[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13505

D.C. Docket No. 1:14-cv-00489-MHC

ALLISON COLARDO-KEEN,
Individually and as Next Friend and Administrator of the Estate of Thomas Colardo, deceased,

Plaintiff-Appellant,

versus

ROCKDALE COUNTY, GEORGIA,
THOMAS J. (JEFF) WIGGINGTON,
Rockdale County Sheriff, in his official capacity and his individual capacity,
LIEUTENANT BOGARDTS,
officer for Rockdale County Jail, in his official capacity and his individual capacity,
ROCKDALE COUNTY JAIL OFFICERS AND DEPUTIES,
in their individual and official capacities,
FNU EASON, et al.,

Defendants-Appellees,

FNU BLOUNT, et al.,

Defendants.

Appeal from the United States District Court
for the Northern District of Georgia

(May 24, 2019)

Before MARTIN, JULIE CARNES, and GILMAN,[*] Circuit Judges.

JULIE CARNES, Circuit Judge:

Thomas Colardo was an inmate at the Rockdale County jail. About a week after his arrival on February 28, 2012, he began experiencing intermittent episodes of bleeding. On March 15, 2012, he went to the medical unit at the Rockdale County jail three times because of this bleeding. His first visit was around 9:24 a.m.; his last was just before 3:00 p.m. Colardo's relatively light bleeding from open scabs and his nose would ordinarily be unremarkable. But Colardo had idiopathic thrombocytopenic purpura ("ITP"), an autoimmune disease that prevents blood from clotting and can lead to fatal internal bleeding. He died in the early hours of March 16, having suffered internal bleeding in his brain.

[*] Honorable Ronald Lee Gilman, United States Circuit Judge for the Sixth Circuit, sitting by designation.

What is not clear is when, or even if, the nurses who treated Colardo on March 15 knew about his ITP. Nurse Deidra Fleming treated Colardo at the jail that day, and Nurse Deborah Whidby was her offsite supervisor who gave orders as to how Nurse Fleming should treat Colardo. Nurse Fleming provided first aid for Colardo's physical wounds and, pursuant to Nurse Whidby's orders, eventually attempted to run blood tests. But jail medical staff were unable to run the tests and Colardo was then sent to the hospital, where he died nine hours later.

Colardo's daughter, Allison Colardo-Keen ("Plaintiff"), filed this lawsuit against both nurses, other jail medical staff, the private company that staffed the jail's medical unit, the deputies at the jail who interacted with Colardo on March 15 and the days leading up to it, the Rockdale County Sheriff, and Rockdale County. In addition to state-law negligence claims, Plaintiff brought federal claims under 42 U.S.C. § 1983 against these defendants, alleging that they had violated Colardo's constitutional rights by being deliberately indifferent to his serious medical needs.

The district court granted summary judgment to Nurse Fleming, Nurse Whidby, and the County (as well as the other defendants) on Plaintiff's § 1983 claims, concluding that the nurses were unaware that Colardo suffered from ITP and that Plaintiff presented insufficient evidence to show that a County policy or

custom had caused any constitutional deprivation. Having resolved all of Plaintiff's federal claims, the court declined to exercise supplemental jurisdiction under 28 U.S.C. § 1367(c)(3) over her state-law claims and dismissed them without prejudice. Plaintiff appealed the grant of summary judgment in favor of Nurse Fleming, Nurse Whidby, and the County on her federal claims and the dismissal of her state-law claims.

Our decision on Plaintiff's § 1983 claims against Nurse Fleming and Nurse Whidby turns on the inferences a reasonable jury could draw from the record evidence regarding whether these nurses knew about Colardo's ITP on March 15 and, if so, when they became aware of this condition. Whether and when the nurses became aware of Colardo's ITP, however, is an issue of fact. This precludes granting summary judgment to Nurse Fleming, as a reasonable jury could find that she was deliberately indifferent to Colardo's serious medical needs if she, in fact, became aware of Colardo's ITP during his first visit to the medical unit on March 15, but nonetheless delayed treating his ITP as directed by her supervisor. The district court's grant of summary judgment to Nurse Whidby was nevertheless appropriate because, regardless of when she learned of his ITP, her actions did not demonstrate disregard for his serious medical needs. We also agree with the district court that summary judgment was appropriate for the County

because even if Colardo's constitutional rights were violated, there is no evidence that it was caused by a County policy or custom. Finally, because we conclude that the district court should not have granted summary judgment on Plaintiff's § 1983 claim against Nurse Fleming, there remains a triable federal claim, and therefore Plaintiff's state-law claims on remand can no longer be dismissed on the ground that no federal claims remain to be tried.

I. BACKGROUND

A. Factual Background

Because this is an appeal from the grant of summary judgment to the defendants, we consider the record evidence in the light most favorable to Plaintiff, drawing all reasonable inferences in her favor. That said, we also briefly summarize the defendants' version of the events that occurred on March 15, 2012, to provide context for the factual disputes at issue here.

1. Colardo's medical history

Prior to his incarceration, Colardo was diagnosed in July 2011 at Rockdale Medical Center with ITP. ITP is an autoimmune disease in which the immune system produces antibodies that attack blood platelets, with the result that platelets are destroyed and new platelet production is inhibited. As a result, ITP can cause thrombocytopenia—a low platelet count. A low platelet count can prevent the blood from clotting, which leads to bleeding, and, if left untreated long enough,

fatal bleeding in the central nervous system. The first step when treating someone with ITP is to conduct blood tests to determine, among other things, the person's platelet count. A platelet count above 50,000 is considered stable, above 20,000 is considered safe, but below 10,000 indicates a severe risk to the patient. To address the condition, doctors provide a variety of treatments to boost the patient's platelet count, such as steroids and intravenous immunoglobulin (essentially a blood transfusion). After a patient is treated for ITP, the patient and his doctors must monitor his platelet count, at least until it hits the 50,000 count stability mark, to ensure that it does not drop again.

Upon admission to Rockdale Medical Center in 2011, Colardo had a platelet count of only 12,000. Concluding that he had severe thrombocytopenia, the doctors treated him with steroids and a blood transfusion. The treatment worked, and Colardo's platelet count eventually increased to 67,000. Colardo was discharged and given a prescription for a tapering[1] dose of Prednisone, a steroid. Colardo filled this prescription on July 30 for fifteen days' worth of medication. Colardo followed up with his doctors to check his platelet count in September, and was supposed to do so again in December, but he never did.

[1] Tapering means that the dose gradually lessens. For example, Colardo was instructed to take three tablets each day for the first five days, then two tablets each day for the next five days, and then one tablet each day for the last five days.

On February 1, 2012, Colardo had surgery to remove a cataract in his left eye. The medical history Colardo provided to his eye doctor revealed that Colardo had joint pain and diabetes; Colardo did not indicate that he had ITP, a platelet disorder, or any blood problems.

2. Colardo's detention

On February 28, 2012, Colardo was arrested and detained in the Rockdale County jail. CorrectHealth Rockdale, LLC provided medical services and staff for the inmates in the jail. At Colardo's intake, Stephanie Lemon, a certified medical assistant, conducted Colardo's medical screening. The only physical abnormality she observed was that Colardo had rashes on his arms. Lemon asked Colardo about his medical history, and he told her that he was diabetic, that he had eye surgery on February 1, and that he was taking medication for both. Lemon also asked Colardo whether he had any "immune" or "hematologic" problems (which she would have explained in layman's terms as "blood problems"), and Colardo said no. Colardo signed the medical intake form affirming its accuracy.

Because Colardo did not know the dosages for his diabetes and eye medication, Nurse Whidby ordered his pharmacy records the next day. The jail received the records on March 2. The records included Colardo's prescription for Prednisone seven months before, but Nurse Whidby assumed that it had likely

been prescribed for bronchitis or a lung infection, given that it was filled on the same day as prescriptions for an antibiotic and an inhaler. She further did not suspect that it was prescribed for a chronic autoimmune disease because Colardo had been given only a tapering dose.

On March 6, Nurse Whidby evaluated Colardo in person to admit him to the jail's chronic-care clinic based on his diabetes. Colardo indicated to her that he had no complaints about any medical issues. Nurse Whidby observed that Colardo's skin was normal. She asked Colardo about his medical history, and Colardo mentioned only his recent eye surgery and diabetes. He also indicated that he had no past hospitalizations. Colardo did not mention his ITP or any blood problem.

After March 6, Colardo began to experience bleeding. On March 8, a prison guard called the booking area to report that Colardo was bleeding through sores on his skin. Colardo was taken to the booking area for closer observation, but was not taken to the medical unit and no medical record was created. On March 11, Colardo was brought to the medical unit because he was bleeding on his jumpsuit. Colardo saw Nurse Donat Samuels, but no medical record of this visit was created. Nurse Samuels testified in her deposition that she could not remember anything about that night or about Colardo generally. On March 13, a deputy referred

Colardo to the medical unit because he was bleeding on his jumpsuit, but there is no evidence Colardo ever went to the medical unit and no medical record indicating that he was seen on that date. There is likewise no indication that Colardo advised anyone that he had a blood disorder or ITP on any of these visits.[2]

3. March 15, 2012

From the record evidence, a reasonable jury could make the following factual inferences about the events of March 15, 2012. At 9:24 a.m. on March 15, Colardo was taken to the medical unit by a deputy because he had bled on his jumpsuit. Colardo told the deputy that he had been bleeding from his rectum during the night. Another deputy who was staffed in the medical unit at that time reported that Colardo's speech was clear and that he was walking and responsive to conversation. We can infer that Colardo was seen by Nurse Fleming, the only nurse in the medical unit that morning. The deputy did not tell Nurse Fleming that Colardo had reported bleeding from his rectum, and Nurse Fleming was not aware of his previous visits to the medical unit for bleeding.

Nurse Fleming observed blood on the back of Colardo's jumpsuit and "several scabbed areas . . . open on buttock and crease[ ] of groin area." She

[2] Plaintiff testified in her deposition that she spoke with one of the deputies at the jail on March 5 and told him that Colardo had a blood disorder. But there is no evidence that this information was ever relayed to anyone in the medical unit.

cleaned the areas, applied ointment, and gave Colardo a new jumpsuit and disposable underwear. As explained below, a reasonable jury could infer from the record evidence that Nurse Fleming learned that Colardo had ITP at some point during this visit.[3] Colardo was then sent back to the dormitory. The deputy who took Colardo back to the dormitory reported that he did not think Colardo was actively bleeding at the time, nor did Colardo appear to be in any pain.

At 9:55 a.m., Nurse Fleming called Nurse Whidby, the mid-level provider on duty that day, who was working offsite. Like Nurse Fleming, Nurse Whidby was not aware of Colardo's previous visits to the medical unit for bleeding. As explained below, a jury could infer from the record evidence that Nurse Fleming told Nurse Whidby about Colardo's bleeding and ITP during the 9:55 a.m. call. The parties disagree about whether Nurse Whidby gave Nurse Fleming treatment instructions on the 9:55 a.m. call or on a latter phone call, but at some point Nurse Whidby ordered Nurse Fleming to obtain Colardo's bloodwork "stat," to apply a pressure dressing to his buttock, to check his blood pressure every eight hours until the bleeding stopped, and to obtain his medical records from Rockdale Medical

[3] Nurse Fleming denies learning that Colardo had ITP. But construing the evidence in the light most favorable to the plaintiff and drawing all reasonable inferences in her favor, we must assume that Nurse Fleming became aware of Colardo's condition during this first visit.

Center. Nurse Fleming did not perform these actions until the afternoon of March 15.[4]

At around 10:30 a.m., Colardo returned to the medical unit because he had bled on another jumpsuit. Colardo was again seen by Nurse Fleming, who observed "small amounts of blood." She applied gauze to the bleeding areas under Colardo's disposable underwear, gave him ointment to take with him that he could apply himself, and provided him another pair of disposable underwear. She then sent Colardo to the booking area—which is closer to the medical unit—to be monitored. The deputy who escorted Colardo to the booking area reported that he did not observe that Colardo was actively bleeding at this time.

A deputy gave Colardo a new jumpsuit at 2:00 p.m. because he continued to bleed. CorrectHealth's medical records department faxed a request for Colardo's medical records to Rockdale Medical Center at 2:44 p.m., according to a timestamp on the fax.

[4] Because Nurse Fleming denies being made aware of Colardo's ITP during this first visit at 9:24 a.m., she likewise denies being told at that time by her supervisor to obtain his bloodwork stat. If we could accept her statement as true, the outcome of this case would be different. But, for reasons explained below, on summary judgment, we must infer from the evidence that Nurse Fleming learned about Colardo's ITP during this first visit, and that she was likewise told to take important steps that she neglected to take for many hours.

At approximately 2:50 p.m., Colardo informed a deputy that he had a nosebleed. Colardo was taken back to the medical unit, and the deputy who escorted him observed that he showed no signs of distress. The deputies stationed in the medical unit observed that he was not actively bleeding at the time. Nurse Fleming took Colardo's vitals at 3:00 p.m. And she sent Colardo to have the bloodwork done that Nurse Whidby had ordered earlier in the morning. Jail medical staff, however, were unable to draw Colardo's blood or otherwise perform the lab work.

At 3:12 p.m., Nurse Fleming called Nurse Whidby to advise her of Colardo's nosebleed and tell her that they had been unable to draw Colardo's blood. Nurse Whidby ordered that Colardo be sent to the hospital.

At 5:10 p.m., Colardo was still waiting to be transported to the hospital. Nurse Karen Cook, who had arrived at the jail at 2:30 p.m., waited with Colardo. Colardo told Nurse Cook that he had been treated in the past at Rockdale Medical Center for "low platelets." Colardo also told Nurse Cook that he had been bleeding off and on for the past few days but had not told anyone in medical. Nurse Cook observed that Colardo was not in observable distress and that Colardo reported no complaints aside from feeling a "little weak."

Colardo was taken to Rockdale Medical Center by patrol car at 5:34 p.m. He arrived at the hospital shortly after 6:00 p.m. and was still alert and not in apparent distress. Colardo was able to move and breathe without difficulty. Doctors determined that Colardo was suffering from thrombocytopenia with a platelet count of only 2,000. Doctors began a transfusion to increase his platelet count. Around 9:15 p.m., Colardo lost consciousness. At approximately 2:25 a.m. the following morning, Colardo died after suffering from intracranial bleeding.

4. Nurse Fleming's and Nurse Whidby's versions of March 15

Nurse Fleming and Nurse Whidby agree with Plaintiff as to what treatment Colardo received, but disagree as to when, if at all, either learned of Colardo's ITP and disagree as to the timing of a few events. They contend that they did not first discuss Colardo until 3:12 p.m., after Colardo's third visit to the medical unit at around 3:00 p.m. If it is true that this was the first time they talked about Colardo, then necessarily Nurse Whidby could not have ordered Nurse Fleming to do the bloodwork and obtain medical records before 3:12 p.m.,[5] meaning that when Nurse

[5] This is so because the evidence shows that, on March 15, Nurse Fleming and Nurse Whidby discussed Colardo in two separate calls. It was during the first call, that Nurse Whidby says she ordered Nurse Fleming to run bloodwork on Colardo, among other things. So, whenever Nurse Fleming and Nurse Whidby first discussed Colardo, this would be the time Nurse Whidby ordered the bloodwork. The record does not establish precisely when Nurse Fleming sent Colardo to have his blood drawn or when medical staff attempted to perform the tests, just that it occurred sometime around 3:00 p.m. or later, after Colardo returned to the medical unit for the

Fleming sent Colardo for bloodwork she was acting promptly to comply with Nurse Whidby's directions, not waiting five hours to comply. Most importantly, under this version, either the two first learned of Colardo's ITP in the afternoon—around 3:00 p.m. or later—which prompted Nurse Whidby to send him to the hospital, or they never learned of the ITP, and the first person to become aware of Colardo's ITP was Nurse Cook at 5:10 p.m. Making these factual determinations will be a job for the jury.

5. The Sheriff's investigation

After Colardo's death, the Rockdale County Sheriff conducted an investigation into the jail personnel's treatment of Colardo on the day of his death. The investigation was conducted to ensure that the Sheriff knew the series of events on March 15 and to make sure the deputies at the jail had acted appropriately. Accordingly, the investigation centered on the work of the deputies at the jail on March 15 who had contact with Colardo. The deputies working on the investigation obtained video of Colardo while at the jail and statements from deputies who interacted with him. They were not asked to acquire, and did not

third time. So, medical staff could have attempted the blood draw before or after the 3:12 p.m. call.

look at, any medical records or talk to medical staff. The review concluded that the deputies had done nothing wrong.

B. Procedural History

In February 2014, Plaintiff filed this lawsuit against CorrectHealth, Rockdale County, the Sheriff, the deputies at the jail who interacted with Colardo, Nurse Whidby, Nurse Fleming, Nurse Cook, Nurse Lemon, Nurse Samuels, and other CorrectHealth medical staff. Plaintiff's federal § 1983 claims alleged that the defendants had been deliberately indifferent to Colardo's serious medical needs. Plaintiff also brought state-law negligence claims based on the same or related conduct.

After a number of defendants were voluntarily dismissed, the remaining defendants moved for summary judgment on Plaintiff's § 1983 claims. The district court granted summary judgment to each. Most relevant to this appeal, the court concluded that Nurse Whidby and Nurse Fleming could not have been deliberately indifferent to Colardo's serious medical needs because they were unaware of Colardo's ITP. The court refused to consider Plaintiff's claim that the Sheriff's investigation had ratified the alleged violation of Colardo's constitutional rights, because the court interpreted that to be a new claim not raised in Plaintiff's complaint. The court also held that the County could not be liable because

Plaintiff had, at best, shown only one incident at the County jail, not a policy or custom, as required for municipal liability. Because the court's grant of summary judgment resolved all of Plaintiff's federal claims, the court declined to exercise supplemental jurisdiction over her state-law claims under 28 U.S.C. § 1367(c) and dismissed them without prejudice.

Plaintiff filed a timely appeal challenging the grant of summary judgment to Nurse Whidby, Nurse Fleming, and the County, as well as the district court's decision to decline to exercise supplemental jurisdiction over her state-law claims.

II. STANDARD OF REVIEW

We review the district court's grant of summary judgment *de novo*, applying the same legal standards as the district court. *Seff v. Broward County*, 691 F.3d 1221, 1222 (11th Cir. 2012). We may "affirm if, after construing the evidence in the light most favorable to the non-moving party, we find that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Id.* at 1223 (quotation marks omitted). "A fact is 'material' if it has the potential of 'affect[ing] the outcome' of the case." *Shaw v. City of Selma*, 884 F.3d 1093, 1098 (11th Cir. 2018) (alteration in original) (quoting *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1303 (11th Cir. 2016)). "And to raise a 'genuine' dispute, the nonmoving party must point to enough evidence that 'a reasonable jury

could return a verdict for [her].'" *Id.* (quoting *Furcron*, 843 F.3d at 1303). "We may not weigh conflicting evidence or make credibility determinations." *Seff*, 691 F.3d at 1223 (quotation marks omitted). So "[i]f the record presents disputed issues of fact, [we] may not decide them." *Id.* (quotation marks omitted).

We review a district court's decision to decline to exercise supplemental jurisdiction over state-law claims for abuse of discretion. *Beck v. Prupis*, 162 F.3d 1090, 1099 (11th Cir. 1998).

III. DISCUSSION

First, we address the district court's grant of summary judgment to Nurse Fleming and Nurse Whidby. Next, we examine the district court's grant of summary judgment to the County. Last, we discuss the district court's decision to decline to exercise supplemental jurisdiction over Plaintiff's state-law claims.

A. Nurse Fleming's and Nurse Whidby's § 1983 Liability

The Fourteenth Amendment prohibits cruel and unusual punishment to pretrial detainees under the same standards as the Eighth Amendment. *Goebert v. Lee County*, 510 F.3d 1312, 1326 (11th Cir. 2007). "Deliberate indifference to a prisoner's serious medical needs is a violation of the Eighth Amendment." *Id.* (citing *Estelle v. Gamble*, 429 U.S 97, 104 (1976)). "To prevail on a claim of deliberate indifference, a plaintiff must show: (1) a serious medical need; (2) a defendant's deliberate indifference to that need; and (3) causation between that

indifference and the plaintiff's injury." *Melton v. Abston*, 841 F.3d 1207, 1220 (11th Cir. 2016).

Only the second element is at issue before us: deliberate indifference to a serious medical need. To show such indifference, a plaintiff "must prove: (1) subjective knowledge of a risk of serious harm; (2) disregard of that risk; (3) by conduct that is more than mere negligence." *Id.* at 1223. Under this framework, "[e]ach individual Defendant must be judged separately and on the basis of what that person knows." *Id.* at 1224 (alteration in original) (quoting *Burnette v. Taylor*, 533 F.3d 1325, 1331 (11th Cir. 2008)).

Plaintiff argues that Nurse Fleming and Nurse Whidby were deliberately indifferent to Colardo's ITP by delaying treatment and providing grossly inadequate care. The district court held that Nurse Fleming and Nurse Whidby were not deliberately indifferent to Colardo's serious medical needs because neither was aware that Colardo had ITP or a blood-clotting disorder. Plaintiff contends that the district court erred because Nurse Fleming's and Nurse Whidby's awareness of Colardo's ITP is a genuine dispute of material fact that precludes summary judgment. Nurse Fleming and Nurse Whidby respond that even if they had been aware of Colardo's condition, their actions still do not constitute deliberate indifference.

We agree with Plaintiff that, viewing the evidence in the light most favorable to her and drawing all reasonable inferences in her favor, a reasonable jury could conclude that Nurse Fleming and Nurse Whidby were aware of Colardo's ITP on the morning of March 15, 2012. Further, we agree that, if Nurse Fleming was in fact aware of Colardo's ITP, a reasonable jury could also find that by delaying for hours the proper treatment directed by her supervisor, Nurse Fleming was deliberately indifferent to Colardo's serious medical needs. But we disagree that Nurse Whidby was deliberately indifferent because even if she knew of Colardo's ITP, she ordered the proper treatment and did not demonstrate disregard for his serious medical needs.

1. Whether Nurse Fleming and Nurse Whidby were aware of Colardo's ITP in the morning of March 15, 2012 is a genuine dispute of fact.

To show deliberate indifference, a plaintiff must establish that the defendant had a "subjective knowledge of a risk of serious harm." *Melton*, 841 F.3d at 1223. "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of . . . an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). "[A]n official's failure to alleviate a significant risk that he

should have perceived but did not, while no cause for commendation, cannot" constitute deliberate indifference. *Id.* at 838.

The district court erred in concluding that neither Nurse Fleming nor Nurse Whidby were aware of Colardo's ITP when treating him on March 15, 2012 because this is a genuine dispute of fact for the jury. For sure, there is no evidence that suggests either Nurse Fleming or Nurse Whidby was aware of Colardo's ITP before March 15. But viewing the facts in the light most favorable to Plaintiff, a reasonable jury could infer that Nurse Fleming and Nurse Whidby became aware that Colardo had ITP during his first visit to the medical unit on March 15. Specifically, on March 15, Colardo first went to the medical unit at approximately 9:24 a.m. and was treated by Nurse Fleming; Nurse Whidby was supervising off-site that day. Between that first visit and when Colardo finally left for the hospital at 5:34 p.m., Nurse Whidby received three calls from the jail: at 9:55 a.m., 3:12 p.m., and 4:08 p.m. She also made one call to the jail at 4:21 p.m.

Nurse Fleming does not remember the specific content of each particular call, but she did have notes reflecting some of the discussion. Nurse Whidby testified in her deposition that she learned from "one of the nurses" at the jail that Colardo had ITP, though she does not remember who. Nurse Whidby also testified that she ordered Nurse Fleming to obtain Colardo's medical records from Rockdale

Medical Center "at th[e] time . . . when[ ] [Colardo] said that he was treated [there] in the past for low platelets." The fax sent to Rockdale Medical Center requesting Colardo's medical records was sent at 2:44 p.m. according to the fax's timestamp. So, if Nurse Whidby ordered Nurse Fleming to obtain Colardo's medical records at the same time that Nurse Whidby learned of his ITP, then she must have learned of it during the 9:55 a.m. call after Colardo's first visit to the medical unit, because every other phone call occurred after the fax was sent at 2:44 p.m. And, if Nurse Whidby learned of Colardo's ITP from the 9:55 a.m. call, then she must have learned of it from Nurse Fleming, because Nurse Cook (the only other nurse on duty during the day on March 15) did not arrive at the jail until 2:30 p.m.[6]

Nonetheless, Nurse Fleming and Nurse Whidby argue that (1) neither could have known Colardo had ITP before he was sent to the hospital, (2) but if they did know, they did not learn of his condition until the afternoon. They point out that: (1) Nurse Fleming testified in her deposition that Colardo never told her he had ITP; (2) Nurse Fleming's testimony and notes indicate that her first call with Nurse Whidby about Colardo occurred after Colardo returned to the medical unit for the

[6] In addition, Nurse Cook testified in her deposition that her only contact with Colardo on March 15 was at 5:10 p.m. as he was waiting to be taken to the hospital. At that time, Colardo told her that he had been treated at Rockdale Medical Center previously for low platelets, and she testified that this was the first time she learned of his ITP—well after the fax for Colardo's medical records was sent.

third time that day (around 2:50 p.m.), meaning that the first call between Nurse Fleming and Nurse Whidby about Colardo could not have occurred any earlier than 2:50 and that it must have been the 3:12 p.m. call between the two when Nurse Fleming first discussed Colardo; (3) Nurse Fleming testified that Colardo's medical records were not ordered because Colardo had told her he had ITP (though she does not remember why they were ordered); (4) the timestamp on the fax could have been an hour off because daylight saving time was four days earlier, meaning that the fax might have been sent at 3:44 p.m. after Colardo's third visit and the 3:12 p.m. call, and (5) Nurse Whidby (albeit contradicting her other testimony about ordering Colardo's medical records only after she learned that he had ITP) also testified that she was not aware Colardo had ITP until after Colardo told Nurse Cook at 5:10 p.m. as he was waiting to go to the hospital.

Altogether, whether and when Nurse Fleming and Nurse Whidby learned of Colardo's ITP on March 15 hinges on several facts: (1) whether Nurse Whidby ordered Nurse Fleming to obtain Colardo's medical records after she learned that he had ITP, (2) when she learned about the ITP (if ever), and (3) whether the fax requesting Colardo's medical records was in fact sent at 2:44 p.m. Resolving these factual disputes also comes down to consideration of several pieces of testimony: (1) Nurse Whidby's testimony that she ordered Nurse Fleming to obtain Colardo's

medical records only when she found out about his ITP, (2) Nurse Whidby's testimony that she found out only later in the day about the ITP, and (3) Nurse Fleming's testimony that she never knew that Colardo had ITP while she was treating him. But Nurse Whidby necessarily learned about Colardo's ITP prior to directing Nurse Fleming to obtain his hospital records because it was her discovery of this condition that prompted Nurse Whidby to seek those records. And if the fax was sent to the hospital at 2:44 p.m., then the only telephone call that Nurse Whidby could have had with Nurse Fleming prior to 2:44 p.m. was the 9:55 a.m. call, and thus a reasonable jury could find that Colardo told Nurse Fleming during his 9:24 a.m. visit that he had ITP.

Given the conflicting evidence in the record and the fact that we must construe the record in the light most favorable to Plaintiff as the non-moving party, this is a genuine dispute of fact for the jury. Accordingly, for the purposes of Nurse Fleming's and Nurse Whidby's summary judgment motion, we must accept that Colardo told Nurse Fleming during his 9:24 a.m. visit to the medical unit that he had ITP and had recently been treated for it at Rockdale Medical Center, and that Nurse Fleming shared that information with Nurse Whidby during their 9:55 a.m. phone call, at which time Nurse Whidby directed Nurse Fleming to

immediately get bloodwork on Colardo and to order his records, tasks that Fleming neglected to do for five hours.

2. A reasonable jury could conclude that Nurse Fleming was deliberately indifferent to Colardo's serious medical needs.

Assuming then that Nurse Fleming was aware of Colardo's ITP at his first visit to the medical unit at 9:24 a.m. on March 15 and was directed at 9:55 a.m. to take certain important steps to address that condition, a reasonable jury could conclude that Nurse Fleming was deliberately indifferent to Colardo's serious medical needs.

First, if Nurse Fleming was aware of Colardo's ITP, a reasonable jury could infer that she had subjective knowledge of the risk of serious harm. Colardo first visited the medical unit on March 15 because he had been bleeding, and he continued to bleed throughout the day as he visited the medical unit two more times over a period of roughly five hours. Nurse Fleming testified in her deposition that "[a]ny bleeding in someone with [ITP] would be significant," and that ITP can cause internal bleeding. Viewing the evidence in the light most favorable to Plaintiff, a jury could infer that Nurse Fleming was aware of a serious risk of harm based on the combination of Colardo's bleeding and his ITP.

Nurse Fleming argues that, even if she was aware of Colardo's ITP after his first visit to the medical unit at 9:24 a.m. and had subjective knowledge of a

serious risk to Colardo's health, granting summary judgment in her favor was still appropriate because the other elements of deliberate indifference are not satisfied. First, she argues that she did not disregard the risk to Colardo. To show subjective disregard of a risk of serious harm, a plaintiff must produce facts showing that the defendant "actually drew th[e] inference" that her "present course of treatment presented a substantial risk of serious harm . . . but persisted in the course of treatment anyway." *Campbell v. Sikes*, 169 F.3d 1353, 1370 (11th Cir. 1999). Nurse Fleming asserts that Plaintiff has offered no facts from which it could be inferred that she knew her actions put Colardo at a substantial risk of harm. *See Howell v. Evans*, 922 F.2d 712, 721 (11th Cir. 1991) ("[Deliberate indifference] requires . . . not merely the knowledge of a condition, but the knowledge of necessary treatment coupled with a refusal to treat properly or a delay in such treatment."). She argues, based on her deposition testimony, that she had no prior experience treating a patient with ITP, knew little about it, and lacked knowledge about what the proper treatment for ITP was.

Taking the facts and the reasonable inferences that can be drawn from them in the light most favorable to Plaintiff, however, a reasonable jury could conclude that, having been informed at 9:55 a.m. that Colardo had ITP, Nurse Whidby directed Nurse Fleming to apply a pressure dressing to Colardo's buttock, take his

vitals every eight hours until the bleeding stopped, obtain Colardo's medical records from Rockdale Medical Center, and to run blood tests "stat." Because Nurse Whidby ordered that the blood tests be conducted "stat," Nurse Fleming testified that she understood that she should run them "immediately." Yet, despite Nurse Whidby's order, Nurse Fleming did none of these things immediately following the 9:55 a.m. call.

At Colardo's second visit to the medical unit around 10:30 a.m., Colardo was still bleeding and Nurse Fleming applied gauze to the bleeding areas under Colardo's underwear and gave Colardo extra disposable underwear and ointment. Afterwards, Colardo was taken to booking (instead of back to the dormitories) because the booking area is closer to the medical unit and easier to monitor. Yet, a reasonable jury could conclude that Nurse Fleming again failed to follow Nurse Whidby's earlier order: that is she did not take Colardo's vitals, run any blood tests, or try to obtain Colardo's records from Rockdale Medical Center.

At 2:44 p.m., Colardo's medical records were ordered. At around 2:50 p.m., Colardo was brought back to the medical unit because his nose had started bleeding. This time, upon Colardo's third visit, Nurse Fleming took his vitals and sent him to the lab to have his blood drawn. After the lab was unable to perform the bloodwork, Nurse Fleming called Nurse Whidby at 3:12 p.m. and Nurse

Whidby ordered that Colardo be sent to the hospital. Two hours later, at 5:34 p.m., Colardo left the jail for the hospital.

Drawing all reasonable inferences from these facts in favor of Plaintiff, a reasonable jury could infer that Nurse Fleming subjectively disregarded the risk of harm to Colardo because she was aware of the necessary treatment for his ITP but intentionally delayed providing it. Under our precedent, "intentional . . . delay of medical care is evidence of deliberate indifference." *Brown v. Hughes*, 894 F.2d 1533, 1538 (11th Cir. 1990) (per curiam). So "[w]hen prison [officials] ignore without explanation a prisoner's serious medical condition that is known or obvious to them, the trier of fact may infer deliberate indifference." *Id.* Here, a reasonable jury could conclude that Nurse Fleming knew how to treat Colardo because she was told what to do by Nurse Whidby during their 9:55 a.m. call. A reasonable jury could also find that Nurse Fleming failed to execute those orders for roughly five hours until around 3:00 p.m. when she finally sent Colardo to the lab to have his blood drawn. Nurse Fleming offers no explanation for why she delayed implementing Nurse Whidby's order for so long—likely because she vigorously denies that Nurse Whidby ever gave this order until the 3:12 p.m. call, at which time Nurse Fleming promptly executed it.

Deliberate indifference to a serious medical need may also be shown "by 'intentionally interfering with the treatment once prescribed.'" *Aldridge v. Montgomery*, 753 F.2d 970, 972 (11th Cir. 1985) (quoting *Estelle*, 429 U.S. at 105); *cf. Gil v. Reed*, 381 F.3d 649, 662–64 (7th Cir. 2004) (holding that a doctor's failure to follow a specialist's recommendations created a genuine issue of fact as to whether the doctor subjectively disregarded the serious medical risk to the patient). A reasonable jury could find that Nurse Fleming disobeyed Nurse Whidby's "stat" order for bloodwork by delaying carrying out the order for five hours without any explanation. Taken altogether, a reasonable jury could infer that Nurse Fleming subjectively disregarded the risk of serious harm to Colardo because she "kn[e]w . . . [the] necessary treatment" but "delay[ed]" implementing it for five hours without explanation, *see Howell*, 922 F.2d at 721, and she did so in disregard of her superior's direct orders, *see Aldridge*, 753 F.2d at 972–73. *See, e.g.*, *Lancaster v. Monroe County*, 116 F.3d 1419, 1426–27 (11th Cir. 1997) (holding that a jury could infer prison officials' subjective disregard of an inmate's risk of having a seizure because the officials delayed treatment for the inmate even after being told by the inmate's relative that the inmate was likely to have a seizure and had recently been hospitalized for seizures), *abrogated on state law grounds*

by Ex parte Shelley, 53 So. 3d 887 (Ala. 2009), *as recognized in LeFrere v. Quezada*, 588 F.3d 1317 (11th Cir. 2009).

Second, Nurse Fleming argues that, even if she subjectively disregarded the risk to Colardo, she did not do so "by conduct that is more than mere negligence." *Melton*, 841 F.3d at 1223. She argues, essentially, that "[w]here a prisoner has received some medical attention and the dispute is over the adequacy of the treatment, federal courts are generally reluctant to second guess medical judgments and to constitutionalize claims which sound in state tort law." *Harris v. Thigpen*, 941 F.2d 1495, 1507 (11th Cir. 1991) (quoting *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976)). And here, Nurse Fleming provided care to Colardo by treating his open wounds, giving him new jumpsuits and disposable underwear, and having him held in booking so he could be monitored more closely.

A person's conduct can amount to more than mere negligence in a few different ways. Outright "fail[ure] or refus[al] to obtain medical treatment for the inmate" rises to the level of deliberate indifference. *Lancaster*, 116 F.3d at 1425. And, even if some medical care is provided, an official's treatment can still constitute deliberate indifference in certain circumstances. For example, deliberate indifference includes "grossly inadequate care," "a decision to take an easier but less efficacious course of treatment," and "medical care which is so cursory as to

amount to no treatment at all." *McElligott v. Foley*, 182 F.3d 1248, 1255 (11th Cir. 1999) (quotation marks omitted). "[A] prison official may [also] act with deliberate indifference by delaying the treatment of serious medical needs, even for a period of hours." *Farrow v. West*, 320 F.3d 1235, 1246 (11th Cir. 2003). "Where the prisoner has suffered increased physical injury due to the delay, we have consistently considered: (1) the seriousness of the medical need; (2) whether the delay worsened the medical condition; and (3) the reason for the delay." *Goebert*, 510 F.3d at 1327.

McElligott addressed circumstances somewhat analogous to those here. In *McElligott*, a prisoner was suffering from severe stomach pain, muscle spasms, and vomiting. 182 F.3d at 1252–53. The prisoner's doctor and nurse prescribed medication and other treatment, but over a period of months the prisoner's condition worsened and the doctor delayed diagnostic testing and trying new forms of treatment. *Id.* at 1253–54. Eventually the doctor diagnosed the prisoner and found an intestinal blockage that was later determined to be cancerous. *Id.* at 1254. The prisoner brought a § 1983 claim for deliberate indifference, and we reversed the district court's grant of summary judgment to the doctor and nurse. *Id.* at 1259. We found that the doctor and nurse did "basically . . . nothing to alleviate [the prisoner's] pain . . . even as his condition was deteriorating." *Id.* at 1257. So even

though they prescribed some medication, a jury could find that such treatment "was so cursory as to amount to no care at all," given that the treatment did not, in reality, treat the prisoner's pain and both the doctor and nurse were aware of this. *Id.* Thus, we determined that a jury could conclude that "rather than try to diagnose and treat [the prisoner's] worsening condition, the defendants knowingly took an 'easier but less efficacious course of treatment,' reflecting their deliberate indifference to the pain and suffering he was experiencing." *Id.* at 1258 (quoting *Waldrop v. Evans*, 871 F.2d 1030, 1035 (11th Cir. 1989)). And we also concluded that a jury could infer that the "delays" in the prisoner's treatment further "evide[nced] the defendants' deliberate indifference." *Id.*

Under *McElligott*'s reasoning, a reasonable jury could conclude that Nurse Fleming was deliberately indifferent in delaying care for Colardo's ITP for five hours without explanation and by otherwise providing grossly inadequate care for his ITP. If unexplained, protracted delay in the treatment of a serious medical risk can constitute deliberate indifference, *Brown*, 894 F.2d at 1538, including a delay of diagnostic care, *Harris v. Coweta County*, 21 F.3d 388, 393–94 (11th Cir. 1994). Although Nurse Fleming treated Colardo's physical wounds, taking the facts in the light most favorable to Plaintiff, a reasonable jury could find that she ignored his ITP for five hours even though Nurse Whidby had ordered her to run

bloodwork immediately. A reasonable jury could also conclude that Colardo's medical need was serious and Nurse Fleming's delay had a significant impact. This is demonstrated by both Nurse Whidby's order for immediate bloodwork and testimony from Plaintiff's expert that Nurse Fleming's delay ultimately caused Colardo's death because Colardo would not have died had he made it to the hospital just a couple hours earlier. And, again, Nurse Fleming offers no explanation for her five-hour delay before trying to test Colardo's blood. In addition, Nurse Fleming's delay was in direct disobedience of Nurse Whidby's "stat" order, which Nurse Fleming also does not explain. *See Rogers v. Evans*, 792 F.2d 1052, 1058 (11th Cir. 1986) ("If prison guards . . . intentionally interfere with treatment once prescribed, the [E]ighth [A]mendment is violated."). A reasonable jury could conclude that this is more than mere negligence and constitutes deliberate indifference. *See, e.g.*, *Bozeman v. Orum*, 422 F.3d 1265, 1273–74 (11th Cir. 2005) (affirming the denial of summary judgment to prison guards where there was an unexplained fourteen-minute delay in providing care to an unconscious, not-breathing prisoner), *abrogated on other grounds by Kinglsey v. Hendrickson*, 135 S. Ct. 2466 (2015); *Brown*, 894 F.2d at 1538–39 (reversing grant of summary judgment to prison officials where there was an unexplained delay of six hours in treating a prisoner's broken foot).

That Nurse Fleming provided other medical care to Colardo does not preclude a jury from finding deliberate indifference. A reasonable jury could find that what little treatment Nurse Fleming provided was care for Colardo's physical wounds, not his ITP. Accordingly, a reasonable jury could conclude that Nurse Fleming's first aid was "grossly inadequate care," "a decision to take an easier but less efficacious course of treatment," or medical care that was "so cursory as to amount to no treatment at all." *McElligott*, 182 F.3d at 1255; *see, e.g.*, *Melton*, 841 F.3d at 1226–28 (reversing grant of summary judgment to a prisoner's doctor who provided only ineffective or inappropriate medical care).

Altogether, viewing the facts in the light most favorable to Plaintiff, a reasonable jury could conclude that Nurse Fleming was deliberately indifferent to Colardo's serious medical needs. Granted, a jury could also conclude that Nurse Fleming was never aware of Colardo's ITP or that Nurse Fleming promptly followed Nurse Whidby's order for bloodwork because that order was actually given during the 3:12 p.m. call. But, looking at the facts in the light most favorable to Plaintiff, as we must, a reasonable jury could find in Plaintiff's favor.

We therefore reverse the district court's grant of summary judgment in favor of Nurse Fleming.[7]

3. Nurse Whidby's actions do not constitute deliberate indifference.

A reasonable jury could not, however, conclude that Nurse Whidby was deliberately indifferent to Colardo's plight. Even assuming she was aware of Colardo's ITP and of the serious risk of harm that this condition created, there is insufficient evidence to show that Nurse Whidby disregarded that risk or that her actions were more than mere negligence. When Nurse Whidby first heard about Colardo's ITP from Nurse Fleming, she ordered Nurse Fleming to perform blood tests "stat," apply a pressure dressing, measure Colardo's vitals every eight hours until his bleeding stopped, and obtain his medical records from Rockdale Medical Center. And later, when Nurse Whidby was told that jail medical staff was unable to run the blood tests, she ordered that Colardo be sent to the hospital.

Plaintiff does not dispute that Nurse Whidby ordered the proper treatment. Plaintiff's expert opined that, when Nurse Whidby was first told of Colardo's

[7] We think it possible that Nurse Fleming is entirely accurate when she avers that she promptly complied with Nurse Whidby's directive to, among other things, do Colardo's bloodwork stat and to obtain his hospital records. It is entirely possible that Nurse Whidby has remembered inaccurately who said what when. But given Nurse Whidby's testimony (some of which is internally inconsistent), there is obviously a disputed issue of material fact that a jury will have to sort out.

disorder, she acted appropriately by ordering Nurse Fleming to test Colardo's blood. Plaintiff's expert also agreed that, once Nurse Whidby learned that medical staff was unable to perform the bloodwork, she correctly ordered that he be sent to the hospital.

Plaintiff's only argument that Nurse Whidby disregarded Colardo's serious medical needs is that she failed to follow up with Nurse Fleming to make sure that the latter had complied with Nurse Whidby's directives. But, under our precedent, a mere failure to follow up does not constitute deliberate indifference. In *Adams v. Poag*, we addressed the same argument that Plaintiff advances here: that although a doctor's treatment "seemed to be adequate," the treatment was nevertheless "inadequate because there should have been some follow-up." 61 F.3d 1537, 1546 (11th Cir. 1995) (quotation marks omitted). We held that the doctor's failure to follow up was insufficient to constitute deliberate indifference. *Id.*; *accord Howell*, 922 F.2d at 721–22.

Adams governs here. The evidence shows that when Nurse Whidby was made aware of Colardo's ITP, she responded immediately and appropriately. There is no evidence that Nurse Whidby subjectively disregarded the risk to Colardo or that she did so by conduct that is more than mere negligence. Accordingly, Nurse Whidby is entitled to summary judgment.

B. The County's § 1983 Liability

Plaintiff also contests the district court's grant of summary judgment in favor of the County and the court's refusal to consider what she refers to as the "sham investigation" conducted by the Sheriff after Colardo's death. Plaintiff argues that the Sheriff's investigation was so inadequate that it meant that the County ratified any earlier unconstitutional conduct. The district court declined to consider this new claim by Plaintiff raised for the first time in her opposition brief to the County's motion for summary judgment.

We agree with the district court. The court did not err by refusing to consider Plaintiff's ratification claim raised for the first time in her opposition brief to the County's motion for summary judgment. "In this circuit, a plaintiff cannot amend his complaint through argument made in his brief in opposition to the defendant's motion for summary judgment." *Miccosukee Tribe of Indians of Fla. v. United States*, 716 F.3d 535, 559 (11th Cir. 2013). At the summary judgment stage, the "assertion of an additional, separate . . . basis for entitlement to" relief is a "fundamental change" that requires amendment of the complaint under Fed. R. Civ. P. 15(a). *Hurlbert v. St. Mary's Health Care Sys., Inc.*, 439 F.3d 1286, 1297 (11th Cir. 2006). This is so because "[l]iberal pleading does not require that . . . defendants must infer all possible claims that could arise out of the facts set forth

in the complaint." *Gilmour v. Gates, McDonald and Co.*, 382 F.3d 1312, 1315 (11th Cir. 2004). In her complaint, Plaintiff had alleged only that the County was liable under § 1983 because the Sheriff was acting as an arm of the County when providing medical care to Colardo, and that the Sheriff had a policy and custom of inadequate training and providing substandard medical care. In her opposition brief to the County's motion for summary judgment, Plaintiff raised for the first time the claim that the County was liable under § 1983 on the basis that the Sheriff's investigation of Colardo's death ratified the allegedly unconstitutional conduct that caused Colardo's death. By raising a new theory of relief for the first time in her opposition brief, Plaintiff attempted to improperly amend her complaint. *See Hurlbert*, 439 F.3d at 1297. The district court did not err by declining to consider this new claim.[8]

[8] Even if considered, Plaintiff's ratification claim is meritless. "[A] local government may be held liable for a constitutional tort when policymakers have had the opportunity to review subordinates' decisions *before* they become final." *Thomas ex rel. Thomas v. Roberts*, 261 F.3d 1160, 1174 (11th Cir.2001) (emphasis added), *judgment vacated sub nom. Thomas v. Roberts*, 536 U.S. 953 (2002), *opinion reinstated*, 323 F.3d 950 (11th Cir. 2003). Because Colardo's constitutional rights were allegedly violated *before* the Sheriff's investigation, the investigation could not have caused any constitutional violation, and the County cannot have ratified it. *See Salvato v. Miley*, 790 F.3d 1286, 1296–98 (11th Cir. 2015) (holding that a county sheriff could not be liable for failing to investigate an officer's past use of excessive force); *Thomas*, 261 F.3d at 1174–75 (holding that a school district could not be held liable for a teacher's searches of schoolchildren because the district "had no opportunity to ratify the decision to search the children before the searches occurred").

Even when considered as supporting evidence for Plaintiff's original allegations about the level of medical care provided by the Sheriff, the Sheriff's investigation is insufficient evidence of a policy or custom. "[T]o impose § 1983 liability on a municipality, a plaintiff must show: (1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004). A municipality cannot be held liable simply because an employee may have once acted unconstitutionally. *Id.* ("A county does not incur § 1983 liability for injuries caused solely by its employees. Nor does the fact that a plaintiff has suffered a deprivation of federal rights at the hands of a municipal employee infer municipal culpability and causation." (citation omitted)); *see also Hill v. Cundiff*, 797 F.3d 948, 977 (11th Cir. 2015) ("[A] municipality[ ] may not be held liable for constitutional deprivations on the theory of *respondeat superior*."). "It is only when the execution of the government's policy or custom . . . inflicts the injury that the municipality may be held liable under § 1983." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989) (quotation marks omitted) (quoting *Springfield v. Kibbe*, 480 U.S. 257, 267 (1987) (O'Connor, J., dissenting)). Thus, a plaintiff must "identify either (1) an officially promulgated county policy or (2) an unofficial

custom or practice of the county." *Grech v. Clayton County*, 335 F.3d 1326, 1329 (11th Cir. 2003). And a custom "must be such a longstanding and widespread practice [that it] is deemed authorized by the policymaking officials because they must have known about it but failed to stop it." *Craig v. Floyd County*, 643 F.3d 1306, 1310 (11th Cir. 2011) (alteration in original) (quoting *Brown v. City of Fort Lauderdale*, 923 F.2d 1474, 1481 (11th Cir. 1991)).

Here, the only official policy of the County that Plaintiff can point to is the County's so-called "sham" investigation. But, as noted, Plaintiff's allegation of a sham investigation is untimely. Even so, Plaintiff concedes that under our precedent a municipality cannot be liable from a single failure to investigate. Indeed, even assuming that the investigation was a "sham" and that Colardo's constitutional rights had been violated, "'[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability' against a municipality," *id.* (quoting *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985) (plurality opinion)), because "[a] single incident [is] not . . . so pervasive as to be a custom," *Grech*, 335 F.3d at 1330 n.6. And although a "persistent failure to take disciplinary action" can give rise to an inference of municipal policy or custom, "an isolated incident is, by definition, not a persistent failure." *See Salvato v. Miley*, 790 F.3d 1286, 1297 (11th Cir. 2015) (quotation marks omitted). Further,

"a single failure to investigate an incident cannot have caused that incident," and thus cannot form the basis for municipal liability. *Id* at 1297. Because Plaintiff has not shown any policy or custom that caused the alleged deprivation of Colardo's constitutional rights, the County cannot be held liable under § 1983, and the district court properly granted summary judgment to the County.[9]

C. Plaintiff's State-Law Claims

Finally, Plaintiff challenges the district court's decision to decline to exercise supplemental jurisdiction and instead to dismiss without prejudice Plaintiff's state-law claims. Under 28 U.S.C. § 1367(c)(3), a district court "may decline to exercise supplemental jurisdiction over a claim" if "the district court has dismissed all claims over which it has original jurisdiction." Here, the district court dismissed Plaintiff's state-law claims without prejudice because, after granting summary judgment to the defendants on all of Plaintiff's federal claims, the only remaining claims were state-law claims that the court determined were better addressed in state court. Because we conclude that the district court erred in

[9] Because Plaintiff has failed to establish that the County had a policy or custom that caused any constitutional deprivation, we do not address the County's alternative argument that it cannot be held liable because the Sheriff is a state—not county—actor when providing inmates in county jails with medical care. *See* O.C.G.A. § 42-5-2(a) ("[I]t shall be the responsibility of the governmental unit . . . having the physical custody of an inmate to maintain the inmate, furnishing him . . . any needed medical and hospital attention."); O.C.G.A. § 42-4-4(a) ("It shall be the duty of the sheriff: (1) To take . . . custody of the jail and the bodies of such persons as are confined therein . . . [and] (2) To furnish the persons confined in the jail with medical aid.").

granting summary judgment to Nurse Fleming on Plaintiff's § 1983 claim, Plaintiff still has an active federal claim over which the district court has original jurisdiction. Thus, § 1367(c)(3) can no longer be a basis for the district court to decline to exercise supplemental jurisdiction over Plaintiff's state-law claims.

Even if Plaintiff did not have a live federal claim, we would still remand for the district court to consider the impact of the statute of repose on Plaintiff's state-law claims because the court's dismissal without prejudice means that Plaintiff would have to refile those claims in state court. And at the time of the district court's dismissal, the Georgia statute of repose seemingly would have barred Plaintiff from bringing her state-law claims in state court.[10] *See* O.C.G.A. § 9-3-71(b) ("[I]n no event may an action for medical malpractice be brought more than five years after the date on which the negligent or wrongful act or omission occurred."). So the court's dismissal was, in effect, a dismissal with prejudice because Plaintiff's state-law claims could never be heard. Although we have interpreted Supreme Court precedent to "strongly encourage[ ] or even require[ ] dismissal of state claims" after a plaintiff's federal claims have been dismissed before trial, *Mergens v. Dreyfoos*, 166 F.3d 1114, 1119 (11th Cir. 1999) (quotation

[10] The date of the alleged medical malpractice here is March 15, 2012, and the district court dismissed Plaintiff's state-law claims on July 12, 2017.

marks omitted), we have also observed that "dismissing state law claims for which the statute of limitations has run will often constitute an abuse of discretion," *Beck v. Prupis*, 162 F.3d 1090, 1100 (11th Cir. 1998); *but see Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 1000 (11th Cir. 1983) ("[A]lthough the potential statute of limitations bar is a necessary consideration, it is not the only consideration.").

It is not surprising that the district court did not consider the impact of the statute of repose because that matter was not raised before it. Thus, the court was presumably unaware that its dismissal without prejudice might deprive Plaintiff of an opportunity to have her state-law claims decided on the merits. At any rate, as the case is being remanded on the remaining federal claim, the basis for the district court's dismissal without prejudice no long exists. Therefore, we reverse the court's order dismissing without prejudice the state-law claims.[11]

CONCLUSION

We **AFFIRM** the district court's grant of summary judgment to Nurse Whidby and the County, but **REVERSE** the grant of summary judgment to Nurse Fleming and the dismissal of Plaintiff's state-law claims. We **REMAND** for further proceedings consistent with this opinion.

[11] This remand, however, does not bar a dismissal of those claims on some other valid ground.

GILMAN, Circuit Judge, concurring:

I fully agree with the lead opinion's ruling and analysis to the extent that it affirms the district court's grant of summary judgment in favor of Nurse Whidby and Rockdale County, and I agree that we should reverse the district court's dismissal of Plaintiff's state-law claims. The only remaining issue is the reversal of the grant of summary judgment in favor of Nurse Fleming. I agree with the ruling of the lead opinion on this issue, but I write separately to highlight that the case against Nurse Fleming hinges entirely on the accuracy of a fax's timestamp.

As the lead opinion points out, a reasonable could jury find that Nurse Fleming was deliberately indifferent to Colardo's serious medical needs only if it finds that (1) she learned of Colardo's ITP during his first visit to the clinic at 9:24 a.m. on March 15, 2012, and (2) she spoke to Nurse Whidby about Colardo's ITP during a 9:55 a.m. phone call that morning in which Nurse Whidby instructed Nurse Fleming to obtain Colardo's medical records from Rockdale Medical Center and to run blood tests "stat." These findings are essential because Colardo-Keen's case against Nurse Fleming turns solely on the theory that Nurse Fleming disregarded the risk of serious harm to Colardo because she was aware that he needed prompt medical attention if his bleeding was ITP-induced, but that she intentionally delayed in providing such care.

Using the following chart of the key events for reference, I underscore that the accuracy of the timestamp on the fax requesting Colardo's records from Rockdale Medical Center is pivotal to the case against Nurse Fleming:

TIME	COLARDO-KEEN'S VERSION	NURSE FLEMING'S VERSION
9:24 a.m. on March 15, 2012	1st time Colardo seen by Nurse Fleming	1st time Colardo seen by Nurse Fleming at this time
9:55 a.m.	1st call to Nurse Whidby about Colardo; Nurse Fleming received orders to send for lab work, obtain medical records, etc.	No call made regarding Colardo at this time
About 10:30 a.m.	2nd time Colardo seen by Nurse Fleming	2nd time Colardo seen by Nurse Fleming
2:44 p.m.	Fax sent requesting Colardo's medical records	Fax not sent at this time
About 2:50 p.m.	3rd time Colardo seen by Nurse Fleming (nosebleed)	3rd time Colardo seen by Nurse Fleming (nosebleed)
3:12 p.m.	2nd call to Nurse Whidby to inform her that Colardo's blood could not be drawn; Nurse Fleming received orders to send him to ER	1st call to Nurse Whidby about Colardo; Nurse Fleming received orders to send for lab work, obtain medical records, etc.

After 3:12 p.m.	Colardo sent for lab work	Colardo sent for lab work
3:44 p.m.	Fax not sent at this time	Fax sent requesting Colardo's medical records
4:08 p.m.	No call made regarding Colardo at this time	2nd call to Nurse Whidby to inform her that Colardo's blood could not be drawn; Nurse Fleming received orders to send him to ER
5:34 p.m.	Colardo transported to ER	Colardo transported to ER

The first key piece of evidence to consider is Nurse Whidby's testimony that she had ordered Nurse Fleming to obtain Colardo's medical records from Rockdale Medical Center because she learned that Colardo "said that he was treated in the past for low platelets." Next we have the fact that the fax sent to Rockdale Medical Center requesting Colardo's records was timestamped at 2:44 p.m. A jury could find that the timestamp on the fax had been accurately updated to "spring forward" when daylight-savings time started four days earlier. And if the fax requesting Colardo's records was in fact sent at 2:44 p.m., then a jury could find that Nurse Fleming told Nurse Whidby about Colardo's ITP—and Nurse Whidby instructed Nurse Fleming on the necessary course of action—at some point before 2:44 p.m. Yet the only call

to Nurse Whidby from the jail before that time occurred at 9:55 a.m. A jury could therefore find that Nurse Fleming and Nurse Whidby discussed Colardo's ITP and the necessary course of action during this 9:55 a.m. call. Accordingly, under this version of events, Nurse Fleming must have learned of Colardo's ITP during his 9:24 a.m. visit the clinic, which was his only visit to the clinic on March 15 before 9:55 a.m.

These key inferences all turn on the accuracy of the 2:44 p.m. timestamp on the fax sent to Rockdale Medical Center requesting Colardo's medical records. The nurses, however, contend that the timestamp was an hour off because someone failed to adjust the timestamp for daylight-savings time. In other words, according to the nurses, the fax was actually sent at 3:44 p.m. Nurse Fleming therefore might not have learned of Colardo's ITP until his 2:50 p.m. visit to the clinic, and the nurses would have first discussed what to do about it during the 3:12 p.m. call from the jail to Nurse Whidby. Under this version of events, Nurse Fleming was prompt in discussing Colardo's case with Nurse Whidby and in complying with Nurse Whidby's directives to send Colardo for lab work and to request his medical records from Rockdale Medical Center. Accordingly, if the fax was actually sent at 3:44 p.m., then no reasonable jury could find that Nurse Fleming was deliberately indifferent to Colardo's serious medical needs.

The point of the above analysis is simply to emphasize that Plaintiff's entire case against Nurse Fleming hangs by a proverbial thread (here, the accuracy of a fax's timestamp), which could easily be unraveled under closer scrutiny. I assume that this factual dispute will be closely examined by the parties on remand to the district court.