In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2255

IZARIAH JUMP and ESTATE OF JONAH MARCINIAK,
by Special Administrator BRENDA MROCH,

Plaintiffs-Appellants,

v.

VILLAGE OF SHOREWOOD, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 2:19-cv-1151 — **Nancy Joseph**, *Magistrate Judge*.

ARGUED FEBRUARY 16, 2022 — DECIDED AUGUST 2, 2022

Before RIPPLE, SCUDDER, and KIRSCH, *Circuit Judges*.

KIRSCH, *Circuit Judge*. Jonah Marciniak died after hanging himself in his holding cell. That tragedy occurred after three officers of the Shorewood Police Department, Thomas Liebenthal, Cody J. Smith, and Nicolas Taraboi, had arrested Marciniak after finding Eric Harper, Marciniak's roommate, lying on the ground four stories beneath the open window to their shared apartment bedroom. Inside the apartment, the

officers had found broken glass, blood droplets, and a naked, intoxicated Marciniak.

Marciniak's son, Izariah Jump, and estate sued the Village of Shorewood and the three officers under 42 U.S.C. § 1983, pursuing both federal and state claims over Marciniak's arrest and death. After the district court granted the defendants' motion for summary judgment, Jump appealed his false arrest claim against all three officers and his failure to protect claim against Sgt. Smith. We agree with the district court that the officers had probable cause to arrest Marciniak and that Sgt. Smith's actions were not objectively unreasonable, so we affirm.

I

A

At 1:35 am on August 15, 2016, Sgt. Cody J. Smith and Officer Nicolas Taraboi, joined by another officer and members of the North Shore Fire Department, responded to a dispatch regarding a "male subject that fell out of a fourth story window." Upon arrival, they indeed found Eric Harper lying on the ground below an open fourth story window. Officer Taraboi observed blood and bruising on Harper's face, scrapes on his legs, and his left arm contorted under his body. The EMT report also stated blood was visible coming from the back of Harper's head. Although alive, Harper could not speak words to Sgt. Smith and Officer Taraboi, and neither heard him speak to fire department personnel.

Determining Harper fell from apartment number 10, Sgt. Smith, Officer Taraboi, and the other officer entered the building. Lack of a response from the apartment prompted the officers to force entry. Inside, they found Jonah Marciniak lying

naked and unconscious on a bed near the open window. He had no apparent injuries. They also observed drops of blood on the bed and on a piece of mail next to the window as well as broken glass on the bed and on Marciniak's back. The window screen had been removed, a lamp broken, and the mattress was askew.

During this investigation, the officers related to each other a couple recent incidents involving Marciniak and the apartment. The third officer told Sgt. Smith and Officer Taraboi that responders had come to the apartment just a few days prior because Marciniak had overdosed on heroin. Sergeant Smith himself had responded to a disorderly conduct call at the location a few weeks earlier involving Marciniak and Harper. Marciniak and Harper had each claimed the other had started the argument, no one was arrested, and Sgt. Smith left the incident believing the two were in an intimate relationship.

Meanwhile, Marciniak regained consciousness and told Officer Taraboi he had had some drinks, fallen asleep, and had no memory of arguing with Harper. The officers informed him that Harper had fallen out of the window and been taken to the hospital. Officer Taraboi thought Marciniak was under the influence of alcohol or drugs. The officers removed Marciniak from the apartment building while Sgt. Smith reported all these events to his supervisor, Lt. Thomas Liebenthal. Following Lt. Liebenthal's orders, Sgt. Smith told Officer Taraboi to handcuff Marciniak and transport him to the Shorewood police station for questioning.

After placing him in one of the department's municipal lockup cells, separate from the general jail population, Sgt. Smith and Officer Taraboi completed the standard booking

and health screening form. The form, per Lt. Liebenthal, is to make officers aware of potential health risks or suicide related issues. Sergeant Smith filled out the form and signed it, noting Marciniak appeared to be under the influence of alcohol or drugs. The form contains three questions about mental health and suicide, all of which Sgt. Smith was required to fill out. First, the form asks, "Have you ever had psychiatric treatment? Explain." This was marked "Yes," but no explanation given. The form also asks, "Have you ever attempted or are you now considering suicide?" Sgt. Smith marked that Marciniak answered this "No." Per Sgt. Smith, Officer Taraboi asked Marciniak this question, and Marciniak answered in the negative. Last is the section entitled "Prisoner placed on suicide watch and supervisor notified," with a space for "Remarks." This row was left blank—Sgt. Smith marked neither "Yes" nor "No." Sergeant Smith also testified that Marciniak later volunteered to Smith that Marciniak was not suicidal.

While Sgt. Smith—assigned to check on Marciniak—was doing paperwork, an agitated Marciniak made loud noises, prompting Smith to make multiple cell checks throughout the early morning hours. Sergeant Smith did visual welfare checks at 2:54, 3:12, 3:16, 3:23, 3:33, and 4:19 am. In the 46-minute gap between 3:33 and 4:19, Marciniak used his t-shirt to hang himself. After Sgt. Smith found Marciniak hanging from the bars with the t-shirt around his neck and his face yellow, Smith cut him down and radioed for help but did not perform CPR. Paramedics stationed in the same building arrived and performed CPR on Marciniak. Sergeant Smith promptly falsified the booking sheet to show that he had checked in on Marciniak at 4:10 am. Marciniak was taken to a hospital where he died six days later.

B

Izariah Jump, Marciniak's son, and Brenda Mroch, Special Administrator for Marciniak's estate, sued the Village of Shorewood, Lt. Liebenthal, Sgt. Smith, and Officer Taraboi. Their complaint alleged that the three officers falsely arrested Marciniak without probable cause, violating his Fourth Amendment rights, and failed to provide medical care and attention and to protect from self harm. The defendants moved for summary judgment. Granting it, the district court concluded (1) the undisputed facts established the officers had probable cause to arrest Marciniak for domestic violence; and (2) a reasonable jury could not find the officers' actions in the period leading to Marciniak's death were objectively unreasonable. Ending each claim there, the district court did not need to deal with the defendants' alternate grounds for summary judgment, qualified immunity.

C

Jump raises two distinct issues on appeal, one relating to Marciniak's arrest and one to his suicide. Both concern whether the officers violated Marciniak's Fourth Amendment rights. Jump first contends the district court erred in finding the officers had probable cause to arrest Marciniak for a crime. Second, Jump argues the district court erred in finding Sgt. Smith's actions not objectively unreasonable in his treatment of Marciniak as a pretrial detainee.

II

Jump challenges the district court's conclusion that the three officers had probable cause at arrest. "The existence of probable cause to arrest is an absolute defense to any § 1983 claim against a police officer for false arrest … ." *Abbott v.*

Sangamon County., 705 F.3d 706, 713–14 (7th Cir. 2013). We review determinations at summary judgment de novo. *Cibulka v. City of Madison*, 992 F.3d 633, 638, (7th Cir. 2021).

A

The district court found that the officers had probable cause to arrest Marciniak for the crime of domestic abuse. The briefing of both parties accepted this premise and debated whether probable cause existed for domestic abuse under Wis. Stat. § 968.075 ("'Domestic abuse' means any of the following engaged in by an adult person … against an adult with whom the person resides or formerly resided … : 1. Intentional infliction of physical pain, physical injury or illness. 2. Intentional impairment of physical condition.").

Right away we hit a snag: section 968.075 is not a criminal liability statute. It is, as the officers point out, a mandatory arrest statute, requiring officers to arrest possible aggressors. But domestic abuse is not a freestanding crime under Wisconsin law. See *State v. Neis*, No. 2009AP1287-CR, 2010 WL 2772679, at *4 (Wis. Ct. July 15, 2010) (Section 968.075(1)(a) "plainly governs law enforcement procedures in domestic abuse cases. It does not create criminal liability for the domestic abuse perpetrator.").

Rather, the statute works as a kind of sentencing rider. Prosecutors attach domestic abuse as defined in § 968.075 to a state crime to trigger Wisconsin's domestic abuse assessment, § 973.055, or to add an additional year of probation under § 973.09(2)(a)1.b. See, e.g., *State v. Edwards*, 830 N.W.2d 109, 112 (Wis. Ct. App. 2010) ("[T]he complaint mentions 'domestic abuse' and 'invok[es] the provisions of sec. 968.075(1)(a), Wis. Stats., because this charge is an act of domestic abuse,

costs upon conviction would include the domestic abuse assessment.'"). The domestic abuse rider is always paired with an actual Wisconsin criminal offense. As far as we can tell, Wisconsin prosecutors never charge domestic abuse as a free-standing crime. That is, no doubt, why the Wisconsin Supreme Court calls § 968.075(1)(a) "the domestic abuse modifier." *State v. Lagrone*, 878 N.W.2d 636, 639 (Wis. 2016). The statute is a modifier for sentencing purposes and victim-protection purposes. It's not a criminal liability statute. That § 968.075 is not a criminal liability statute precludes it from being a predicate offence in our probable cause analysis for § 1983 false arrest claims. See *Abbott*, 705 F.3d at 715 ("The existence of probable cause … depends, in the first instance, on the elements of the predicate criminal offense(s) as defined by state law.").

But that is not a fatal issue here. The officers have alternatively argued, both below and on appeal, that they had probable cause to arrest Marciniak for battery. At summary judgment, the defendants argued that the "evidence showed probable cause for arrest … for simple battery." And in their appellate brief, the officers kept that argument alive, alleging "the evidence of an altercation in the apartment bedroom … would give a reasonable officer good reason to believe that … probable cause supported Marciniak's arrest for … battery." And it does not matter what crime(s) for which the officers subjectively thought they had probable cause at the time of arrest. The Supreme Court has made clear that "an arresting officer's state of mind (except for the facts that he knows) is irrelevant to the existence of probable cause." *Devenpeck v. Alford*, 543 U.S. 146, 153 (2004). Since that decision, we have held that "an arrest can be supported by probable cause that the arrestee committed any crime." *Abbott*, 705 F.3d at 715.

In lieu of § 968.075, we focus on Wisconsin's criminal battery statute, Wis. Stat. § 940.19. Section 940.19 establishes criminal liability for both simple battery ("[w]hoever causes bodily harm to another by an act done with intent to cause bodily harm to that person or another without the consent of the person so harmed is guilty of a Class A misdemeanor," *id.* § 940.19(1)) and substantial battery ("[w]hoever causes substantial bodily harm to another by an act done with intent to cause bodily harm to that person or another is guilty of a Class I felony," *id*. § 940.19(2)). Both simple and substantial battery share three elements: (1) causation, (2) harm, and (3) intent. See *State v. Martin*, 456 N.W.2d 892, 895 (Wis. Ct. App. 1990). Simple battery adds a fourth element, that the act is done without the consent of the person harmed. Wis. Stat. § 940.19(1); see *State v. Giwosky*, 326 N.W.2d 232, 234–35 (Wis. 1982) (citing "the four elements of [simple] battery" as bodily harm, causation, intent, and lack of consent). Criminal intent in Wisconsin can be inferred from a party's overt acts and conduct and inferences fairly deducible from the circumstances. *State v. Lunz*, 273 N.W.2d 767, 772 (Wis. 1979). The levels of harm are statutorily defined. "'Bodily harm' means physical pain or injury, illness, or any impairment of physical condition," Wis. Stat. § 939.22(4), while "'[s]ubstantial bodily harm' means bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a petechia; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth," *id*. § 939.22(38).

B

Equipped with a suitable predicate criminal offense, we turn to the absolute defense of probable cause. It exists at

arrest when a reasonable officer with all the knowledge of the on-scene officers would have believed that the suspect committed an offense defined by state law. *Jones v. Clark*, 630 F.3d 677, 684 (7th Cir. 2011). The Supreme Court has admonished us not to dissect every fact in isolation but to look at the totality of the circumstances—the whole picture. *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018). We do not ignore circumstances susceptible to innocent explanation but look to the degree of suspicion attached to particular types of possibly noncriminal acts. *Id*.

Here, the suspect was Marciniak, the state crime battery, and the moment of arrest Marciniak's handcuffing. We accept the officers' argument (and Jump's implicit agreement) that Marciniak was arrested when Officer Taraboi handcuffed him and placed him inside his squad car. A reasonable person in Marciniak's position would have understood the situation to constitute a restraint on his freedom of movement to the degree which the law associates with formal arrest. See *Tebbens v. Mushol*, 692 F.3d 807, 816 (7th Cir. 2012).

At that moment of handcuffing, under the totality of the circumstances, probable cause to arrest for battery existed. The officers came upon a man who fell from a fourth story bedroom window at 1:30 in the morning with the fall victim's roommate—with whom he had a history of conflict known to the police—passed out on the bed in a disheveled room containing broken glass and drops of blood. Enough facts supported a reasonable officer's inference that (1) Marciniak had intent to cause bodily harm; (2) Harper had suffered at least bodily harm, probably substantial bodily harm; and (3) Marciniak had caused that harm. Intent and causation could be inferred by these circumstances known to the officers: the

broken glass, broken lamp, and spots of blood around the bed close to the window; Marciniak's condition; and the earlier disturbance call in which Harper claimed Marciniak was an aggressor. As to harm, the officers saw Harper in fairly bad shape: his arm was contorted and he had blood coming from his head.

Jump attacks each circumstance, attempting to negate the degree of suspicion attached to each. Jump first contends summary judgment was precluded because Harper told the defendant officers that Marciniak did not push him out of the window. Harper said afterward that he told a "policeman" and paramedics on scene that Marciniak had not pushed him out the window, that he answered "no" twice to whether he was pushed or jumped, and that he told the officers "be careful with [Jonah]. His brain space isn't in a good place." But in the district court, Jump did not dispute the testimony of Sgt. Smith and Officer Taraboi—that neither heard what Harper tried to say to the fire department personnel. Jump did not dispute Harper was "unable to speak words" to Sgt. Smith and Officer Taraboi and was "uncommunicative." There is no evidence—disputed or otherwise—that Sgt. Smith, Officer Taraboi, or Lt. Liebenthal heard directly or heard about Harper's alleged statements. In any case, even if the officers did hear Harper's words, they did not have to credit them in their assessment of the situation. After all, "[a]cts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions." *Giles v. California*, 554 U.S. 353, 377 (2008). And the totality of the other circumstances was enough to establish probable cause regardless of whatever Harper said. See *Outlaw v. Newkirk*, 259 F.3d 833, 838 (7th Cir. 2001) (no genuine

issue of material fact when "defendants would be entitled to summary judgment even assuming the truth of [plaintiff's] version of the incident").

Next, Jump points to three circumstances that do not, in his view, indicate a crime had occurred—officer interaction with Marciniak, the condition of the bedroom, and the prior arguments between Marciniak and Harper. Citing *Williams v. City of Chicago*, 733 F.3d 749, 756 (7th Cir. 2013), Jump says Marciniak's physical presence in the apartment cannot support probable cause without further indicia of involvement. True enough. But when, as here, there *are* further indicia, police are allowed to take a suspect's physical presence into account. So Jump assails some of those further indicia, like the disheveled room, the shards of glass, and the drops of blood. These, per Jump, could have come about for any number of reasons and have a low degree of suspicion associated with them. But we do not accept innocent explanations for one circumstance while divorcing it from the rest. The police were entitled to view the state of the room—featuring broken glass and blood—as having a significant degree of suspicion alongside the rest of the circumstances. Jump also tries to negate the prior disorderly conduct call by claiming Marciniak was the victim of Harper, but Smith testified that both Marciniak and Harper claimed at the time the other had started the argument. Smith and the others were certainly entitled to credit Harper's version of the previous incident when faced with the rest of the facts in the apartment—including that Harper himself had taken a four-story fall. Taking reasonable inferences in Jump's favor on appeal does not require us to second guess officers' reasonable inferences made on the scene.

Jump thinks the officers unreasonably disregarded exculpatory evidence—a cell phone video and the potential statement of the eyewitness who took the video. According to Jump, the video shows Harper falling out of the window and gives no indication he was pushed. He cites *BeVier v. Hucal*, 806 F.2d 123, 128 (7th Cir. 1986), for the notion that police officers must pursue reasonable avenues of investigation to establish probable cause, especially when it is unclear whether a crime had taken place. We went on to specify in *BeVier*, however, that an arresting officer must seek out only information that "could have been easily obtained and was necessary" to conclude a crime had been committed. *Id.* That is not a free-standing affirmative duty for officers to pursue all avenues of investigation before arrest. Rather, it follows the "well-settled" rule that "once detectives have performed a good-faith investigation and assembled sufficient information from the totality of the circumstances to establish probable cause, they are not required under the Constitution to continue searching for additional evidence." *Driebel v. City of Milwaukee*, 298 F.3d 622, 643–44 (7th Cir. 2002) (emphasis omitted). Only readily obtainable information necessary and sufficient to establish probable cause needs to be sought out by investigating officers.

Here, there's no question the officers collected information necessary and sufficient to arrest Marciniak for battery independent of the video or the eyewitness's potential statements. After finding Harper, entering and observing the apartment, and speaking to Marciniak, the officers had all they needed to arrest him for battery. They had no obligation to seek out this allegedly exculpatory evidence.

Finally, Jump contends that the officers expressed on scene that they did not have probable cause for arrest. But subjective thoughts, expressed or not, are utterly immaterial in challenging the sufficiency of probable cause for arrest. See *Abbott*, 705 F.3d at 714; *Devenpeck*, 543 U.S. at 153.

We see plenty of facts here that, viewed together, established probable cause for battery. Therefore, the officers have an absolute defense to this § 1983 false arrest claim.

C

Even if the officers did not have probable cause to arrest for battery, they are still entitled to qualified immunity. Jump has the burden to defeat qualified immunity "either by identifying a closely analogous case or by persuading the court that the conduct is so egregious and unreasonable that, notwithstanding the lack of an analogous decision, no reasonable officer could have thought he was acting lawfully." *Abbott*, 705 F.3d at 723–24; see also *Wesby*, 138 S. Ct. at 589–90.

Jump takes the first route—identifying a closely analogous case—and offers us two options: (a) it was clearly established that an arrest made without probable cause violates the Fourth Amendment; and (b) it was clearly established that police forcibly removing a person from their home, detaining him, and transporting him to the police station in handcuffs for investigative purposes violates the Fourth Amendment under *Dunaway v. New York*, 442 U.S. 200, 209 (1979) (holding that seizing and transporting a suspect to a police station for interrogation without probable cause violated the Fourth Amendment) and *Hayes v. Florida*, 470 U.S. 811, 816 (1985) (reaffirming *Dunaway* and holding that such seizures without

judicial supervision are sufficiently like arrests and violate the Fourth Amendment absent probable cause).

We've repeatedly told litigants the first option is at an impermissibly high level of generality for qualified immunity purposes. See, e.g., *Zimmerman v. Doran*, 807 F.3d 178, 183 (7th Cir. 2015) ("It is not enough to simply assert that it was clearly established law that officers need probable cause to arrest a person"); see also *Wesby*, 138 S. Ct. at 590. And Jump's second option ignores that he was arrested at handcuffing. An arrest is an arrest. We ask only whether the officers had probable cause at that point. What happened afterward is irrelevant, as are analogies to *Dunaway* and *Hayes*. Yes, the Supreme Court was clear that officers cannot just drag people down to the station for the purpose of questioning. But "bringing someone in for questioning" is not the Fourth Amendment activity challenged in this false arrest claim; the arrest is. And to the extent *Dunaway* and *Hayes* reaffirm the established rule that arrests lacking probable cause violate the Fourth Amendment, that brings us full circle to the same generality problem as before.

At no point has Jump presented us with a closely analogous case putting these officers on notice that their conduct violated the Fourth Amendment. He certainly has not shown any case law establishing what constitutes probable cause under the Wisconsin statutes for battery or even domestic abuse. We've seen no case in which officers confronted with these disturbing facts—a defenestrated man below an open window of an apartment containing broken glass and drops of blood in the early morning hours—were found to have violated the Fourth Amendment by arresting someone for battery.

III

The second part of Jump's appeal concerns the events at the jail leading up to Marciniak's death. The district court found Smith not to have acted objectively unreasonably in those moments, and Jump now challenges that conclusion. We review de novo a district court's entry of summary judgment based on objective reasonableness. *Pulera v. Sarzant*, 966 F.3d 540, 549 (7th Cir. 2020).

Jump's complaint listed three § 1983 claims against the defendants: failure to provide medical care and attention and failure to protect from self harm. Jump appeals all claims—though only as to Sgt. Smith.

The Fourth Amendment protects arrestees before a *Gerstein* probable cause finding, *Pulera*, 966 F.3d at 549 (citing *Gerstein v. Pugh*, 420 U.S. 103 (1975)), the Fourteenth Amendment after a finding of probable cause, *id.*, while the Eighth Amendment protects convicted prisoners, *Miranda v. County of Lake*, 900 F.3d 335, 350 (7th Cir. 2018). Pretrial confinement claims like Jump's—whether characterized as arising under the Fourth or Fourteenth Amendment[1]—are analyzed via the objective reasonableness standard. *Pulera*, 966 F.3d at 550.

Under this standard, the nonmoving plaintiff has the burden to provide evidence that the defendants' actions were

[1] Marciniak never had a *Gerstein* hearing, so our current precedents suggest this is a Fourth Amendment objective unreasonableness claim. Still, we've twice suggested our distinction between pre and post hearing detention needs reexamined after *Manuel v. City of Joliet*, 137 S. Ct. 911, 917–19 (2017). See *Pulera*, 966 F.3d at 549 n.1; *Otis v. Demarasse*, 886 F.3d 639, 645 n.27 (7th Cir. 2018). Both parties here, however, agree that the same objective reasonableness standard governs either way, so we once again put off this discussion.

objectively unreasonable and caused his injuries. *Id.* We view this objective standard not mechanically but in light of the totality of the facts and circumstances of each particular case. *Id.*; *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). Summary judgment is due defendants when no rational jury could find the official's actions objectively unreasonable under the circumstances. *Pulera*, 966 F.3d at 551, 555. And when an officer has no reason to think a detainee is suicidal, it is not objectively unreasonable to take no special precautions. *Id.* at 555.

Pulera is on point. There, Pulera, who was intoxicated, was arrested and booked into a pretrial facility. *Id.* at 545. Another detainee (Pulera's cousin) told multiple officers that he worried Pulera might hurt himself. *Id*. An officer screened Pulera using a standard mental health form, noting Pulera was on prescription medications and his brother had committed suicide one year prior. *Id.* The officer marked down that he saw no behavior suggesting a risk of suicide, and Pulera told the officer he was not presently contemplating suicide. *Id.* Pulera made three medical requests about his prescription medications, stating he could die if he did not receive them. *Id.* at 546–47. While speaking with multiple medical professionals, Pulera told none of them he had suicidal thoughts. *Id.* at 547. He nonetheless later tried to hang himself with bed sheets in his cell. *Id.* We affirmed summary judgment, holding no reasonable jury could find any of the state officials objectively unreasonable in their actions. *Id.* at 556. We did not imply, as the dissent suggests, that the facts known by the various defendants would add up to notice of potential suicide had any one individual defendant known all of them. This case is factually indistinguishable from *Pulera*.

Jump disagrees and thinks a jury should see this case. He presents several facts he believes satisfy his burden to provide evidence Sgt. Smith was objectively unreasonable: Marciniak's being under the influence and having overdosed a few days earlier; Smith's observation of Marciniak crying and asking for Harper; Marciniak's telling Smith he had past psychiatric treatment; general signs of distress such as Marciniak's slamming his body against the cell bars; the health screening form's failure to flag whether Marciniak was suicidal; and the 45 minutes between wellness checks. From these, Jump argues, a reasonable jury could conclude Sgt. Smith was on notice of Marciniak's suicidal ideation and in fact put him on suicide watch, making Smith objectively unreasonable.

But—with *Pulera* in mind—each of these facts would not have made a reasonable officer in Sgt. Smith's position think Marciniak was a suicide risk. First, and most dispositively, we have no facts that Marciniak told Sgt. Smith or Officer Taraboi he was suicidal. In fact, Sgt. Smith testified Marciniak had affirmatively told both the opposite. See *Pulera*, 966 F.3d. at 554 (state official "was not even negligently responsible for a suicide risk that Pulera never told her about."). The dissent concludes that a jury could find Sgt. Smith lied on that count, but it's undisputed the intake form indicated Marciniak affirmatively said the opposite. And Marciniak's general distress and history of psychiatric treatment would give a reasonable officer notice of general distress and a history of psychiatric treatment, not risk of suicide. See *id.* at 553 (medical request for medications did not give a nurse "notice of any serious problems, let alone a risk of suicide"). Nor was the 45 minutes between checks unreasonable. Adding in extra checks would be a special precaution—that's why Shorewood policy was to

check every 15 minutes for suicide risks. But Marciniak never gave Sgt. Smith reason to think Marciniak might attempt suicide, so no extra steps were required. See *id.* at 555 ("not unreasonable" for official to take "no special precautions" against suicide when official had no reason to believe detainee was a suicide risk).

Nor do the facts bear out that the officers consciously treated Marciniak as a suicide risk. Both Officer Taraboi and Sgt. Smith testified Marciniak told them he was not suicidal, and Smith marked down that Marciniak was not contemplating suicide at that time. It is true that Sgt. Smith's failure to fill in the required suicide watch section introduces some ambiguity into this case. But drawing positive inferences in Jump's favor does not require us to conclude that the officers put Marciniak on suicide watch. All we know is that they failed to follow protocol and that—according to the same form—Marciniak had told them he was not contemplating suicide. This is simply not enough to create a reasonable inference that they did in fact treat Marciniak as a suicide risk. And Sgt. Smith's repeated welfare checks weren't suicide watch checks. It's undisputed Sgt. Smith was trying to calm Marciniak down so he could get his paperwork done. What matters is whether Smith's actions were objectively unreasonable. *Pulera* demands they weren't, and a rational jury couldn't conclude otherwise.

* * *

Jonah Marciniak's life ended far too early. Yet this is one of those cases in which federal law leaves no one to blame legally. Following the controlling precedent of this court, we must AFFIRM the decision of the district court granting summary judgment for the defendants.

RIPPLE, *Circuit Judge*, concurring in part and dissenting in part. I join Parts I and II of the majority opinion. However, because I disagree with the majority opinion's affirmance of summary judgment on Mr. Jump's failure-to-protect claim, I respectfully dissent as to Part III of the majority opinion. In my view, Mr. Jump has the right have a jury evaluate his failure-to-protect claim.

I

A.

In conformity with the Supreme Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389, 396–97 (2015), we have long held that "the Fourth Amendment governs the period of confinement between arrest without a warrant and the [probable cause determination]." *Currie v. Chhabra*, 728 F.3d 626, 629 (7th Cir. 2013) (alteration in original) (quoting *Villanova v. Abrams*, 972 F.2d 792, 797 (7th Cir. 1992)). And we have "since applied the Fourth Amendment's 'objectively unreasonable' standard to both 'conditions of confinement' and 'medical care' claims brought by arrestees who have not yet had their *Gerstein* hearing."[1] *Id.* (citing *Ortiz v. City of Chicago*, 656 F.3d 523 (7th Cir. 2011) (medical care); *Williams v. Rodriguez*, 509 F.3d 392 (7th Cir. 2007) (medical care); *Sides v. City of Champaign*, 496 F.3d 820 (7th Cir. 2007) (medical care); *Lopez*

[1] The *Gerstein* hearing refers to the probable cause determination, promptly following a warrantless arrest, that serves as prerequisite to pretrial confinement. *See Gerstein v. Pugh*, 420 U.S. 103, 126 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44, 47, 56 (1991).

v. City of Chicago, 464 F.3d 711, 719 (7th Cir. 2006) (conditions of confinement)).[2]

In *Currie*, we explained that the rationale behind asking whether the state officials' response to an arrestee's medical needs was objectively reasonable is grounded in "greater solicitude to presumptively innocent arrestees." 728 F.3d at 630–31. To impose the deliberate indifference standard of the Eighth Amendment on pretrial detainees and pre-*Gerstein* inmates would nullify the protections of the criminal process. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979).[3] Mr. Jump

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2 *See also Pulera v. Sarzant*, 966 F.3d 540, 549–50 (7th Cir. 2020); *Lovett v. Herbert*, 907 F.3d 986, 992 (7th Cir. 2018); *Horton v. Pobjecky*, 883 F.3d 941, 953 (7th Cir. 2018); *Est. of Perry v. Wenzel*, 872 F.3d 439, 453 (7th Cir. 2017); *Florek v. Village of Mundelein*, 649 F.3d 594, 599 (7th Cir. 2011); *Sallenger v. City of Springfield*, 630 F.3d 499, 503 (7th Cir. 2010). We also evaluate medical care claims brought by pretrial detainees (those who have had their probable cause determination) under the objective unreasonableness inquiry grounded in the Fourteenth Amendment. *See Miranda v. County of Lake*, 900 F.3d 335, 352 (7th Cir. 2018); *see also Pulera*, 966 F.3d at 550 (declining to decide whether the objective unreasonable standards under the Fourth Amendment and the Fourteenth Amendment were identical).

3 Specifically, the Court stated:

> Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be "cruel and unusual" under the Eighth Amendment. The Court recognized this distinction in *Ingraham v. Wright*, 430 U.S. 651, 671–72, n.40 (1977):
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> > "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. *See United States v. Lovett*, 328 U.S. 303, 317–18 (1946). … The State does not acquire the

therefore bears the burden in this litigation of showing that Sergeant Smith's actions were "objectively unreasonable." *Pulera v. Sarzant*, 966 F.3d 540, 550 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1509 (2021). On these important threshold principles, I have no disagreement with the majority opinion. It is in the *application* of this standard that my views differ from those expressed in the majority opinion.

B.

In my view, the record contains sufficient evidence to raise a jury question as to whether Sergeant Smith acted in a reasonable manner. "Reasonableness … must be determined in light of the totality of the circumstances." *Id.* To assist in this assessment, we have identified four nonexclusive factors "relevant for ascertaining whether a defendant's conduct was objectively unreasonable": (1) "notice of the arrestee's medical need, whether by word … , or through observation of the arrestee's physical symptoms[;]" (2) "the seriousness of the medical need[;]" (3) "the scope of the requested treatment[;]" and (4) "police interests." *Williams*, 509 F.3d at 403; *Florek v. Village of Mundelein*, 649 F.3d 594, 600 (7th Cir. 2011) (explaining that the factors are nonexclusive).

At the same time, we have cautioned that "[o]ne should not fixate on factors … : the intuitive, organizing principle is that police must do more to satisfy the reasonableness inquiry when the medical condition they confront is apparent and

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> power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law."

Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979) (cleaned up).

serious and the interests of law enforcement in delaying treatment are low." *Florek*, 649 F.3d at 600. The medical condition need not be an objectively serious medical condition;[4] instead, the "reasonableness analysis operates on a sliding scale, balancing the seriousness of the medical need with … the scope of the requested treatment." *Williams*, 509 F.3d at 403. "Our ultimate inquiry, however, is 'whether the conduct of each defendant was objectively reasonable under the circumstances.'" *Est. of Perry v. Wenzel*, 872 F.3d 439, 453–54 (7th Cir. 2017) (quoting *Ortiz*, 656 F.3d at 531).

This case should not be taken away from the jury. Mr. Jump has put forth sufficient evidence from which a reasonable jury could conclude that Sergeant Smith acted in an objectively unreasonable manner when he failed to protect Mr. Marciniak from suicide. Regarding the first factor noted in *Williams*, there is sufficient evidence for a jury to find that Sergeant Smith was on notice that Mr. Marciniak needed medical attention. Mr. Jump relies on the following alleged facts to show notice:

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[4] We stated recently that a pretrial detainee must have "an objectively serious medical need" to "state a claim for inadequate medical care." *Gonzalez v. McHenry County*, No. 21-2756, 2022 WL 2921022, at *2 (7th Cir. July 26, 2022). This is in tension with our prior position that "[w]hether a medical need is serious … is just a threshold requirement before the state has a duty under the Eighth Amendment to provide medical care to a prisoner … [, and] there is no such threshold under the Fourth Amendment." *Pulera*, 966 F.3d at 552. We have viewed the standards of the Fourth Amendment (that applies here) and the Fourteenth Amendment (applied in *Gonzalez*) as functionally identical. *Id.* at 550; *see also Manuel v. City of Joliet*, 137 S. Ct. 911, 917–19 (2017); Majority Op. 15 n.1. Either way, "the risk of suicide is an objectively serious medical condition." *Lisle v. Welborn*, 933 F.3d 705, 716 (7th Cir. 2019).

- Paramedics on the scene of his arrest observed that Mr. Marciniak was emotionally distressed and recommended that Mr. Marciniak go to the hospital.
- Sergeant Smith knew Mr. Marciniak was intoxicated, confused and upset, and then handcuffed, brought to a police station, and put in a cell.
- Mr. Marciniak repeatedly asked where Harper was.
- Mr. Marciniak was distressed in his cell, slamming his body against the cell wall or cell door.
- Sergeant Smith knew Mr. Marciniak had a history of psychiatric treatment.
- Sergeant Smith initially checked on Mr. Marciniak every fifteen minutes after placing him in a cell, indicating that Sergeant Smith had put Mr. Marciniak on *de facto* suicide watch.[5]
- The "suicide watch" section of the health screening form was left blank. It is the only section where neither "yes" nor "no" was marked.[6]
- Sergeant Smith was aware that Mr. Marciniak overdosed on heroin within the past week.

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5 *See* R.58 at 12–13 (explaining that "if someone is identified as a suicide risk, checks were to be made every 15 minutes" and that Sergeant Smith understood this policy).

6 R.51-1 at 2.

- "[Sergeant] Smith was aware that a drug overdose could be a suicide attempt."[7]
- Sergeant Smith and Officer Taraboi each insist the other asked Mr. Marciniak if he was suicidal.[8]
- The intake booking sheet section for the prisoner signature is marked "refused,"[9] which Mr. Jump maintains a jury could find as "evidence of [Mr. Marciniak's] impairments, needs and risk, and that [Sergeant] Smith did not conduct a proper, adequate or reasonable intake procedure."[10]

These facts, taken together, demonstrate that Mr. Marciniak was not well, distraught, and in need of help. Sergeant Smith knew that Mr. Marciniak was severely distraught, "being loud and kicking the door."[11] The banging was so loud (and Sergeant Smith so close to Mr. Marciniak's cell) that it was interfering with the officer's ability to do work. Sergeant Smith knew Mr. Marciniak was troubled, was asking for Harper and unsure of Harper's condition, and was upset about the state of his relationship with his son; with that

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7 R.58 at 11.

8 *See* R.46-1 at 95:19–23 (Sergeant Smith testifying that he did not recall which intake questions he asked Mr. Marciniak, and "[a]ll I know is that [Officer Taraboi is] the one that asked if he was suicidal and then at some point after there is when I picked it up").

9 R.58 at 19.

10 Appellant's Br. 36.

11 R.46-1 at 102:3–12.

knowledge, Sergeant Smith in turn asked Mr. Marciniak "what would your kid say if he could see the way you are behaving, would you want your kid to behave like this[?]"[12]

Moreover, Mr. Marciniak's mental health history indicated that he needed help. The purpose of the screening form is to make officers aware of an arrestee's "psychiatric issues, suicidal issues, things of that nature."[13] Mr. Marciniak admitted during the intake process that he had a prior history of psychiatric treatment. The form prompts for an explanation if the answer to a given question is yes. Although Mr. Marciniak answered affirmatively, no explanation is listed. And at the place reserved for Mr. Marciniak's signature, the booking sheet is marked "Refused." Although the sheet indicates that Mr. Marciniak said he was not suicidal, a rational jury could find from this evidence that his conduct indicated he had significant psychiatric needs that required attention. *Cf. Sanville v. McCaughtry*, 266 F.3d 724, 738 (7th Cir. 2001) (holding that prison officials could not ignore repeated signs that an inmate with a history of mental illness was not functioning normally). One more fact weighs on Mr. Marciniak's mental

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12 *Id.* at 102:3–12. Sergeant Smith claims that at this time, Mr. Marciniak—unprompted—said that he was not suicidal. *Id.* at 102:13–19. When the only witness who could contradict an officer is deceased, the court must undertake a "fairly critical assessment" of the evidence and "decide whether the officer's testimony could reasonably be rejected at a trial." *Plakas v. Drinski*, 19 F.3d 1143, 1147 (7th Cir. 1994). A reasonable jury could disbelieve Sergeant Smith's contention that Mr. Marciniak said he was not suicidal, which was uttered without prompting and out of place in the conversation.

13 R.59-10 at 110:4–12.

condition at the time: he was distraught with concern for his intimate partner, Harper.

Faced with this evidence of Mr. Marciniak's mental state, Sergeant Smith initially checked Mr. Marciniak approximately every fifteen minutes (which would be consistent with department policy on monitoring suicidal inmates). After 3:33 a.m. however, forty-six minutes elapsed between that final check and 4:19 a.m., when Sergeant Smith found Mr. Marciniak hanging in his cell. Sergeant Smith testified that he was "swamped" assisting officers searching for juveniles driving around, who might have been involved in an armed robbery the previous night and might have still been armed.[14] No doubt, Sergeant Smith's need to provide accurate information to the officers on the scene is a legitimate police interest that comes into the equation. A jury could find the situation so pressing that he was unable to step away from the office and check on Mr. Marciniak for the entire forty-six-minute duration. But a jury could also find that it was unreasonable for him not to check on Mr. Marciniak or get help, particularly if getting that help would have been easy.

Sergeant Smith also testified that it would have been easy to get Mr. Marciniak the help he needed. The office where he was working was very close to Mr. Marciniak's cell, and Sergeant Smith's earlier checks on Mr. Marciniak's welfare established that he was capable of checking on Mr. Marciniak without significantly interrupting his other work. Additionally, Sergeant Smith had other options such as placing Mr. Marciniak in a restraint chair or calling an ambulance,

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14 R.46-1 at 103:19–104:15.

medical personnel, or a supervisor. After all, "[t]he fire department was right upstairs."[15]

Another factual consideration needs the jury's attention. When Sergeant Smith found Mr. Marciniak hanging by his neck in his cell, he falsified the booking sheet to show that he had checked on Mr. Marciniak at 4:10 a.m.[16] A jury could determine quite easily from this admitted deviation from established police practice that Sergeant Smith himself knew that his long gap in checking on Mr. Marciniak was a significant breach of the custodial obligations that he had undertaken.

Nor does *Pulera* require, or even counsel, the majority's outcome. In that case, each of several defendant officers had some information on the detainee's psychiatric state, but none of them had sufficient information to be on notice that the defendant would engage in self harm. We held that an intake officer's conduct towards a detainee was not unreasonable when the officer simply could hear the detainee "standing on a bench and yelling" about needing a jacket. *Pulera*, 966 F.3d at 545, 550–51. A *different* intake officer was not on notice of the detainee's suicidal ideations, we explained, after they observed signs that the detainee suffered from depression, and they knew that the detainee's mother and brother had recently committed suicide. A nurse declined to give the detainee his depression treatment without a prison physician's approval and, as we held, a "simple request for medicine"

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15 *Id.* at 25:19–24.

16 Sergeant Smith pleaded guilty to criminal official misconduct for falsifying the booking sheet. R.58 at 19.

would not give notice to any serious problems to which a response would be necessary. *Id.* at 553.

Each of the *Pulera* defendants had a part of the picture, but the whole is greater than the sum of its parts, and Sergeant Smith had the whole picture. Here, one single officer had knowledge that the arrestee had prior psychiatric treatment; that the arrestee was upset, confused, and intoxicated; that the arrestee believed his intimate partner could be severely injured or dead; and that the arrestee began to self-harm by slamming his body against the cell walls. Armed with this knowledge, Sergeant Smith questioned Mr. Marciniak, bringing up his difficult relationship with his son, Mr. Jump. He then failed to check on Mr. Marciniak for forty-six minutes, and when he finally did check on Mr. Marciniak, he found him hanging in his cell. He then falsified the booking sheet. A jury could find this conduct objectively unreasonable.

In sum, construing the facts in the light most favorable to Mr. Jump (as we must given the summary judgment posture of the case), a reasonable jury could determine that Sergeant Smith acted unreasonably when he failed to check on Mr. Marciniak. We should not deprive him of his right to present this claim to a jury. For these reasons, I respectfully dissent as to Part III.