No. 25-1091

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RICKY SANABRIA, JR.,
Plaintiff-Appellant,

v.

CORPORAL STEPHEN BRACKETT, II;
LIEUTENANT BRIAN VANES,
Defendants-Appellees.

On Appeal from the United States District Court for the
District of Delaware, No. 1:22-cv-1012
Before the Hon. Christopher J. Burke, Magistrate Judge

OPENING BRIEF OF APPELLANT

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INTRODUCTION

As the Supreme Court held in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the standard governing pretrial detention claims under the Fourteenth Amendment's Due Process Clause fundamentally differs from the standard governing postconviction claims under the Eighth Amendment. People detained before trial "cannot be punished at all," *id.* at 400, whereas those who have been convicted are protected only from "unnecessary or wanton" pain during their lawfully imposed punishment, *Wilson v. Seiter*, 501 U.S. 294, 297 (1991). As a result, "a pretrial detainee can prevail" on a due process claim against a jail official "by providing only *objective* evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398 (emphasis added). "[T]he text of the [Eighth] Amendment," in contrast, mandates a *subjective* inquiry: "To violate the Cruel and Unusual Punishments Clause, a prison official must have a 'sufficiently culpable state of mind.'" *Farmer v. Brennan*, 511 U.S. 825, 834, 837 (1994).

This fundamental distinction made all the difference below. After Appellant Ricky Sanabria, Jr.'s cellmate—who was twice Mr. Sanabria's weight, had recently attacked other detainees, and was charged with no fewer than ten counts of rape, assault, and terroristic threatening—exhibited increasing aggression towards Mr. Sanabria, Mr. Sanabria informed Defendant Stephen Brackett that he was unsafe and

feared an attack. Brackett assured Mr. Sanabria that he understood and that he would move Mr. Sanabria to a new cell. But Brackett moved Mr. Sanabria only for about an hour and 41 minutes, until Defendant Brian Vanes issued a highly unusual directive to move Mr. Sanabria *back* to the same cell, with the same dangerous cellmate. The cellmate inferred, predictably, that Mr. Sanabria had complained to prison officials and tried to leave. The very next day, the furious cellmate attempted to strangle Mr. Sanabria and then, while Mr. Sanabria struggled for his life, bit off a chunk of Mr. Sanabria's ear.

At trial, Mr. Sanabria presented ample evidence that Brackett *should have known* of the risk, which is all the Due Process Clause requires. But the district court, elevating nonbinding sources over Supreme Court precedent, instead directed the jury to apply the Eighth Amendment standard. Over Mr. Sanabria's objections, the court instructed jurors that they could not find Brackett liable if he did not *subjectively believe* Mr. Sanabria to be at risk, no matter how obvious the risk was.

That instruction was both wrong and prejudicial. As five other circuits have held, under *Kingsley*, a claim that jail officials exhibited deliberate indifference to circumstances posing a serious risk to a pretrial detainee must be evaluated under an objective standard. The district court's contrary instruction went to the heart of the parties' dispute at trial. And, independently, the court erred even before trial: It eliminated Vanes from the case at summary judgment only by construing the record

against Mr. Sanabria, denying him the benefit of reasonable inferences, and failing to consider the totality of the circumstances. This Court should reverse.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Mr. Sanabria filed suit under 42 U.S.C. §§ 1983 and 1988. ECF 1 at 1 (Complaint); ECF 44 at 1 (First Amended Complaint); Appx4-5 (Memorandum Opinion). The district court had jurisdiction under 28 U.S.C. § 1331. The court granted Defendant Vanes's motion for summary judgment on November 19, 2024. Appx26-27. A jury entered a verdict in favor of Defendant Brackett on December 18, 2024. Appx633 (12/18/24 Trial Transcript). The court entered final judgment on January 2, 2025. Appx29 (Final Judgment). Mr. Sanabria timely appealed on January 15, 2025. Appx1 (Notice of Appeal); Appx48 (Docket Report). This Court has jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED

1. Whether the district court erred in instructing the jury to apply the Eighth Amendment's subjective standard to Mr. Sanabria's Fourteenth Amendment claim that, despite receiving warnings, Defendants failed to protect him from a violent attack by his cellmate in pretrial detention.

2. Whether the district court erred in granting summary judgment to Defendant Vanes by resolving disputes of material fact, declining to draw reasonable

inferences in Mr. Sanabria's favor, and failing to consider the totality of the circumstances.

STATEMENT OF RELATED CASES

There are no prior or related cases.

STATEMENT OF THE CASE

I. Factual Background[1]

A. Mr. Sanabria fears his cellmate will attack him; with nowhere else to turn, he informs Brackett he is unsafe and needs to move.

On July 7, 2021, Ricky Sanabria, Jr. was afraid. He was detained pending trial at the Howard R. Young Correctional Institution, colloquially known as Gander Hill. *See* Appx439, Appx465 (12/16/24 Trial Transcript); Appx58 (Sanabria Deposition). And for twenty-two hours a day, he was locked in a cell with another man, Kiyohn Carroll, who was far bigger and stronger than him, and who was engaged in an escalating pattern of threatening behavior against him. Appx467-474 (12/16/24 Transcript); Appx60 (Sanabria Deposition).

Carroll stood accused of ten counts of rape and additional charges for unlawful imprisonment, assault, and terroristic threatening, and he had just been disciplined for attacking two other detainees in short succession in March and June. Appx182-

[1] Because the district court erred both in granting summary judgment to Defendant Vanes, and in instructing the jury as to the claim against Defendant Brackett, this factual recitation draws from both the summary judgment record and the trial record.

183 (Graham Deposition); Appx239 (Criminal History); Appx243-244 (Disciplinary Reports); Appx530-532 (12/17/24 Trial Transcript). Both Mr. Sanabria and Carroll had been transferred to a transitional "step-down" housing unit from disciplinary confinement following a rule violation—Mr. Sanabria for possession of a cellphone and suboxone; Carroll for one of his assaults on other detainees. Appx59 (Sanabria Deposition); Appx183 (Graham Deposition); Appx244 (Disciplinary Report).

Mr. Sanabria didn't know the details of Carroll's predatory history. But during the past week, Carroll (over six feet tall and 300 pounds) had increasingly been acting in sexually aggressive and menacing ways towards Mr. Sanabria (five foot eight and around 150 pounds). Appx466, Appx469-471 (12/16/24 Transcript); Appx60, Appx62 (Sanabria Deposition). While Mr. Sanabria worked out in their cell, Carroll would "ogl[e]" him; "eye [his] body from top to bottom"; "ma[k]e like a 'woof' sound"; and say, unprompted, "Woof, you could be a model" or "could steal someone's girlfriend." Appx469 (12/16/24 Transcript); Appx60-61 (Sanabria Deposition). Mr. Sanabria asked around and learned that Carroll was potentially detained on a "skin charge," prison-speak for a charge relating to sexual assault. Appx467, Appx470 (12/16/24 Transcript); Appx63 (Sanabria Deposition).

Things had gotten worse still on July 6. That day, Mr. Sanabria had taken a break from exercising in his cell when Carroll "pounced on [him], [and] grabbed . . . both [his] wrists." Appx473 (12/16/24 Transcript); Appx60 (Sanabria Deposition).

Mr. Sanabria struggled for some time before he could pull away and ask, "Whoa, what's up? What are you doing?" Appx473 (12/16/24 Transcript); Appx60 (Sanabria Deposition). Carroll simply stared at him. Appx473 (12/16/24 Transcript); Appx60 (Sanabria Deposition). From his experience dealing with others in jail, Mr. Sanabria understood Carroll was testing him, "gauging [his] strength," "like a snake gauging his prey and opening up his jaws to see or to fit a bigger prey in his mouth." Appx473 (12/16/24 Transcript); *accord* Appx61 (Sanabria Deposition).

Mr. Sanabria knew he had to get away to protect himself. Appx473-474 (12/16/24 Transcript); Appx60 (Sanabria Deposition). At the same time, he understood that "you don't tell a predator that you're trying to leave him." Appx64 (Sanabria Deposition); *accord* Appx474-475 (12/16/24 Transcript). So, on July 7, on his bunk and out of view, Mr. Sanabria surreptitiously wrote a note explaining that "I need to be moved out. I don't feel safe. Something is going to happen to me." Appx474-475 (12/16/24 Transcript); *accord* Appx65 (Sanabria Deposition). He folded up the note and pressed a buzzer to request to be let out of the cell for medication call. Appx474-475 (12/16/24 Transcript); Appx65 (Sanabria Deposition).

Once Mr. Sanabria was at the medication station and (again) out of view, he held up the note to the window of a module where Defendant Brackett was stationed and slipped it under the door. Appx476-477 (12/16/24 Transcript); Appx65

(Sanabria Deposition). Brackett—the housing officer on duty for that portion of the unit, who was trained on protecting detainees from violence by other detainees, Appx498-500 (12/17/24 Transcript); Appx90-91 (Brackett Deposition)—discreetly told Mr. Sanabria to enter into a private interview room; both men understood well that if other detainees saw them speaking, it would place Mr. Sanabria at risk of retaliation. Appx474-475 (12/16/24 Transcript); Appx509 (12/17/24 Transcript); Appx65 (Sanabria Deposition); Appx100-101 (Brackett Deposition).

Once in private, Mr. Sanabria "reiterated what [he] wrote on the note" to Brackett. Appx477 (12/16/24 Transcript); *accord* Appx66 (Sanabria Deposition). He explained to Brackett not only that he and Carroll had "lifestyle differences" in that Carroll "liked men," and that Carroll was "weird," but also that he simply was not safe in the cell with Carroll. Appx477 (12/16/24 Transcript); Appx66 (Sanabria Deposition). He warned Brackett if he wasn't moved away from Carroll, "something was going to happen" to him imminently. Appx478 (12/16/24 Transcript); Appx66 (Sanabria Deposition). Brackett indicated he had heard enough; he nodded and said "Ah, okay. I got you" and "I'm going to get you moved," thus assuring Mr. Sanabria that he fully understood. Appx478 (12/16/24 Transcript); Appx66 (Sanabria Deposition).[2]

[2] Brackett, for his part, testified that the note from Mr. Sanabria only said he wanted to be moved. Brackett claimed that when he asked Mr. Sanabria why, Mr. Sanabria

B. Brackett moves Mr. Sanabria to a new cell for roughly one hour and 41 minutes before changing course and moving him back at Vanes's direction.

In response to Mr. Sanabria's report, Brackett indeed moved him, securing multiple layers of approval to do so. Appx510-516 (12/17/24 Transcript); Appx105-107 (Brackett Deposition). Brackett first contacted his floor supervisor, Sergeant Ritter; Ritter, in turn, secured sign-off from the floor lieutenant, Lieutenant Robert Stewart. Appx503, Appx513, Appx539 (12/17/24 Transcript); Appx105 (Brackett Deposition). Brackett memorialized the change over email; Stewart replied to confirm he approved and had conducted required checks. Appx514-515 (12/17/24 Transcript); Appx106-107 (Brackett Deposition); Appx231 (Stewart Deposition).

Jail policy recommended against leaving one person alone in a cell due to the risk of self-harm. Appx501 (12/17/24 Transcript); Appx98 (Brackett Deposition). But Brackett did not have Mr. Sanabria simply switch places with another detainee. Instead, he moved an unrelated detainee to a new cell to clear room for Mr. Sanabria—thus leaving Carroll alone and ensuring that no other detainee was locked in a cell with him. Appx515-518 (12/17/24 Transcript); Appx108 (Brackett

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insisted only that Carroll was "weird" and refused to elaborate in any way. Appx534-535 (12/17/24 Transcript); Appx101 (Brackett Deposition). Brackett also asserted that he gave Mr. Sanabria's note to the floor supervisor, Sergeant Joseph Ritter. Appx536 (12/17/24 Transcript); Appx101 (Brackett Deposition). Ritter, however, testified that he never received it. ECF 132 at 472-73 (12/17/24 Transcript); Appx200 (Ritter Deposition).

Deposition). Records reflect that Mr. Sanabria was moved at 12:49 p.m. Appx516 (12/17/24 Transcript); ECF 73-1 at 223 (Housing Details and History).

But Mr. Sanabria's relief was short-lived. *See* Appx481 (12/16/24 Transcript). Just after the move, Carroll told Brackett he "had concerns and issues" and needed to speak with Defendant Brian Vanes. Appx540 (12/17/24 Transcript); Appx110, Appx112 (Brackett Deposition). Vanes was a facility investigator, which meant he reviewed all disciplinary reports. Appx133 (Vanes Deposition); Appx195-196 (Stewart Deposition). He was also the facility's Prison Rape Elimination Act ("PREA") compliance manager. Appx130 (Vanes Deposition). Brackett called Vanes, who confirmed he was familiar with Carroll and requested that Carroll be escorted to his office. Appx112-113 (Brackett Deposition). Carroll left his cell at 1:10 p.m. and returned at 2:20 p.m. ECF 73-1 at 151-52 (Muhammad Deposition); *accord* ECF 77, Ex. K (Logbook).[3]

Just after Carroll returned to his cell, Vanes called Brackett and told him to move Mr. Sanabria back in with Carroll. Appx541-542 (12/17/24 Transcript); Appx113 (Brackett Deposition).[4] Vanes's intervention was highly unusual: He was

[3] As discussed *infra*, Vanes departed from Brackett's testimony, insisting that he never met with Carroll that day—just one of several discrepancies in Defendants' accounts. *See* Appx169 (Vanes Deposition).

[4] Vanes claimed Brackett called him, not the other way around, because "everybody knew Mr. Sanabria was under my microscope for some time." Appx167-168 (Vanes Deposition).

not in the chain of command for housing assignments, and during his eight-plus years working at the facility, it had been exceedingly rare for him to order a housing change unconnected to an investigation. *See* ECF 132 at 362 (12/17/24 Transcript) (Stewart testimony); *id.* at 478 (Ritter testimony); Appx111 (Brackett Deposition); Appx201, Appx203-204 (Ritter Deposition); Appx127 (Vanes Deposition). Brackett "ha[d] the ability to push back" but opted not to challenge Vanes's directive. Appx521-522 (12/17/24 Transcript); *accord* Appx112 (Brackett Deposition).

Less than two hours after Mr. Sanabria had moved into his new cell, Brackett suddenly ordered him to pack up his things and move back in with Carroll. Appx481-482 (12/16/24 Transcript); Appx523 (12/17/24 Transcript); ECF 73-1 at 223 (Housing Details and History). Mr. Sanabria refused, telling Brackett that he was not going to return because, again, it wasn't safe. Appx482 (12/16/24 Transcript); Appx67 (Sanabria Deposition). Brackett shut down the conversation, "promis[ing]" Mr. Sanabria that he'd "get [him] out tomorrow" and threatening him with OC spray if he refused to move back. Appx482 (12/16/24 Transcript); Appx67 (Sanabria Deposition). Left with no other option, Mr. Sanabria complied.[5] Records show he was locked back into Carroll's cell at 2:30 p.m.—just one hour and 41 minutes after

[5] Brackett offered a different account of this conversation, too. He claimed Mr. Sanabria was "indifferent" to the move back. Appx523 (12/17/24 Transcript).

being moved out. Appx523 (12/17/24 Transcript); ECF 73-1 at 223 (Housing Details and History).

C. The next day, as feared, Mr. Sanabria's cellmate attacks him, tears out his hair, and bites off his ear.

Predictably, when Mr. Sanabria returned to Carroll's cell, he found Carroll upset and agitated. Appx483 (12/16/24 Transcript); *see* ECF 132 at 430-31 (12/17/24 Transcript) (Stewart agreeing that, in prison, being seen as a "snitch" leads to violence and retaliation). Carroll, who understood that Mr. Sanabria had complained and tried to move, repeatedly asked him, "You tried to leave. Why did you try to leave?" and "Did you go up there and talk to them? Why did you want to leave, man? Why do you want to leave?" Appx483 (12/16/24 Transcript); Appx68 (Sanabria Deposition). Carroll was so worked up that he refused to sit down, remaining standing the rest of the day. Appx68.

Mr. Sanabria told himself he just had to "make it through the night to the morning," since Brackett had promised to move him again the next day. Appx483 (12/16/24 Transcript). He couldn't sleep, knowing that if Carroll "got the jump on [him], then [he] was really going to be in trouble"; he spent the night sitting by the toilet, wide awake. Appx484.

The next morning, July 8, Mr. Sanabria looked for Brackett but couldn't find him. Appx485. As it turned out, despite his promise the day before, Brackett wasn't even scheduled to work that day. Appx524-525 (12/17/24 Transcript); Appx116

(Brackett Deposition). Mr. Sanabria asked other officers if they knew whether he was moving, to no effect. Appx485 (12/16/24 Transcript); Appx69 (Sanabria Deposition).

Because there was no toilet in the common area, it was customary for cellmates to use their limited time out of cell to allow one another to use the bathroom in private in their cells. ECF 131 at 211-12 (12/16/24 Transcript); Appx69 (Sanabria Deposition). But Carroll would not leave; when Mr. Sanabria asked him to do so, he replied, "You're still trying to leave." ECF 131 at 212 (12/16/24 Transcript); Appx70 (Sanabria Deposition). Mr. Sanabria attempted to return to the unit's common area. ECF 131 at 212 (12/16/24 Transcript); Appx70 (Sanabria Deposition). Carroll said, "We've got to do something about this," and slipped a towel around Mr. Sanabria's neck from behind in an attempt to strangle him. ECF 131 at 212-14 (12/16/24 Transcript); Appx70 (Sanabria Deposition).

Carroll tightened the towel around Mr. Sanabria's neck and lifted him off the ground. ECF 131 at 213-14 (12/16/24 Transcript); Appx70 (Sanabria Deposition). Mr. Sanabria kicked out, pushing off first one and then the other bunk in the cell, knocking himself and Carroll into the wall and loosening Carroll's grip. ECF 131 at 214-15 (12/16/24 Transcript); Appx70 (Sanabria Deposition). In a panic, Mr. Sanabria punched out at Carroll, hitting him in the face. Appx70 (Sanabria Deposition). Carroll punched back, grabbed Mr. Sanabria's dreadlocks, and yanked

him down to the ground by his hair. ECF 131 at 215 (12/16/24 Transcript); Appx70 (Sanabria Deposition). Mr. Sanabria screamed, "Let me go, let me go," but Carroll used his weight to push Mr. Sanabria's head onto the floor by the toilet. ECF 131 at 215 (12/16/24 Transcript); Appx70 (Sanabria Deposition).

With Mr. Sanabria pinned down, Carroll leaned over and tried to bite his nose; Mr. Sanabria turned his head to avoid the bite and "felt [Carroll's] teeth on [his] ear," "felt his breath," "felt his teeth," "felt warmness," "felt saliva." ECF 131 at 215 (12/16/24 Transcript); Appx70 (Sanabria Deposition). Mr. Sanabria felt "a sharp, sharp pain" on his ear and "starting yelling, screaming" in agony; then, "in one motion," Carroll "tore . . . away" a significant portion of Mr. Sanabria's ear using his teeth. ECF 131 at 215 (12/16/24 Transcript); Appx71 (Sanabria Deposition). At the same time, Carroll pulled a chunk of Mr. Sanabria's hair out of his scalp. ECF 131 at 215-16 (12/16/24 Transcript).

Finally, a bloodied Mr. Sanabria was able to push Carroll away and sprint out of the cell for safety. ECF 131 at 216; Appx71 (Sanabria Deposition). By that time, officers had swarmed the pod—they had heard Mr. Sanabria yelling and sounds of scuffling. ECF 131 at 216 (12/16/24 Transcript); ECF 132 at 461 (12/17/24 Transcript). Initially, both Carroll and Mr. Sanabria were cuffed and charged with infractions, but the hearing officer determined that Mr. Sanabria was acting in self-defense. ECF 132 at 399-407 (Stewart testimony); Appx71 (Sanabria Deposition).

The missing piece of his ear was never found. ECF 132 at 398-99, 438-39 (12/17/24 Transcript). Trial exhibits depicting Mr. Sanabria's injuries, as well as what remains of his ear following surgeries, are reproduced at Appx636-640.

The attack scarred Mr. Sanabria physically, mentally, and emotionally. He has undergone multiple surgeries to partially repair what remains of his ear, but they have created "a tremendous amount of scar tissue" that will require tens of thousands of dollars of further surgery to correct. ECF 131 at 220 (12/16/24 Transcript); ECF 132 at 439-46 (12/17/24 Transcript); Appx75-76 (Sanabria Deposition). He experiences discomfort and pain when he turns his head or is exposed to cold temperatures, and the quality of his hearing has decreased. ECF 131 at 221 (12/16/24 Transcript); ECF 132 at 444-45 (12/17/24 Transcript); Appx76 (Sanabria Deposition).

Immediately following the attack, a prison psychologist diagnosed Mr. Sanabria with "acute stress disorder"—similar to Post-Traumatic Stress Disorder ("PTSD") but within 30 days of the triggering event. ECF 132 at 293, 306-07 (12/17/24 Transcript). Months later, Mr. Sanabria was so distressed that he received a disciplinary infraction because he "feared for his safety and was anxious and paranoid about going in the cell with another inmate." ECF 132 at 309-10. A clinical psychologist diagnosed him with PTSD, and he has experienced nightmares, hypervigilance, disturbed sleep, and stressed/depressed mood. ECF 131 at 268

(12/16/24 Transcript); ECF 132 at 303-04, 311 (12/17/24 Transcript). Mr. Sanabria's mother believes the attack made him less outgoing and negatively impacted his self-esteem; in her words, he was literally "[c]annibalized." ECF 132 at 573.

II. Procedural Background

A. The district court grants Vanes's summary judgment motion.

Mr. Sanabria filed suit against Brackett and Vanes, alleging that both Defendants knew or should have known that Carroll posed a grave risk to his safety and exhibited deliberate indifference in failing to protect him. *See* ECF 1 at 7-9 (Complaint). After the close of discovery, Brackett and Vanes jointly moved for summary judgment. ECF 67. As relevant, they argued Mr. Sanabria had "failed to plead facts showing . . . that Brackett and Vanes knew of a substantial risk [of injury] but were deliberately indifferent to that risk" and that the record "clarifie[d] there was no obvious, known risk." ECF 72 at 16; *accord, e.g.*, *id.* ("A showing that the official *should* have known of the risk is not sufficient."); *id.* at 17 ("[I]t cannot be inferred . . . that Brackett had subjective knowledge of a risk of harm").

In response, Mr. Sanabria explained that "as a pretrial detainee, [his] claim is subject to a less onerous, objective standard under the Fourteenth Amendment than it would have been under the Eighth Amendment, which requires proving subjective intent." ECF 76 at 15-16 (citing *Kingsley*, 576 U.S. at 396-97). And regardless, he

argued, a jury could reasonably find that Brackett and Vanes culpably failed to protect him under either standard.

The district court denied Brackett's motion for summary judgment but granted Vanes's motion. Appx2-27 (Memorandum Opinion). The court declined to resolve, at that stage, whether an objective or subjective standard governed Mr. Sanabria's claims. Appx8-10 & n.5.

As for Brackett, the court held that there was sufficient evidence in the record for a reasonable jury to conclude that Brackett was deliberately indifferent to the grave risk Carroll posed to Mr. Sanabria. Appx14-18. The court explained that given Mr. Sanabria's evidence—including, for instance, the significant difference in size between Carroll and Mr. Sanabria; Mr. Sanabria's testimony that he communicated to Brackett that he felt unsafe and feared an imminent assault (both in writing and verbally); Brackett's clear indication to Mr. Sanabria that he understood Mr. Sanabria feared an assault; and Brackett's initial decision to move Mr. Sanabria (a complex process)—there was a genuine dispute of fact regarding what Brackett knew about the risk Carroll posed to Mr. Sanabria. *Id.*

When it came to Vanes, however, the court construed the record differently. It began by emphasizing *Brackett's* account of his conversation with Mr. Sanabria, rather than Mr. Sanabria's. Appx21. And it gave little or no weight to the many disparities between Brackett's and Vanes's accounts of the events of July 7, 2021.

See ECF 76 at 11 (Brief in Opposition to Summary Judgment). Rather, the court relied on Defendants' claims that Brackett never disclosed any safety concerns to Vanes and, instead, told Vanes only that "[Mr. Sanabria] thinks his cellmate is weird." Appx22 (Memorandum Opinion).

The court declined to infer that "Brackett *must have told* Vanes that Plaintiff had expressed concern to Brackett about Carroll being ready to attack," reasoning that Defendants had asserted otherwise and there was no "compelling evidence of record to the contrary" from someone "privy to" their private conversation(s). Appx24. The court also deemed Carroll's prior violent incidents insufficient, standing alone, to establish Vanes's knowledge of the risk Carroll posed. Appx25. Based on these conclusions, the court granted Vanes's motion.[6]

B. At trial, the district court instructs jurors to apply a subjective, actual-knowledge standard to Mr. Sanabria's failure-to-protect claim against Brackett.

The case proceeded to a jury trial against Brackett alone. Witnesses who testified to the events of July 2021 included Mr. Sanabria himself, Stewart, Corporal Steven Graham, Jr. (who heard Mr. Sanabria yell "get the fuck off me" when Carroll

[6] Defendants also argued that there was no clearly established constitutional right "not to be housed with a cellmate who [an] inmate perceives as weird . . . [or] who is homosexual." Appx26-27 n.18 (Memorandum Opinion) (quoting ECF 69 at 19). The district court easily disposed of this argument, noting that it was simply a mischaracterization of Mr. Sanabria's claim. *Id.*

attacked him and observed the aftermath of the attack, ECF 132 at 460-64 (12/17/24 Transcript)), Ritter, and Brackett.

Brackett's defense centered on his asserted lack of subjective awareness. In his opening statement, Brackett emphasized that "[w]hat matters is what [he] knew" about the risk Carroll posed to Mr. Sanabria. Appx450 (12/16/24 Transcript). In his Rule 50 motion for judgment as a matter of law, Brackett declined to assert or even mention qualified immunity, relying instead on his purported lack of "actual knowledge of the alleged risk." Appx547 (12/17/24 Transcript). In his closing argument, Brackett emphasized that the case was "only about what did [he] know on July 7, 2021." Appx604 (12/18/24 Transcript). And Brackett testified that he did not believe Mr. Sanabria was unsafe. Appx539, Appx542-543 (12/17/24 Transcript).

In parallel, the parties continued to litigate whether an objective or subjective standard applied. Prior to trial, the parties twice filed proposed jury instructions; each time, Mr. Sanabria requested a jury instruction employing an objective deliberate indifference standard, while Brackett requested one employing a subjective standard. Appx372-374 (Proposed Jury Instructions and Objections); Appx397-401 (Proposed Final Jury Instructions). Mid-trial, the court said it had "made . . . clear" its view "that . . . actual knowledge is required by the Third Circuit with regard to the Fourteenth Amendment" and forbade Mr. Sanabria from suggesting to the jury that an objective standard applied. ECF 132 at 285-87 (12/17/24 Transcript).

At the charge conference that afternoon, Mr. Sanabria again "raise[d] the objective standard under *Kingsley*." Appx553 (12/17/24 Transcript). The court rejected Mr. Sanabria's instruction and adopted a subjective instruction. Appx560-561. In its ruling on the record, the court provided three reasons for this decision. *First*, it noted that the Third Circuit had, in unpublished opinions that postdated (but did not discuss) *Kingsley*, applied a subjective standard to failure-to-protect claims. Appx561-562 (citing *Edwards v. Northampton Cnty.*, 663 F. App'x 132 (3d Cir. 2016); *Tapp v. Brazill*, 645 F. App'x 141 (3d Cir. 2016); *Travillion v. Wetzel*, 765 F. App'x 785 (3d Cir. 2019)). *Second*, the court relied on two district court decisions. Appx562-563. *Third*, the court cited model jury instructions. Appx563.

Mr. Sanabria's counsel objected again, citing precedent from the Fourth, Seventh, and Ninth Circuits holding that an objective standard governed in light of *Kingsley*. Appx564-566 (citing *Short v. Hartman*, 87 F.4th 593 (4th Cir. 2023); *Kemp v. Fulton Cnty.*, 27 F.4th 491 (7th Cir. 2022); *Castro v. Cnty. of L.A.*, 833 F.3d 1060 (9th Cir. 2016) (en banc)). The court responded that it was "bound to follow the law of the Third Circuit." Appx567; *accord* Appx571-572 (12/18/24 Transcript) (expressing a "belief that the Third Circuit has told us . . . that a[n] . . . actual knowledge standard is the appropriate standard to use here" (citing *Moore v. Luffey*, 767 F. App'x 335 (3d Cir. 2019))).

Accordingly, the district court instructed the jury, as relevant, that "[t]o show deliberate indifference, Plaintiff must show that Defendant *knew of* a substantial risk that Plaintiff would be attacked by Kiyohn Carroll." Appx586 (emphasis added). "It is not enough," the court stated, "for Plaintiff to show that a reasonable person would have known or that Defendant should have known of the risk to Plaintiff" Carroll posed. Appx586-587. Rather, the court emphasized (twice), "Plaintiff must show that Defendant actually knew of the risk." Appx586, Appx587. The court added that "even if there was an obvious risk," "Defendant claims that . . . he was unaware of that risk. If you find that Defendant was unaware of the risk, then you must find that he was not deliberately indifferent." Appx587.

So instructed, the jury found for Brackett. Appx633. Mr. Sanabria timely appealed. Appx1 (Notice of Appeal).

STANDARD OF REVIEW

"This Court exercises plenary review over whether jury instructions state a proper legal standard." *DiFiore v. CSL Behring, LLC*, 879 F.3d 71, 75 (3d Cir. 2018). Likewise, this Court reviews a grant of summary judgment *de novo*. *See, e.g.*, *Giles v. Kearney*, 571 F.3d 318, 322 (3d Cir. 2009). Summary judgment is proper only when, taking the evidence of the non-movant as truth and drawing "all justifiable inferences in . . . favor" of the nonmoving party, the record "shows that there is no

genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Id.* (quoting Fed. R. Civ. P. 56(c)).

SUMMARY OF ARGUMENT

I. The district court's instruction, which directed the jury to apply a subjective deliberate indifference standard to Mr. Sanabria's Fourteenth Amendment failure-to-protect claim, was legally erroneous and prejudicial.

A. The Due Process Clause of the Fourteenth Amendment governs conditions claims in pretrial detention. *See* U.S. Const. amend. XIV. Supreme Court precedent and founding-era historical authorities are clear: The Due Process Clause protects detainees against conditions of confinement that amount to "punishment" prior to an adjudication of guilt. *See, e.g.*, *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Kingsley*, 576 U.S. at 397-98.

Although a subjective intent to punish is often *sufficient* to establish that government conduct violates the Fourteenth Amendment, it is not *necessary*. As far back as *Bell*, the Supreme Court explained that conduct constitutes punishment, even without proof of punitive intent, where it is not "rationally related to a legitimate governmental objective" or is "excessive in relation to that purpose." 441 U.S. at 561. And if *Bell* left any doubt, *Kingsley* eliminated it: The *Kingsley* Court held that "a pretrial detainee can prevail by providing only objective evidence." 576 U.S. at 398.

The *Kingsley* Court also took pains to emphasize the distinction between the protections afforded by the Due Process Clause and those afforded by the Cruel and Unusual Punishments Clause. *See id.* at 400-01. The subjective standard that applies to Eighth Amendment deliberate indifference claims "follows from" the text of the Cruel and Unusual Punishments Clause, *Farmer*, 511 U.S. at 834, which by its terms proscribes "only the unnecessary and wanton infliction of pain," *Wilson*, 501 U.S. at 298—unlike the Due Process Clause. Put simply, "[t]he language of the two Clauses differs, and the nature of the claims often differs." *Kingsley*, 576 U.S. at 400.

In addition, *Kingsley*'s holding hinged on generally applicable Fourteenth Amendment text and doctrine—not any considerations peculiar to the factual context of that case, which involved a claim of excessive force in pretrial detention. Indeed, the *Kingsley* Court drew heavily on detention conditions cases, and it discussed the relevant due process principles in broad terms. For that reason, five other courts of appeals have concluded, in published and persuasive decisions, that an objective standard applies to pretrial detainees' claims that jail officials were deliberately indifferent to serious risks. *See Short*, 87 F.4th at 604-05 (collecting cases). This objective standard—which requires more than negligence, but does not demand subjective awareness of an obvious risk—strikes an appropriate balance between protecting pretrial detainees and jail officials alike.

B. The district court refused to grapple with any of these considerations. Instead, it erroneously deemed itself "bound" by unpublished, inapt cases and model jury instructions. Appx567 (12/17/24 Transcript). And it drew support from out-of-circuit cases. Appx571 (12/18/24 Transcript). But the non-binding decisions on which the court relied are unpersuasive; they conflict with controlling precedent, and if followed, they would make a mess of prison law writ large.

C. Because the court's instruction directly misstated the law, a new trial is warranted unless "it is highly probable that the error did not contribute to the judgment." *Advanced Med., Inc. v. Arden Med. Sys., Inc.*, 955 F.2d 188, 199 (3d Cir. 1992). "This rigorous test is not met here." *Id.* at 200. There was abundant evidence that Brackett should have perceived the obvious risk Carroll posed to Mr. Sanabria—particularly when Brackett moved Mr. Sanabria *back into* Carroll's cell, at which point Carroll knew full well that Mr. Sanabria had attempted to escape his grasp. But the jury was instructed that none of that mattered, so long as it bought Brackett's testimony that he did not *subjectively believe* Mr. Sanabria faced any risk.

II. The district court independently erred in granting summary judgment to Vanes under either an objective or subjective standard. The court did so only by improperly resolving disputes of material fact in Vanes's favor—refusing to draw reasonable inferences from circumstantial evidence—and failing to consider the totality of the circumstances.

In light of the summary judgment record as a whole, a jury reasonably could conclude that Vanes was familiar with Carroll (and met with him that very day); knew Carroll had twice been disciplined for attacking other detainees in recent months, and perhaps even that he was accused of severe, violent crimes; knew Carroll was bigger and stronger than Mr. Sanabria; knew Mr. Sanabria had expressed fear for his safety and that Brackett had agreed to move him as a result; and understood, as anyone would, that locking Mr. Sanabria *back* into a cell with Carroll for twenty-two hours a day would substantially heighten the risk (as it did)—yet directed Brackett to do so anyway. Therefore, there was ample evidence for a jury to conclude that Vanes exhibited deliberate indifference under either standard.

This Court should reverse and remand for a new trial against both Defendants.

ARGUMENT

I. The District Court Erred in Instructing the Jury to Apply a Subjective Eighth Amendment Standard to Mr. Sanabria's Fourteenth Amendment Claim

A. An objective standard governs Fourteenth Amendment claims brought by pretrial detainees.

Constitutional text and history establish that the government may not subject pretrial detainees to punishment. A half-century of Supreme Court precedent—clarified and expounded upon in *Kingsley*—holds that pretrial detention conditions amount to unconstitutional punishment when they are objectively unreasonable, without necessitating any Eighth Amendment-style inquiry into subjective intent.

These cases, including *Kingsley*, apply with full force to Mr. Sanabria's failure-to-protect claim, as five courts of appeals have explained in well-reasoned, persuasive precedents. And these cases' objective standard strikes an appropriate balance between protecting pretrial detainees against unlawful punishment and ensuring that a jail official's mere negligence will not be deemed a constitutional violation.

1. The Due Process Clause of the Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Time and again, the Supreme Court has reiterated that this Clause protects pretrial detainees against any and all punishment. *See, e.g.*, *Bell*, 441 U.S. at 535 ("[T]he proper inquiry is whether [detention] conditions amount to punishment of the detainee."); *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989) ("[T]he Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment."); *Kingsley*, 576 U.S. at 397-98; *accord Hubbard v. Taylor*, 399 F.3d 150, 166 (3d Cir. 2005). The reason is simple: "[A] detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." *Bell*, 441 U.S. at 535.

This deeply rooted principle traces back to the founding era. Consider Blackstone, "whose works constituted the preeminent authority on English law for the founding generation." *Alden v. Maine*, 527 U.S. 706, 715 (1999). In his Commentaries on the Laws of England, Blackstone explained that pretrial detention

was "only for safe custody, and not for punishment." WILLIAM BLACKSTONE, 4 COMMENTARIES ON THE LAWS OF ENGLAND 300 (1769). As a result, he wrote, those detained awaiting trial should not be "subjected to other hardships than such as are absolutely requisite for the purpose of confinement only." *Id.* Rather, where confinement had to be imposed in the "dubious interval between [] commitment and trial," it should be with "the utmost humanity." *Id.*[7]

2. In line with constitutional text and history, controlling Supreme Court law sets forth an objective test to ensure that pretrial detainees are not unlawfully punished. Under these precedents, a subjective "intent to punish" is *sufficient* to establish that a jailer's conduct amounts to impermissible punishment. *See Bell*, 441 U.S. at 538. But, unlike under the Cruel and Unusual Punishments Clause, it is not *necessary*. Rather, the dispositive question under the Due Process Clause is whether

[7] Blackstone's view was widely shared. William Eden, 1st Baron Auckland—whose pioneering treatise, Principles of Penal Law, was cited by four Justices in *Borden v. United States*, 593 U.S. 420, 455 (2021) (Kavanaugh, J., dissenting)—explained that "previous to the conviction of guilt . . . the utmost tenderness and lenity are due" to the pretrial detainee. 2 PRINCIPLES OF PENAL LAW 51 (2d ed. 1771). Cesare Beccaria wrote in his influential treatise that pretrial incarceration should be "attended with as little severity as possible." CESARE BECCARIA, ET AL., 2 ESSAY ON CRIMES AND PUNISHMENTS 75 (1767). Sir George Onesiphorous Paul, 2nd Baronet, opined that "every suffering from neglect or abuse, which exceeds" that necessary to render pretrial custody "secure" is "an oppression, not only unwarrantable by law, but wholly repugnant to the spirit of the constitution" in England. PROCEEDINGS OF THE GRAND JURIES, MAGISTRATES, AND OTHER NOBLEMEN AND GENTLEMEN, OF THE COUNTY OF GLOCESTER ON THE CONSTRUCTION AND REGULATION OF THE PRISONS FOR THE SAID COUNTY 16 (1808).

an official's action or inaction was "objectively unreasonable" under the circumstances. *Kingsley*, 576 U.S. at 397.

The Court indicated as much in *Bell*. There, it held that government conduct constitutes punishment under the Fourteenth Amendment if it is not "rationally related to a legitimate governmental objective" or is "excessive in relation to that purpose." *Bell*, 441 U.S. at 561. The best reading of *Bell* is that these criteria are objective, not subjective. *See id.* at 538 (explaining that the test may be satisfied "[a]bsent a showing of an expressed intent to punish").

To the extent *Bell* left any doubt on this point, *Kingsley* eliminated it. There, the Court confronted whether an objective or subjective standard applied to a pretrial detainee's claim that jail officers used excessive force against him. *Kingsley*, 576 U.S. at 391-92. Canvassing constitutional text and precedent, the Court concluded that the appropriate standard for the pretrial detainee's claim was "solely an objective one." *Id.* at 397. The Court explained: "[A]s *Bell* itself shows (and as our later precedent affirms), a pretrial detainee can prevail by providing only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Id.* at 398. Thus, government conduct constitutes unlawful punishment if it is "objectively unreasonable," even if the government actor subjectively thought otherwise. *Id.* at 396-97.

3. Importantly, too, *Kingsley* recognized that the objective standard for Fourteenth Amendment claims fundamentally differs from the Eighth Amendment's subjective standard. The *Kingsley* Court was careful to distinguish claims "brought by convicted prisoners under the Eighth Amendment's Cruel and Unusual Punishment Clause" from those "brought by pretrial detainees under the Fourteenth Amendment's Due Process Clause": "The language of the two Clauses differs, and the nature of the claims often differs." *Kingsley*, 576 U.S. at 400.

Specifically, under the Due Process Clause, "pretrial detainees (unlike convicted prisoners) cannot be punished at all." *Id.* The Cruel and Unusual Punishments Clause, meanwhile, bars punishment that rises to the level of "cruel and unusual." U.S. Const. amend. VIII; *see Bell*, 441 U.S. at 535 n.16. Accordingly, the Eighth Amendment proscribes "only the unnecessary and wanton infliction of pain." *Wilson*, 501 U.S. at 298; *accord, e.g.*, *Whitley v. Albers*, 475 U.S. 312, 320-21 (1986).

"[W]hen it is claimed that [a prison] official has inflicted cruel and unusual punishment," this wantonness principle—unique to the Eighth Amendment—"mandate[s] inquiry into [the] official's state of mind." *Wilson*, 501 U.S. at 299. In other words, the "requirement" of a subjective inquiry "follows from" this Eighth Amendment-specific principle. *Farmer*, 511 U.S. at 834; *accord, e.g.*, *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) ("We . . . conclude that [subjective] deliberate

indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain' . . . proscribed by the Eighth Amendment."). Because this wantonness limitation finds no home in the Fourteenth Amendment, "pretrial detainees are entitled to greater constitutional protection than that provided by the Eighth Amendment." *Hubbard*, 399 F.3d at 167 n.23.

Again, this distinction has deep historical roots. Founding-era legal luminaries did not stop at emphasizing the impermissibility of inflicting punishment on pretrial detainees, *see supra* pp. 25-26 & n.7; they expressly distinguished the standards governing pretrial detention and post-conviction incarceration. Eden wrote that "it is contrary [] to public justice" to "throw the accused and convicted . . . into the same [d]ungeon." 2 PRINCIPLES OF PENAL LAW 51-52 (1771). Paul, too, explained that pretrial detainees should not be held in "similar circumstances" as post-conviction prisoners. PROCEEDINGS OF THE GRAND JURIES, MAGISTRATES, AND OTHER NOBLEMEN AND GENTLEMEN, OF THE COUNTY OF GLOCESTER ON THE CONSTRUCTION AND REGULATION OF THE PRISONS FOR THE SAID COUNTY 16 (1808).

4. Although *Kingsley* happened to arise in the context of an excessive force claim, the Supreme Court's reasoning cannot be confined to such claims. *Kingsley*'s holding hinged on the Fourteenth Amendment's general proscription against punishment prior to conviction, as applied to a wide range of conditions-of-confinement claims—not any considerations peculiar to excessive force claims. The

Court applied an objective standard specifically because even "in the absence of an expressed intent to punish, a pretrial detainee can nevertheless prevail" in proving that governmental actions amount to punishment "by showing that the actions are not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" *Kingsley*, 576 U.S. at 398 (quoting *Bell*, 441 U.S. at 561).

In reaching this conclusion, the *Kingsley* Court turned to case law that did not involve excessive force claims, making clear that its logic applied to conditions claims writ large. Specifically, the Court relied heavily on *Bell*, which involved "a variety of prison conditions, including a prison's practice of double-bunking," yet still "did not consider the prison officials' subjective beliefs." *Kingsley*, 576 U.S. at 398 (citing *Bell*, 576 U.S. at 541-43, 561). An objective standard applies as much to Mr. Sanabria's failure-to-protect claim as it did to the conditions claims in *Bell*, on which the *Kingsley* Court relied; after all, "the protection [Mr. Sanabria] is afforded against other inmates" "is just as much a 'condition' of his confinement," *Wilson*, 501 U.S. at 303, as any other.

Unsurprisingly, too, the *Kingsley* Court often discussed these general due process principles in general terms, without purporting to limit them to *Kingsley*'s facts. In a crucial portion of the Court's analysis, it explained that "*Bell* itself shows (and . . . our later precedent affirms)" that "a pretrial detainee can prevail by

providing only objective evidence that the *challenged governmental action* is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose." *Kingsley*, 576 U.S. at 398-99 (collecting cases) (emphasis added). As the Fourth Circuit recently observed, "[t]he fact that *Kingsley* refers broadly to 'challenged governmental action' and speaks of claims under the Fourteenth Amendment generally, coupled with its heavy reliance on *Bell v. Wolfish*, demonstrate that *Kingsley*'s objective standard extends not just to excessive force claims; it applies equally to deliberate indifference claims." *Short*, 87 F.4th at 605-06 (quoting *Kingsley*, 576 U.S. at 398); *accord, e.g.*, *Castro*, 833 F.3d at 1070.

5. Well-reasoned precedent from five other circuits confirms this conclusion. Although this Court has not yet resolved whether *Kingsley* requires an objective standard for Fourteenth Amendment failure-to-protect claims, *see Hightower v. City of Philadelphia*, 130 F.4th 352, 356 (3d Cir. 2025), several others have. The Second, Fourth, Sixth, Seventh, and Ninth Circuits have all rightly concluded that, under *Kingsley*, an objective standard applies to pretrial detainees' claims of deliberate indifference to serious medical or safety risks. *See Short*, 87 F.4th at 610 ("recogniz[ing] that *Kingsley*'s objective test extends to all pretrial detainee claims under the Fourteenth Amendment . . . for deliberate indifference to an excessive risk of harm"); *Brawner v. Scott Cnty.*, 14 F.4th 585, 596 (6th Cir. 2021) ("agree[ing] with" several other circuits that *Kingsley* applies to pretrial

deliberate indifference claims); *Miranda v. Cnty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) ("We see nothing in the logic the Supreme Court used in *Kingsley* that would support . . . dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause."); *Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) ("A pretrial detainee may not be punished at all under the Fourteenth Amendment, whether through the use of excessive force, by deliberate indifference to conditions of confinement, or otherwise."); *Castro*, 833 F.3d at 1070 ("We are persuaded that *Kingsley* applies, as well, to failure-to-protect claims brought by pretrial detainees . . . . Jailers have a duty to protect pretrial detainees from violence at the hands of other inmates, just as they have a duty to use only appropriate force themselves.").

Most recently, the Fourth Circuit held that *Kingsley* "upend[ed]" that circuit's prior "assumption that Fourteenth Amendment Due Process Clause claims should be treated the same as Eighth Amendment claims." *Short*, 87 F.4th at 608. The Fourth Circuit emphasized that *Kingsley* did not clarify the standard just for pretrial excessive force claims—it "did more." *Id.* Specifically, *Kingsley* "reiterated that a pretrial detainee may state a claim under the Fourteenth Amendment by satisfying *Bell*'s objective standard." *Short*, 87 F.4th at 608. And "*Kingsley* directs us to be more solicitous of the Fourteenth Amendment claims of a pretrial detainee than the Eighth Amendment claims of a post-conviction detainee, for 'pretrial detainees

(unlike convicted prisoners) cannot be punished at all.'" *Id.* at 609 (quoting *Kingsley*, 576 U.S. at 400). "The only way to respect the distinction *Kingsley* drew between the Eighth and Fourteenth Amendments," the Fourth Circuit concluded, "is to recognize that *Kingsley*'s objective test extends to all pretrial detainee claims under the Fourteenth Amendment . . . for deliberate indifference." *Short*, 87 F.4th at 610.

6. Finally, it is worth noting that an objective standard strikes an appropriate, workable balance in the context of detention before trial. Specifically, the objective deliberate indifference standard (unlike a mere negligence standard) requires that a defendant (1) make an intentional decision that affects the plaintiff's safety, *see Kingsley*, 576 U.S. at 396, and (2) disregard an objectively obvious risk of serious harm, *see Castro*, 833 F.3d at 1071; *accord, e.g.*, *Darnell*, 849 F.3d at 36; *Miranda*, 900 F.3d at 353-54. Thus, the standard ensures that pretrial detainees, who have not been convicted of any crime and cannot be subjected to punishment, are not held in obviously unsafe conditions.[8] At the same time, by requiring more than

[8] This is all the more important because many pretrial detainees are in jail solely due to poverty and their inability to pay bail. *See, e.g.*, John Mathews II & Felipe Curiel, *Criminal Justice Debt Problems*, Hum. Rts. Mag. (Nov. 30, 2019), https://www.americanbar.org/groups/crsj/resources/human-rights/archive/criminal-justice-debt-problems/; Bernadette Rabuy & Daniel Kopf, *Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time*, Prison Policy Initiative (May 10, 2016), https://www.prisonpolicy.org/reports/incomejails.html. A standard originating from the Cruel and Unusual Punishments Clause is plainly inappropriate for such detainees, who cannot be subjected to any punishment.

negligence, it ensures that jail officials receive more protection against constitutional claims than they would in tort actions, for example. *See Daniels v. Williams*, 474 U.S. 327, 328 (1986); *Kingsley*, 576 U.S. at 396.

In addition, respecting the distinction between the Eighth Amendment's subjective standard and the Fourteenth Amendment's objective one is the only way to maintain coherency across prison law as a whole. The Supreme Court has instructed that corrections officers should be granted the most deference in the excessive force context, where they must act "quickly and decisively." *E.g.*, *Hudson v. McMillian*, 503 U.S. 1, 6 (1992). Adopting an objective standard for these claims and a subjective standard for others would have the opposite effect: it would give jail officials the *least* amount of deference in challenges to split-second uses of force, while affording maximal deference in other contexts that are often slower-moving. It would also create inconsistencies among this Circuit's standards for pretrial deliberate indifference claims; jail suicide cases would be subject to an "objective" deliberate indifference standard, *Kedra v. Schroeter*, 876 F.3d 424, 440 n.11 (3d Cir. 2017) (citing *Woloszyn v. Cnty. of Lawrence*, 396 F.3d 314, 321 (3d Cir. 2005)), whereas failure-to-protect cases would be governed by a subjective one.

Finally, by focusing on what an objectively reasonable official would understand, rather than delving into any given defendant's subjective mindset, an objective deliberate indifference standard is in many ways *more* administrable than

a subjective one. In the context of a failure-to-protect claim like Mr. Sanabria's, this objective standard entails a straightforward evaluation of whether the defendant failed to "take reasonable available measures to abate" a substantial risk of serious harm, "even though a reasonable officer in the circumstances would have appreciated the high degree of risk involved." *Castro*, 833 F.3d at 1071; *accord Kemp*, 27 F.4th at 496-97. Judges and jurors undertake similar objective analyses every day. And this objective standard has hardly proven unworkable in the five circuits that have adopted it, which collectively cover more than half of the U.S.[9]

For all these reasons, an objective standard governs Mr. Sanabria's claims.

B. The district court erred in applying the subjective Eighth Amendment standard to the pretrial context despite *Kingsley*.

The district court nevertheless instructed the jury to apply the subjective Eighth Amendment standard to Mr. Sanabria's failure-to-protect claim. *See* Appx586-587 (12/18/24 Transcript). It was wrong to do so. The court deemed itself bound by inapt unpublished opinions and model jury instructions, rejected persuasive appellate precedents out of hand, and belatedly drew support from a case whose reasoning contravenes controlling precedent.

[9] *See* U.S. Census Bureau, *2020 Population and Housing State Data* (Aug. 12, 2021), https://www.census.gov/library/visualizations/interactive/2020-population-and-housing-state-data.html.

1. To justify its subjective instruction, the district court stated simply that it was "bound to follow the law of the Third Circuit." Appx567 (12/17/24 Transcript). But the authorities it cited—unpublished cases, district court cases, and this Circuit's model jury instructions, *see* Appx561-562; Appx571-572 (12/18/24 Transcript)—were not the law of this Circuit. They did not bind the district court, nor do they bind this Court. *See, e.g.*, *El v. City of Pittsburgh*, 975 F.3d 327, 340-41 (3d Cir. 2020) ("unpublished cases . . . are not binding"); 3d Cir. I.O.P. 5.7; *United States v. Maury*, 695 F.3d 227, 259 (3d Cir. 2012) (model jury instructions "are not[] binding on this, or any, court").

What's more, none of the four unpublished cases on which the district court relied purported to decide the proper standard in light of *Kingsley*—so none of them lend the decision below any persuasive support either. In three cases (all of which involved *pro se* appellants), the standard appears to have been undisputed, and neither this Court nor the parties mentioned *Kingsley*. *See Edwards*, 663 F. App'x 132; *Tapp*, 645 F. App'x 141; *Travillion*, 765 F. App'x 785. In the fourth, this Court "decline[d] to address" whether an objective or subjective standard applied because the claims "fail[ed] under both standards." *Moore,* 767 F. App'x at 340 n.2.

Finally, even to the extent this Court's pre-*Kingsley* cases occasionally (if inconsistently) embraced a subjective analysis in the context of pretrial detention,[10] *Kingsley* has abrogated them. This Court has repeatedly "recognized the abrogation of Circuit precedent by more recent Supreme Court precedent that has 'undermined [our Circuit's] rationale.'" *Fisher v. Hollingsworth*, 115 F.4th 197, 205-06 (3d Cir. 2024) (alteration in original) (quoting *United States v. Stevens*, 70 F.4th 653, 659 (3d Cir. 2023)). As several circuits have held, *Kingsley* clears that bar—and then some. *See Short*, 87 F.4th at 604-05 ("*Kingsley* is irreconcilable with precedent requiring pretrial detainees to meet a subjective standard to succeed on claims under the Fourteenth Amendment for prison officials' deliberate indifference to excessive risks of harm to the inmate."); *Brawner*, 14 F.4th at 596 ("*Kingsley* is an inconsistent Supreme Court decision that requires modification of our caselaw."); *Miranda*, 900 F.3d at 352 (*Kingsley* "called into question" cases treating deliberate indifference under the Eighth and Fourteenth Amendments as "functionally indistinguishable"); *Darnell*, 849 F.3d at 35 (holding pre-*Kingsley* precedent abrogated "to the extent that it determined that the standard for deliberate indifference is the same under the Fourteenth Amendment as it is under the Eighth Amendment"); *Castro*, 833 F.3d at

[10] *Compare, e.g.*, *Hubbard*, 399 F.3d at 164 (rejecting as "fatally flawed" the notion that "pretrial detainees are afforded essentially the same protection as convicted prisoners"), *with Stevenson v. Carroll*, 495 F.3d 62, 68 (3d Cir. 2007) (applying Eighth Amendment subjective deliberate indifference standard in pretrial context).

1069 ("*Kingsley* rejected the notion that there exists a single 'deliberate indifference' standard applicable to *all* § 1983 claims . . . .").

2. Despite the absence of on-point precedent in this Circuit, the district court refused to engage substantively with persuasive appellate precedent from other circuits that *did* decide the issue and explained why *Kingsley*'s objective standard applied to Mr. Sanabria's claims. *See* Appx553, Appx567-568 (12/17/24 Transcript); Appx570-573 (12/18/24 Transcript).

Instead, the district court pointed to out-of-circuit cases that do not offer any compelling reason to limit *Kingsley* to the excessive force context. *See* Appx571. Only the Tenth Circuit, in *Strain v. Regalado*, has set forth reasoning for refusing to apply *Kingsley*'s objective standard beyond excessive force claims. *See* 977 F.3d 984, 991 (10th Cir. 2020).[11] Specifically, *Strain* offered three justifications for cabining *Kingsley* in this way. Each is unpersuasive.

First, the court in *Strain* opined that an excessive force claim pertained to punishment, whereas a "deliberate indifference cause of action does not relate to punishment"; *Kingsley*, the court added, "relie[d] on precedent specific to excessive

[11] The Fifth, Eighth, and Eleventh Circuits also limited *Kingsley*, but did so in footnotes "with little analysis or none at all." *Short*, 87 F.4th at 610 n.9 (citing *Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018); *Nam Dang v. Sheriff, Seminole Cnty.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 419 n.4 (5th Cir. 2017)).

force claims." *Strain*, 977 F.3d at 991-92. Both assertions are incorrect. As explained above, a deliberate indifference claim is merely one flavor of a conditions-of-confinement claim. *See Wilson*, 501 U.S. at 303. The Due Process Clause protects against pretrial detention conditions that rise to the level of punishment, which is why pretrial conditions claims are subject to an objective standard. *See supra* pp. 26-29. For that reason, the *Kingsley* Court did not, in fact, rely solely (or even mostly) on excessive force precedents; it drew heavily from non-excessive-force precedents (including conditions cases like *Bell*) to explain why general Fourteenth Amendment principles required an objective standard. *See supra* pp. 30-31.

Second, the *Strain* court believed that "a deliberate indifference claim presupposes a subjective component" based on a dictionary definition of "deliberate." 977 F.3d at 992. That is wrong, too. The Supreme Court in *Farmer* "recogniz[ed] that on th[is] crucial point (whether a prison official must know of a risk, or whether it suffices that he should know) the term ['deliberate indifference'] does not speak with certainty." *Farmer*, 511 U.S. at 840; *see also id.* ("Use of 'deliberate' . . . arguably requires nothing more than an act (or omission) of indifference to a serious risk that is voluntary, not accidental."); *id.* at 841 (stating that "[i]t would be hard to describe" the civil "deliberate indifference" standard for municipal failure-to-train liability "as anything but objective").

Thus, *Farmer* "explained that the term ['deliberate indifference'] itself has no dispositive intrinsic meaning." *Brawner*, 14 F.4th at 595; *accord, e.g.*, *Darnell*, 849 F.3d at 35 ("*Farmer* is clear that 'deliberate indifference' can be viewed either subjectively or objectively."). This Court, too, recognizes an "objective" "'deliberate indifference' standard" applicable to prison suicide claims, defeating any suggestion that the context-dependent concept of "deliberate indifference" *requires* a subjective component. *Kedra*, 876 F.3d at 440 n.11.

Third, *Strain* invoked *stare decisis*. *See* 977 F.3d at 993. But to the extent the court in *Strain* believed itself bound by "the Supreme Court's rejection of a purely objective test in *Farmer*," *id.*, it was wrong. In *Farmer*, the Court held only that a subjective deliberate indifference standard "comport[ed] best with the text of the [Eighth] Amendment" and "follow[ed] from" that Amendment's wantonness principle, 511 U.S. at 834, 837; in *Kingsley*, by contrast, the Court held that "a pretrial detainee" proceeding under the Fourteenth Amendment "can prevail by providing only objective evidence," 576 U.S. at 398.

And to the extent the *Strain* court believed its hands were tied by circuit precedent, it was wrong again. Court after court has held that *Kingsley* abrogated circuit precedent applying an Eighth Amendment standard to pretrial detainees' deliberate indifference claims. *See supra* pp. 37-38. The same is true here: At minimum, *Kingsley* surely "undermine[s] [the] rationale" of prior cases applying the

Eighth Amendment's subjective standard to pretrial deliberate indifference claims. *Fisher*, 115 F.4th at 205-06 (quoting *Stevens*, 70 F.4th at 659).

For all these reasons, the district court erred in instructing the jury to apply a subjective standard to Mr. Sanabria's failure-to-protect claim.

C. The instructional error was prejudicial.

Because the court's instruction was erroneous, "a new trial is warranted unless such error [was] harmless." *Harvey v. Plains Twp. Police Dept.*, 635 F.3d 606, 612 (3d Cir. 2011) (citing *Advanced Med., Inc.*, 955 F.2d at 199). The error was harmless, in turn, only if "there is a 'high probability' that [it] did not prejudice [Mr. Sanabria's] substantive rights," *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 124 (3d Cir. 2018)—*i.e.*, only if "it is highly probable that the error did not contribute to the judgment," *Advanced Med., Inc.*, 955 F.2d at 199.

"This rigorous test is not met here." *Id.* at 200. The jury quite reasonably could have concluded that Brackett was liable under the proper, objective standard—even if he lacked subjective awareness of the risk. *See, e.g.*, *Savarese v. Agriss*, 883 F.2d 1194, 1205 (3d Cir. 1989) (granting new trial where "jury may have been led erroneously to believe" more demanding standard applied); *McNulty v. Citadel Broadcasting Co.*, 58 F. App'x 556, 565 (3d Cir. 2003) (granting new trial because "jury may have [reached its verdict] on an incorrect legal basis").

1. There was ample evidence in the trial record for the jury to conclude that Carroll posed an objectively serious risk of physical harm to Mr. Sanabria and that Brackett *should have known* of that obvious risk.

Mr. Sanabria testified that he explicitly told Brackett, both in writing and verbally, that he was unsafe being locked in a cell alone with Carroll and feared Carroll would attack him. Appx474-478 (12/16/24 Transcript). He warned Brackett that if he wasn't moved away from Carroll, "something was going to happen" to him imminently. Appx478.[12] Brackett testified that he knew Carroll was "larger in height and girth" than Mr. Sanabria. Appx495-497 (12/17/24 Transcript).[13] Brackett understood that if Carroll knew Mr. Sanabria had spoken with Brackett, this would put him at risk. *See* Appx509.[14] And Brackett knew Carroll had recently committed

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[12] *See, e.g.*, *Haley v. Gross*, 86 F.3d 630, 643 (7th Cir. 1996) (upholding finding of deliberate indifference even under Eighth Amendment where, *inter alia*, plaintiff in "protective custody deadlock status" reported cellmate "was intimidating him, acting strangely, and had threatened [plaintiff] that 'something crucial was going to happen' if one of them wasn't moved").

[13] *See, e.g.*, *Velez v. Johnson*, 395 F.3d 732, 736 (7th Cir. 2005) (applying *Farmer* standard and affirming denial of summary judgment to officer where, *inter alia*, plaintiff, "the weaker of [the] two cellmates," was "locked together in a small cell for hours" with a "stranger . . . facing criminal sexual assault charges"); *Sousa v. Anglin*, 481 F. App'x 265, 267-68 (7th Cir. 2012) (finding deliberate indifference sufficiently pleaded even under Eighth Amendment standard where, *inter alia*, plaintiff was "housed with a 260-pound inmate" with a "history of attacks" on prior cellmates).

[14] *See, e.g.*, *Bistrian v. Levi*, 696 F.3d 352, 370 (3d Cir. 2012) (finding Eighth Amendment deliberate indifference adequately pleaded where plaintiff was attacked

a significant infraction, given that he was housed in a step-down unit following disciplinary segregation. Appx494-495.[15]

Accordingly, Brackett indicated to Mr. Sanabria that he understood the risk, stating, "Ah, okay. I got you," and "I'm going to get you moved." Appx478 (12/16/24 Transcript). Brackett even secured the approval of two supervisory officials to move Mr. Sanabria and placed Carroll alone in his cell, contrary to normal policy and practice. Appx510-518; *see also* ECF 132 at 376-77, 380-88 (Stewart testimony regarding jail policy).[16]

These facts show that any reasonable officer would have recognized the

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"because [he] was an informant"), *abrogated on other grounds as recognized in Fisher*, 115 F.4th at 204; *Hulsey v. Bishop*, No. 24-10014, 2024 WL 4692029, at *6 (5th Cir. Nov. 6, 2024) (collecting cases and emphasizing that "[i]t is well settled that an inmate who acts as an informant to other inmates faces a substantial risk of serious harm").

[15] Indeed, any reasonable officer who looked up Carroll's charges—to say nothing of Carroll's attacks on detainees—would have learned, as Brackett could have, that Carroll was charged with no fewer than ten counts of rape (alongside charges for assault, unlawful imprisonment, and terroristic threatening), bolstering Mr. Sanabria's concerns. Appx497, Appx510, Appx531-533 (12/17/24 Transcript); *see Gevas v. McLaughlin*, 798 F.3d 475, 484 (7th Cir. 2015) ("It was the prison that placed [two prisoners] in a cell together; and once the defendants were made aware that [one] was threatening [the other], it was their obligation as prison officials to assess the reported danger and to take reasonable steps to address it if they found it to be a real one.").

[16] *See, e.g.*, *Tate v. Lindsay*, No. 20-2820, 2021 WL 5492810, at *2 (3d Cir. Nov. 23, 2021) (in Eighth Amendment case, noting that "the defendants ostensibly determined there was at least some credibility to [the plaintiff's] fear because they offered to take remedial action").

danger Mr. Sanabria faced and the need to keep him away from Carroll. That is especially true given that Brackett was trained on "protecting inmates from violence by other inmates." Appx498-500 (12/17/24 Transcript). Moreover, having already acted on the threat by moving Mr. Sanabria out of Carroll's cell, a reasonable officer would not have blindly followed Vanes's unusual, unreasoned order to lock Mr. Sanabria back into a cell with Carroll for twenty-two hours a day. *See* Appx518-522; *see also* ECF 132 at 362-63 (Stewart testifying that he did not recall Vanes moving another detainee); *id.* at 478 (Ritter agreeing "it was very rare"). Brackett should have known that doing so would create an even greater risk of the violence that later unfolded; as is common knowledge, "[t]here is retaliation to snitches." ECF 132 at 431 (Stewart testimony); *see supra* p. 42 n.14.

2. But under the court's subjective instruction, all of this evidence could be defeated by Brackett's claim that he did not subjectively realize the danger, without regard to whether those beliefs were remotely reasonable.

The court instructed the jury that "Defendant claims that even if there was an obvious risk, he was unaware of that risk. If you find that Defendant was unaware of the risk, then you must find that he was not deliberately indifferent." Appx587 (12/18/24 Transcript). And Brackett repeatedly testified that—whatever the circumstances obviously indicated—he did not feel Mr. Sanabria was unsafe. *See, e.g.*, Appx539 (12/17/24 Transcript) ("Q: If you thought [Mr. Sanabria] was in an

unsafe condition, would you put him back on the floor? A: No."); Appx542 ("Q: Did you feel that Mr. Sanabria's safety was threatened? A: No."). So long as jurors credited Brackett's testimony about his subjective beliefs, the court's instruction left them no choice but to rule against Mr. Sanabria, regardless of what they concluded a reasonable officer would have perceived.

What's more, Brackett also stressed to the jury that he bore no ill will towards Mr. Sanabria. In his closing argument, he specifically noted that he had no subjective "intent" or "motivation" to harm Mr. Sanabria and argued that he bore him "no animosity." Appx606, Appx618 (12/18/24 Transcript). Whatever force the absence of punitive intent may have had under the subjective Eighth Amendment standard, it would have carried little weight under the objective Fourteenth Amendment standard. Phrased differently, a core aspect of Brackett's defense was, in effect, that he was "just following orders" without malice. But under an objective standard, "just following orders" does not suffice where, as here, a jury could find that any reasonable officer would recognize an obvious risk.

Given the district court's view of the law, it comes as no surprise that Brackett made "what [he] kn[e]w on July 7"—his professed lack of subjective knowledge or intent—the core of his trial defense. Appx604. He emphasized it to the jury in his opening statement. Appx450 (12/16/24 Transcript) ("What matters is what Mr. Brackett knew . . . ."). He raised it to the court in his motion for judgment as a matter

of law, which centered on whether he "had actual knowledge of the alleged risk." Appx547 (12/17/24 Transcript). And he stressed it again to the jury in closing, reiterating that the case was "only about what did Sergeant Stephen Brackett know on July 7, 2021." Appx604 (12/18/24 Transcript). Under the court's erroneous instruction, *see* Appx586-587, Brackett's subjective assessment was indeed dispositive; in contrast, a properly instructed jury would have had ample basis to rule for Mr. Sanabria regardless.

The court's instructional error struck at the heart of this case, creating a significant risk that it affected the jury's decision. Accordingly, this Court should remand for a new trial against Brackett.

II. The District Court Erred in Granting Summary Judgment to Vanes.

Independently, under either an objective or subjective standard, the district court erred in granting Vanes's motion for summary judgment. Contrary to how the court construed the summary judgment record as to Brackett, it improperly resolved disputes in Vanes's favor and siloed the evidence of Vanes's deliberate indifference rather than considering the totality of the circumstances.

1. In granting Vanes's motion, the court resolved disputes of material fact in his favor and denied Mr. Sanabria the benefit of reasonable inferences.

It is axiomatic that at summary judgment, "[t]he non-movant is entitled to all reasonable inferences in [his] favor." *J.F. Feeser, Inc. v. Serv-A-Portion, Inc.*, 909

F.2d 1524, 1531 (3d Cir. 1990). "[C]redibility determinations are not the function of the judge; instead the non-movant's evidence must be credited at this stage." *Id.*

When it came to Brackett's motion for summary judgment, the district court adhered to this standard: In the face of divergent narratives, the court reasoned that a jury could conclude "that [Mr. Sanabria] *did* communicate to Brackett his fear of imminent danger," and that "Brackett now . . . is not accurately relaying what [Mr. Sanabria] said on that score." Appx20 & n.11 (Memorandum Opinion).

But when it came to Vanes's motion, the court changed course. It "start[ed] by . . . noting that according to Brackett, when he spoke with [Mr. Sanabria] on the day in question, [Mr. Sanabria] never told him that Carroll presented a danger"—exactly the disputed factual claim it had just rejected in analyzing Brackett's motion. Appx21. From there, the court emphasized that Defendants further claimed Brackett never told Vanes that Mr. Sanabria raised any safety concerns; according to them, all Brackett told Vanes was that Mr. Sanabria thought Carroll was "weird." Appx21-23. The court took Defendants' accounts as gospel, finding "no credible evidence that anyone ever told Vanes anything about" the risk Carroll posed. Appx23-24.

That analysis was erroneous for at least three reasons. *First*, as to the factual dispute concerning whether Brackett told Vanes directly about the safety concerns Brackett had identified, the court credited Defendants' deposition testimony over Mr. Sanabria's. The court had just explained that a jury could reasonably conclude

"Brackett now . . . is not accurately relaying" what Mr. Sanabria told him on July 7, 2021. Appx20 n.11. By the same token, a jury could reasonably conclude that Defendants' testimony about their calls, in which each insisted that they didn't discuss any safety concerns with the other, was not credible, either—all the more so because Defendants' accounts "wildly diverg[ed]" on several key points, severely undercutting their credibility. ECF 76 at 11.[17] Yet the court credited their testimony rather than "the non-movant's evidence" (*i.e.*, Mr. Sanabria's account of what he told Brackett, and a reasonable inference as to what Brackett relayed to Vanes). *J.F.*

[17] Defendants disagreed over everything from how many times they spoke on July 7 (*compare* Appx112 (Brackett Deposition) (twice), *with* Appx168 (Vanes Deposition) (once)); to what they discussed about Mr. Sanabria (*compare* Appx111-112 (Brackett Deposition) (whether to move him back), with Appx168-169, Appx171 (Vanes Deposition) (whether to move him out in the first instance)); to who called whom about Mr. Sanabria (*compare* Appx111 (Brackett Deposition) (Vanes called Brackett), *with* Appx167-168 (Vanes Deposition) (Brackett called Vanes)). Most notably, Brackett testified that Carroll (the attacker) asked to meet with Vanes while Mr. Sanabria had been moved to a different cell—so Brackett called Vanes, who agreed to meet with Carroll in his office (and did so). Appx112-113 (Brackett Deposition); *accord* ECF 77, Ex. K (Logbook). But Vanes flat-out denied meeting with Carroll that day—he stated that "[i]nmates are not allowed in my office," that "[t]here has never been an inmate in my office," and that he "[n]ever" met with Carroll in the unit's interview room, either. Appx170 (Vanes Deposition). A reasonable jury could have relied on these divergences to infer that Brackett's and Vanes's accounts were unreliable, offering an additional reason to reject their claim that they never discussed the safety reasons for Mr. Sanabria's move. *See, e.g.*, *El v. Se. Penn. Transp. Auth. (SEPTA)*, 479 F.3d 232, 237 (3d Cir. 2007) ("When a witness's credibility is critical to supporting the necessary findings of fact, the District Court must consider whether there are sufficient grounds for impeachment that would place the facts to which he testifies in legitimate dispute.").

Feeser, Inc., 909 F.2d at 1531. "Cases that turn crucially on the credibility of witnesses' testimony . . . should not be resolved on summary judgment." *Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999).

Second, the district court ignored or downplayed additional evidence in the record from which a reasonable jury could infer that Vanes recognized the risk to Mr. Sanabria, regardless of whether Brackett told him of that risk. As a facility investigator, Vanes would have been aware of Carroll's disciplinary reports.[18] Indeed, Vanes confirmed to Brackett on July 7 that he was familiar with Carroll, Appx112-113 (Brackett Deposition), and Vanes knew that Carroll had recently been punished with disciplinary segregation, Appx159 (Vanes Deposition). Vanes knew Carroll was much bigger than Mr. Sanabria, too. Appx160.

Vanes was also the facility's PREA compliance manager, which meant he was responsible for identifying and preventing sexual assault and other violence. Appx130. In that role, he spoke twice with Brackett, who told him—at a minimum—

[18] Vanes admitted he had "access to . . . all" incident reports; "[t]ypically in the morning time, when I come in, I'll review most incident reports just as part of my daily start" and "would be notified of" "assault" incident reports "immediately." Appx137 (Vanes Deposition). Stewart averred that Vanes was "part of all disciplinaries. I mean, he reviews everything that happens in the facility." Appx215-216 (Stewart Deposition). And Graham testified that "higher-ups" like Vanes "would have . . . been aware of" the fact that a detainee like Carroll had been involved in two inmate-on-inmate incidents within just three months. Appx183 (Graham Deposition).

that Mr. Sanabria had been moved to a different cell, away from Carroll. Appx111-112 (Brackett Deposition); *accord* Appx540-541 (12/17/24 Transcript) (Brackett testifying at trial that when he first spoke with Vanes, about Carroll's request to meet, Mr. Sanabria's move "was brought up in the course of the phone call"). Furthermore, Vanes met directly with Carroll *after* Mr. Sanabria had been moved out of the cell and Carroll told Brackett that he "had concerns and issues." Appx110, Appx112 (Brackett Deposition); *accord* Appx540-541 (12/17/24 Transcript).[19]

From all of this, a reasonable jury could conclude that Vanes understood that putting Mr. Sanabria *back* into the same cell with Carroll, after he had been moved away, would create a grave safety risk. *See* Appx100-101 (Brackett Deposition) (explaining Brackett intentionally met with Mr. Sanabria where other detainees couldn't see them); *cf.* ECF 132 at 431 (12/18/24 Transcript) (Stewart testifying at trial that there is truth to the phrase "snitches get stitches"). Especially given these safety concerns, as the district court explained at the pleading stage, it was "a natural and fair inference that correctional supervisors like [Vanes] do not make decisions

[19] There was also evidence (despite Vanes's denial, *see* Appx157 (Vanes Deposition)) from which a jury could infer Vanes knew of Carroll's pending criminal charges for rape (ten counts), if not his charges for assault, unlawful imprisonment, and terroristic threatening. After all, Vanes didn't just know Carroll personally—he served as the facility's PREA compliance manager. Appx130. And Carroll's rape charges would, Vanes admitted, have informed his PREA score. Appx134, Appx157.

like this one without informing themselves of the relevant facts; here, that would have meant talking with Brackett, asking Brackett 'why he transferred [Mr. Sanabria] in the first place[,]' and having 'Brackett explain[] his reasons to [Vanes].'" Appx37 (Docket Report).

Third, and finally, the court improperly demanded that Mr. Sanabria introduce direct evidence of what Brackett and Vanes discussed, rather than crediting Mr. Sanabria's evidence and reasonable inferences therefrom. Brackett and Vanes had every incentive not to accurately relay what they discussed. Nonetheless, the court reasoned that because "the only parties privy to the Brackett/Vanes conversation(s) on July 7" had claimed that they did not discuss any risks to Mr. Sanabria, there was "no other compelling evidence of record" that could contradict their claims on that point. *See* Appx24 (Memorandum Opinion).

That was error. To defeat a summary judgment motion, "the evidence that the non-moving party presents may be either direct or circumstantial." *Hugh v. Butler Cnty. Family YMCA*, 418 F.3d 265, 267 (3d Cir. 2005). In particular, it is hardly unusual for a jury to discredit a defendant's profession of innocence—even on matters of which only the defendant has direct knowledge—by drawing reasonable inferences from circumstantial evidence. *See, e.g.*, *Fasold v. Justice*, 409 F.3d 178, 187 (3d Cir. 2005) (a jury could reasonably "discredit the Defendants' explanation" for termination of an employee, and infer discriminatory intent, even in the absence

of "direct evidence of discrimination"). Here, too, given the circumstantial evidence discussed above—including *both* evidence undercutting Defendants' claim that they never discussed the risk, *and* evidence showing Vanes's independent knowledge of it—a reasonable jury could have concluded that Vanes was aware of the risk but ordered Mr. Sanabria locked back in with Carroll anyway. Direct evidence contradicting what Defendants claimed they discussed in private was not required.

In sum, a reasonable jury could have determined that Vanes (no less than Brackett) was liable under either a subjective or objective standard.

2. The district court also siloed the evidence of Vanes's deliberate indifference. It downplayed the fact that Vanes would have been aware of Carroll's two other violent attacks on fellow detainees in the months leading up to July 2021. *See* Appx25. In the court's view, "knowledge of that fact" alone did not "equate to knowledge that Carroll pos[ed] a substantial risk of harm to [Mr. Sanabria]." *Id.*

But the point was not that Carroll's disciplinary history *alone* evidenced his dangerousness. Instead, it was that the totality of the circumstances, with all reasonable inferences drawn in favor of Mr. Sanabria, supported a finding that Vanes appreciated the risk Carroll posed to Mr. Sanabria (and that a reasonable officer in Vanes's shoes would have appreciated that obvious risk).

As discussed above, those circumstances included Carroll's two recent disciplinary incidents for attacking other inmates, which Vanes would have known

about (and which Vanes knew had recently landed Carroll in segregation). *Supra* p. 49.[20] They also included Mr. Sanabria's report that he felt unsafe being locked in a cell with Carroll for twenty-two hours a day and that he feared an imminent attack, which a jury could reasonably infer Brackett conveyed to Vanes. *Supra* pp. 42 n.12, 47-52. And they included other evidence from which a jury could infer Vanes's awareness of the risk, including that Vanes agreed to meet with Carroll while Mr. Sanabria had temporarily been moved to a different cell; that Vanes knew of the disparity in size and strength between the two detainees; and that Mr. Sanabria would be in far greater danger upon being moved back than he had been before, since Carroll could infer Mr. Sanabria complained about him and tried to move away. *Supra* pp. 42 nn.13-14, 49-50.

All in all, a jury reasonably could have concluded that Vanes knew Carroll posed a grave risk to Mr. Sanabria's physical safety, but ordered Mr. Sanabria sent back into Carroll's cell anyway. Nor would Vanes be shielded by qualified immunity: Mr. Sanabria "had a clearly established constitutional right to have prison

[20] *See, e.g.*, *Brown v. Budz*, 398 F.3d 904, 912 (7th Cir. 2005) (explaining, even under subjective analysis, that an assailant's prior attacks on two other inmates in temporal proximity could help establish substantial risk); *Bowen v. Warden Baldwin State Prison*, 826 F.3d 1312, 1322 (11th Cir. 2016) (similar re: assailant's prior assault against prior cellmate, precipitating transfer to disciplinary segregation); *King v. Barton*, 455 F. App'x 709, 711 (8th Cir. 2012) (similar re: assailant's reputation and two prior "assaultive behavior" violations).

officials protect him from inmate violence," *Bistrian*, 696 F.3d at 367; *accord, e.g.*, *Castro*, 833 F.3d at 1067—as Vanes conceded, Appx26-27 n.18 (Memorandum Opinion); Appx260-262, Appx323-325 (Summary Judgment Argument Transcript). The district court's grant of summary judgment was improper and should be reversed.

CONCLUSION

For the foregoing reasons, this Court should reverse and remand for a new trial against both Defendants.

Dated: July 25, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a), I certify that this brief complies with the type-volume limitation set forth in Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 12,977 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: July 25, 2025

/s/ Amit Jain

CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Third Circuit Local Appellate Rule 28.3(d), the undersigned counsel hereby certifies that I have been admitted to the bar of the United States Court of Appeals for the Third Circuit, and that I am a member in good standing of the bar of the Court.

Dated: July 25, 2025

/s/ Amit Jain

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Pursuant to Third Circuit Local Appellate Rule 31.1(c), I hereby certify that a virus detection program was performed on this electronic brief/file using Sophos, version 2025.1.2.12.0, last updated July 25, 2025, and that no virus was detected.

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Pursuant to Third Circuit Local Appellate Rule 31.1(c), I hereby certify that the text of the electronic brief is identical to the text in the hard, paper copies of the brief.

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I hereby certify that on July 25, 2025, I electronically filed the foregoing *Opening Brief of Appellant* with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 25, 2025

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