IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

JENNIFER LOUISE JENKINS,	)	
Administrator ad Litem of the	)	
ESTATE OF STERLING L. HIGGINS,	)	
	)	
Plaintiff,	)	
	)	**NO. 20-cv-01056 STA-atc**
vs.	)	
	)	
OBION COUNTY, TENNESSEE, *et al*.,	)	
	)	
Defendants.	)	

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS OBION COUNTY, WAYLON SPAULDING, MARY BROGGLIN AND BRENDON SANFORD (ECF 100)

I. INTRODUCTION

This case involves the fatal asphyxiation of Sterling L. Higgins resulting from a corrections officer gripping his neck on the floor of a county jail:

That is one of thousands of sequential images captured by the Obion County Jail's video surveillance system. Without that surveillance footage, no one would quite know the reasons Mr. Higgins sustained substantial neck trauma with significant bleeding into the muscle layers of his neck, near the airway, or how he sustained other physical findings leading two prominent forensic pathologists to conclude that he died from manual asphyxiation.

The evidence in this case shows that Obion County Jail Officer-Defendant Waylon Spaulding (pictured above) maintained significant pressure on the neck of Mr. Higgins over the course of more than five minutes. It shows that during those critical five-plus minutes, Mr. Higgins lay supine on the jail floor totally restrained—hands cuffed behind him, legs shackled together—with Defendant Spaulding straddling his torso, grasping his neck, hyperextending his head, and forcing his mouth shut. It shows that for nearly three of these five-plus minutes, Union City Police Officer-Defendant Robert Orsborne was standing on Mr. Higgins's lower body to further pin him down. And it shows that Defendant Orsborne and Obion County Jail Officer-Defendants Mary Brogglin and Brendon Sanford did not intervene to stop or mitigate the grossly excessive force—even though they had the time and opportunity to do so.

The evidence shows more—much more. After several minutes in the grasp of Defendant Spaulding, Mr. Higgins stopped moving and went limp. Still, Defendant Spaulding *continued* to maintain pressure on Mr. Higgins's neck and throat area for two additional minutes. When he finally got off, Mr. Higgins lay unconscious on the floor. But no one called for immediate medical aid. Instead, two defendants lifted Mr. Higgins's lifeless body off the floor and literally dragged it across the hallway to a restraint chair while the other two looked on. They heaved him up and dropped his body into the chair as dead weight. And for the next *seven minutes*, the two county defendants dallied and dithered with the various straps and buckles of the chair as Mr. Higgins's head drooped to one side—his body entirely motionless but for the officers' jostling of the chair and fussing with the straps—while the other two defendants looked on.

Any reasonable observer could see that Mr. Higgins's condition in the restraint chair was dire. And it was clear to the defendants too. But they still did not summon medical care. Instead, they wheeled the chair into a cell, closed the door, and left Mr. Higgins alone. There, still strapped into the chair, he remained inert—his head cast to one side and his mouth ajar. By the time officers

finally called for medical aid, Mr. Higgins had been unconscious for approximately twelve minutes. This delay cost him his life.

Defendants want the Court, and presumably the jury, to disbelieve its own eyes. But as much as they attempt to depreciate or ignore their own video surveillance, it overwhelmingly supports Plaintiff's case. And Plaintiff's case is also bolstered by two eminent forensic pathologists who concluded that Mr. Higgins sustained significant internal neck trauma and died from asphyxiation. It's supported by an emergency physician who concluded that Mr. Higgins would likely have survived if medical care had been timely summoned. It's supported by an expert in law enforcement and jail practices who found that the officers' actions and inactions violated numerous norms and that Obion County had serious deficiencies in training and policy. It's supported by a Ph.D. correctional healthcare expert who concluded that the jail's medical staffing was inadequate—in violation of state regulations. And it's supported by the testimony, statements, and interviews of the defendants themselves, the testimony of others, and additional relevant records. The only *missing* evidence is impossible to provide—the testimony of Sterling Higgins himself. On all claims, this is a case for the jury.

II. FACTS

A. The Material Events of March 25, 2019

Early in the morning on March 25, 2019, Union City Police Officer Robert Orsborne arrested Sterling Higgins for trespassing at a convenience store called Pockets Market. Mr. Higgins was mentally compromised—he was hiding in the store cooler and appeared "genuinely scared" and "almost childlike."[1] Mr. Higgins was compliant with Defendant Orsborne and not combative in any way.[2] In fact, Mr. Higgins asked to go with Defendant Orsborne.[3] Though Mr. Higgins was in no way combative, he was "acting bizarre," appeared to be paranoid, and was "somewhat

[1] Orsborne Dep. at 88:7-12.
[2] *Id*. at 88:19-25.
[3] *Id*. at 89:12-14.

delusional in his thoughts and ideas."[4] In particular, he seemed to be irrationally afraid of women.[5] On the way to the jail, Mr. Higgins continued to make irrational, paranoid statements.[6]

At about 1:43 a.m., Defendant Orsborne's patrol car pulled into the parking area of the Obion County Jail with Mr. Higgins. (Sally Port Surveillance Video Supplied by Defendants at ECF 101). When Mr. Higgins got out of the car, he skipped and ran about the enclosure while handcuffed behind his back. Defendant Orsborne stood by the door of the jail simply waiting for Mr. Higgins to come over. Defendant Orsborne did not feel threatened in any way; in fact, consistent with earlier statements, Mr. Higgins irrationally stated that *he* wanted to protect Defendant Orsborne.[7] At about 1:45:50, the two men walked into the jail together.

As Mr. Higgins first entered the jail, he continued to make delusional statements, which were overhead by the jail's correctional officers. As he was coming in, Defendant Mary Brogglin heard Mr. Higgins irrationally say: "That's her. She's got a gun. She's going to kill me."[8] Officer Brogglin knew this made no sense—she had no such gun and knew it was "crazy talk."[9] Defendant Orsborne heard Mr. Higgins say of Officer Brogglin, "that's her," which he viewed as consistent with the previous paranoid statements about females.[10] Defendant Spaulding was equally aware that Mr. Higgins was illogically worried that Officer Brogglin had a gun and would shoot him.[11]

From the time Mr. Higgins enters the jail until he is taken away in a stretcher, the events are captured on the Jail Hallway Surveillance Video system (JHSV). The core events can be viewed in this hyperlink, embedded in Plaintiff's First Amended Complaint (ECF 37) at ¶ 48: https://budgeandheipt-2.wistia.com/medias/7imvnq3bbc.[12]

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[4] *Id.* at 92:5-14.
[5] *Id.* at 92:17-22.
[6] *Id*. at 98:21-25.
[7] *Id*. at 109:5-17.
[8] Brogglin Dep. at 23:7-12; 54:8-12.
[9] *Id*. at 54:13-23.
[10] Orsborne Dep. at 123:18-22.
[11] Spaulding Dep. at 64:14-19.
[12] All video referenced herein has also been filed with the Court via thumb drive.

The JHSV is in color. It's relatively sharp and clear. A timestamp in the lower right-hand corner keeps track of the real time that everything is happening to the 1/1000th of a second. The video begins at 1:45:50 a.m. and ends about 35 minutes later. Because the video camera is located high up near the entrance of the jail and points down the hallway, there is a bit of area directly below the camera that's outside the camera's view.[13] But most events—including all the crucial events leading up to and surrounding Mr. Higgins's death—can be watched, paused at any time, rewound, and watched again.

The JHSV shows the following: Jail Officer-Defendant Mary Brogglin is standing in the hallway when Mr. Higgins and Defendant Orsborne enter the jail at 1:45:50. She wears a jacket with the word "Sheriff" in yellow letters on her left sleeve. Within seconds of entering the jail, the JHSV shows a short scuffle between her and Mr. Higgins. Specifically, at about 1:46:18, Mr. Higgins grabs her jacket as he walks by. She shoves him away. Then, although he was handcuffed behind his back, Mr. Higgins manages to briefly grab her hair. Consistent with his earlier irrational statements, Mr. Higgins yelled: "That's the woman that's trying to take my money. That's the woman that's trying to hurt me. She has a gun."[14]

In an interview between Defendant Brogglin and a TBI officer the morning of Mr. Higgins's death, she acknowledged that Mr. Higgins let go of her hair after grabbing it only briefly.[15] At that time, Obion County Jail Officer-Defendant Waylon Spaulding, having heard Mr. Higgins's nonsensical statements, interceded. In the JHSV, Defendant Spaulding intercedes at about 1:46:26. Defendant Spaulding wears green pants, a black sweatshirt, blue gloves, and a cap.[16]

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[13] The same events were captured from surveillance video looking in the opposite direction. However, because the camera is much further away, it is less useful. Nevertheless, at times it may be helpful to view the events from the opposite perspective. The opposite view can be found here: https://budgeandheipt-2.wistia.com/medias/4fkg66osxa.

[14] Deposition of Stormy Travis at 35:17-36:23.

[15] TBI Interview of Mary Brogglin from March 25, 2019 at 8:6-20 (admitting Mr. Higgins "*let go* of my hair" after briefly grabbing it for "a second" and saying nothing about it being pulled from her scalp).

[16] Spaulding Dep. at 87:22-88:17.

By 1:46:28, Defendant Spaulding and Mr. Higgins are outside the camera's view (and remain outside its view until about two minutes later). Although one can't clearly see what's happening during this two-minute period, Defendant Spaulding described it in his deposition. Specifically, no later than 1:46:55, he had Mr. Higgins on the ground.[17] Mr. Higgins was yelling but was not forming discernable words.[18] Pausing the JHSV at this time shows Defendant Brogglin looking on at the lower-right portion of the screen. Also looking on are Defendant Orsborne and Jail Officer-Defendant Brendon Sanford. Defendant Orsborne is the taller officer wearing a Union City Police uniform with a patch on the right shoulder.[19] And Defendant Sanford wears a short-sleeve shirt with a star emblem over his left breast.[20]

While Defendant Spaulding is on the ground with Mr. Higgins, the other three officers simply look on—nonchalantly. That's because, no later than 1:47:05 (i.e., within 10 seconds of going to the ground), Defendant Spaulding was not having any real difficulty containing Mr. Higgins by himself.[21] It's somewhere around this time, as Mr. Higgins was laying on his back in handcuffs "very soon after he was on the floor on his back," that Defendant Spaulding claims Mr. Higgins "spit."[22] Defendant Spaulding is not sure whether the "spitting" was intentional or inadvertent.[23] Regardless, according to Defendant Orsborne, Defendant Spaulding became "very upset" after having first been spit on and gave Mr. Higgins an "ultimatum."[24] He told Mr. Higgins, "dude, do not do that again" and said "you will regret it" if you do it again.[25] Mr. Higgins apparently did spit again—once or twice in quick succession (i.e. within seconds of each other) and this occurred "within about a minute or so of going to the ground"—after which Mr. Higgins

[17] *Id*. at 89:16-90:7. Defendant Spaulding says Mr. Higgins "fell." Defendant Orsborne says he delivered a knee strike to Mr. Higgins to take him down. Orsborne Dep. at 128:6-10.
[18] Orsborne Dep. at 128:18-21.
[19] Spaulding Dep.at 90:22-25.
[20] *Id.* at 91:1-4.
[21] *Id.* at 92:19-22; 93:3-15. *See also* Report of Michael Leonesio at p. 16.
[22] Spaulding Dep. at 73:25-75:3.
[23] *Id.* at 76:3-11.
[24] TBI Interview of Robert Orsborne from March 25, 2019 at 18:6-13.
[25] *Id.*

never spat again.[26] Defendant Spaulding quickly realized Mr. Higgins's mouth was dry and he could no longer spit.[27] Any "spitting" would therefore have been over by approximately 1:48 a.m.

At approximately 1:48:17, the JHSV shows Defendant Sanford approaching the scene with a length of chain. These are leg shackles.[28] Together, Defendants Sanford, Brogglin, and Orsborne then use the shackles to bind Mr. Higgins's ankles together.[29] By 1:49:05 Mr. Higgins's legs have been shackled together.[30] Mr. Higgins is now handcuffed and leg-bound, lying supine on the floor of the jail. He remains handcuffed and leg-bound from that point forward.

Up until 1:48:45, it's not possible to see exactly what Defendant Spaulding was doing because he and Mr. Higgins are out of view of the camera. But beginning just after 1:48:45—and continuing for the duration of the events—Defendant Spaulding and Mr. Higgins come back into the camera's view. And what is clearly seen from that point forward is nothing short of horrifying.

To better appreciate the ensuing events, Plaintiff retained a forensic video professional, formerly of the NYPD, who specializes in video analysis.[31] While maintaining the authenticity of the JHSV, he prepared a clarified, cropped version of the JHSV showing the events in detail from 1:48:45 to 1:54:29.[32] This video captures the same events on the JHSV but in close-up with two viewing panes. It can be watched here: https://budgeandheipt-2.wistia.com/medias/blo5xayyug.

When it begins at 1:48:45, this Clarified Floor Video (CFV) shows that Defendant Spaulding has just moved into view on the floor of the jail in the lower-left portion of the screen, wearing the cap and a black sweatshirt that says "CORRECTIONS" on the back. Defendants Orsborne and Sanford are standing just a few feet away about to finish putting the shackles on Mr.

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[26] Spaulding Dep. at 75:4-76:2; 193:17-194:14.
[27] *Id.* at 193:17-194:14.
[28] Sanford Dep. at 85:2-5.
[29] JHSV at 1:47:17 to 1:49:05.
[30] Sanford Dep. at 87:3-6.
[31] Forensic Video Analysis Report of Conor McCourt.
[32] *Id.* at p. 6.

Higgins's legs. And shortly after the video begins, Defendant Brogglin also comes into view. Like the original JHSV, the CFV can be played, paused at any time, rewound, and watched again.

Within seconds of playing the CFV, it's clear that Defendant Spaulding is kneeling over Mr. Higgins, who remains supine on the floor with his hands cuffed behind his back.[33] Defendant Spaulding's gloved hands are clearly grasping Mr. Higgins's throat and neck. He uses his body weight to pin Mr. Higgins to the floor and presses into Mr. Higgins's throat and neck area with his grip and the heel of his hand. He uses his hands to hyperextend Mr. Higgins's neck and head and forces his mouth shut by pushing his jaw closed. Mr. Higgins's lower body is not always visible, but Defendant Spaulding admits he was on top of Mr. Higgins's stomach and/or groin area.[34]

Though Defendant Spaulding's hand position sometimes changes slightly, he presses forcefully against Mr. Higgins's vital areas for more than *five minutes straight without relenting*. In so doing, he puts "bilateral pressure and compression from the heels of [his] hands directly onto the areas of the carotid arteries, the carotid sinus, and the external jugular veins of Mr. Higgins' neck."[35] He can be seen "applying pressure to the neck," and forcing Mr. Higgins's neck "into extreme hypertension."[36] And it was this use of force, including "gripping [Mr. Higgins's] neck area/underside of the chin for an extended period of time"[37] that caused the physical damage to Mr. Higgins's neck found at autopsy: "[S]ignificant neck trauma with significant bleeding into the muscle layers within the neck, near the airway."[38] Mr. Higgins sustained "hemorrhage of the left omohyoid muscle," deep within his neck, proving that "pressure was applied to the neck while Mr.

[33] There is no dispute that Mr. Higgins remained handcuffed behind his back the entire time this force was used. *See* Spaulding Dep. at 91:5-12. Nor is there any dispute that he was leg shackled from 1:49:05 forward. (*See* JHSV).
[34] Spaulding Dep. at 193:5-12.
[35] Report of Michael Leonesio at p. 12.
[36] Report of Allecia Wilson, M.D. at pp. 4-5.
[37] Report of J.C. Upshaw Downs, M.D. at p. 12.
[38] *Id.* at p. 11.

Higgins was alive."[39] Mr. Higgins was also found to have sustained bilateral hemorrhagic sclera "due to the pressure on the neck limiting blood flow return from the head."[40]

Then, as Defendant Spaulding continues to press into Mr. Higgins's neck area with his hands, and shortly after Mr. Higgins is fully shackled at the feet, Defendant Orsborne uses his own body weight to pin Mr. Higgins to the floor. He literally steps onto Mr. Higgins's lower body and stands on top of him. Using his left hand to balance against the wall, Defendant Orsborne remains standing on Mr. Higgins for 2 ½ to 3 minutes. (CFV at 1:49:26-1:52:29).[41] Defendant Orsborne weighed 247 pounds and was wearing 15-20 pounds of police gear.[42] As he stands on top of the cuffed and shackled Mr. Higgins, Defendant Spaulding continues to straddle Mr. Higgins, grasp his neck and throat, force his jaw shut, and hyperextend his neck. (CFV at 1:49:26-1:52:29).

The surveillance video shows that Mr. Higgins is moving around for a time as he is being asphyxiated on the jail floor—squirming. This was simply "an attempt to breathe and remain conscious as [Defendant] Spaulding compressed his torso and constricted the blood flow to his brain."[43] His supposed resistance "was directly attributable to Mr. Higgins being compressionally asphyxiated by [Defendant] Spaulding's improper application of force."[44] But at about the same time Defendant Orsborne gets off Mr. Higgins, the surveillance video shows that Mr. Higgins stops moving and goes still in Defendant Spaulding's grasp. "On video, the last obvious movement from Mr. Higgins occurs at around minute 1:52 while he is still on the ground" when Defendant Spaulding "still has his hands on Mr. Higgins's chin/neck/throat area."[45] At this time, "[h]is clinical condition has quite suddenly changed as he has stopped obvious movement and is no longer responsive."[46] Whether watching the JHSV, the CFV, or the Hall Cameras Synchronized

[39] Report of Allecia Wilson, M.D. at p. 4.
[40] *Id.* at p. 5.
[41] Orsborne Dep. at 143:2-18; 146:7-10; 147:12-16; Report of Michael Leonesio at p. 9.
[42] Orsborne Dep. at 142:17-143:1.
[43] Report of Michael Leonesio at p. 16.
[44] *Id.*
[45] Report of Matthew DeLaney, M.D. at p. 4.
[46] *Id. See also* Report of Michael Leonesio at p. 16

(supplied by the Obion County Defendants at ECF 101), there is no further volitional movement by Mr. Higgins after 1:52:30—he remains motionless from that point forward.

But Defendant Spaulding doesn't stop. Instead, he keeps grasping Mr. Higgins's neck area, *for approximately two additional minutes after Mr. Higgins stops moving*.[47] As shown in the video, he remains on top of Mr. Higgins with his left hand clasped firmly on Mr. Higgins's throat/jaw and does not get off him or release his grasp until just after 1:54.20. (CFV at 1:52:30-1:54:20). During this time, Mr. Higgins shows no volitional movement. *Id*. "The video shows pressure still being applied under the chin and on the chest after he becomes unresponsive."[48]

At 1:54:24 Defendant Spaulding finally gets off Mr. Higgins. By now, Mr. Higgins is completely limp and laid out on the floor. By this time, Defendant Spaulding had been on Mr. Higgins—his hands pressing into his vital areas—for a minimum of five minutes and 34 seconds. At no time during this period "did Mr. Higgins present a reasonably perceived immediate threat to the officers that would justify" Defendant Spaulding's dangerous use of force.[49] When Defendant Spaulding first gets off him, he still has a hand on Mr. Higgins's neck:

 [50]

At this point, Defendants Spaulding and Sanford (pictured above) lift Mr. Higgins up under his arms and drag him to a restraint chair that had been positioned in the hallway by Defendant

[47] Report of Michael Leonesio at p. 17.
[48] Report of Allecia Wilson, M.D. at p. 5.
[49] Report of Michael Leonesio at 16.
[50] CFV at 1:54:25.

Brogglin. Closeup excerpts from the JHSV cited at ¶ 53 of Plaintiff's First Amended Complaint shows them dragging his limp body across the hall like a rag doll—his feet trailing inertly on the floor—where they heave his body into the restraint chair as dead weight: https://budgeandheipt-2.wistia.com/medias/v7pkol3c8m. A white substance, likely pulmonary foam, can be seen in the area of Mr. Higgins's nose as the officers drag him over.[51]

Mr. Higgins "is limp when he is placed in the chair" and "does not regain consciousness or purposeful movement."[52] He had "signs and symptoms consistent with, and indicative of, a life-threatening medical emergency."[53] "Any non-medical observer should have recognized that Mr. Higgins was having a medical emergency, and the initiation of CPR by Officer Orsborne, who was trained in CPR, or any other person who initiated CPR, along with promptly summoning EMS for more advanced care would more likely than not have saved Mr. Higgins' life."[54] Yet, no one aided Mr. Higgins or summoned medical care.

The next seven minutes are shocking. Although Mr. Higgins clearly needs prompt medical attention, Defendants Spaulding, Sanford, and Brogglin (with Defendant Orsborne looking on) spend these seven minutes strapping Mr. Higgins's limp body into the restraint chair—fussing and dallying with the straps and buckles—as Mr. Higgins's motionless body sits in the chair with his head drooped to one side. A cropped version of the JHSV shows these events in detail from 1:54:22 to 2:01:52. https://budgeandheipt-2.wistia.com/medias/tczsy8aizn.[55]

Throughout this period, Mr. Higgins never moves on his own volition. Defendant Orsborne describes Mr. Higgins as "unresponsive" during this time.[56] And his dire condition must have been obvious to the defendants as it is to any reasonable viewer of the video. At 2:00:50, Defendant

[51] Report of J.C. Upshaw Downs, M.D. at p. 11.
[52] Report of Allecia Wilson, M.D. at p. 5.
[53] Report of Michael Leonesio at p. 21.
[54] Report of Matthew DeLaney, M.D. at p. 5.
[55] The time count on this video is in the upper right-hand corner.
[56] Orsborne Dep. at 156:19-158:5.

Spaulding pushes Mr. Higgins's slack head to one side to try to get a reaction—only to see it drop back again by the force of gravity. Seconds later, Defendant Sanford feels for a pulse while the other officers stare on.[57] Seconds after that, at 2:01:29, Defendant Orsborne vigorously rubs Mr. Higgins's sternum to elicit a pain response, but he gets none.[58] "[I]t is abundantly clear that [the defendants] knew, or reasonably should have known, that Mr. Higgins was in medical distress."[59] Still, no one summons aid.[60]

Instead of calling for medical aid, Defendant Spaulding, in the company of the other defendants, wheels Mr. Higgins's lifeless body into a nearby cell. Once in the cell, the defendants leave him there alone—still strapped into the restraint chair, still unconscious—and close the cell door. This is shown on the original JHSV at 2:01:38 to 2:02:06.[61] Once he's in the cell, Mr. Higgins's body can be seen on the recording from the jail camera positioned inside the cell located here: https://budgeandheipt-2.wistia.com/medias/5338yjtrbw. Mr. Higgins's body sits inertly in the chair, his head cast to one side and his mouth ajar. He doesn't make a single movement.

It is not until 2:04:07 that the first defendant called for medical aid.[62] This was approximately *twelve minutes* after Mr. Higgins's last voluntary movement. While they wait for medics, with Mr. Higgins's body still in the chair, the defendants sit on the bench, lean against the wall, and stand around hands-in-pockets and arms crossed—periodically looking at Mr. Higgins, repeatedly trying to get a pulse, and pushing his head from side to side. But no one starts resuscitative efforts. Defendant Orsborne's police sergeant showed up at the scene shortly before medics arrived and "couldn't understand why" Mr. Higgins hadn't been removed from the chair and CPR begun.[63] When medics did arrive, Mr. Higgins was still in the chair—beyond saving.

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[57] Though he felt for a pulse, he doesn't remember feeling one. Sanford Dep. at 108:14-17.
[58] Orsborne Dep. at 167:11-168:12.
[59] Report of Michael Leonesio at p. 24.
[60] There were multiple opportunities to save his life through prompt medical attention including well-past 2:00. *See generally* Report of Matthew DeLaney, M.D. And the defendants do not claim otherwise.
[61] https://budgeandheipt-2.wistia.com/medias/7imvnq3bbc.
[62] Declaration of Robert Orsborne (ECF 103-2) at ¶ 63.
[63] Simmons Dep. at 102:21-103:7.

Sterling Higgins died from asphyxiation.[64] His death was a homicide.[65] It is undisputed, and demonstrated in the jail's surveillance footage, that no defendant ever attempted to intervene to prevent or stop the force used against Mr. Higgins that caused his death—despite their presence at the scene. Thereafter, they all squandered numerous opportunities to save his life by their unreasonable delay in calling for aid.[66]

B. Obion County Policies, Practices, and Failures to Train

Defendant Spaulding, whose force was directly responsible for Mr. Higgins's death, testified that it was personally important to him to follow any training provided by or through Obion County, that he always did his best to follow any such training, and that he would have followed any training that had been provided to him.[67] But he was woefully undertrained.

Defendant Spaulding had been working at the Obion County Jail for more than three years.[68] The jail had about 140-170 inmates, with up to 5-7 new arrestees coming in per shift.[69] There was no nurse or other medical person at the jail during his shift.[70] Defendant Spaulding could recall no specific training on the constitutional limits on the use of force against inmates or detainees.[71] He had no training on the dangers associated with compressing a person in the area of the neck or on any form of restraint-related asphyxia or suffocation.[72] He recalled no specific training about any constitutional obligation to summon medical care for detainees with serious medical conditions.[73] He wasn't trained about when to call for medical assistance for a detainee in need—even if he goes limp during restraint.[74] He received no training about removing an inmate

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[64] Report of J.C. Upshaw Downs, M.D. at p. 11; Report of Allecia Wilson, M.D. at p. 5.
[65] Report of J.C. Upshaw Downs, M.D. at p. 11; Report of Allecia Wilson, M.D. at p. 5.
[66] Report of Matthew DeLaney, M.D. at pp. 4-7.
[67] Spaulding Dep. at 6:25-7:9; 7:21-8:1; 27:15-28:6.
[68] *Id.* at 53:19-25.
[69] *Id*. at 37:8-24.
[70] *Id*. at 38:6-16. Defendant Spaulding agreed that if a nurse had been on duty, he would have called the nurse to look at Mr. Higgins "as soon as he was put in the restraint chair." *Id*. at 30:13-18.
[71] *Id.* at 26:7-12.
[72] *Id.* at 20:4-15; 25:10-14.
[73] *Id.* at 27:1-6.
[74] *Id*. at 24: 1-14.

from the restraint chair who was no longer moving.[75] He recalled no training about any duty to intervene in a fellow officer's use of excessive or unreasonable force.[76] He had no training about accommodating detainees exhibiting signs of mental illness or drug intoxication.[77]

Defendant Sanford, who was a new officer but still permitted to work autonomously, also would have followed any training.[78] He too could recall no training about the constitutional limits on the use of force.[79] He had no training on the duty to intervene if he witnessed excessive force.[80] He had no training at all on the use of the restraint chair (even though he actively participated in strapping Mr. Higgins in) and had never even seen it used before.[81] He had no training on any policies or procedures associated with the use of the restraint chair and didn't even know written policies existed.[82] He had no training relative to any form of asphyxia or suffocation or what to do if a detainee needed medical assistance following a restraint-related event.[83] He did not know what the word "asphyxia" meant.[84] He recalled no training about accommodating or securing medical assistance for detainees exhibiting signs of mental illness or drug intoxication.[85]

Obion County Sheriff Karl Jackson is the final policymaker for the Obion County Jail.[86] He knows of no policy associated with teaching jail officers about the dangers of restraining people by the neck or throat or restricting their blood oxygen supply when using physical force.[87] Sheriff Jackson cannot identify any policy prohibiting officers from restraining people by the area of the neck or throat.[88] Nor was the Obion County Jail commander able to identify any such policy.[89]

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[75] *Id.* at 23:14-18.
[76] *Id.* at 26:20-25.
[77] *Id.* at 25:15-25.
[78] Sanford Dep. at 17:2-6; 29:18-22.
[79] *Id.* at 27:16-20.
[80] *Id.* at 27:21-28:6.
[81] *Id.* at 22:15-24.
[82] *Id.* at 23:18-24:20.
[83] *Id.* at 25:7-17; 26:7-19.
[84] *Id.* at 26:12-19.
[85] *Id.* at 25:25-26:6; 26:20-27:9.
[86] Deposition of Sheriff Karl Jackson at 13:17-19.
[87] *Id.* at 19:18-20:21; 21:18-23:5.
[88] *Id.* at 13:20-14:8; 15:15-16:23.
[89] Deposition of Kent Treece at 32:9-33:17.

The jail commander was "not aware of any specific policy about any type of a neck restraint."[90] That's because Obion County had no such policy and didn't train its officers on the subject.

Michael Leonesio, an expert about generally accepted law enforcement standards, found that Defendant Spaulding, who "demonstrated no understanding of the concepts of objective reasonableness, control versus compliance, compressional asphyxia, or the relationship between the need for force and the amount of force used,"[91] was not properly trained. He found that the Obion County Use of Force policy consists of a nothing more than a single paragraph and an ambiguous three-page continuum.[92] Yet, the County gave its officers no more than a *single hour* of training on the use of force, which was "clearly not enough time to cover the material and assure that officers have a satisfactory level of understanding."[93] The Obion County training plan lacks any performance objectives or measurable training goals and is "deficient in quantitative or competency-based testing methods."[94]

Lori Roscoe, Ph.D., an expert on correctional healthcare standards, thoroughly reviewed the evidence and found that the County's jail officers had no training in the basic medical skills required to determine if an individual had a health condition requiring further assessment by a medical professional.[95] Particularly since there was no regular nurse on duty (and none on the shift in question), officers were supposed to have the necessary skills to identify serious medical conditions, such as those exhibited by Mr. Higgins.[96] The jail's officers were inadequately trained on assessing and responding to inmates with serious health conditions, which placed individuals at the jail at unacceptable risk of injury or death.[97]

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[90] *Id.* at 33:13-14.
[91] Report of Michael Leonesio at pp. 13-14.
[92] *Id.* at p. 17.
[93] *Id.* (emphasis in original.)
[94] *Id.*
[95] Report of Lori Roscoe, Ph.D. at pp 7-9.
[96] *Id.*
[97] *Id.* at pp. 7-9.

Obion County was also operating the jail in violation of legal standards requiring at least one CPR-trained and certified staff member per shift.[98] *None* of the jail officers on the relevant shift had this required training or certification.[99] If they had, this would likely have resulted in prompt medical aid to Mr. Higgins that would probably have saved his life.[100] Obion County claims that this violation on the March 25th shift was a one-off—that a CPR-trained officer was scheduled to work the shift but called in sick. But the County provides no documentation about the scheduled shift to support this claim, and Defendant Spaulding testified that the officers working the shift in question—none of whom were CPR-trained—were the ones who *regularly* worked that shift together.[101] Moreover, even accepting the claim that a CPR-trained officer called in sick for the shift in question, the jail commander admitted that the County had no policy to ensure the substitution of a CPR-trained replacement.[102]

In his deposition, County Policymaker Jackson watched the precise video segment from 1:48:45 to 1:54:28 showing Defendant Spaulding grasping Mr. Higgins's vital areas for minutes on end as his two other officers stand by.[103] After watching it, he testified that he "fully approved" of his officers' actions, believed "they followed policy in everything they did," and approves of their actions in his official capacity as Sheriff.[104] Sheriff Jackson also watched the precise video segment from 1:54:22 to 2:01:41 when officers spend minutes on end strapping Mr. Higgins's lifeless body into the restraint chair without taking any action to help him or call for aid.[105] After watching it, he testified that he fully approved of their actions and inactions and believed they "went by policy."[106] As the final policymaker for the jail, Sheriff Jackson had no criticism about

[98] *Id.* at pp. 6-9. *See also* Report of Michael Leonesio at pp. 24-25.
[99] *Id.* at pp. 7-8.
[100] *Id.* at pp. 7-9; Report of Matthew DeLaney at pp. 4-7.
[101] Spaulding Dep. at 36:7-15; 60:11-20; 61:9-16; 61:24-62:2.
[102] Deposition of Kent Treece at 78:20-80:8.
[103] Deposition of Karl Jackson at 44:21-24.
[104] *Id.* at 45:8-46:5.
[105] *Id.* at 47:2-5.
[106] *Id.* at 47:9-25.

where Defendant Spaulding had his hands on Mr. Higgins, about officers putting Mr. Higgins's lifeless body in the restraint chair, the time it took for them to strap his body in, the fact that no officer intervened, the delay in calling for medical aid, or anything else.[107] According to Sheriff Jackson, each of his three officers, Defendant Spaulding included, "follow[ed] the policies and expectations of the Obion County Sheriff's Office."[108] In sum, despite clear evidence of unconstitutional actions and omissions in this case, Sheriff Jackson was "satisfied that all [his] officers followed Obion County Jail policies and expectations in all respects."[109]

III. SUMMARY JUDGMENT STANDARD

Summary judgment is only appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must view the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The court cannot engage in "jury functions" like "credibility determinations and weighing the evidence." *Youkhanna v. City of Sterling Heights*, 934 F.3d 508, 515 (6th Cir. 2019). Rather, the question is whether a reasonable juror could find by a preponderance of the evidence that the nonmoving party is entitled to a verdict. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

In cases, like this one, where there is video footage capturing the events in question, the Court must view the facts "in the light depicted by the videotape." *Green v. Throckmorton*, 681 F.3d 853, 859 (6th Cir. 2012) (citing *Scott v. Harris*, 550 U.S. 372, 378-81 (2007)). However, when "reasonable jurors could interpret the video evidence differently," summary judgment is not appropriate. *Id.* at 865-66. This is because when "facts shown in videos can be interpreted in multiple ways . . . such facts should be viewed in the light most favorable to the non-moving party." *Latits v. Phillips*, 878 F.3d 541, 547 (6th Cir. 2017); *See also Walker v. Fayette Cty. Schs.*,

[107] *Id.* at 48:1-49:15.
[108] *Id.* at 4:18-5:20.
[109] *Id.* at 5:17-20.

No. 2:19-cv-02562-TLP-tmp, 2021 U.S. Dist. LEXIS 1617, at *23 (W.D. Tenn. Aug. 26, 2021) ("[T]he Court interprets the video in the light most favorable to Plaintiff and finds that there is a genuine dispute of fact about whether Defendant choked Q.W. during the incident. With that in mind, a reasonable jury watching the video could find that Defendant choked Q.W.").

IV. ARGUMENT

A. Defendants Spaulding, Brogglin, and Sanford Are Not Entitled to Qualified Immunity

Resolving qualified immunity presents two basic questions: (1) whether the facts, viewed in the light most favorable to the plaintiff, show that the defendants violated any constitutional rights; and, if so, (2) whether the constitutional rights at issue were clearly established at the time of the incident. *Saucier v. Katz*, 533 U.S. 194, 202 (2001). In this case, there are two distinct constitutional rights involved—the right to be free from excessive force and the right to timely medical care. As shown below, the individual defendants violated each of these constitutional rights, and the unconstitutionality of their conduct was clearly established in March 2019.

1. Defendant Spaulding Violated the Right of Sterling Higgins to Be Free from Excessive Force

In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the Supreme Court clarified the law of the land by holding that courts must apply an *objective* test to excessive force claims brought by pretrial detainees under the Fourteenth Amendment; the question is whether the force was "objectively unreasonable." *Id.* at 396-97 (citing *Graham v. Connor,* 490 U.S. 386, 396 (1989)).[110]

[110] Defendants state that Plaintiff's excessive force claims "must be analyzed under the Fourteenth Amendment's 'objective reasonableness' standard." Def. Mem. (ECF 101-1) at 23. The force in this case occurred before Mr. Higgins was booked in the jail. Although the line between an arrestee and a pretrial detainee is somewhat hazy, the Sixth Circuit has instructed that "Fourth Amendment protections extend through police booking until the completion of a probable cause hearing." *Coley v. Lucas Cnty.*, 799 F.3d 530, 537 (6th Cir. 2015). For purposes of this motion, however, it does not matter whether the Court resolves the issue under the Fourteenth Amendment or the Fourth Amendment because, either way, the exact same "objective reasonableness" standard applies. *See Hanson v. Madison Cty. Det. Ctr.*, 736 Fed. Appx. 521, 528-29 (6th Cir. 2018) (applying the Fourth Amendment "objective reasonableness" standard to an arrestee who was injured during the booking process); *Coley*, 799 F.3d at 537-38 (applying the Fourteenth Amendment's "objective reasonableness" standard to a pretrial detainee who had been in jail for several months and was killed by corrections officers).

Borrowing from *Graham's* Fourth Amendment factors, the Court listed several considerations that may bear on the reasonableness of the force used: (1) the relationship between the need for force and the amount of force used; (2) the extent of the plaintiff's injury; (3) any effort made to "temper or to limit" the degree of force; (4) the severity of the security problem at issue; (5) the threat reasonably perceived by the officer; and (6) whether the plaintiff was actively resisting. *Id.* at 397 (citing *Graham,* 490 U.S. at 396). Under this standard, viewing the facts in the light most favorable to Plaintiff, the evidence is more than sufficient to show that Defendant Spaulding's use of force was objectively unreasonable.

The defense begins its analysis by focusing on Defendant Spaulding's act of pulling Mr. Higgins away from Defendant Brogglin, his initial efforts to gain control of Mr. Higgins on the floor, and the placement of leg restraints on Mr. Higgins. Plaintiff agrees that these early actions do not amount to excessive force and has never contended otherwise. However, within a minute of being on the ground, Defendant Spaulding testified that Mr. Higgins was "pretty much under control" and no longer spitting (or capable of spitting). Yet, in the ensuing minutes, video footage shows Defendant Spaulding kneeling on the body of the handcuffed Mr. Higgins and gripping him by the neck—forcibly keeping his mouth closed and hyperextending his head and neck. For five-and-a-half minutes, Defendant Spaulding remained in this position—maintaining significant pressure on the neck of Mr. Higgins, compressing his blood vessels, and cutting off his oxygen supply. Significantly, Defendant Spaulding continued to kneel on Mr. Higgins's torso and exert substantial pressure on his neck area for an additional two minutes *after* he became unresponsive due to blood oxygen deprivation. This force was deadly and killed Mr. Higgins via asphyxiation.[111]

[111] Force is deadly when it creates "a substantial risk of causing death or serious bodily harm." *Robinette v. Barnes,* 854 F.2d 909, 912 (6th Cir. 1988). Here, Defendant Spaulding used deadly force when he choked this handcuffed and leg-bound man to the point of unconsciousness and continued to do so for nearly two minutes after he became unconscious. *See Coley v. Lucas Cnty*., 799 F.3d 530, 541 (6th Cir. 2015). Under well-established Supreme Court law, deadly force is only justified if the officer has probable cause to believe that use of deadly force against the suspect is necessary to prevent a significant threat of death or bodily injury to the officer or others. *See Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985); *Washington v. Newsom*, 977 F.2d 991, 994 (6th Cir. 1992); *Brandenburg v. Cureton*, 882 F.2d 211, 215 (6th Cir. 1989). There was absolutely no such threat here.

Defendant Spaulding's force was grossly disproportionate to the need for using it. At the time he used the force at issue—after Mr. Higgins was on the ground, after he stopped spitting, and after he was under control—Defendant Spaulding had no reason to believe that Mr. Higgins posed a threat of harm to anyone at the scene. When Defendant Spaulding was gripping his neck, Mr. Higgins was fully restrained—his hands were cuffed behind his back, his legs were shackled together, and a 250-pound officer was standing on his thighs. Mr. Higgins was not actively or aggressively resisting; at most, he was struggling to breathe. Defendant Spaulding made no effort to "temper or limit" his force even *after* his victim suddenly went limp and lost consciousness. Instead, he continued to apply significant pressure to his lifeless victim's vital areas for an additional two minutes. This force was readily capable of inflicting severe injury or death, and it, in fact, killed Mr. Higgins. Under no circumstances could such force be objectively reasonable.

It also significant that Mr. Higgins was mentally impaired. The Sixth Circuit has made clear that the reasonableness of an officer's conduct "*mus*t take into account" whether the person they are restraining is either on drugs or mentally unstable. *See, e.g.*, *Landis v. Baker*, 297 Fed. Appx. 453, 465 (6th Cir. 2008) (emphasis added). Here, Mr. Higgins's mental instability was apparent to everyone at the scene. As soon as Mr. Higgins saw Defendant Brogglin, for example, he began saying bizarre and paranoid things about her having a gun, wanting to shoot (or hurt) him, and stealing his money. He then irrationally grabbed her hair with one of his handcuffed hands before going down to the ground—where he began yelling indiscernibly. In situations where officers confront unarmed and mentally unstable individuals, the Sixth Circuit commands them to "deescalate the situation and adjust the application of force downward." *Martin v. City of Broadview Heights*, 712 F.3d 951, 962 (6th Cir. 2013). *See also Landis*, 297 Fed. Appx. at 465 (explaining that officers should employ "different tactics" when confronting mentally disturbed people who are resisting than they would use against armed and dangerous criminals who recently

committed serious crimes). Here, Defendant Spaulding ignored Mr. Higgins's diminished mental state and made no effort to deescalate the force—even when Mr. Higgins became unresponsive.

The defense argues that Defendant Spaulding was justified in "placing his left and right hands on [Mr.] Higgins's chin and jaw to prevent Higgins from spitting on him." Def. Mem. (ECF 100-1) at 29. However, the alleged spitting stopped shortly after Mr. Higgins and Defendant Spaulding went to the ground—by approximately 1:47:05 a.m. According to Defendant Spaulding, Mr. Higgins spat twice and then tried to spit a third time but could not do so because his mouth was too dry. He never spat (or attempted to spit) after that. Defendant Spaulding also testified that he was not having any significant trouble containing Mr. Higgins at that time. Thus, whatever justification may have existed "to prevent Mr. Higgins from spitting" was no longer present—particularly not in a manner that could compromise his oxygen and put him at risk of death.[112]

The defense further argues that Defendant Spaulding "never placed his hands on [Mr.] Higgins's neck or throat" and "never grabbed [his] neck or throat." Def. Mem. at 3, 29 n.3. But this characterization is belied by video evidence, which plainly shows Defendant Spaulding with his hands around Mr. Higgins's neck for multiple consecutive minutes. Plaintiff's interpretation of this video evidence is consistent with the physical findings at autopsy, which showed substantial neck trauma with significant bleeding in the deep muscle layers within Mr. Higgins's neck—near the airway. Specifically, Mr. Higgins sustained "hemorrhage of the left omohyoid muscle," indicating that "significant pressure or force was applied to the neck." Mr. Higgins also sustained bilateral hemorrhagic sclera (or bleeding in the whites of his eyes) "due to the pressure on the neck limiting blood flow return from the head." And two prominent forensic pathologists concluded that Mr. Higgins died of asphyxiation from "significant" pressure or force applied to his neck.

[112] Defendants cite several cases holding that an "appropriate level" of force to prevent spitting is objectively reasonable. *See* ECF 100-1 at 28-29. None of these cases involve force anywhere near the extreme level used here.

Viewing the evidence in the light most favorable to Plaintiff, the Court must reject the argument that Defendant Spaulding never touched or grabbed the neck or throat of Mr. Higgins.[113]

2. It was Clearly Established in March 2019 that the Force Used by Defendant Spaulding was Constitutionally Excessive

The next question is whether the constitutional right at issue was clearly established when the event occurred such that a reasonable officer would have known his conduct violated it. *See Burchett v. Kiefer*, 310 F.3d 937, 942 (6th Cir. 2002). In determining whether a constitutional right is "clearly established," the Supreme Court has cautioned lower courts not to define the right at issue with "a high level of generality." *Ashcoft v. Al-Kidd*, 563 U.S. 732, 742 (2011). "The general proposition, for example, that [excessive force] violates the Fourth Amendment is of little help in determining whether the violative nature of particular conduct is clearly established." *Id.* (citation omitted). But "just as a court can generalize too much, it can generalize too little. If it defeats the qualified-immunity analysis to define the right too broadly (as the right to be free of excessive force), it defeats the purpose of § 1983 to define the right too narrowly (as the right to be free of needless assaults by left-handed police officers during Tuesday siestas)." *Hagans v. Franklin County Sheriff's Office*, 695 F.3d 505, 508-09 (6th Cir. 2012). Thus, in defining the right, courts should endeavor to find a proper middle ground. *See id.* at 509. The appropriately phrased

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[113] As this Court explained in *Provost v. Crockett Cty*., No.: 1:17-cv-01060-STA-egb, 2018 U.S. Dist. LEXIS 150950 (W.D. Tenn. Sept. 5, 2018):

> When 'the officer defendant is the only witness left alive to testify, the award of summary judgment to the defense in a deadly force case must be decided with particular care.' *Burnette v. Gee*, 137 Fed. Appx. 806, 809 (6th Cir. 2005) (citation omitted); *accord Plakas v. Drinski*, 19 F.3d 1143, 1147 (7th Cir. 1994) (holding that the 'defendant knows that the only person likely to contradict him or her is beyond reach . . . [s]o a court must undertake a fairly critical assessment of the forensic evidence, the officer's original reports or statements, and the opinions of experts to decide whether the officer's testimony could reasonably be rejected at a trial')); *Scott v. Henrich*, 39 F.3d 912, 914-915 (9th Cir. 1994) (pointing out that the Court may not simply accept what may be a self-serving account by the police officer; instead, it must also look at the circumstantial evidence that, if believed, would tend to discredit the police officer's story, and consider whether this evidence would convince a rational fact finder that the officer acted unreasonably).

Id. at *22. This same reasoning applies regardless of whether Court finds that the force used was deadly as a matter of law. Either way, Sterling Higgins is not alive to tell his side of the story.

question here is whether it was clear to a reasonable officer in March 2019 that pinning a restrained (handcuffed and leg-bound) person to the ground while exerting prolonged and significant pressure on his neck (continuing even after he is motionless)—is excessive force. The answer is yes.

Fifteen years before the death of Sterling Higgins, the Sixth Circuit held that "[c]reating asphyxiating conditions by putting substantial or significant pressure, such as body weight, on the back of an incapacitated and bound suspect constitutes objectively unreasonable excessive force." *Champion v. Outlook Nashville, Inc*., 380 F.3d 893, 903 (6th Cir. 2004). *See also Martin v. City of Broadview Heights*, 712 F.3d 951, 961 (6th Cir. 2013) ("The prohibition against placing weight on [an arestee's] body *after* he was handcuffed was clearly established in the Sixth Circuit as of August 2007.") (emphasis in original). Defendants try to distinguish *Champion* and *Martin* by emphasizing that they involved body weight "on the back" of incapacitated suspects. Def. Mem. at 29-30. However, this is a distinction without a meaningful difference. If an officer had notice not to put pressure *on the back* of a restrained person, the same officer would surely be on notice not to put pressure *on the neck* of a handcuffed and leg-bound person.

Indeed, in *Champion*, the Sixth Circuit principally relied on *Simpson v. Hines*, 903 F.2d 400 (5th Cir. 1990), a case in which officers entered an inmate's cell, placed the inmate in a *neck restraint*, and put pressure upon his chest—not his back. *Champion*, 380 F.3d at 903 (emphasis added). Like Sterling Higgins, the decedent in that case "died of asphyxia as a result of trauma to the neck during the struggle." *Simpson*, 903 F.2d at 404. And in *Martin*, the Sixth Circuit noted that "*Champion*'s reliance on *Simpson* shows that creating asphyxiating conditions by applying 'substantial or significant pressure' to restrain a suspect who presents a minimal safety risk amounts to excessive force." 712 F.3d at 961-62. It is also notable that the defendant-officers in *Martin* "restrained [the suspect's] neck or chin." *Id.* at 960. In addition, to bolster its holding, the *Martin* court cited and addressed another case involving an individual who "died from asphyxiation" as the result of "neck restraint" applied during a struggle with police officers. *Id.* at

962. Thus, both *Champion* and *Martin* make clear that the officer's pressure does not have to be "on the back" of an individual for their holdings to apply and that "creating asphyxiating conditions" by putting pressure on the neck of a person who is restrained or who presents a minimal safety risk likewise constitutes excessive force.

In fact, the Sixth Circuit has repeatedly found that using neck restraints or chokeholds on restrained, subdued, or non-threatening individuals amounts to constitutionally excessive force. For example, in *Griffith v. Coburn*, 473 F.3d 650 (6th Cir. 2007), the court addressed an officer's use of a neck restraint or chokehold that led to the asphyxiation of a mentally disturbed man during an arrest. Although the officer claimed that the arrestee was resisting and reaching for his gun when they were trying to handcuff him, there was evidence from another witness that his resistance was passive. *See id.* at 652-54. Viewing the facts in the light most favorable to the plaintiff, the Sixth Circuit found that the unarmed and mentally disturbed individual posed no serious threat to the officers or anyone else. *Id.* at 659. Thus, the court ruled that "the use of the neck restraint in such circumstances violates a clearly established constitutional right to be free from gratuitous violence during arrest[.]" *Id.* at 659-60. The court explained that if the jury were to conclude that the officer "used the neck restraint without an objectively reasonable belief that [the suspect] posed a threat of serious bodily injury," then it would be "obvious to us that 'no reasonable officer could believe that such [use of force] would not violate another's constitutional rights.'" *Id.* at 660 (second bracket in original) (quoting *Brandenburg v. Cureton*, 882 F.2d 211, 216 (6th Cir. 1989)).

Similarly, in *Coley v. Lucas Cnty.*, 799 F.3d 530 (6th Cir. 2015), the Sixth Circuit affirmed an order denying qualified immunity to an officer who choked a handcuffed and leg-bound pretrial detainee and who did not release his chokehold until the detainee went limp and unconsciousness. *Id.* at 535. The Sixth Circuit had no trouble finding constitutionally excessive force. "The use of a chokehold on an unresisting—and even an initially resistant—detainee violates the Fourteenth Amendment." *Id.* at 540. Although the detainee "admittedly began to 'squirm around' and struggle

at the point [the defendant-officer] choked him," he was "handcuffed to a bed and was surrounded by multiple officers." *Id.* at 541. In that circumstance, "force as extreme as chokehold was excessive and impermissible[.]" *Id.* After finding the violation of a constitutional right, the court turned to whether "the right in question—the right to be free from deadly physical force *such as a chokehold* while fully restrained—was clearly established, providing [the defendant] notice that what he was doing violated that right." *Id.* (emphasis added) (citations & internal quotations omitted). In answering affirmatively, the court ruled that the case law "makes it abundantly clear" that fatally injuring a shackled prisoner is constitutionally impermissible. *Id.* (citation omitted). The court reiterated that "[c]hokeholds are objectively unreasonable where an individual is already restrained or there is no danger to others." *Id.* (citation omitted).

More recently, in *Hanson v. Madison Cty. Det. Ctr.*, 736 Fed. Ex. 521 (6th Cir. 2018), a pretrial detainee became belligerent during the booking process at a county jail and pushed one of the deputies. *Id.* at 524. After two deputies had control of the detainee's arms, a third deputy "placed both hands around [his] neck in an apparent chokehold." *Id.* He maintained this hold "for nearly a minute" despite the detainee's "minimal resistance." *Id.* For part of this time, the detainee was being strapped into a restraint chair." *Id.* The Sixth Circuit found that a jury could conclude that the deputy's chokehold was "unconstitutionally excessive force." *Id.* at 532. In addition, the Sixth Circuit ruled that because there was evidence that could allow a jury to conclude that the detainee was no longer resisting, the deputy "was on sufficient notice that continuing to choke [him] violated clearly established law." *Id.*

Other pre-2019 cases in our circuit also support the conclusion that the constitutional right at issue was clearly established. *See, e.g.*, *Laury v. Rodriguez*, 659 Fed. Appx. 837, 845 (6th Cir. 2016) ("[A] reasonable factfinder could conclude that it was unreasonable for [an officer] to continue to put pressure on [a detainee's] head and neck when [he] was already restrained on the ground and not struggling or resisting."); *Dixon v. County of Roscommon*, 479 Fed. Appx. 680,

683 (6th Cir. 2012) ("Viewing the facts in the light most favorable to Dixon and assuming he was choked after being subdued, a jury could reasonably find that Sergeant Tatrai used excessive force."); *Papp v. Snyder*, 81 F. Supp. 2d 852, 857 (E.D. Ohio 2000) ("The Court finds that no reasonable officer would use a choke hold and a carotid sleeper hold on a suspect who is both handcuffed and restrained by four other individuals. . . . [T]he use of such aggressive maneuvers on a handcuffed suspect goes beyond any reasonable notion of acceptable force."). In sum, Defendant Spaulding was clearly on notice that his conduct was unconstitutional.

3. Defendants Sanford and Brogglin are Liable for Violating Their Clearly Established Duty to Intervene and Protect Sterling Higgins from Defendant Spaulding's Excessive Force

The Sixth Circuit has long made clear that police officers and corrections officers can be liable for failing to intervene when another officer uses excessive force in their presence. *See Durham v. Nu'man*, 97 F.3d 862, 866-67 (1996). An officer "who fails to act to prevent the use of excessive force may be held liable when (1) the officer observed or had reason to know that excessive force would be or was being used, and (2) the officer had both the opportunity and the means to prevent the harm from occurring." *Turner v. Scott*, 119 F.3d 425, 429 (6th Cir. 1997) (citing *Anderson v. Branen*, 17 F.3d 552, 557 (2d Cir. 1994)). Defendants Sanford and Brogglin are plainly liable under this test.

In *Turner*, an officer struck a woman in the head with the butt of his shotgun in a police station squad room. *Id.* at 426-27. This happened suddenly and unexpectedly, and, from the Sixth Circuit's description, it appears it may have been accidental. *See id.* at 427. When it happened, there was another officer in the squad room who was doing paperwork and had his back turned. *Id.* at 426-27. Even though he didn't see the incident or expect it to happen, the woman included him in her excessive force lawsuit for failing to intervene. The Sixth Circuit rejected this claim because it was "devoid of any suggestion" that the officer saw what happened or should have known that it would happen. *Id.* at 429. While the officer who struck the woman "may or may not"

have intended to do so, there was "not a scintilla of evidence" linking the second officer to the harm. *Id.* at 430. The facts of *Turner* stand in stark contrast to those of this case.

Here, Defendant Spaulding's use of force did not happen in a split second. He had his hands around the neck area of Mr. Higgins, who was handcuffed and leg-shackled, for over five minutes. Defendants Sanford and Brogglin saw this happening. Indeed, both defendants participated in shackling Mr. Higgins's legs together. Video footage shows them standing mere steps away watching what was happening. While Defendant Sanford briefly left the scene twice to retrieve items, he was right there watching for over four minutes of the encounter. Defendant Brogglin also left the scene for a period of time, but she was present for at least two minutes. Under clearly established Sixth Circuit caselaw, this was ample time for them to intervene.

For instance, in *Goodwin v. City of Painesville*, 781 F.3d 314 (6th Cir. 2015), two officers went to an apartment to arrest one of the residents for disorderly conduct. *See id.* at 319. During the arrest, one of the officers tased the resident in dart mode for a period of 21 seconds. *Id.* A third officer entered the apartment during this time and assisted the other two in handcuffing the resident. *Id.* While they were handcuffing the resident, the officer who had tased him in dart mode tased him again—this time in drive stun mode. *Id.* The second taser application lasted 5 seconds. *Id.* After finding the officer's taser applications to be excessive under clearly established law, *see id.* at 322-29, the Sixth Circuit found sufficient evidence for a jury to find the other two officers liable for failing to protect the plaintiff from excessive force. *Id.* at 328-29. Distinguishing *Turner*, the court described the tasering, which lasted 31 seconds in total, as "a prolonged application of force." *Id.* at 329. The court affirmed the denial of qualified immunity because both officers (one of whom was only there for part of the time) violated their "clearly established duty to protect" the victim. *Id. See also Kent v. Oakland Cnty.*, 810 F.3d 384, 388 & 397 (6th Cir. 2016) (affirming denial of qualified immunity when defendant-officer had "the opportunity and means" to prevent another officer from using a "five-second taser cycle" on a man who had his arms in the air).

There is no question that the same "clearly established duty to protect" applies to corrections officers. The Sixth Circuit first made this clear in *McHenry v. Chadwick*, 896 F.2d 184 (6th Cir. 1990): "[A] correctional officer who observes an unlawful beating may, nevertheless, be held liable without actively participating in the unlawful beating." *Id.* at 188. In *McHenry*, an inmate sued multiple corrections officers for violating his Eighth Amendment rights based on two separate assaults. The defendants included corrections officers who were present but did not personally participate in assaulting him. The judge instructed the jury on a failure to intervene theory, and the prisoner-plaintiff prevailed at trial. *Id.* The Sixth Circuit upheld the verdict on appeal, holding that "even if one or more of the officers did not actively participate in the beating, they still owed [the prisoner-plaintiff] a duty of protection." *Id.*

Subsequently, in *Laury v. Rodriguez*, 659 Fed. Appx. 837 (6th Cir. 2016), the Sixth Circuit addressed a failure to intervene case that involved force used in a county jail. The plaintiff in that case was an arrestee who alleged that an officer "put his hands around [his] neck and started choking [him]" during the booking process. *Id.* at 841. He further alleged that the officer took him down to the ground and that he and another officer forcibly held him down by putting pressure on his head and neck. *See id.* In addressing the excessive force claim, the Sixth Circuit held that "a reasonable factfinder could conclude that it was unreasonable for [the first officer] to continue to put pressure on [the arrestee's] head and neck when [he] was already restrained on the ground and not struggling or resisting." *Id.* at 845. The court also ruled that "a factfinder could find [the other officer's] use of force was gratuitous and unreasonable" because he put pressure on the arrestee when he was "already subdued and being held down" by the first officer. *Id.* at 847.

After upholding the district court's denial of qualified immunity to the two participating officers, the Sixth Circuit turned its attention to a non-participating officer whom the plaintiff alleged was liable for failing to intervene. The non-participating officer argued that he was dealing with another detainee at the time "and therefore was not in a position to intervene." *Id.* at 847-48.

The Sixth Circuit rejected this argument as "belied" by video footage, which showed him at the scene "for at least a minute" when the officers were holding the arrestee down and appeared to "look directly" at them. *Id.* at 848. Because the defendant "stood by" and watched "while some of the alleged excessive force occurred," the evidence suggested that "he had the opportunity and the means to prevent the harm from occurring." *Id.* (citation & internal quotations omitted). *See also Ortiz ex rel. Ortiz v. Kazimer*, 811 F.3d 848, 853 (6th Cir. 2016) (denying qualified immunity to a non-participating officer when he observed "at least some of the excessive force," which involved pinning a handcuffed boy against a car, "and had the ability and opportunity to stop it").

Finally, in *Kulpa v. Cantea*, 708 Fed. Appx. 846 (6th Cir. 2017), the Sixth Circuit reversed an entry of summary judgment on the plaintiff's failure to intervene claim. In *Kulpa*, corrections officers brought a handcuffed and allegedly-resisting detainee into a holding cell—where they put him face down. *Id.* at 849. One officer kneeled on his torso, with the alleged plan of removing the handcuffs so others could place him in a restraint chair to have medical personnel evaluate him. *Id.* The detainee briefly rolled to his side, but then went back to his chest. *Id.* The officer continued to apply pressure to the detainee's trunk, while some other officers "planted their feet on [his] legs," preventing him from moving them. *Id.* Less than one minute after the officers first placed the detainee face down, the detainee made his "last discernible movement." *Id.* The officer continued to keep pressure on his torso for 40 seconds after that. *See id.* On these facts, the Sixth Circuit found the evidence sufficient for a jury to find that the kneeling officer violated the detainee's Fourteenth Amendment right to be free from excessive force. *Id.* at 851-53.

In addition to suing the kneeling officer for excessive force, the decedent's personal representative sued eight other officers for their failure to intervene in the roughly one-minute-30-second encounter on the ground. These eight defendants saw all or part of the incident from a short distance away. *Id.* at 854. Two of them participated in holding the detainee's legs down; another removed his glasses; and the rest just watched from either inside the cell or right outside. *Id.* In

reversing summary judgment, the Sixth Circuit found that all of them had the opportunity and means to prevent the harm from occurring, "yet none told [the officer] to reposition or apply less pressure, or otherwise attempted to intervene." *Id.* Notably, here, Defendants Sanford and Brogglin had far more time to intervene. Indeed, Defendant Spaulding had his knee on Mr. Higgins's torso and hands in the area of his neck for well over three times as long. As in *Kulpa*, they both had the opportunity and means to intervene, yet neither did, in any degree or at any time—not even during the two minutes after Mr. Higgins's last discernible movement.

In sum, based on clear Sixth Circuit precedent, the evidence is more than sufficient to show that Defendants Sanford and Brogglin had the opportunity and the means to intervene to prevent the harm. In failing to do so, they violated their well-established duty to protect Mr. Higgins.

4. The Individual Defendants' Failures to Summon Timely Medical Care Violated Mr. Higgins's Fourteenth Amendment Rights

Arrestees and pretrial detainees have a Fourteenth Amendment right to adequate medical care. As the defense correctly notes, the Sixth Circuit traditionally analyzed Fourteenth Amendment medical care claims under the same "subjective deliberate indifference" test applied in Eighth Amendment cases of convicted prisoners. Plaintiff could establish deliberate indifference under that test by showing that the detainee had an objectively serious medical need and that the defendant (1) *subjectively knew* that an inmate faced "a substantial risk of serious harm," and (2) "disregard[ed] that risk by failing to take reasonable measures to abate it." *Farmer v. Brennan*, 511 U.S. 825, 843 (1994). Recently, the Sixth Circuit joined other circuits in holding that the Supreme Court's decision in *Kingsley* "requires modification of the subjective prong of the deliberate indifference test." *See Brawner v. Scott Cty.*, No. 19-5623, 2021 U.S. App. LEXIS 28722, *21 (6th Cir. Sept. 22, 2021). Under the modified version of the *Farmer* test, a plaintiff can establish deliberate indifference by showing that the detainee had an objectively serious need or condition that the defendant *either* (1) intentionally ignored, *or* (2) "recklessly failed to act with

reasonable care to mitigate the risk" even though the defendant knew *or should have known* "that the condition posed an excessive risk to health or safety." *Id.* at 21-22.

Viewing the facts in the light most favorable to Plaintiff, it is beyond debate that Mr. Higgins suffered from an objectively serious medical condition,[114] one that resulted in his death, and the defendants do not even attempt to argue otherwise. Thus, the only question for the Court is whether the defendants acted with "deliberate indifference" to that need. While the Court is bound by the Sixth Circuit's decision in *Brawner* and must apply the modified version of the deliberate indifference test, the modification doesn't materially affect this case because Plaintiff can easily show deliberate indifference under either version of the test.

Even under the pre-*Kingsley* test, showing the requisite state of mind did not require an admission by the defendants or direct evidence of their thought process. As the Supreme Court has long made clear, the requisite culpable state of mind in deliberate indifference cases is a "question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence . . . and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842. *See also Estate of Carter v. City of Detroit,* 408 F.3d 305, 313 (6th Cir. 2005) ("In most cases in which the defendant is alleged to have failed to [summon] treatment, there is no testimony about what inferences the defendant in fact drew. Nonetheless, in those cases, a genuine issue of material fact as to deliberate indifference can be based on a strong showing on the objective component."). Here, a factfinder could easily infer that the individual defendants knew full-well that Mr. Higgins needed emergency medical attention when he lost consciousness and that not summoning medical care posed a substantial risk of serious harm to him—because "it was obvious."

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[114] A medical need is objectively serious if it is "one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Phillips v. Roane County*, 534 F.3d 531, 540 (6th Cir. 2008). The seriousness may also be measured by "the effect of delay in treatment." *Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 897 (6th Cir. 2004). Here, Mr. Higgins stopped moving and became nonresponsive. He never regained consciousness. Any lay person would have easily recognized his need for emergency care, and the delay in treatment cost him his life.

To avoid this inescapable conclusion, the defendants claim that after Mr. Higgins "calmed down," as they euphemistically say, "they focused [their attention] on ensuring that [he] stayed in compliance—not in 'reckless disregard' for [his] health but due to concern for their own safety and the safety of the facility." ECF 101-1 at 36. They claim that it was only "shortly after [Mr.] Higgins became fully constrained in the restraint chair" that they first "began having concern for [his] health." *Id.* These claims are not credible, and a jury is "entitled to discount [them]." *Carter,* 408 F.3d at 313 (6th Cir. 2005) (citing *Johnson v. Karnes*, 398 F.3d 868, 876 (6th Cir. 2005)).

Indeed, the defendants insist, even now, that Mr. Higgins had simply "calmed down" when he went unresponsive on the jail floor even though the surveillance video clearly shows them dragging his inert and lifeless body across the hall and heaving him into the restraint chair as dead weight. The jury is clearly entitled to disregard the defendants' spurious suggestion that he had simply "calmed down." Seeing for themselves that Mr. Higgins remained unconscious for the next *seven minutes* (before they wheeled him into in the cell), a jury could easily reject the defendants' purported "focus" on "ensuring that [he] stayed in compliance." And after observing the footage of the defendants checking his pulse, jostling his limp head to look for signs of life, and seeing him fail to react to a sternum rub—during the seven-minute process of gratuitously strapping him into the restraint chair—a jury is free to disbelieve their self-serving claim that they did not become "concern[ed] for his health" until *after* he was "fully constrained" in the chair.

The context is important. When Mr. Higgins suddenly stopped moving, he was lying supine, handcuffed and leg-bound, under the weight of two officers—one of whom was forcibly kneeling on his torso and grasping his neck—in violation of well-established excessive force law, of which the defendants had ample notice. When Defendant Spaulding finally released his grip two minutes later, Mr. Higgins was *obviously* unconscious. It strains credulity to suggest that the defendants "had no idea" that Mr. Higgins was in medical distress or that it would not put him at substantial risk of serious harm if they failed to summon immediate help. Yet, they waited another

ten minutes to do so. Given the video in this case, which the Court must interpret in the light most favorable to Plaintiff, a jury could easily infer subjective *or* objective deliberate indifference. While Plaintiff need only show that the defendants *should have known* of the risk of harm to Mr. Higgins, *see Brawner*, 2021 U.S. App. LEXIS 28722, at *21-22, the video evidence is sufficient for a jury to infer that they *knew* the risk. In sum, the defendants plainly violated Mr. Higgins's Fourteenth Amendment right to adequate medical care for his serious medical needs.

5. Mr. Higgins's Right to Adequate Medical Care was Clearly Established

While the defendants concede that *Brawner* modified the "subjective component" of the deliberate indifference test and replaced it with an "objective" one, they argue that this standard does not apply to the second step of the qualified immunity analysis. Namely, they argue that they "*could not have known* that an objective 'reckless disregard' for a detainee's medical condition could lead to a constitutional rights violation." ECF 101-1 at 37 (emphasis in original). However, the Sixth Circuit flatly rejected the same argument in *Hopper v. Plummer*, 887 F.3d 744 (6th Cir. 2018), where defendants facing excessive force claims based on pre-*Kingsley* conduct argued for qualified immunity because it would not have been clear to them that any claims against them would be governed by an *objective* standard. *See id.* at 755-56. As the court explained, "[W]e have rejected this argument before because 'a defendant is not entitled to qualified immunity simply because the courts have not agreed upon the precise formulation of the [applicable] standard.'" *Id.* (citing multiple cases). "Rather, the relevant question under the clearly established prong is whether defendants had notice 'that [their] ***conduct*** was unlawful in the situation [they] confronted.'" *Id.* at 756 (emphasis added) (quoting *Saucier v. Katz*, 533 U.S. 194, 202 (2001)).

Here, the defendants unquestionably had notice that their conduct was unconstitutional. In addressing the individual defendants' failure to intervene, *supra*, Plaintiff discussed the case of *Kulpa v. Cantea*, 708 Fed. Appx. 846 (6th Cir. 2017), which involved a handcuffed detainee who stopped moving less than a minute after a corrections officer began using his body weight to apply

pressure to the prone detainee's torso. As discussed above, the officer continued to apply pressure for 40 seconds after the detainee stopped moving, while other nearby officers watched. The Sixth Circuit found these facts sufficient to support an excessive force claim and a failure to intervene claim and to deny qualified immunity on both claims. While the above-described facts bear a resemblance to those of the instant case, what happened next in that case is eerily similar. After the officer released the pressure to the detainee, who, by then, was no longer moving, the officers then picked up his limp body and strapped him into a restraint chair, apparently unconscious, and kept him in the chair for five-and-a-half minutes before summoning help. *See id.* at 849-50. The plaintiff's medical experts opined that he died of asphyxiation. *Id.* at 850. In addition to an excessive force claim and a failure to intervene claim, the decedent's estate filed a Fourteenth Amendment claim for failing to summon or provide timely emergency care.

Notably, as in this case, jail video footage depicted the events, and the Sixth Circuit relied on the footage in ruling that "a jury could infer that each officer, standing in or just outside the cell, knew that [the detainee] needed immediate attention." *Id.* at 855. Thereafter, the video showed the detainee "unconscious—his body appear[ed] completely limp—as [officers] picked him up off the ground." *Id.* The video also showed one of the officers pulling and twisting the detainee's arm "without [the detainee] reacting in pain" as they put him in a restraint chair. *Id.* "Once seated in the chair, [the detainee's] head appears tilted back, his eyes shut, his jaw slack. And as the officers [wheeled] him into the cell, his limp body sagged to the left." *Id.* The court then found that "[a] jury could infer from [the detainee's] obvious unconsciousness that the officers knew he needed prompt medical attention" and that "[a] jury could thus conclude that the officers were deliberately indifferent to [the detainee's] serious medical needs." *Id.* Accordingly, the court reversed the district court's grant of summary judgment to the officers.

Kulpa gave the defendants ample notice that failing to promptly summon care for Mr. Higgins would violate clearly established law. So did other Sixth Circuit cases. In *Estate of*

Owensby v. City of Cincinnati, 414 F.3d 596 (6th Cir. 2005), after using force on a handcuffed suspect, officers picked him up, carried him to a police cruiser, "and placed him—handcuffed and possibly unconscious—in the back seat." *Id.* at 600. Although multiple officers "were either on the scene or in the immediate vicinity," none of them "attempted to provide medical care" to the arrestee. *Id.* at 600-01. "Approximately six minutes after [the arrestee] was placed in the [police] cruiser," an officer checked on him and discovered that he wasn't breathing. *Id.* at 601. Only then did officers remove him and start CPR; however, the resuscitation efforts were unsuccessful, and he died of asphyxiation. *Id.* Given a six-minute delay in providing or summoning medical care for the arrestee—the Sixth Circuit found sufficient evidence of deliberate indifference. *See id.* at 603.

Other cases in this jurisdiction likewise provided the defendants sufficient notice that their conduct in in March 2019 was unconstitutional. *See, e.g.*, *Jones v. City of Cincinnati,* 521 F.3d 555, 560 (6th Cir. 2008) (denying qualified immunity in a Fourteenth Amendment deliberate indifference case where officers allegedly failed to provide medical care to a restrained suspect who was not breathing); *Coley v. Lucas Cnty.*, No. 3:09-CV-00008, 2014 U.S. Dist. LEXIS 6331, at *27 (N.D. Ohio Dec. 17, 2014) ("Failing to resuscitate or immediately call medical personnel in response to an unconscious, non-breathing prisoner clearly rises to the objective level of a constitutional violation."); *Glomski v. Cnty. of Oakland*, No. 05-70503, 2007 U.S. Dist. LEXIS 22395, at *8 (E.D. Mich. Mar. 28, 2007) (finding sufficient evidence of deliberate indifference when defendants did not immediately summon "emergency medical attention" for a prisoner who was "completely unconscious"). In sum, the Fourteenth Amendment right of Mr. Higgins to emergency medical care in his condition was clearly established in March 2019.

B. Obion County is Liable Under *Monell*

Municipalities are subject to § 1983 liability when the harm-causing acts or omissions of their employees result from the actual or *de facto* policies or customs of the entity employing them. *See Monell v. Dept. of Soc. Services of City of New York*, 436 U.S 658, 690-91 (1978). Under

Monell, a custom can be one of action or inaction and need not be formally approved by the entity. *City of Canton v. Harris*, 489 U.S. 378, 404 (1989).

Unconstitutional policies or customs can be shown in different ways. This includes the entity's failure to adequately train to its employees for the tasks they are expected to perform when the inadequacy results from the entity's deliberate indifference and is closely related to the victim's injury. *Plinton v. Cnty. of Summit*, 540 F.3d 459, 464 (6th Cir. 2008). A single violation of federal rights, accompanied by showing that a municipality has failed to train its employees to handle recurring situations presenting an obvious *potential* for a constitutional violation, can trigger entity liability. *Shadrick v. Hopkins Cnty.,* 805 F.3d 724, 739 (6th Cir. 2015). The entity's deliberate indifference can be inferred from its failure to train, as can an inference of causation, especially in the context of a jail, from showing that employees "lack the essential knowledge, tools, preparation and authority to respond" to situations they are likely to encounter. *Id.* at 739-40. "The Sixth Circuit permits the use of expert testimony in establishing failure to train claims." *Askew v. City of Memphis*, No. 14-cv-02080-STA, 2016 U.S. Dist. LEXIS 88468, at 40 n.88 (W.D. Tenn. July 8, 2016) (citation omitted). *See also Russo v. City of Cincinnati*, 953 F.2d 1036, 1047 (6th Cir. 1992) ("Especially in the context of a failure to train claim, expert testimony may prove the sole avenue available to plaintiffs to call into question the adequacy of a municipality's training procedures."). In this case, there is copious evidence of the County's failure to train—more than enough to defeat summary judgment.

The Obion County Sheriff's Office was responsible for operating a sizeable jail with well over 100 inmates at any given time and numerous arrestees being brought in on any given shift. The jailers would have endeavored to follow any training the County provided. Though the jailers were authorized to use force and expected to do so, the County provided no specific training on the constitutional limits relating to that expected task. The county's written use-of-force policy was one paragraph, with an ambiguous three-page continuum, and officers were given only a

single hour of training on the policy. In the judgment of Plaintiff's correctional practices expert, this was clearly deficient given the duties the jailers were expected to perform. Despite a wealth of clearly established law in the Sixth Circuit on the subject, the County failed to train its officers in any respect about the dangers of restraint-related asphyxia or neck restraints. Defendant Spaulding admitted that he had no specific training on the constitutional limits on the use of force and no training on any form of restraint-related asphyxia or suffocation. Defendant Sanford gave similar testimony. And neither the sheriff nor the jail's commander could identity any policy or training on the dangers of neck restraints or restricting blood oxygen supply when using force.

In the context of deaths resulting from asphyxia, courts have routinely found that such training deficiencies support *Monell* liability after only a single incident—even when officers are state-certified and when (*unlike* here) the municipality has a written policy on the subject. *See, e.g.*, *Valenzuela v. City of Anaheim*, No. 17-00278, 2019 U.S. Dist. LEXIS, at *15-19 (C.D. Cal. June 25, 2019) (failing to train officers about the risk of applying neck restraint on panicked and resistive inmates sufficient to support § 1983 liability against city—based only on single incident); *Martin v. City of Broadview Heights*, No. 1:08-cv-2165, 2011 U.S. Dist. LEXIS 92466, at *30-32 (N.D. Ohio Aug. 18, 2011) (finding mere written directive on restraint-related asphyxia, without specific training, sufficient to support *Monell* liability); *Pirolozzi v. Stanbro*, No. 5:07-cv-798, 2008 U.S. Dist. LEXIS 36054, at* 30-36 (N.D. Ohio May 1, 2008) (denying summary judgment despite general instructional program, where city did not train "about positional or compressional asphyxia"); *Lawrence v. City of San Bernadino*, No. 04-00336, 2006 U.S. Dist. LEXIS 97183, at *19 (C.D. Cal. May 17, 2006) (failing to adequately train officers on neck restraint sufficient to defeat summary judgment on single-incident *Monell* claim); *Blair v. City of Cleveland*, 148 F. Supp. 2d. 894, 908-910 (N.D. Ohio 2000) (denying summary judgment to city where it "failed to adequately train its officers in the use and/or advisability of neck restraints.").

But these training deficiencies are not the only basis to support Plaintiff's failure-to-train claim. Mr. Higgins could have been saved if medical care had been promptly summoned. Yet, as confirmed by the jail's officers and by the report of Plaintiff's correctional healthcare expert, the County failed to train its officers on their obligation to recognize emergency conditions and secure medical care for detainees in need—even after a restraint-related medical event like this one and even though the County routinely had no nurse or medical professional at the jail during the shift in question. This also supports *Monell* liability. *See, e.g., Jimenez v. Hopkins County,* No. 4:11-cv-00033, 2014 U.S. Dist. LEXIS 3722, *49-54 (W.D. Ky. Jan. 13, 2014) (finding county's lack of training on how to respond to medical emergencies of jail inmates and when to notify medical staff supports *Monell* liability after a single incident—despite the completion of minimum state-required training), *rev'd on other grounds,* 805 F.3d 724 (6th Cir. 2015); *Morris v. Dallas County*, 960 F. Supp. 2d 665, 688 (N.D. Tex. 2013) (failing to train corrections officers to recognize and respond to medical needs by informing appropriate medical personnel supports *Monell* liability after only a single incident); *Tandel v. County of Sacramento*, No. 2:11-cv-00353, 2012 U.S. Dist. LEXIS at *58-59, 63 (E.D. Calif. Feb. 22, 2012) (failing to properly train custody staff on detecting the need for medical care and responding appropriately sufficient to defeat summary judgment to county); *Glomski v. County of Oakland*, No. 05-70503, 2007 U.S. Dist. LEXIS 22395, at *25-27 (E.D Mich. Mar. 28, 2007) (finding county's failure to train jailers on how to properly respond to an inmate's obvious medical emergency when there was no medically-trained person on duty sufficient to defeat summary judgment on single-incident *Monell* theory).

The County makes much of the fact that its staff was required to complete "minimum" training provided by the Tennessee Corrections Institute and suggests that courts "consistently" refuse to find municipal liability when officers complete minimum state training. *See* Def. Mem. at 13-14. In fact, this Court and others have routinely *rejected* the argument that officers' completion of state-mandated minimums insulates municipalities from § 1983 liability. For

example, in *Askew v. City of Memphis*, No. 14-cv-02080-STA-tmp, 2016 U.S. Dist. LEXIS 88468 (W.D. Tenn. July 8, 2016), this Court considered a motion for summary judgment by the City of Memphis arising from a fatal shooting of a person in a parked car. The city argued that its officers had completed basic training on search and seizure and the constitutional use of force and that this complied with Tennessee requirements—in addition to 40 hours of annual in-service training. *Id*. at *38. The Court nevertheless rejected the city's motion for summary judgment, finding sufficient evidence to show (on a single-incident theory) that the city did not specifically train its officers how to deal with suspicious vehicles with a possible intoxicated person inside. *Id*. at *39-41. Other courts in our circuit have also rejected similar arguments, including in the jail context. *See Jimenez,* 2014 U.S. Dist. LEXIS 3722, at *50-51 ("That the deputy jailers received the bare minimum training required by the state does not mean that they received adequate training in this particular area of jail administration . . . . [S]uccessful completion of state mandated training alone is insufficient to demonstrate adequate training regarding medical needs in the prison setting."). *See also Thomas v. City of Shaker Heights*, No. 1:04-cv-2015, 2006 U.S. Dist. LEXIS 2095, at *22-25 (N.D. Ohio Jan. 20, 2006) (rejecting claim that training was adequate because it was completed based on state template). And although the County contends that completion of minimum state-mandated training insulates it from liability, it offers no evidence about what that training entailed or why it overrides Plaintiff's evidence that its officers were not *adequately* trained.

Monell liability is also supported by Obion County's practice of insufficiently staffing its jail by failing to ensure that there was at least one CPR trained and certified staff member per shift. The County's notice of this requirement is not in dispute. As explained in the reports of Plaintiff's correctional healthcare expert and jail practices expert, the TCI mandated it. Yet, the jail did not have a single staff member on the shift in question who was so trained. This requirement and its breach are not disputed. Nor does the County dispute that *had* there been a staff member with the required training, Mr. Higgins's life would likely have been saved. The County instead takes the

position (without providing any documentation) that its failure was not a "practice," but rather a one-off occurrence caused by the unexpected illness of a CPR-trained guard who called in sick.

On this point, Plaintiff has created a genuine issue of material fact by demonstrating that the four guards who worked the shift in question (none of whom had CPR training) were the ones who *regularly* worked the shift together—without anyone else. But even putting that aside, and even accepting Obion County's explanation, the county's jail commander admitted that there was no policy for how to address the unexpected absence of a CPR-trained staff member to ensure compliance with the TCI requirement. As a result, there was no jail employee on the shift with the skill and training to respond to Mr. Higgins's medical emergency. Given the importance of this requirement to the welfare of detainees, its mandatory nature, clear notice to the County, the fact that its very purpose was to address the predicable likelihood that inmates would have CPR-worthy medical needs, and the County's lack of any policy to address what would happen if the solitary CPR-trained employee "called in sick," Plaintiff can easily show the County's *Monell* liability. *See Jimenez,* 2014 U.S. Dist. LEXIS at *53-54.

Finally, there is the issue of the final policymaker's own admission. After viewing all relevant video of the events (including the force used, the failures to intervene, and the failure to promptly summon medical aid), Sheriff Jackson testified that his officers "follow[ed] the policies and expectations of the Obion County Sheriff's Office." Obion County says this evidence is inconsequential because "ratification" is only meaningful if it was a moving force behind the constitutional violation. This is a red herring, because the sheriff's testimony is not being offered to show "ratification" in the legal sense. Rather, it's a simple and plain admission that constitutes additional evidence of the County's policy and training deficiencies.

V. CONCLUSION

For the reasons stated above, this Court should deny the Obion County Defendants' Motion for Summary Judgment in its entirety.

DATED this 28th day of October, 2021.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date stated below this document was filed with the Clerk of the Court for the United States District Court for the Western District of Tennessee, Eastern Division, via the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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