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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

NICHOLAS BANNING, Plaintiff, v. SHELBY COUNTY, SHELBY COUNTY SHERIFF BRIAN MCREYNOLDS, DON KOONCE, ADVANCED CORRECTIONAL HEALTHCARE, INC., CWENTON WILLIAMS, TONYA ATTEBERRY, DEVON DURBIN, MEGAN WARNER, MELISSA HAYNES, BRANDON GATTON, CHRIS ZAKOWSKI, DAINE BURKHEAD, Defendants.	)	No. 21-cv-03100-JES-JEH

DEFENDANTS KOONCE'S AND MCREYNOLDS' MOTION TO DISMISS

COUNTS I & III OF PLAINTIFF'S THIRD AMENDED COMPLAINT

NOW COME Defendants, DON KOONCE and SHELBY COUNTY SHERIFF BRIAN MCREYNOLDS, by Heyl, Royster, Voelker & Allen, their attorneys, and pursuant to Federal Rule 12(b)(6) and for their Motion state as follows:

I. INTRODUCTION

For the convenience of counsel and the Court, the instant Motion is substantively identical to Defendants' now-mooted Motion to Dismiss (Doc. #26) filed against Plaintiff's First Amended Complaint. That Motion was fully briefed, and Defendants do not wish to delay the Court's decision or occupy the parties' time with bespoke briefing for fully briefed issue.

The sole differences between the instant Motion and its predecessor is (1) this italicized "Introduction", (2) some updated procedural history added to the "Procedural Background" section, (3) the name of the current sheriff was updated from McQueen to McReynolds, and (4) record citations were updated to reflect Plaintiff's operative complaint.

A. Procedural Background

Defendant Koonce previously filed a Motion to Dismiss Counts I and III (doc. #15) of Plaintiff's initial Complaint (doc. #1). Plaintiff subsequently amended his complaint to account for Defendant Koonce's retirement as Shelby County Sheriff, and that Defendant Sean McQueen currently holds that office. (Doc. #21). Plaintiff also added new allegations to his First Amended Complaint, "aimed at addressing the alleged deficiencies" identified in Koonce's Motion. See (doc. #20, ¶6) (quoted language); (doc. #21, ¶¶ 27, 29 70–72, 75–92) (new allegations).

These Defendants appreciated Plaintiff's amendment and additional allegations. However, these additions did not meaningfully improve Plaintiff's *Monell* claim against the Sheriff's Office (Count III), and Defendant still believes Defendant Koonce does not have a sufficient basis of individual liability alleged against him in Count I. Defendants therefore file a Motion to Dismiss Plaintiff's First Amended Complaint. (Doc. #26) (Motion to Dismiss); (Doc. #35) (Plaintiff's Response).

Plaintiff has since filed two additional amended Complaints (#46, 56). The pending Third Amended Complaint has the same allegations against these Defendants that were subject to Defendants' most-recent Motion to Dismiss. This Motion follows.

B. Synopsis of Plaintiff's Relevant Claims/Defendant's Argument

A Sheriff's Office cannot be liable under Section 1983 when it lacks notice of any unconstitutional policy or custom. Similarly, an individual Sheriff (here, Don Koonce) cannot be liable for an alleged violation he was not involved in. Accordingly, the Shelby County Sheriff's Office and former Sheriff Don Koonce should be dismissed from this action, as Plaintiff's

individual-capacity theories (Count I) and *Monell* claims (Count III) against these Defendants fail to state a claim upon which relief may be granted.

Plaintiff Nicholas Banning is a former pre-trial detainee at the Shelby County Jail, and on April 27, 2021 filed this Section 1983 action against Co-Defendant Advanced Correctional Healthcare, Inc., the Shelby County Sheriff's Office (through Sheriff Sean McReynolds), the former sheriff Don Koonce, and various of the Sheriff's subordinates. (Doc. #56). In his Amended Complaint, Plaintiff alleges that he experienced severe heroin withdrawal while at the Jail from March 6 to March 10, 2020; that this heroin withdrawal created a medical need obvious to "anyone, including individuals with no medical training"; but that correctional officers nonetheless failed to timely seek medical attention for Plaintiff. (Doc. #56, ¶¶ 42, 45, 57, 65).

Against the Sheriff's Office, Plaintiff alleges his lack of medical treatment was the result of the Office's inadequate "supervision and training of the jail staff" regarding how to "respond to the medical needs of detained individuals." (*Id.* at ¶¶ 75–76). However, there is no alleged pattern of similarly neglected heroin withdrawal cases at the Jail. Moreover, Plaintiff specifically alleges that the medical issue in question was "obvious to anyone, including individuals with no medical training[.]" (Doc. #56, ¶65). Thus, not only is there no alleged pattern of misconduct from which the Sheriff's Office could have been on notice of an unconstitutional policy or training regime, but the specific circumstances at issue here were allegedly such that a different policy or training regime would not have made a difference (because the alleged injury was "obvious to anyone"). The Sheriff's Office should therefore be dismissed from Count III.

For his part, former Sheriff Don Koonce is not alleged to have been directly involved in Plaintiff's care/condition, or even in the Jail during Plaintiff's detention. Plaintiff instead faults the

former sheriff under two theories: (1) for failing to personally intervene in Plaintiff's treatment and secure him better medical care after ("upon information and belief") receiving emails from the Jail that documented Plaintiff's serious medical needs; and (2) as the individual who set the policies for how correctional officers are to respond to medical emergencies, and who signed an allegedly inadequate contract with Co-Defendant ACH for medical services at the Jail. (Doc. #56, ¶¶ 666–67, 69–74, 77). There is a common issue with both bases: There are no non-conclusory allegations that Defendant Koonce harbored doubts about the ability of his correctional officers to monitor heroin withdrawal at the Jail. To the contrary, Plaintiff's Complaint shows that it is the alleged misconduct of Koonce's subordinates — who are alleged to have acted contrary to Koonce's policies — that caused Plaintiff's alleged injury. To hold Koonce liable would, therefore, be tantamount to *respondeat superior*, which Section 1983 prohibits. Accordingly, Count I should be dismissed from Plaintiff's Amended Complaint.

II. ARGUMENT

Plaintiff's allegations seek to hold the Sheriff's Office and former Sheriff Koonce liable for an incident the latter was not involved in, and based on policies neither allegedly suspected where constitutionally suspect. Section 1983 and Rule 12 demand more. Therefore, Plaintiff falls short of alleging either an official capacity/*Monell* claim against the Sheriff's Office (Count III) or an individual capacity claim (Count I) against Don Koonce.

A. Pleading Standard

Federal Rule of Civil Procedure 12(b)(6) permits a Motion to Dismiss for failing to state a claim for which relief can be granted. To state such a claim, Rule 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief." While Rule 8 does not require

detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). "Factual allegations must be enough to raise a right to relief above the speculation level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

In determining whether the plaintiff's Amended Complaint survives a motion to dismiss, the Court must employ a two-step process. First, a Court must identify the "allegations in the complaint that are not entitled to the assumption of truth." *Iqbal,* 129 S. Ct. at 1951. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 1949. Conclusory allegations are "not entitled to be assumed true" and cannot be considered for purposes of determining whether the complaint states a claim for relief. *Id.* at 1951. Once the court determines those allegations which can be considered, it must then determine whether such allegations "state[] a plausible claim for relief…" *Id.* at 1950. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]-'that the pleader is entitled to relief.'" *Id.* (quoting FRCP 8(a)(2)). Accordingly, "[i]n the interest of justice and economy, every effort should be made by the district court from the start of a case to determine its likely merit and guide it to a swift conclusion as is consistent with doing justice to the parties." *Milam v. Dominick's Finer Foods, Inc.*, 588 F.3d 955, 959 (7th Cir. 2009).

B. Defendant McReynolds/Sheriff's Office (Count III; *Monell*): Plaintiff does not allege a pattern of unconstitutional misconduct for his policy-omission and failure-to-train theories, warranting dismissal.

Plaintiff's *Monell* claim must be dismissed because there is no allegation that the Sheriff's Office had notice that its policies resulted in inadequate medical care for detainees experiencing

heroin withdrawal at any time. Plaintiff only offers conclusory allegations that the Office "knew" of these policies, which is insufficient under *Iqbal* and *Twombly*. Sheriff Koonce should be dismissed from Count III.

Preliminarily, the Supreme Court's *Monell* decision allows governmental entities to be held liable under Section 1983, but not on a theory of *respondeat superior*. *Milestone v. City of Monroe, Wis.*, 665 F.3d 774, 780 (7th Cir. 2011); *City of Okla. City v. Tuttle*, 471 U.S. 808, 810 (1985). Instead, "[m]isbehaving employees are responsible for their own conduct," and "'units of local government are responsible only for their policies, rather than misconduct by their workers.'" *Lewis v. City of Chicago*, 496 F.3d 645, 656 (7th Cir. 2007) (quoting *Fairley v. Fermaint*, 482 F.3d 897, 904 (7th Cir. 2007)).

For municipal liability to attach, a constitutional violation must be brought about by (1) an express municipal policy; (2) a widespread, though unwritten, custom or practice; or (3) a decision by a municipal agent with final policymaking authority. *Bridges v. Dart*, 950 F.3d 476, 480 (7th Cir. 2020). Regardless of basis, the Plaintiff also must prove that the municipality in question was deliberately indifferent to — i.e., was aware of and consciously disregarded — the risk of constitutional harm to the plaintiff by the practice in question. *Thomas v. Cook County Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2009) (describing standard); *see also Whitney v. Kahn*, 2021 U.S. Dist. LEXIS 5659, at *15 (N.D. Ill. Jan. 12, 2021) (explaining how deliberate indifference remains the standard for *Monell* liability after *Miranda v. County of Lake*, 900 F.3d 335 (7th Cir. 2018) (creating "objective unreasonableness" standard for claims by pre-trial detainees)).

Here, Plaintiff advances a "policy omission" and "failure to train" *Monell* claim. Each will be discussed in turn, but pose a common pleading shortcoming for Plaintiff: the lack of alleged

instances of previous unconstitutional conduct, such that the Sheriff could have consciously disregarded the attendant constitutional risks.

1. Policy-Omission Claim:
Plaintiff does not allege a pattern of unconstitutional conduct

For Plaintiff's policy-omission claim, Plaintiff generally faults the Sheriff's Office for failing to craft sufficiently detailed policies *re* medical care. (Doc. #56, ¶119(a)–(c); ¶¶68–71, 74). An allegation that a written policy has key omissions is treated as a "widespread practice" claim. *Calhoun v. Ramsey*, 408 F.3d 375, 380 (7th Cir. 2005). Plaintiff must allege there was, indeed, a custom. To that end, the Seventh Circuit recently stated that the practice must have been "so pervasive that acquiescence on the part of policy makers was apparent and amounted to a policy decision." *Hildreth v. Butler*, 960 F.3d 420, 426 (7th Cir. 2020), *cert. denied* 2021 U.S. LEXIS 1357 (U.S., Mar. 8, 2021). A custom therefore requires more than "one or two missteps." *Id.*; *see also Thomas v. Cook County Sheriff's Dep't*, 604 F.3d 293, 303 (7th Cir. 2009) (noting there is no bright line rule for the number of incidents necessary, but it must be "more than one instance, or even three.") (internal citations/quotations omitted). In *Hildreth*, the Circuit concluded Plaintiff did not establish a custom of delaying prescription medication refills for inmates, when plaintiff could only point to three (3) occasions where he personally did not have his prescriptions timely refilled, and no competent evidence of any other inmate experiencing a similar delay. *Hildreth*, 960 F.3d at 426–430 (affirming summary judgment); *see also Copeland v. Johnson*, 2019 U.S. Dist. LEXIS 165147, at *15–16 (N.D. Ill. 2019) (dismissing firefighters *Monell* custom/practice claim when it only alleged own and three other instances of constitutional injury); *Collier v. Ledbetter*, 2016 U.S. Dist. LEXIS 135336, *17–19 (C.D. Ill. 2016) (Darrow, J.) (similar result when other lawsuits are alleged as prior examples of unconstitutional conduct, dismissing *Monell* claim with prejudice).

Beyond the number of incidents, the incident themselves must share common features. It is not enough, for example, to allege that a prosecutor's office engaged in a pattern of *Brady* violations; rather, there must be allegations for the same specific type of *Brady* violation. *See, e.g.*, *Connick v. Thompson*, 563 U.S. 51, 61–63 (2011). In the medical care context, a *Monell* plaintiff needed previous specific instances of the type of misconduct in question --- e.g., a pattern of failing to give timely methadone treatments, or a practice of taking inmates off medications without physician oversight. *Davis v. Carter*, 452 F.3d 686, 693 (7th Cir. 2006) (methadone); *King v. Kramer*, 680 F.3d 1013, 1020–21 (7th Cir. 2012) (medication removal). The point is that the separate instances must be woven together into a cognizable, unconstitutional policy. *Phelan v. Cook County*, 463 F.3d 773, 790 (7th Cir. 2006).

Here, Plaintiff does not allege any other incidents of inadequate medical care at the Jail, let alone instances of heroin withdrawal such as his. Instead, Plaintiff alleges: (1) that his own incident occurred; (2) that ACH had some unspecified number of bad medical outcomes for withdrawing inmates at *other* facilities, some of which resulted in lawsuits in Kentucky and Indiana (Doc. #56, ¶¶ 8, 86–97); and (3) that the Sheriff's Office was generally aware that inmates with medical needs would enter the Jail at some point. (Doc. #56, ¶102). In other words, the Sheriff's Office had a set of policies, and they allegedly failed Plaintiff. This is not a "pattern" under *Monell* — it is a single incident, and courts within this Circuit have dismissed *Monell* claims even when they *do* assert more than a single incident at a given facility. *See, e.g.*, *Copeland v. Johnson*, 2019 U.S. Dist. LEXIS 165147, at *15–16 (N.D. Ill. 2019) (dismissing firefighters *Monell* custom/practice claim when it only alleged own and three other instances of constitutional injury); *Taylor v. Wexford Health Sources, Inc.*, 20216 U.S. Dist. LEXIS 76341, at *14–15 (N.D. Ill. 2016) (dismissing medical-needs

Monell claim only alleged plaintiff's own experience, and an allegation that "[i]t is common at Stateville to see prisoners with clear symptoms of serious medical needs who repeatedly request * * * treatment, and whose requests are * * * completely ignored by healthcare and correctional employees."); *Collier v. Ledbetter*, 2016 U.S. Dist. LEXIS 135336, *17–19 (C.D. Ill. 2016) (Darrow, J.) (similar result when other lawsuits are alleged as prior examples of unconstitutional conduct, dismissing *Monell* claim with prejudice).

In other words, the Complaint does not demonstrate how the Office knew its policies (or training) had proven to be inadequate, such that the Office acquiesced to their failings. Granted, Plaintiff *does* allege that the Sheriff "knew" its policies were insufficient and created a risk of constitutional harm. (Doc. #56, ¶¶ 74, 101). But these are conclusory allegations, which *Iqbal* and *Twombly* teach are immaterial to evaluating a Motion to Dismiss. *See* Part II.A, *infra*. In other words, these allegations do not alter the above analysis.

Therefore, Plaintiff failed to allege the pattern of misconduct necessary for his policy-omission *Monell* theory. Sheriff Koonce should be dismissed from Count III.

2. Failure-to-Train Claim

A municipality's liability "is its most tenuous" where a claim focuses on a failure to train. *Connick v. Thompson*, 563 U.S. 51, 61 (2011). A failure-to-train theory can manifest in two ways: through a pattern of unconstitutional misconduct, or through a narrow, "single-incident" theory. *Id.* at 62–64. As discussed in the previous section, Plaintiff has not alleged a pattern of similar unconstitutional misconduct — leaving only the single-incident theory as a basis of *Monell* liability.

The single-incident theory is an "extremely limited" class of *Monell* liability, reserved for those circumstances where a municipality fails to provide training for its employees to handle recurring

situations with an obvious potential for constitutional injury. *Terry v. Cnty. of Milwaukee*, 2018 U.S. Dist. LEXIS 93298, at *14–15 (W.D. Wis. 2018) (discussing authorities).

But Plaintiff pleads himself out this theory. The Complaint faults the Sheriff's Office for giving its correctional officers "little or no" medical training, or training on how to identify and respond to medical issues. (Doc. #56, ¶¶ 119(d)–(g); ¶¶ 9, 28, 67, 73). Yet, elsewhere, Plaintiff alleges "it was obvious to anyone, *including individuals with no medical training*, that Mr. Banning's serious medical needs were not being met" at the Jail. (Doc. #56, ¶65) (emphasis added). Stated differently, Plaintiff claims the Sheriff failed to provide *unnecessary* medical training — a non-starter for *Monell*. *See, e.g.*, *Palmquist v. Selvik*, 111 F.3d 1332, 1345 (7th Cir. 1997) (rejecting *Monell* claim calling for "special training").

Moreover, Plaintiff acknowledges the Jail had available medical staff and policies which could or did guide officers when a medical emergency arose. (Doc. #56, ¶¶66, 69–71). Because Plaintiff alleges the medical need did not require training to detect, and there were protocols in place on how to handle medical emergencies, Plaintiff's complaint boils down to faulting "[m]isbehaving employees," and municipalities are not constitutionally liable for the misconduct of their workers. *Lewis v. City of Chicago*, 496 F.3d 645, 656 (7th Cir. 2007).

Accordingly, Plaintiff has plead himself out of a "single incident" failure-to-train theory. Because he also failed to allege a pattern of unconstitutional conduct, *see* Part II.B.1, *supra*, Plaintiff has failed to allege any cognizable *Monell* theory.[1] Sheriff Koonce should be dismissed from Count III.

[1] The Sheriff's Office acknowledges that Plaintiff's allegations include claims for failing to "discipline" allegedly errant officers. *E.g.*, (Doc. #56, ¶119(d)). But these are conclusory terms, and there is no reference in Plaintiff's Complaint about any individuals being promoted, demoted, etc. due to certain conduct. *See, e.g.*, *Foy v. City of Chicago*, 2016 U.S. Dist. LEXIS 63346, *30–31 (N.D. Ill. 2016) (dismissing "failure to

C. Defendant Koonce (Count I): Plaintiff has not alleged either a direct or supervisory theory against former sheriff Koonce, meriting dismissal of Count I.

In Count I, Plaintiff seeks to allege an individual liability count against former sheriff Don Koonce. This Count should be dismissed, however, because there is no allegation that Koonce was personally involved in Plaintiff's medical care, and Plaintiff does not allege an adequate "supervisory liability" theory.

Preliminarily, Section 1983 is predicated on personal liability — there is no *respondeat superior*. *Monell v. De't of Soc. Servs.*, 436 U.S. 658, 691 (1978). In order for an individual to be liable under Section 1983, the constitutional deprivation must have occurred at his or her direction, or with his or her knowledge and consent. *Smith v. Rowe*, 761 F.2d 360, 369 (7th Cir. 1995). Stated differently, an individual can be liable if they themselves committed the unconstitutional act, *or* if they acquiesced to an unconstitutional act. Each type of individual liability will be discussed in turn.

1. Koonce was not personally involved in Plaintiff's care, and was not allegedly aware of a constitutional injury he needed to intervene in

In his Amended Complaint, Plaintiff adds an allegation that Koonce "upon information and belief * * * received emailed 'shift briefs' and/or specific information from jail staff regarding [Plaintiff's] deteriorating condition and serious medical needs, and thereby had personal knowledge of [Plaintiff's] severe opioid withdrawal, but did not respond * * * to provide adequate medical care to [Plaintiff] for his condition." (Doc. #56, ¶77).

Plaintiff's issue is that former sheriff Koonce is not alleged to have been in the Jail and personally monitoring Plaintiff, or otherwise involved in the day-to-day management and

discipline" claim that "repeat[ed] all of the trigger words required of a *Monell* claim but absolutely no factual content to demonstrate a widespread practice of failing to adequately punish prior instances of similar misconduct.") Koonce does not believe these allegations require any further discussion, but request leave to provide further briefing if this Court desires.

decision-making at the Jail — and an inference of such a role is not warranted considering he was the alleged "chief administrator" (so, akin to a warden) of the Jail. (Doc. #56, ¶¶ 26–28). *See Duncan v. Duckworth*, 644 F.2d 653, 656 (7th Cir. 1981) (noting "[i]t is doubtful that a prison warden would be directly involved in the day-to-day operation of the prison hospital such that he would have personally participated in, or have knowledge of, the kinds of decisions that led to the delay in treatment" at issue).

Thus, Plaintiff's theory is that Koonce "failed to intervene" in Plaintiff's medical care, which requires Plaintiff to plead, among other things, that Koonce was aware of an underlying constitutional violation — so here, the *denial* of medical care, not just that Plaintiff had a serious medical need (opioid withdrawal). *See, e.g.*, *Laktas v. Wexford Health Sources, Inc.*, 2018 U.S. Dist. LEXIS 121752, at *15–17 (S.D. Ill. 2018) (Eighth Amendment; permitting a failure-to-intervene claim against prison administrator to survive a Motion to Dismiss when administrator allegedly received a complaint from the plaintiff-inmate complaining about a lack of treatment).

But Plaintiff's Complaint only charges Defendant Koonce with knowledge that Plaintiff was experiencing "severe opioid withdrawal." There is no non-conclusory allegation that Koonce knew this "severe opioid withdrawal" was *not* being adequately treated by his subordinates (so as to create the risk for an "objectively unreasonable response to a serious medical need."). As with Plaintiff's *Monell* claims, there is no non-conclusory allegation (such as past issues *re* opioid withdrawal at the Jail) that would cause Defendant Koonce to doubt that his subordinates would respond appropriately to Plaintiff's condition. Because Defendant Koonce was not given notice that his on-site staff was allegedly failing to provide Plaintiff with adequate medical care, Koonce could not have known that there was a constitutional risk in which he was supposed to intervene.

Consequently, if Plaintiff is to assert individual liability against Sheriff Koonce, it must be on some kind of "supervisory liability" theory.

2. Supervisory Liability

Plaintiff does not adequately allege supervisory liability, because the alleged misconduct which caused Plaintiff's injury was not some high-level policy at the Jail; rather, it was caused by the alleged, "localized" failure of subordinate officers to follow the Sheriff's alleged policies. A complaint will be dismissed if the Plaintiff fails to allege that the defendant had knowledge of or personal involvement in the actions leading to the alleged constitutional violation. *Schultz v. Dart*, 2013 U.S. Dist. LEXIS 156546 (N. D. Ill. 2013) (finding plaintiff failed to state an individual capacity claim when defendant sheriff had no direct personal involvement in the provision of medical care at the Jail).

Supervisors can only be responsible for their own conduct, meaning they must have personally participated in the alleged unconstitutional injury. *Jones v. Chicago*, 856 F.2d 985, 992 (7th Cir. 1988). "An official satisfies the personal responsibility requirement of section 1983 if the conduct causing the constitutional deprivation occurs at his direction or with his knowledge and consent." *Gentry v. Duckworth*, 65 F.3d 555, 561 (7th Cir. 1995). Simple knowledge that a subordinate engaged in misconduct is not enough, as "[t]he supervisor must want the forbidden outcome to occur." *Vance v. Rumsfeld*, 701 F.3d 193, 204 (7th Cir. 2012).

As already noted, there are no allegations showing that Defendant Koonce participated in Plaintiff's medical care in March of 2020, or otherwise had knowledge that Plaintiff was receiving inadequate medical care for his opioid withdrawal. Although this would normally end the analysis for individual liability, the Seventh Circuit has noted that a supervisor can "realistically be expected

to know about or participate in creating systemic jail conditions." *Sanders v. Sheahan*, 198 F.3d 626, 629 (7th Cir. 1999); *see also Antonelli v. Sheahan*, 81 F.3d 1422, 1429 (7th Cir. 1996). A supervisor also can be directly responsible if they personally wrote an unconstitutional policy with the required mental state. *See Armstrong v. Squadrito*, 152 F.3d 564, 581 (7th Cir. 1998). Thus, Plaintiff must sufficiently alleged that Defendant Koonce wrote an unconstitutional policy with *scienter*, or that Plaintiff's injury was the result of a "systemic" condition at the Jail such that Koonce's *scienter* can be presumed. Defendant respectfully believes Plaintiff has fallen short on both theories.

First, Plaintiff has not alleged that Sheriff Koonce wrote an unconstitutional policy. The alleged policies are: having medical professionals on call 24/7 for the Jail, but generally offsite; trusting correctional officers to be the eyes and ears of these off-site medical professionals; giving the correctional officers instructions to call a supervisor if more guidance is needed; and instructing officers to facilitate immediate medical care for inmates when there is an emergency. (Doc. #56, ¶66, 69–71). Defendants have not found a case establishing that such a policy is unconstitutional *per se*. Moreover, Defendant does not perceive any meaningful distinction between a policy-based individual capacity claim against him as the former Sheriff, and an official capacity claim against the Sheriff's Office. Accordingly, Defendant Koonce believes he cannot be held individually liable for his policies for the same reasons the Sheriff's Office cannot be liable under *Monell*. *See* Part II.B, *supra*.

Second, Plaintiff has not adequately alleged his injury was the result of "systemic" conditions at the Jail. "A systemic violation means a general prison condition that affects a widespread group of inmates." *Eason v. Pritzker*, 2020 U.S. Dist. LEXIS 215779, 12 (N. D. Ill. 2020).

In *Antonelli*, the Seventh Circuit dismissed a number of supervisory counts against a Sheriff, and permitted others to proceed, based on whether the counts alleged a "systemic" situation the Sheriff could presumably be aware of, or a "localized" situation not entitled to such an inference. *Antonelli v. Sheahan*, 81 F.3d 1422, 1429 (7th Cir. 1996). In the "systemic" column were alleged inadequacies in recreation space (given the plaintiff shared space with 37 other inmates), rampant vermin infestations, restrictions on library access, extreme hot/cold temperatures, and tampering with the mail system. *Id.* In contrast, the Plaintiff only alleged "localized" issues when he claimed his requests for mental health treatment were ignored, or when he was denied religious services. *Id.*

Here, Plaintiff's alleged "condition" is that correctional officers failed to detect that Plaintiff was undergoing a medical emergency (severe heroin withdrawal) that was so obvious that a layperson would have noticed it. (Doc. #56, ¶65). Plaintiff's is not the 'easy' case of a systemic condition, such as extremely hot or cold cell block housing temperatures. More importantly, there is no allegation of any individual actually suffering an adverse health outcome at the Jail *aside* from Plaintiff. (Note: Plaintiff added allegations about negative health outcomes at *other* correctional facilities in Kentucky and Indiana, (Doc. #56, 87–97), but these clearly do not speak to the Sheriff's Office's own track record). And Plaintiff's negative outcome is the alleged result of individual correctional officers ignoring his requests for medical care — akin to the "localized" ignoring of a plaintiff's mental treatment requests in *Antonelli*.

To be fair, Plaintiff does allege, repeatedly, that the medical services provided at the Jail were categorically deficient — going so far as to allege they amount to "no medical care and mental health care at all." (Doc. #56, ¶103). But these are conclusory allegations, and at odds with

the substance of Plaintiff's Complaint. Again, Plaintiff is not alleging that the Jail had *no* applicable policies and that his condition was somehow outside the ken of untrained officers. Instead, he specifically alleges that the Jail had a policy for immediate care to be provided if necessary, and that Plaintiff's specific condition was so obvious medical training was unnecessary to detect it. (Doc. #56, ¶60). Rather than a high-level policy error, the alleged error is the failure of subordinates to provide the immediate medical care the Sheriff's policies called for.

Thus, Plaintiff's injury was "localized" to him. Because Defendant Koonce cannot be presumably aware of some "localized" unconstitutional situation at his Jail, and cannot be liable for the policies he allegedly wrote, Plaintiff has no remaining bases for individual liability against Defendant Koonce. Accordingly, Plaintiff's Count I should be dismissed.

III. CONCLUSION

For the reasons stated above, Defendants DON KOONCE and SHELBY COUNTY SHERIFF'S OFFICE (BRYIAN MCREYNOLDS), respectfully request that this Court dismiss Counts I and III from Plaintiff's Amended Complaint (Doc. #56) and provide such other relief as this Court deems warranted.

Respectfully submitted,

SHELBY COUNTY SHERIFF'S OFFICE (BRIAN MCREYNOLDS) and DON KOONCE, Defendants

BY: s/Keith E. Fruehling
Keith E. Fruehling, ARDC #6216098
Bryan J. Vayr, ARDC #6327729
HEYL, ROYSTER, VOELKER & ALLEN
Suite 505, 301 N. Neil Street
Champaign, IL 61820
Telephone 217.344.0060
Email: kfruehling@heylroyster.com
Email: bvayr@heylroyster.com

PROOF OF SERVICE

I hereby certify that on April 5, 2022 I electronically filed the foregoing DEFENDANTS KOONCE'S AND MCREYNOLDS' MOTION TO DISMISS COUNTS I & III OF PLAINTIFF'S THIRD AMENDED COMPLAINT, with the Clerk of the Court using the CM/ECF system, which will send notification to:

Louis J. Meyer – *louismeyer@meyerkiss.com*
Meyer & Kiss, LLC
311 West Stratford Drive
Peoria, IL 61614

Amanda S. Yarusso – *Amanda.yarusso@gmail.com*
111 West Washington Street, #1500
Chicago, IL 60602

Peter R. Jennetten - *pjennetten@quinnjohnston.com*
Betsy Wirth – *bwirth@quinnjohnston.com*
Quinn Johnston
227 NE Jefferson
Peoria, IL 61602

I also hereby certify that I have mailed, by United States Postal Service, the foregoing to the following non-CM/ECF participant: None.

s/ Keith E. Fruehling
Heyl, Royster, Voelker & Allen

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