No. 22-1485

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAQUETTA COOPWOOD,

Plaintiff-Appellant,

v.

WAYNE COUNTY, MI ET AL.,

Defendants-Appellees

On Appeal from Order of the United States District Court
For the Eastern District of Michigan, Southern Division
(No. 2:20-cv-12092)

BRIEF OF AMICI CURIAE PSYCHIATRY AND PSYCHOLOGY EXPERTS IN SUPPORT OF PLAINTIFF-APPELLANT

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INTEREST OF *AMICI CURIAE*[1]

Amici are professors and practitioners of psychiatry and psychology with extensive experience studying the psychological and physiological effects of imprisonment and the mental capacity of individuals in penal confinement and treating individuals who are in penal confinement.

- **Terry A. Kupers, M.D., M.S.P.**, is Professor Emeritus at the Wright Institute, and a Distinguished Life Fellow of the American Psychiatric Association. Dr. Kupers has provided expert testimony in many lawsuits about prison conditions and mental health care behind bars, and published books and articles on jail mental health treatment and related subjects.

- **Craig Haney, Ph.D., J.D.**, is Distinguished Professor of Psychology and UC Presidential Chair at the University of California, Santa Cruz. One of the researchers in the "Stanford Prison Experiment," he has been studying actual prison conditions for more than forty years. Dr. Haney has toured and inspected numerous prisons and has written extensively about the psychological effects of imprisonment.

- **Pablo Stewart, M.D.**, is a Clinical Professor in the Department of Psychiatry, University of Hawaii, and was previously a Clinical Professor of Psychiatry at the University of California, San Francisco. Dr. Stewart has worked in the criminal justice system for decades and as a court-appointed expert on the psychiatric status of prisoners for over twenty-five years.

- **Stuart Grassian, M.D.**, is a psychiatrist who taught at Harvard Medical School for almost thirty years. Dr. Grassian has evaluated hundreds of prisoners and has published many articles on the psychiatric effects of confinement and the psychiatric status of prisoners.

[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief.

As leading experts in psychology and psychiatry, with a particular expertise in inmate psychology, *amici* have an interest in ensuring that legal proceedings involving prisoners track current understandings of mental health and psychiatric treatment. *Amici* thus respectfully submit this brief to advise the Court of principles and practices relevant to the issues presented in this case.

INTRODUCTION

This case allows the Court to clarify whether mental illness can render administrative remedies unavailable to an incarcerated person. Appellant Jaquetta Coopwood ("Coopwood") alleges that while in pretrial custody at Wayne County Jail ("Jail") in Detroit, Michigan, Wayne County Deputy Jonith Watts ("Watts") assaulted her and kicked her in the stomach, while Coopwood was six months pregnant. Complaint, RE 1, PageID #3[2]; Order Granting Defs' Mot. to Dismiss ("Order"), RE 22, Page ID #342. The record is consistent with a finding that Coopwood was suffering from bipolar disorder, schizophrenia, and impaired cognitive functions at the time of the assault. Coopwood Affidavit, RE 16-2, PageID #114–15. It is *amici*'s professional opinion that Coopwood's documented history of multiple psychotic episodes and a doctor's psychiatric examination in October are

[2] Coopwood swore to the contents of the complaint in her affidavit, verifying the complaint for summary judgment purposes. *See* Coopwood Affidavit, RE 16-2, PageID #113–16.

consistent with and support the view that Coopwood experienced an acute period of psychotic decompensation in the days and weeks surrounding the assault. As a result, Coopwood did not file a formal grievance against Watts during the ten-day window following the assault—the brief period for administrative grievances to be filed under the Jail's administrative procedures. Inmate Handbook, RE 5-4, PageID #57. The lower court dismissed Coopwood's complaint for failing to exhaust administrative remedies as required by the Prison Litigation Reform Act ("PLRA"). 42 U.S.C. § 1997e(a); Order, RE 22, Page ID #354.

But the PLRA requires only that prisoners exhaust "available" remedies, which are those that are accessible and "capable of use for the accomplishment of a purpose." *See* 42 U.S.C. § 1997e(a); *Ross v. Blake*, 578 U.S. 632, 635, 642 (2016). Because of Coopwood's mental illness, it is *amici*'s professional opinion that it is exceedingly likely that Coopwood was not competent to exhaust her administrative remedies during the Jail's brief grievance period, and the assessment of a licensed psychiatrist that examined her in October 2017 supports that view. As a result, administrative remedies were unavailable to Coopwood because she was not capable of using them to accomplish any purpose. Therefore, Coopwood did not fail to exhaust all "available" remedies. *Amici* ask the Court to reverse the lower court's decision and allow Coopwood's suit to proceed.

FACTUAL SUMMARY

I. Mental Health History Before Incarceration.

Coopwood has a long history of mental health problems beginning in 2008, when Coopwood was diagnosed with depression and bipolar disorder. Coopwood Aff. RE 16-2, PageID #113–14. Later that year, Coopwood was diagnosed with bipolar disorder and schizophrenia and was prescribed medications. *Id.* In the following years, Coopwood struggled with insomnia, depression, memory lapses, and psychosis, and was repeatedly prescribed various medications—including anti-psychotics. *Id.* In 2016, Coopwood was again diagnosed with schizophrenia and bipolar disorder while hospitalized for a month of inpatient mental health treatment. *Id.* In 2017, Coopwood experienced two inpatient psychiatric stays, including a 10-day stay in early 2017 and an 8-day stay in May 2017 related to a lack of sleep and schizophrenia-induced psychosis. *Id.*; Medical Records, RE 18-3, PageID #229–34. By August 13, 2017, Coopwood was six-months pregnant and had stopped taking her anti-psychotics out of concern for the drugs' potential effects on her unborn fetus. Coopwood Affidavit, RE 16-2, PageID #114. On that day, Coopwood committed a bizarre crime: fatally stabbing her mother over a pack of cigarettes. *See* Biographical Information, RE 5-5, PageID #74; Booking Card, RE 5-6, PageID #77; Medical Records, RE 20-1, PageID #325. Coopwood was ultimately found guilty

but mentally ill at the time of the crime. Judgment of Sentence, RE 20-2, PageID #329.

II. Coopwood Exhibits Repeated Mental and Physical Health Problems in Custody; Assault by Deputy Watts.

On August 16, 2022, Coopwood entered pretrial custody at the Jail. *See* Booking Card, RE 5-6, PageID #77. The next day, the Jail's for-profit healthcare provider, Wellpath, conducted Coopwood's "receiving screening." Medical Records, RE 18-2, PageID #148–53. The receiving screening consisted primarily of a surface-level questionnaire self-reported by Coopwood mere days after her bizarre crime. *See id.* The only observed conditions listed on the questionnaire are Coopwood's pregnancy, high blood pressure, and high cholesterol. *See id.* The questionnaire shows that Coopwood denied any history of psychiatric hospitalization or mental health treatment, but also notes that Coopwood's mental health history, which the Wellpath practitioner could access, "states otherwise." *Id.* The checklist nonetheless raised no concerns as to Coopwood's mental status except a "blunted" affect and "depressed" mood. *Id.* The provider then referred Coopwood for a psychiatric evaluation. *Id.*

On August 17, 2017, Coopwood alleges that Deputy Watts assaulted her. Complaint, RE 1, PageID #3. Coopwood alleges that Watts grabbed her by the hand, drug her to her cell by the hair and fingers, and kicked Coopwood in the stomach

with a large boot. *Id.* Watts' alleged assault underlies Coopwood's claims in this litigation.

The next day, Wellpath conducted a behavioral evaluation of Coopwood. Mental Health Records, RE 20-1, PageID #320–22. Like the receiving screening, Wellpath's behavioral health screening consisted of a surface-level questionnaire rather than a detailed mental health analysis. *See id.* The evaluating practitioner acknowledged no mental health problems, merely noting that Coopwood had a "blunted" affect and "poor" insight. *Id.* Coopwood again denied having any mental health history, stating that she had previously been diagnosed with insomnia and a condition "like depression" but that she "kinda got over that." *Id.* The provider prescribed Coopwood Remeron, an antidepressant. *Id.*

In the following days, Coopwood complained to jail officials of throbbing pain and bloody discharge from her vagina. Coopwood made repeated trips to the hospital, including on August 23, August 30, and September 27. Medical Records, RE 18-2, PageID #163–71, 174. On September 28th, Wellpath conducted another mental health assessment, largely relying on a similar questionnaire and noting no issues—even going so far as to state that Coopwood had "no" history of "violent behavior" and "no" history of "psychiatric hospitalization." *See* Medical Records, RE 18-2, PageID # 177–81. Coopwood returned to the hospital after midnight on

October 19, complaining of continued vaginal pain after her water had broken. Medical Records RE 18-3, PageID #229.

At the hospital, for the first time since entering the Jail, Coopwood received a thorough psychiatric evaluation from an independent, licensed psychiatrist outside the Wellpath system: Dr. Luay L. Haddad ("Dr. Haddad"). Medical Records, RE 18-3, PageID #229–32. Dr. Haddad's evaluation presented a drastically different mental state than Wellpath's questionnaires. *See id.* Dr. Haddad recognized that Coopwood had been "psychotic" for an unknown duration. *Id.* PageID #230. Haddad's notes reference an incident in which Coopwood called EMS in May 2017 and presented "in a bizarre way." *Id.* Haddad further identified that Coopwood was unaware of her circumstances as she did not know why she was in jail, recalled the incident leading to her arrest as when she "tripped and fell and someone else got hurt," and incorrectly believed that the judge had dropped all charges against her. *Id.* PageID #229.

Haddad's mental status exam reflects that Coopwood was "Bizarre, Dramatic." *Id.* PageID #232. Haddad observed that her "thinking is seriously derailed and internally inconsistent, resulting in irrelevancies and disruption of thought processes, which occur frequently," and that such issues were "observed through[]out examination period." *Id.* Haddad identified that Coopwood was experiencing frequent auditory hallucinations that "tend to distort thinking and/or disrupt behavior," she delusionally interpreted such hallucinations, and she

responded to them and was motivated by the voices. *Id.* Haddad noted "None" as to Coopwood's insight and that she had "Poor" judgment. *Id.* PageID #233. Haddad diagnosed Coopwood with Psychosis NOS, possible schizophrenia, personality disorders and mental retardation, cluster B traits, and as being manipulative. *Id.*[3] Haddad prescribed Coopwood Haldol, an antipsychotic commonly used to treat schizophrenia, and recommended placing her in the jail's psychiatric unit. *Id.* PageID #233–34.

Days later, Coopwood returned to the hospital for abdominal pain. Medical Records, RE 18-3, PageID #247. Coopwood continued to exhibit bizarre behavior at the hospital, kicking the medical staff and accusing them of sexual assault while denying any history of mental illness. *Id.* PageID #249. Doctors consulted Dr. Haddad, who "stated the patient is not competent and appears to continue being psychotic from her known paranoid and aggressive behavior." *Id.* PageID #251. Haddad ordered that Coopwood be physically restrained and that she be treated with

[3] "NOS" in this context means "not otherwise specified" meaning that because Haddad was early in the diagnostic process, the doctor could not definitively state the cause of such psychosis. *Amici* note that the preliminary nature of Dr. Haddad's schizophrenia diagnoses is typical when a patient sees a new provider, even with severe schizophrenia symptoms, but the practitioner has not personally examined the patient for long enough to establish the six-month diagnosis. *Compare* Medical Records, RE 18-3, PageID #233 (noting Dr. Haddad's diagnosis of "possible schizophrenia") *with* AMERICAN PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS § 295.90 (5th ed. 2013) ("DSM-V") (requiring "[c]ontinuous signs of the disturbance must persist for at least 6 months").

the anti-psychotic Haldol and an antihistamine Benadryl. *Id.* Unfortunately, Coopwood's unborn child was ultimately stillborn in November 2017. *Id.* PageID #266–68.

III. Coopwood's Attempts to Exhaust Administrative Remedies.

During the same time that Coopwood was experiencing untreated psychosis and repeated physical issues requiring hospital care, the clock was running on Coopwood's deadline to exhaust administrative remedies. The Jail's administrative procedures require inmates to first file an official grievance form within just ten days of the incident underlying the grievance. Inmate Rules and Regulations, RE 5-4, PageID #57. While an inmate may request staff assistance with the form where a documented disability, illiteracy, or language barrier stands in the way, there is no provision to help the mentally ill. *Id.* at PageID #56–57. The inmate may submit the grievance to any staff member, and the Jail will answer within fifteen business days, followed by a maximum twenty-five day appeal process. *Id.* The record shows that Coopwood claimed she did not receive the handbook or grievance form when she entered the Jail. Coopwood Aff., RE 16-2, PageID #115. Coopwood also claims she asked to report the assault, but her requests were denied. *Id.* Coopwood also states that she recalls filling out a form that she thought was a grievance form, but she does not recall who she gave the form to. *Id.*

Coopwood sued Watts and Wayne County in the United States District Court for the Eastern District of Michigan. The district court dismissed Coopwood's claim for failure to exhaust administrative remedies. Coopwood appeals from the district court's order.

ARGUMENT

I. Poor Mental Health Can Render Administrative Remedies Unavailable.

The PLRA requires inmates to exhaust "such administrative remedies as are available" before suing to challenge harsh prison conditions. 42 U.S.C.A. § 1997e(a). While this requirement applies equally to all inmates without regard to special circumstances, *amici* propose that when determining whether administrative remedies are "available" to a mentally ill inmate, courts should look to the facts of the inmate's mental health status. Because severe mental illness can profoundly undercut an individual's ability to fulfill administrative duties and complete tasks, mental illness can render administrative remedies unavailable to prisoners. *Amici* thus urge the Court to grant Coopwood's appeal and hold that mental illness can render administrative remedies unavailable under the PLRA.

A. The Supreme Court requires incarcerated persons exhaust only those remedies "available" to them.

The United States Supreme Court has held that the PLRA's availability standard has real meaning. In *Ross v. Blake*, 578 U.S. 632 (2016), the Court held, "A prisoner need not exhaust remedies if they are not 'available.'" *Id.* at 636. In

Ross, the Court rejected the Fourth Circuit's adoption of an extra-textual "special circumstances" exception to the PLRA's exhaustion requirement but nonetheless held that the statute's availability standard is a "textual exception to mandatory exhaustion." *Id.* at 642. The Court defined "available" under the PLRA as "capable of use for the accomplishment of a purpose' and that which 'is accessible or may be obtained." *Id.* (quoting *Booth v. Churner*, 532 U.S. 731, 737–38 (2001)). In turn, the Court recognized three examples when an administrative remedy may not be available: (1) where the process is a "simple dead end" such that the process or officials are unable or unwilling to provide relief; (2) where a scheme is so opaque that it becomes incapable of practical use; and (3) where an inmate is thwarted from the procedure through "machination, misrepresentation, or intimidation." *Id.* at 643–44. Multiple circuits have held that *Ross*'s list was non-exhaustive.[4] Thus what matters is that remedies were unavailable under the circumstances because Coopwood's mental illness was a real-world barrier making it impossible for her to

[4] S*ee, e.g.*, *Williams v. Correction Officer Priatno*, 829 F.3d 118, 124 n.2 (2d Cir. 2016) (finding *Ross*'s list to be non-exhaustive circumstances "relevant" to the Court's determination); *Andres v. Marshall*, 867 F.3d 1076, 1078 (9th Cir. 2017) (per curiam) (referencing *Ross*'s list as "non-exhaustive" circumstances when "an administrative remedy was not capable of use to obtain relief despite being officially available"); *Rinaldi v. United States*, 904 F.3d 257, 267 (3d Cir. 2018) (recognizing other circumstances consistent with *Ross* including where instructions were misleading or prison failed to follow its own grievance procedure); *Ramirez v. Young*, 906 F.3d 530, 533 (7th Cir. 2018) (referring to *Ross* as containing a list of examples, "not a closed list" and finding error to the extent the district court thought the list was exhaustive).

use the Jail's grievance system. Alternatively, *amici* believe that mental illness can trigger *Ross*'s second example of unavailability by rendering the process so opaque as to become incapable of practical use.

B. Mental health problems can render administrative remedies unavailable.

As mental health experts familiar with the effects of confinement on mentally ill patients, *amici* believe that mental illness can render administrative remedies unavailable. Commentators have long recognized that the PLRA is unfair to prisoners exhibiting mental illness because of difficulties inherent in a mentally ill prisoner trying to fulfill administrative remedy requirements:

> Mental illness and improper medication—too little, too much or the wrong drug—may . . . prevent prisoners from complying in a timely and correct way with prison grievance procedures that typically set short deadlines for filing the initial grievance through the appeals process. While not explicitly cutting back on prisoners' constitutionally protected rights, the PLRA creates formidable obstacles to judicial protection and enforcement of those rights by applying with equal force to meritorious as well as frivolous cases.[5]

Compounding this problem, prisoners with mental illness are more likely to be victimized and experience physical trauma and harm in prison.[6] Indeed, prisoners suffering from serious mental illness are disproportionately subject to force by

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[5] Jamie Fellner, *A Corrections Quandary: Mental Illness and Prison Rules*, 41 HARV. C.R.-C.L. L. REV. 391 (2006).

[6] Craig Haney, et al., *The Plight of Long-Term Prisoners with Mental Illness, in* CRIMINALIZATION OF MENTAL ILLNESS READER 170 (K. Frailing ed., 2018).

custody staff.[7] So, while mentally ill prisoners are more likely to be the victim of actionable conduct under the PLRA, PLRA remedies are less available to them than to other populations.

And, even if a person is competent to stand trial, he or she may not be competent enough for administrative remedies to be available. To stand trial, a person need only "understand the nature and consequences of the proceedings against him or to assist properly in his defense." *See* 18 U.S.C. § 4241. But in *amici*'s professional opinion, because grievance procedures and other administrative remedies must be undertaken by the prisoner by himself or herself, the prisoner must be able to do more than "assist" and "understand" the proceedings that are forced upon him or her. Instead, to carry out administrative remedies, the prisoner must actively choose to undertake administrative actions and follow detailed and time-limited procedures, typically without assistance from an attorney or other representative. *Amici* submit that, based on their experience in prisons and with inmate psychology, exhaustion of administrative remedies requires the prisoner to understand and accurately perceive (1) his or her circumstances, surroundings, and reality; (2) the consequences of undertaking or failing to undertake administrative

[7] *Id.*; Terry A. Kupers, M.D., M.S.P., *A Community Mental Health Model in Corrections*, 26 STAN. LAW & POL'Y REV. 119, 149 (2015).

and grievance processes; (3) the existence of administrative rules and procedures; and (4) how to navigate those rules and procedures in a timely and accurate manner.

In *amici*'s professional opinion, mental illness impacts all these areas of understanding and perception. For example, mental illness may render a patient unable to accurately perceive or understand their circumstances or reality. Failing to perceive reality, in turn, would keep the patient from understanding the consequences of participating—or not participating—in an administrative procedure. And even where the patient perceives reality accurately, severe mental illness may disrupt thought and mood processes so completely that the patient may still be unable to carry out even the most basic activities of daily living, much less the detailed and time-sensitive tasks required in administrative proceedings. It is thus the professional opinion of *amici* that mental illness can render administrative remedies so such an insurmountable hurdle that they are unavailable to certain prisoners.

II. Coopwood's Mental Health Rendered Administrative Remedies Unavailable to Her.

The record shows that Coopwood had severe mental illness requiring multiple psychiatric hospital stays over many years. Coopwood's health records show that doctors diagnosed her with schizophrenia related to her psychosis and other mental health symptoms. Indeed, Coopwood was found mentally ill at the same trial that resulted in her incarceration. *Amici* agree that Coopwood's symptoms, behavior, and

history are consistent with a schizophrenia diagnosis. *Amici* believe that Coopwood's medical records show that along with depression and insomnia, Coopwood's schizophrenia led to a severe acute psychotic episode lasting at least two months, likely beginning shortly before her August 2017 crime until after her October 2017 hospital visits. During this period, Coopwood suffered from psychosis, including auditory hallucinations and reality distortion. While psychotic, Coopwood's functioning was further impaired by physical pain from her assault, stress from her pregnancy, and the trauma inherent in imprisonment. *Amici* believe that these circumstances and diagnosis would prevent Coopwood from carrying out administrative remedies to the point where such remedies were no longer available in any practical way.

A. The record shows that Coopwood suffered from schizophrenia and severe psychosis.

1. Schizophrenia greatly impairs functioning.

Schizophrenia is a serious mental illness and psychotic condition that waxes and wanes over a person's lifetime, causing severe disability.[8] Unlike mood disorders like depression or bipolar disorder, schizophrenia is primarily a thought process disorder.[9] Schizophrenia typically emerges with an initial breakdown in

[8] Terry A. Kupers, M.D., M.S.P., *Schizophrenia, its Treatment and Prison Adjustment*, *in* CIVIC RSCH. INST., MANAGING SPECIAL POPULATIONS IN JAILS AND PRISONS 9-2 (Stan Stojkovic et al. eds., 2005); *see also* DSM-V § 295.90.

[9] Kupers, *supra* note 8 at 9-2.

early adulthood, followed by alternate periods of psychosis or relative remission for the rest of the patient's life.[10] Psychosis, a key symptom of schizophrenia, describes a period when a person's thoughts and perceptions are so disturbed that the individual loses contact with reality and may be unable to understand what is real and what is not.[11] Schizophrenia is a spectrum disorder with various symptoms but typically involves some form of psychosis including hallucinations (sensory perceptions absent corresponding external stimulus) or delusions (fixed false beliefs based on false inferences about reality or oneself that are maintained despite obvious contradictory evidence).[12] An untreated schizophrenic psychotic episode typically lasts longer—often weeks or months—when compared to bipolar or depressive disorders.[13]

The DSM-V requires that symptoms persist for at least six months for a schizophrenia diagnosis.[14] So a practitioner must conduct prolonged treatment or deep analyses of a patient's history for a definitive diagnosis.[15] Symptoms during an

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[10] *See id.*

[11] NAT'L INST. OF MENTAL HEALTH, NIH PUB. NO. 20-MH-8110 *Understanding Psychosis*, https://www.nimh.nih.gov/health/publications/understanding-psychosis (last visited Nov. 11, 2022).

[12] David B. Arciniegas, M.D., *Review Article: Psychosis*, 21 AM. ACAD. OF NEUROLOGY CONTINUUM J. 715, 715 (2015).

[13] *See id.* at 725.

[14] DSM-V § 295.90.

[15] *See* Kupers, *supra* note 8 at 9-2–3.

acute period of psychosis or decompensation include hallucinations, delusions, loose associations and disordered thinking, inappropriate or labile affect, severe difficulty relating to others, an inability to engage in abstract thinking, and a bizarre quality of thought, behavior, and verbal expression.[16]

Trauma and stress exacerbate schizophrenia, and withdrawing anti-psychotic medications can cause symptoms and psychosis to return or worsen.[17] Patients suffering from schizophrenia may have trouble understanding rules and systems, causing them to make mistakes or run into problems that the general population would not.[18] Prisons and jails exacerbate these problems by imposing additional social and administrative rules that are often confusing and differ from the rules that the person grew up with.[19] Schizophrenia and psychosis may impair patients' ability to perform even the most basic activities of daily living, including financial management, shopping, cooking, cleaning, medication management, and transportation.[20]

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[16] *Id.*

[17] *Id.*

[18] *See id.* at 9-5–7.

[19] *Id.*

[20] Philip D. Harvey, Robert K. Heaton, et al., *Functional impairment in people with schizophrenia: Focus on employability and eligibility for disability compensation*, 140 SCHIZOPHRENIA RSCH. 1 (Sept. 2012).

2. The record shows that Coopwood exhibits symptoms of schizophrenia.

Amici agree that Coopwood's medical history is consistent with a schizophrenia diagnosis. Coopwood's mental health symptoms first emerged in early adulthood in 2008, when Coopwood was about 23 years old. Coopwood Affidavit, RE 16-2, PageID #113; Medical Records, RE 18-3, PageID #223 (showing Coopwood's birth year as 1985). In the following years, Coopwood experienced severe enough symptoms to warrant multiple inpatient psychiatric stays, along with apparent psychosis. Coopwood Affidavit, RE 16-2, PageID #114.

3. Medical records from Wayne County Wellpath Providers are not probative of Coopwood's mental state.

Amici recognize that Wellpath's intake and behavioral health evaluations conducted at the Jail seemingly minimized or failed to recognize Coopwood's psychosis and other symptoms of mental illness Mental Health Records, RE 20-1, PageID #320–26. This failure is especially egregious because Wellpath's documentation acknowledged that despite her denial, Wellpath knew that Coopwood in fact had a significant history of mental health treatment, including psychiatric hospitalization. Wellpath's failure to recognize that Coopwood was in the midst of a mental health crisis is unsurprising and of no probative value as to her mental state.

Prison and jail health systems are often ill-equipped and ill-trained to address mental illness, resulting in mental illness often going unidentified and untreated in

prisons and jails.[21] Wellpath, the largest provider of carceral healthcare in the country, has a long history of inadequate mental health care, and publications[22] and lawsuits[23] related to Wellpath's inadequacy abound. Even the U.S. Department of Justice ("DOJ") recognized in a California investigation that Wellpath "do[es] not consistently apply any definition in identifying, assessing, or treating prisoners with

[21] *See* Haney, *supra* note 6 at 172 ("Only a third of state prisoners who had mental health problems had received treatment since they began their incarceration.").

[22] Jared Bennett, *Experts: Inadequate Mental Health Resources, Policies Contribute to Louisville Jail Suicides*, THE KY. CENTER FOR INVESTIGATIVE REPORTING (Feb. 24, 2022) https://kycir.org/2022/02/24/experts-inadequate-mental-health-resources-policies-contribute-to-louisville-jail-suicides/ (explaining how Wellpath's inadequate care contributed to suicides); Nick Chrastil, *Mental Illness Behind Bars: The Hard Lessons of Orleans Parrish*, SALON (Nov. 24, 2019) https://kycir.org/2022/02/24/experts-inadequate-mental-health-resources-policies-contribute-to-louisville-jail-suicides/ (highlighting inadequate mental health resources, and noting that Wellpath, "one of the largest suppliers of correctional health care in the country, . . . has repeatedly come under fire for appearing to prioritize profits over care").

[23] Wellpath is frequently subject to lawsuits including wrongful death for inadequate mental care. *See, e.g.*, Arias Sanguinetti, *Monerey County Jail and Wellpath Sued Once Again for Alleged Wrongful Death of Inmate*, CISION PR NEWSWIRE (May 7, 2022) https://www.prnewswire.com/news-releases/monterey-county-jail-and-wellpath-sued-once-again-for-alleged-wrongful-death-of-inmate-301542126.html. Wellpath is now facing a class action brought by inmates across 25 county jails, including Wayne County Jail, alleging systematic constitutional violations for inadequate mental health screening, care, and medications, resulting in serious injuries, including death. *See Hall v. Wellpath*, No. 20-CV-10670, 2021 WL 267780, at *2 (E.D. Mich. Jan. 27, 2021), *reconsideration denied*, No. 20-CV-10670, 2021 WL 567602 (E.D. Mich. Feb. 16, 2021).

serious mental illness."[24] The DOJ's report found that prisoners experience serious harm because of Wellpath's inadequate mental health care, and that Wellpath practitioners "fail[] to capture information relevant to treatment planning" and conduct inadequate mental health assessments.[25]

Wellpath's deficient care is apparent from Coopwood's records, which are blatantly inconsistent with known facts, such as listing that Coopwood had "no" history of "violent behavior" or psychiatric hospitalization. *See* Medical Records, RE 18-2, PageID # 177–81. Records show that even though the Wellpath practitioner had access to Coopwood's medical records showing her history of serious mental illness and psychosis, the practitioner took Coopwood's verbal denials of mental illness at face value. *See* Medical Records, RE 18-2, PageID #157. In light of Coopwood's history, a responsible practitioner upholding basic standards of care would not have heeded Coopwood's denials, which in all likelihood were a symptom of her psychosis. Instead, in *amici*'s expert opinion, the practitioner should have acted to maintain continuity of care and prescribed Coopwood with anti-psychotics like those she was taking before she entered custody. *Amici* therefore view

[24] U.S. D.O.J., Investigation of the San Luis Obispo County Jail, U.S. D.O.J, C.R. DIV. 19, n.27 (Aug. 31, 2021).

[25] *See id.* at 9 (stating, "Wellpath and its staff appear not to take seriously prisoner grievances or the grievance process" and listing examples when Wellpath "staff took no action or inadequate action on complaints of potentially serious medical concerns").

Wellpath's records as immaterial to determining Coopwood's mental state during the grievance period.

But, while unsurprising given Wellpath's documented lack of care, the Wellpath providers' failure to recognize and treat Coopwood's schizophrenia beyond a mere antidepressant is particularly concerning. The more quickly a psychotic episode is brought under control, the better the patient's prognosis.[26] If a psychotic episode is allowed to progress too long without interventions like anti-psychotic medications, the patient's brain may undergo permanent changes that will decrease mental functioning.[27] *Amici* acknowledge that there is a cost-benefit analysis when prescribing anti-psychotic drugs to a pregnant person due to potential negative consequences for a pregnancy, but Wellpath apparently undertook no such analysis, instead just prescribing an antidepressant without further consideration. Mental Health Records, RE 20-1, PageID #320–22. *Amici* believe, like Dr. Haddad, that the benefits of anti-psychotic drugs in Coopwood's case were clear: her psychosis likely caused her to attack her mother, Coopwood could not function normally once in custody, and her aggression and erratic behavior showed that the severity of her psychosis continued. Therefore, *amici* conclude that Wellpath

[26] Kupers, *supra note* 8 at 9-2–4.

[27] *Id.*

provided grossly inadequate care to Coopwood, and their treatment notes cannot be considered probative of Coopwood's mental state during the grievance period.

4. Coopwood's competency to stand trial does not affect her ability to exhaust administrative remedies here.

Amici note that the mere fact that Coopwood was competent to stand trial should not serve as any evidence that Coopwood was competent complete the tasks required to exhaust administrative remedies. Coopwood's trial occurred more than a year after Watts' assault, and it is likely that Coopwood was on anti-psychotic medication by the time trial occurred. And as explained, *amici* submit that the competency required to stand trial is a lower standard than that for a person to participate in administrative remedies such that they are available to the person.

B. Coopwood's schizophrenia likely caused psychosis that rendered administrative remedies unavailable.

Amici conclude that Coopwood was likely in the midst of a major psychotic episode that began before she entered Jail custody and continued until October 2017 or later—fully encompassing the administrative grievance period. The severe, disorganizing psychotic episode that Coopwood was suffering rendered administrative remedies unavailable to her.

By early August 2017, Coopwood had stopped taking her anti-psychotic medication. Commonly, stopping or withdrawing anti-psychotic medication can

trigger psychotic decompensation.[28] *Amici* conclude that the facts and Coopwood's medical history indicate that it is likely that Coopwood was experiencing a psychotic episode at the time of her crime. The crime's bizarre nature—stabbing her own mother over cigarettes and then apparently failing to recall the encounter—supports the view that Coopwood was psychotic, delusional, and lacked understanding of her surroundings. Coopwood's conviction of "guilty but mentally ill" further shows she was mentally ill at the time of her crime on August 13, 2017. Judgment of Sentence, RE 20-2, PageID #329.

And the first time that an independent, non-Wellpath practitioner, Dr. Haddad, conducted a mental health exam on Coopwood in October 2017, it was apparent that Coopwood was still psychotic and could not accurately perceive reality: Coopwood failed to recall her crime, thought that the charges against her had been dropped, and did not understand why she was in jail. Medical Records, RE 18-3, PageID #229–32. Coopwood also experienced auditory hallucinations that she thought were real. *Id.* Coopwood still exhibited symptoms of psychosis days after Dr. Haddad's examination when she returned to the hospital for pregnancy complications and had altercations with the staff. *Id.* PageID #249. Coopwood's continued psychotic behavior after Dr. Haddad had prescribed anti-psychotic medication is more

[28] *See* Kupers, *supra* note 8 at 9-2–4.

evidence of a longer psychotic episode, because the longer a psychotic episode persists, the harder it is to control the patient's symptoms.[29]

As explained, untreated schizophrenic psychosis can last weeks or months, rather than shorter bursts of intermittent psychosis characteristic of other mental health diagnoses. *Amici* believe that Coopwood's October psychotic symptoms were likely a continuation of the same period of psychotic decompensation that either started in or was already ongoing in August. Coopwood thus likely suffered psychosis throughout the ten-day period when she had to exhaust the jail's grievance procedures. In turn, Coopwood's psychosis would have been exacerbated by the pain of the assault, trauma of her crime and incarceration, and concern for her pregnancy. *Amici* thus propose that Coopwood's psychosis should at least create a fact issue as to whether administrative remedies were available to Coopwood.

CONCLUSION

The PLRA's exhaustion of administrative remedies requirement is unfair to seriously mentally ill prisoners who may be incapable of carrying out the sorts of tasks required to exhaust remedies. Coopwood in particular showed symptoms consistent with schizophrenia and severe psychosis which likely persisted throughout the brief ten-day window when she could have submitted a grievance form at the Jail. Coopwood's severe mental illness likely rendered the grievance

[29] *See* Kupers, *supra* note 8 at 9-2–4.

process unavailable to her as a practical matter. *Amici* therefore ask that the Court grant Coopwood's appeal, reverse the lower court's decision, and allow Coopwood to pursue her claims.

Dated: November 17, 2022

Respectfully submitted,

s/ Meaghan D. Nowell

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CERTIFICATE OF COMPLIANCE

I certify that this **BRIEF OF AMICI CURIAE PSYCIATRY AND PSYCHOLOGY EXPERTS IN SUPPORT OF PLAINTIFF-APPELLANT** complies with the length limits permitted by Fed. R. App. P. 29(a)(5). This brief is 5,457 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The brief's type size and type face comply with Fed. R. App. P. 32(a)(5) and (6).

s/ Meaghan D. Nowell
Meaghan D. Nowell

Counsel for Amici Curiae

Dated: November 17, 2022

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system, and that it has been served on all counsel of record through the court's electronic filing system.

s/ Meaghan D. Nowell
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Dated: November 17, 2022

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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