apparent to previous leadership. Indeed, a jury would be all the more likely to find deliberate indifference when the testimony of Defendants' own expert—Director Keen—supports it. AA116, R. Doc. 101 at 51. In short, a reasonable jury could easily find deliberate indifference here.

3. The County's custom of disregarding detainees' known medical needs was a moving force behind Mr. Leonard's injury.

Finally, the County's custom of disregarding detainees' known medical needs was a moving force behind Mr. Leonard's injury. That conclusion is straightforward: The County had a custom of failing to treat medical needs; in accordance with that custom, it failed to treat Mr. Leonard's known medical needs (his psychosis and his pepper-sprayed eye); and, consequently, Mr. Leonard dug his eye out of its socket. AA287, 324, R. Doc. 101-11 at 8, 45; AA385, R. Doc. 101-12 at 51-52; AA400, R. Doc. 101-13 on 7, 12; AA474, R. Doc. 101-23 at 17.

The County's only response on this issue relies on inapplicable caselaw. The County contends that the "moving force" inquiry requires Mr. Leonard to show that "*this* officer was highly likely to inflict the *particular* injury suffered by the plaintiff." AB62 (quoting *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 415 (1997)). But *Bryan County* is inapposite: It dealt with a unique municipal-liability claim predicated on a "single hiring decision by a county sheriff," 520 U.S. at 404,

and formulated a separate causation standard suited for "a claim of municipal liability rest[ing] on a single decision, not itself representing a violation of federal law and not directing such a violation," *id.* at 408, 411-12. In the typical case of municipal liability, however—where, as here, a plaintiff alleges that municipal officials directed or tolerated a longstanding custom that resulted in the violation of his civil rights—the causation inquiry only requires a showing that the plaintiff's injury occurred "pursuant to the custom." *Harris*, 821 F.2d at 507; *see also Powers v. Hamilton Cnty. Pub. Defender Comm'n*, 501 F.3d 592, 608 (6th Cir. 2007). And, under that standard, as Defendants don't seriously contest, the County's custom caused Mr. Leonard's injury. Therefore, the County was not entitled to summary judgment.

CONCLUSION

For the foregoing reasons, Mr. Leonard respectfully urges this Court to vacate the judgment below and remand for a trial on his claims.

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Respectfully submitted,

/s/ David F. Oyer
David F. Oyer*
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
501 H Street NE, Suite 275
Washington DC 20002
(202) 869-3434
david.oyer@macarthurjustice.org

Steven A. Donner
Thomas R. Applewhite
DONNER APPLEWHITE,
ATTORNEYS AT LAW
906 Olive Street, Suite 1110
St. Louis, MO 63101

Gary K. Burger
BURGER LAW, LLC
500 N. Broadway, Suite 1860
St. Louis, MO 53101

Amy E. Breihan
W. Patrick Mobley
Shubra Ohri
RODERICK & SOLANGE
MACARTHUR JUSTICE CENTER
906 Olive Street, Suite 420
St. Louis, MO 63101

Easha Anand
RODERICK AND SOLANGE
MACARTHUR JUSTICE CENTER
2443 Fillmore St., Suite 380-15875
San Francisco, CA 94115

Counsel for Plaintiff-Appellant Jamie Leonard

**Admitted only in California; not admitted in D.C. Practicing under the supervision of the Roderick & Solange MacArthur Justice Center.*

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/s/ David F. Oyer

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I hereby certify that on July 28, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ David F. Oyer