IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR DUCHESNE COUNTY, STATE OF UTAH

STATE OF UTAH Plaintiff, vs. JANA CLYDE, Defendant.	MEMORANDUM DECISION AND VERDICT Case No. 171800359 Judge Don M. Torgerson

This case was before the court for a bench trial on October 3rd, 5th, and 6th, 2022. Defendant Jana Clyde was present and represented by Loni DeLand and Ted Peterson. The State was represented by Craig Peterson and Brian Namba.

FINDINGS OF FACT

Madison Jensen died from profound dehydration in the Duchesne County Jail. She was 21 years old and had been in jail only four days.[1] Her death resulted from many failures. First, her father demanded her arrest as a path to drug treatment. Then she was arrested and held at the jail on specious probable cause. And finally, institutional failure by the jail staff to recognize and treat her symptoms.

***Relevant Jail Background in 2016**:*

The Duchesne County Jail typically houses 160-200 inmates. There are 3 separate housing areas relevant here: Booking cells house inmates until booking is complete; Hotel Block (H-Block) is a general population housing unit; and two court-holding cells. The court-holding cells are single-inmate housing with 24-hour observation and call buttons to the control room. They house people going to court, on suicide watch, for

[1] For clarity, the court will refer to the victim by her first name and all other parties by surnames or other obvious designations. No disrespect is intended by the apparent informality.

medical observation, and when inmates needed to be separated (e.g., problem inmates, confidential informants).

In the jail control room, one operator per shift monitors all housing and passageways at the jail on 15 separate monitors. They are also responsible to answer the call buttons, open and close the doors at the facility, monitor officer safety, and log notable events in BluHorse—the jail's inmate information tracking software.

PA Logan Clark works under Dr. Tubbs as the jail's contracted "medical providers." They approve and prescribe medication, make treatment plans, diagnose, and direct all medical interventions at the jail. PA Clark worked full-time for the Utah Department of Corrections at the prison for 10 years, and has worked with the Duchesne County Jail since 2008. PA Clark typically visited the jail on Thursdays to see inmates in person and is always available by phone to approve medications or answer questions from the jail nurse or correctional officers. He frequently speaks with the jail nurse and correctional officers by phone to resolve medical questions or concerns.

The jail nurse is Nurse Clyde. She has been a licensed practical nurse (LPN) since 2005 and was hired at the jail in 2013 as the only full-time nurse.[2] She works from 7 a.m. to 5 p.m., Monday through Thursday. Nurse Clyde consults the jail's contracted medical providers—PA Clark or Dr. Tubbs—to implement their medical care of inmates consistent with her scope of practice as defined by the Nurse Practices Act. She and the correctional officers inform the providers of inmate medical needs, answer healthcare requests, and administer medications. She also maintains the medical file which, in 2016, was a "hard chart" on paper.[3] Although Nurse Clyde is a jail employee, she is not a correctional officer. Thus, she is not allowed to go into any of the housing cells without a corrections officer present, but may go to the door of the court-holding cells unaccompanied.[4] Otherwise, she had to see inmates in the medical room unless she had

[2] In 2016, she was the only full-time nurse, but additional nursing staff has been added since then.
[3] Madison's file only contained her Medical Request to see PA Clark, Nurse Clyde's written statement about her death, the jail's Inmate Intake Questions/Responses, and Madison's Medication Log for her Clonodine prescription.
[4] There was conflicting testimony about whether Nurse Clyde had been told not to go to court-holding while Madison was there because cell #2 housed a very agitated dangerous male under suicide watch.

an escort. She did not take medication to inmates in their cells. And she cannot transfer inmates to court-holding for medical observation without permission from a ranking officer.

Before Nurse Clyde, every correctional officer was expected to perform the same medical functions that Nurse Clyde now provides during her shifts. And that still applies when she is not working. Within a few months after being hired, officers are required to pass off the 20 medical proficiency skills in the "Medical FTO List." Those skills include taking vital signs, passing medication, and documenting medical information. All correctional officers are trained and responsible to contact PA Clark or Dr. Tubbs in case of emergency or to answer any medical questions that arise.

When the correctional officers change shifts (twice a day), the crews are expected to meet and "pass-along" important information or serious concerns to the next shift. The jail staff who aren't correctional officers, including the jail nurse, do not attend the pass-along briefings.

Medication is dispensed at the jail during "med-pass." Most inmates receive their medications in the medical room. But the inmates in court-holding and booking cells are given their medications in their cell while a correctional officer watches to make sure it is ingested. Nurse Clyde does not take medication to court-holding because she can't open the handcuff port.

In 2016, the jail did not have a written policy for someone experiencing opiate withdrawal and dehydration. PA Clark had ordered jail staff to give inmates Gatorade to keep them hydrated while they were withdrawing. When Gatorade was given, it was not typically entered in BluHorse or the medical chart. Since Madison's death, Gatorade is always charted. And the jail has implemented the Clinical Opiate Withdrawal Scale (C.O.W.S.) to monitor common signs and symptoms of opiate withdrawal over time.

Before Sunday, November 27, 2016:

Madison had been regularly using heroin for almost two years by the time she moved back to her parents' house on November 4, 2016. When she was arrested, she told the officer she had been using up to a gram and a half per day and participated in all the usual behaviors associated with that lifestyle including paraphernalia, dangerous relationships, and trafficking/distribution. She genuinely wanted to be sober and repair

the relationships with her family. But that was difficult, and her family relationships were extremely strained.

On November 22nd Madison's father picked her up from a friend's house. She had brown heroin residue on her teeth and eventually admitted to him that she'd used heroin and marijuana. Two days later, she saw Dr. Kerr at the Uintah Basin Medical Center for help. Her chief complaint was "Withdrawal from Heroin." And she left all her drug paraphernalia (pipes and "tooters") at the hospital.

Madison told Dr. Kerr that she had smoked heroin that morning (the 24th) and had been smoking 1 gram per day for the last 18 months. She was just beginning to feel the withdrawal symptoms and was very concerned about having a seizure since she had a pre-existing history for those. She reported cramping pain in her arms and legs, that she had "the shakes", had tremors, and was anxious. The doctor reported no nausea, vomiting, or diarrhea.

The medical records also note that "The patient has had moderate, chronic weight loss with poor appetite and nutritional intake (90 lbs in last year)." Her "stated weight" at intake was 58.5 kg (128.97 lbs).[5] Her blood pressure was 139/93 at intake and 118/71 at discharge.

Madison was treated and discharged the same day. She was prescribed oral Clonidine every 12 hours to help manage her blood pressure; Tramadol for pain; and Wellbutrin for mood. She was also given a referral to consult a Suboxone prescriber. Then she went home to tough-out the withdrawal symptoms.

Sunday, November 27, 2016—Arrest:

By Sunday, November 27, 2016, there was conflict at home. Father called law enforcement because he had found a "heroin wrapper" in Madison's room—a small piece of tinfoil with heroin residue. He also believed she had stolen a cell phone from him to talk to her boyfriend and drug dealers, had over-used her medication that Father had stored securely in his room, and had taken hydrocodone that was prescribed for her grandfather. Father reported that she had threatened to kill herself the night before

[5] Her weight had been consistent for a few months. She was seen at the women's clinic on November 11th and weighed 130 lbs. 5 oz. And she'd had a hospital visit in June and weighed 128 lbs. 5 oz.

and told him that she would leave and use more heroin to feel better. Madison later denied those things but did inform the responding officer that she knew she "will relapse" if she didn't have drug treatment.

Deputy Jared Harrison of the Duchesne County Sheriff's Office responded to the call around 10:00 a.m. He recorded everything on his bodycam. He had about 10 years' experience in law enforcement, including many drug-related cases as a member of the joint drug task force. He also handled a drug-detection dog.

At the house, Madison told Harrison that she last used heroin at 8:00 a.m. four days before, on the morning she went to the hospital.[6] She smoked marijuana "a week or two ago," and used methamphetamine "probably 2 months ago" in the form of speedballs—heroin and meth cut together. She smoked or snorted her drugs, and never injected because she knew that was more dangerous. She admitted the piece of tinfoil in her room was heroin paraphernalia but explained that it was old and she'd dumped it out of her purse when she went to the hospital.

Father insisted that Madison be arrested for her own safety. He said she was detoxing at home because drug-treatment programs are so expensive. And that the emergency room doctor had advised (in Father's words) "…if you can get her arrested for something, you can get her into a medical think tank while you're gonna have 72 hours, basically, to try and find someplace, somewhere in the State of Utah or somebody else that would take her." He also claimed to have seen the justice court judge "work a deal" with parents to keep adult children confined until a treatment program could be located. Harrison tried to explain that the justice system didn't really work the way Father had described. And that if Madison went to jail, the judge might order a rehabilitation program, but the family would have to pay for it. Father still wanted her arrested and was convinced that Madison would qualify for some sort of benefits because she had no money and no job. He also told the officer that "It's gotten so I can't have her here."

Harrison spoke with Madison at length. She had been trafficking heroin for the drug cartels for the past couple of years. But she was at a point where she genuinely

[6] This appears to be a miscalculation by one day since she had gone to the hospital only 3 days before.

wanted to be sober and would work with the drug task force to help law enforcement catch the big heroin dealers. She just wanted to get better and repair her family relationships. Harrison asked if she wanted to stay at her parents' house. Although she did, she felt like they didn't understand her circumstances very well. And, surprisingly, she had never been arrested despite her history with heroin.

Madison told Harrison that she was currently experiencing symptoms of withdrawal that made it so she couldn't sleep, she had been unable to walk well, had "…been pretty out of it" for a few days, and that this was the first day she was feeling a little bit better. In her view, she had mostly detoxed from the heroin. In the bodycam video, she appears very thin. Her movements were lethargic and slow. And she still felt very ill, laying down whenever she had the chance and moving deliberately. At trial, Harrison testified that Madison looked like a "typical drug user" who had lost a lot of weight from substance use and had sunken features. But she was alert and didn't have too much trouble moving around or getting into his patrol truck. In his recollection, she was not overly weak or disoriented.

Harrison seemed genuinely concerned and tried for over an hour to find a solution to help Madison and her family that did not involve jail. He hesitated to arrest her based on the evidence he had. He even deployed his drug-detection dog in Madison's room and confirmed that she didn't have any heroin or paraphernalia there.

But without a good alternative, Harrison told Madison "I'm kind of at the point where I don't know what to do with you. If I leave you here, I'll be back for a family fight and I don't want to do that." He told Madison that he planned to arrest her and that jail would provide her with a controlled environment where she could not access drugs and could "come down." Madison did not want to go to jail and didn't see why she had to go. She said she would prefer to be in a comfortable place like her bedroom to detox, but she reluctantly cooperated. She gathered her Clonodine, Tramadol, and Wellbutrin medications and left in handcuffs with Harrison.[7]

[7] According to the discussion on bodycam video, there were only three Tramadol pills left when she was arrested.

On the way to jail, Madison agreed to a "pee test" to check her drug levels. Jail staff administered a urinalysis test which, according to the probable cause statement, "…tested positive for heroin and had a slight THC (Marijuana) positive."[8]

Harrison ultimately arrested Madison for Internal Possession of Heroin, Internal Possession of Marijuana, and Possession of Paraphernalia.

Sunday, November 27, 2016—Booking and Jail:

According to Harrison's pre-booking form, Madison was arrested at 1:34 p.m. She responded "yes" to the question "Are you under the influence or going thru withdrawals from drugs or alcohol?" Harrison also noted on the form that he had given Madison's medications to jail staff.

Jail officers Shawn Sorenson and Elizabeth Richens both interacted with Madison at the initial book-in. To Sorenson, Madison did not appear to be in good health and was very skinny. In his words, she looked "…like a drug user." But he was not concerned because he saw many arrive at the jail looking the same way. And Madison seemed otherwise fine—she spoke clearly and was coherent.

Richens completed Madison's intake. Madison self-reported her weight at 129 lbs.[9] On the medical intake form, Madison responded "yes" to withdrawals, hypertension, a history of drug abuse (including overdose), prior suicide attempt, and other medical problems. She noted her drug of choice was heroin and told Richens that she'd last used 5 days before. But although she answered "yes" to being on prescription medication, she did not tell Richens anything specific about her medications. Richens printed the intake form, Madison signed it, and Richens put the form in the booking file, with a copy in the medical box for the medical file.

Richens left Madison in booking cell #2 that night, rather than general population. Although she seemed fine at booking, Richens noticed later that Madison had thrown up in the sink. She was cold, so Richens gave her an extra blanket and told the night shift that Madison might be detoxing.

[8] Officer Elizabeth Richens administered the test.
[9] All weights and heights at booking are self-reported and a scale is not used.

Officer David Lacy worked the night shift and saw Madison in booking. She was detoxing and looked like everybody else who came to the jail detoxing, so he wasn't concerned. He moved her to H-Block and she walked there and carried her tote (bedding, and so on) with no trouble. He hadn't heard anything about her at pass-along, and he didn't pass any information about her to Nurse Clyde or PA Clark.

Monday:

On Monday morning, Richens and Sergeant Holly Purdee helped Nurse Clyde in the medical room to dispense medications to inmates. Madison, escorted by Corporal Daniel Roberts per policy, walked from H-Block to medical for her medication. She was nauseated but didn't need assistance walking. Roberts observed nothing that gave him concerns about her condition and no officer ever reported concerns to him about Madison. Krista Carter was the control room operator and observed her walking to medical. She also didn't see anything unusual.

It was Madison's first time at medical and Nurse Clyde took her vitals and entered the blood pressure of 156/105 in BluHorse at 8:16 a.m. She asked Madison about her medications and symptoms, and offered Madison over-the-counter medication for her nausea and pain. Madison explained that her Clonidine was for high blood pressure, but did not disclose that she had been to the emergency room a few days before for heroin withdrawal symptoms. Madison also reported that she had vomited in the night and needed clean sheets, but thought she just had the flu. She denied using heroin recently, but Richens advised Nurse Clyde of the positive opiate urine screen from the day before. Nurse Clyde told Madison that she needed to be honest about her drug use so Nurse Clyde could help her.[10] Madison maintained that her roommate had the flu and that's what she thought she had. Before she left, Nurse Clyde told her to ask for a blood pressure check if she needed it, since Madison was concerned about her blood pressure and Clonidine prescription.

[10] Nurse Clyde told investigators from the Attorney General's Office that she remembers thinking "Chick, you do some serious drugs and I know you're lying to me, but I can't tell you that and I can't change what you're telling me…you do some serious crap, I don't care what you're telling me…you are a walking skeleton."

Nurse Clyde called PA Clark and he approved Madison's Clonidine for blood pressure. As was typical, that call lasted about 30 seconds and he did not know the name of the inmate then. They also did not discuss Madison's Tramadol or Wellbutrin prescriptions because those are on the list of medications not permitted in the jail and are never permitted until the PA or Doctor has met with the inmate. According to the medical file, Madison took her Clonidine twice each day at the jail, and once on Thursday morning.

Richens gave Madison new sheets. Nurse Clyde gave her a Gatorade. And Madison used the water from the water fountain to take her medication before she walked back to H-Block. Richens was concerned about the report of vomiting but did not think Madison was experiencing any medical distress. Richens thought she was in good health.[11]

Purdee recalled Madison being very thin, almost anorexic. She walked normally to H-Block and her movement wasn't abnormal. She was just very thin. Purdee asked Nurse Clyde what was going on with Madison, and Nurse Clyde thought Madison was coming off heroin.

Tuesday:

On Tuesday, Madison again walked from H-Block to medical for her medication. Richens observed Nurse Clyde take Madison's blood pressure. But the result was not recorded in the medical file or BluHorse. Richens thought Madison seemed much weaker that morning and Madison reported that she was still vomiting. Richens voiced her concerns to Nurse Clyde and then checked on Madison throughout the day while she was in H-Block. Each time she did, Madison was laying in bed.

Later in the day, Richens walked Madison to booking to speak with Chief Deputy Monte Nay.[12] Nay spoke with Madison about the possibility of her working as a confidential informant. She provided names, dates, and sources of her narcotics. He testified that she was coherent and he noticed her walk to and from booking without

[11] Richens has credible experience for her observations. She has been an Emergency Medical Technician for many years. She has worked on the ambulance, as a Certified Nursing Assistant, and in Med-Surge and the ICU at the hospital.
[12] Then, Deputy Nay was the lieutenant supervising patrol and the joint drug task force.

assistance. In his assessment her condition was "rough" and she looked to him like she was a "hardcore user" who was withdrawing from substances and was very skinny and pale.

Nay testified that it was not unusual to see inmates at the jail who looked like Madison when they were in withdrawal. He did not have concerns that she needed medical help and would have gotten her care immediately if she had been incoherent or showing signs of concern.[13] As he generally did with inmates in her condition, Nay asked Madison if she was drinking enough and encouraged her to eat and try to gain some weight.

After Madison met with Nay, Richens left her in the booking cell. Madison seemed weak and complained that she was still vomiting. Richens told Nurse Clyde and Nurse Clyde recommended Madison fill out a medical form to see PA Clark on Thursday, even if the symptoms had subsided by then. Richens took the form to Madison and returned it directly to Nurse Clyde later that day after Madison completed it. Madison wrote:

> "Pucking for 4 days straight, Runs, diarrhea, cant hold anything down not even water. I know my body and it is not detoxing i am completely detoxed. My roomate caught the stomach bug to [illegible] me…."

Madison misdated the form. It appears to be December 3, 2016 with an additional "/", or December 31, 2016, or December 37, 2016. And the time is "4:10 A.M./P.M."

Before ending her shift on Tuesday, Richens asked Nurse Clyde if Richens could give Madison Gatorade because she wasn't keeping any food down and didn't look good. She also asked if she could move Madison to a court-holding cell for better observation. Nurse Clyde agreed to both. BluHorse entries for the day show that Madison refused her lunch at 12:08 p.m. They also show that Richens gave Madison

[13] Nay also has medical training, having been an Emergency Medical Technician since 1997.

Gatorade at 4:13 p.m. to "help keep some fluid down" and moved her to court-holding #1 at 4:19 p.m for "Medical". According to Richens, the move to court-holding served two purposes. It allowed jail staff to monitor Madison's behavior because she complained of vomiting. And it kept her segregated from the general population at Nay's request since Madison would be a confidential informant. According to Nurse Clyde, the move was to give Madison a private place to be sick and for her symptoms to be monitored. She also wanted to keep her segregated from the general population if she had the flu.

Wednesday:[14]

Purdee started her shift at 7:00 a.m. At pass-along, she asked why Madison was in a court-holding cell and heard that Madison had been vomiting. Purdee informed Nurse Clyde and Nurse Clyde approved more Gatorade.

At 4:05 p.m., Nurse Clyde visited Madison's cell and delivered another Gatorade. Her visit was brief, lasting about 20 seconds. Madison walked to the door to retrieve the bottle and there appears to be a short conversation. Nurse Clyde reported that she told Madison the PA was coming on Thursday and Madison still wanted to see him. She

[14] The State provided 14 hours of video of Madison at the jail. All video is from court-holding #1 and begins at 4:00 p.m. on Wednesday and ends at 2:00 p.m. on Thursday. No video was provided between 12:00 a.m. to 8:00 a.m. Thursday. And no video of Madison's time at the jail before 4:00 p.m. on Wednesday was offered into evidence. The facts from the video are detailed in the timelines included as Attachment 'A'. Those facts are included by reference in these findings of fact, with these qualifications: 1) it is often unclear on video if Madison was vomiting, so the items detailed as vomiting were times when Madison physically appears to vomit; and 2) many times Madison went to the toilet appear to be failed attempts to find relief from her symptoms. Finally, the court does not know how often Madison vomited or used the toilet throughout her four-day stay at the jail. Special Investigator Joe Schuler represented that he observed Madison vomit approximately 30 times while re-watching jail video. But that number of times was not confirmed in the videos that were submitted in evidence.

asked how Madison was feeling and if there was anything else she could do for her, but Madison "…denied needing anything else from me." This was the only time Nurse Clyde interacted with Madison outside the medical room.

Officer John Jacobs worked Wednesday night. At 7:21 p.m. he spoke with Madison for over a minute at her cell. Then returned at 9:17 p.m. to see if she wanted a shower. She said 'yes' and walked to the bench outside of her cell before she sat down because she was lightheaded and too tired. She declined to go to the shower in a wheelchair and said she'd go the next morning instead.

Jacobs could see vomit accumulated in Madison's bin and a small spot on the floor that he described as the size of a small plate. There was a little on the bedding too. Jacobs was not concerned because he knew she was "coming off something" and had flu-like symptoms. He didn't report it to anyone, measure the amount, or take photos. He gathered Madison's bin and bedding and brought her some cleaning supplies.

Nothing Jacobs saw raised red flags because he's seen people in that condition before. And he did not inform Nurse Clyde about anything he saw because their shifts didn't overlap.

Thursday:

Sherrie Thompson was the only jail control room operator on Wednesday and Thursday from 7 a.m. to 7 p.m. She observed Madison on camera often during those shifts. On Wednesday, Madison looked "a little sick", but not enough to need medical help. On Thursday, Thompson thought Madison looked like she was improving and was not as sick as the day before. Madison pushed the button once to talk to the controller but didn't say anything before she returned to bed and sat down. From Thompson's perspective, Madison's movements didn't seem unusual or disoriented. But she acknowledged at trial that she couldn't watch Madison's video feed the entire time and didn't see Madison vomit as often as she did.

Officer Bryant Cook worked the day shift (7 a.m. to 7 p.m.) and knew that Madison was being observed medically. He saw her at med-pass in the morning when she walked to the door to take her medication. She looked sick and had been laying down. Then around 10:00 a.m. he, Purdy, and Sergeant Hackwell offered Madison a shower, but she wasn't feeling good enough for it then. He did not tell Nurse Clyde or

PA Clark about what he saw, even though he knew both were present in the building to see inmates for medical visits.

Purdee believes she told Nurse Clyde on Thursday that the night shift had passed along that Madison had been vomiting. But she can't recall when she relayed the message. Purdee never saw anything personally that concerned her enough to take vitals, monitor Madison's vomit, or call PA Clark. And she knew PA Clark would be at the jail around 10:00 a.m. and that Nurse Clyde planned to take him to Madison. To her, Madison didn't look any different on Thursday than she had on Monday, and her appearance resembled other heroin-withdrawing inmates. Had she seen something that concerned her, she would have contacted Nurse Clyde or PA Clark because that's what they were all trained to do.

At 10:52 a.m., Amy Branson from the kitchen staff dropped off lunch and picked up old food from the door. Amy told Officer Caleb Bird that Madison hadn't eaten her breakfast and wasn't eating her lunch.[15]

PA Clark arrived at the jail earlier than usual, around 9:00 a.m. His usual clinic time took about an hour, but he expected longer on Thursday because he was catching up from being gone the week before.[16] As was his practice, he went through the stack of healthcare requests with Nurse Clyde and saw the inmates as they were sent to medical by correctional officers.[17] He always saw those inmates before he went to the booking or court-holding cells. Then he'd walk to the cells and Nurse Clyde would report if anyone

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[15] Officer Bird had arrived on shift at 7:00 a.m. on Thursday and, according to his written statement on the day of Madison's death, he "had no contact with inmate Jensen prior to this incident." He was interviewed on 12/7/2016 and included more information about seeing vomit in Madison's tote before Thursday and telling Nurse Clyde about it. Then, six months later, he was interviewed again (on 6/1/2017) and his narrative changed to include more details about his statements to Nurse Clyde and also new comments to his wife before Madison's death that Madison "…looks like death" and "…looked like she was gonna die." The court finds his statements to be wildly disparate and cannot determine which statements are credible. The court believes his written statement on the day of Madison's death is likely more reliable than his later interviews and trial testimony.

[16] There had also been a suicide at the jail the week before and he had some work to do concerning that incident.

[17] The healthcare requests were not prioritized according to urgency because his usual clinic time lasts about an hour. Nurse Clyde prepares the stack of forms, but not in any particular order.

in the cells had a complaint. Madison's Medical Request form was not in the forms he had in the medical room.

When PA Clark finished in the medical room, Nurse Clyde informed him that there was a patient in a court-holding cell with flu symptoms. They arrived at Madison's cell at 1:27 p.m. PA Clark immediately noticed that something was wrong and summoned help open the cell. Officers tried unsuccessfully to revive Madison with CPR and chest compressions, then PA Clark pronounced her time of death at 13:28.

But Madison had been dead for about 30 minutes before anyone noticed. At 12:56 p.m., Madison began having seizures on her bed. She convulsed for less than a minute, then fell dead to the floor in a seated position against the wall where she remained until PA Clark first saw her.

Death Investigation:

Madison's death was first investigated by detectives from the Uintah County Sheriff's Office who responded to the jail on the day of Madison's death. The investigation was later transferred to the Utah Attorney General's Office in May 2017.

The day after Madison died, Dr. Michael Belenky, M.D. completed her autopsy. He determined her immediate cause of death to be probable cardiac arrhythmia due to dehydration from opiate withdrawal. Her weight at the time of autopsy was 112 lbs. Dr. Belenky found significant fluid (almost 1.5 liters) in Madison's stomach suggesting that she drank and ingested plenty of Gatorade and water. But there was no evidence of significant fluid in her bowels. He concluded that Madison consumed a lot of fluid, but it did not pass to the lower portions of her GI tract where the fluid could be absorbed for her hydration.

RULING AND CONCLUSIONS OF LAW

For Nurse Clyde to be found guilty of negligent homicide, the State must prove beyond a reasonable doubt that she caused Madison's death when 1) she should have been aware of a "substantial and unjustifiable risk" of death, and 2) her conduct

"gross[ly] deviat[ed] from the standard of care that an ordinary person would exercise in all the circumstances" in failing to perceive that risk.[18]

I. <u>The Experts</u>:

To determine the applicable standard of care and severity of risk, the court has considered the testimony of two retained defense experts, one retained State's expert, and the fact-specific expertise of both Dr. Belenky and PA Clark, all of whom the court finds credible.

The State's retained expert witness at trial was Derek Moss. RN Moss is the Nursing Director at the Summit County Health Department and was previously a correctional nurse at the Summit County Jail for about 8 years. He is a registered nurse with a bachelor's degree in nursing.

Nurse Clyde's retained nursing expert was Debra Ash. Among her credentials, she has a master's degree in nursing and is a certified legal nurse consultant with the National Commission on Correctional Healthcare —the highest level of certification available in correctional nursing. She has been a nurse for 36 years, with the past 13 years focused on correctional nursing. She is the former director of medical operations at Advanced Correctional Healthcare, Inc., and former chief nursing officer for Quality Correctional Healthcare.[19]

Nurse Clyde's retained expert on jail operations was Gary DeLand. Among other things, Mr. DeLand was the Executive Director for the Utah Department of Corrections from 1985 to 1992 and currently provides consulting services to jails on jail policy and procedure. He has been a law enforcement officer since 1963.

II. <u>Substantial and Unjustifiable Risk</u>:

At the preliminary hearing, the magistrate questioned whether "knowing that someone had been vomiting and had diarrhea for four days communicates the existence

[18] UTAH CODE §§ 76-2-103(4), 76-5-206(1). See also *State v. Clyde*, 444 P.3d 1151, 1155 (Utah Ct.App. 2019).
[19] According to RN Ash, Advanced Correctional Healthcare, Inc. is the largest jail healthcare provider in the United States.

of a risk of death that's so significant that immediate action is warranted."[20] The magistrate also said that "…he did not 'have any evidence of how substantial this risk is' — one in ten or one in ten thousand."[21] The magistrate did not bind the case over for trial and the State appealed that decision. As part of its decision reversing the magistrate's order, the Court of Appeals reasoned that "…even a small likelihood of death might create a 'substantial and unjustifiable' risk of death" and here, "the risk of not treating [Madison] for dehydration was death."[22] Further, that "[g]iven the seriousness of the risk (death) and the relative ease with which it can be avoided (IV fluids)...there was evidence of a 'substantial and unjustifiable risk' of death."[23]

People experiencing heroin withdrawal exhibit many of the same symptoms as the stomach flu—vomiting, diarrhea, and body aches. And according to PA Clark, those symptoms are also present in a least a dozen other medical conditions. But the trajectory of those symptoms has a pattern in opiate withdrawal. Nurse Ash described the first 3-4 days of symptoms as the worst, with lessening symptoms after that for about a week in total.

Ultimately, the primary risk from opiate withdrawal or the stomach flu is the same — dehydration. Among other factors, Nurse Moss believes that 72 hours of persistent vomiting and diarrhea indicate dehydration because the body loses eloctrolytes along with water. And Dr. Belenky stated that a typical healthy young person dies from dehydration within 3-5 days of onset, although it is impossible to pinpoint when death will occur from dehydration.

Yet dehydration is treated quite simply whether it is caused by opioids or other conditions. According to Dr. Belenky and Nurse Moss, vital signs like increased heart rate and changing blood pressure would have signaled dehydration. As did obvious signs like persistent vomiting, diarrhea, skin and eye dryness, and lethargic movement. In Dr. Belenky's opinion, if Madison had received intravenous fluids as part of a medical intervention, her death would have been preventable up to 30 minutes before

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[20] See *Clyde* at 1155.
[21] *Id*.
[22] *Id.* at 1157.
[23] *Id*.; This court recognizes that the appellate decision was made under the preliminary hearing standard for bindover — not weighing the evidence or credibility, but taking the evidence in a light most favorable to the State.

death. In other words, if she had gotten IV fluids by 12:00 p.m. on Thursday, she likely would have survived.

At the preliminary hearing, the magistrate appears to have viewed the risk statistically — is the probability of occurrence one in ten inmates or one in ten thousand inmates? But this court believes the risk is personal to Madison and her situation, without comparison to other similarly situated inmates. So what was the risk of death from dehydration for Madison after diarrhea and vomiting for 3-4 days? Death. And that is a substantial risk.

The court also concludes that the risk was unjustifiable. Madison's symptoms could have been easily avoided or reversed with simple interventions and IV fluids. She was in a facility where she interacted with officers hourly and had a jail nurse on staff. Given those factors, there should not have been any risk of death by dehydration while she was confined at the Duchesne County Jail.

III. Standard of Care:

In 2016, Duchesne County Jail did not have a written medical treatment protocol for inmates experiencing opiate withdrawal. Nurse Clyde told Uintah County investigators that she understood the instructions for heroin withdrawal to be blood pressures twice a day, give Gatorade, monitor the inmate, and notify PA Clark. But PA Clark testified that he did not expect to be notified about every person who came in with withdrawal symptoms or even someone reporting vomiting and diarrhea, until jail staff verified the symptoms and had concerns. Instead, he trained jail staff to give a fluid diet (like Gatorade) and take vital signs, then call him if they became concerned.[24]

Nurse Moss had worked in a much larger jail (Summit County), with considerably more medical resources. At his jail, they had full-time nursing staff, including RNs who could administer IVs, and a small pharmacy on site. His policy also incorporated the Clinical Opiate Withdrawal Scale (C.O.W.S.). But the basic care for withdrawal and dehydration was like Duchesne in many ways—give electrolyte

[24] There was conflicting testimony by PA Clark about his expectation to be notified of about a patient in withdrawal. During an interview before trial, he also testified that he expected to be notified about any patient in withdrawal, but that does not seem to have been the practice then.

replacement fluids, interview the patient for more information about their symptoms, closely monitor the patient's condition and follow-up twice a day, check vitals at each encounter and more frequently when needed, and relay the information to the supervising PA.[25]

Nurse Ash testified that the primary concern with opiate withdrawal is getting liquid into the patient to offset the fluid loss from the expected vomiting and diarrhea. To do that, every jail that she knows of in the country gives Gatorade or some other form of electrolyte replacement drink to inmates in withdrawal. She also described how the medical response for a heroin user in withdrawal is different from a healthy person with the same symptoms. The same symptoms for a healthy person are immediately concerning because a healthy person doesn't have a ready explanation for symptoms. But a heroin user usually looks terrible, gaunt, and thin from the beginning and medical staff expects them to be sick with the symptoms of withdrawal for 3-4 days before the symptoms become a concern.

Based on all the testimony, the court finds that the standard of care for jail inmates experiencing opioid withdrawal in 2016 was largely as Nurse Clyde understood: 1) monitor vitals; 2) give Gatorade as needed; 3) check-in about symptoms, and 4) notify the medical provider (PA or doctor) if symptoms persist.

IV. Risk Awareness and Gross Deviation:

By most reports, Nurse Clyde is a capable nurse. She has no disciplinary record with the Division of Occupational and Professional Licensing and has never been disciplined as an employee of the Duchesne County Sheriff's Office. PA Clark has had a good working relationship with her and she consistently advocates for patients, even putting in healthcare requests for them when they don't. The Jail Commander (Curry) also said she gets along well with inmates and advocates for them when she thinks they are treated unfairly. Yet she failed to perceive the risk that Madison's vomiting and diarrhea might lead to death, and that failure to perceive was based on several factors.

[25] Nurse Moss testified that in 2016, Gatorade was the least invasive way to deal with dehydration in jails.

Expected Symptoms:

The corrections and medical experts agree on a crucial reality that has long affected medical care in the correctional setting—no expert has ever known of someone dying from opiate withdrawal symptoms in a jail, except Madison Jensen.[26] Nurse Moss, with 8 years in correctional medicine, is unaware of a death from heroin withdrawal, other than what he's read about "in the literature." In Nurse Ash's experience with hundreds of jails, no one in jail ever dies from heroin withdrawal. Mr. DeLand has never heard of anyone dying from heroin withdrawal, even as former director of the Utah Department of Corrections and consultant to dozens of jails. And PA Clark has never had a patient before this who passed away from heroin withdrawal in his roughly 25 years working in correctional medicine. Finally, the State did not offer a single incident of death in a jail caused by opiate withdrawal symptoms.

Many of the trial witnesses, including PA Clark, testified that Madison's symptoms at the jail were common. Jail staff were not concerned when they saw Madison because of their experience with other inmates going through the same thing. And, as noted previously, Nurse Ash testified that during the first 3-4 days of opiate withdrawal, daily vomiting and diarrhea is expected and not alarming.

Also, the interactions between correctional officers and the jail nurse are unique because of the security concerns at the jail. As Nurse Moss testified, the correctional officers become the eyes and ears of the PA, and are part of the medical team when the nurses aren't there. They are trained to do the same functions in her absence and pass the information to the PA. And they also know to pass-along serious concerns to the nurse on her shift or other officers at shift changes.

Finally, unlike hospital care where a doctor or nurse might do rounds and see patients daily, correctional nurses do not see or lay hands on people every day. They typically see patients in the medical room because there are a lot of inmates nurses are not allowed into secure areas without an escort. So they rely heavily on other officers to provide information about inmate needs.

[26] Dr. Belenky did not opine on this issue and does not have correctional medicine experience.

What Nurse Clyde Knew:

Unfortunately, Madison was not a reliable source of information about her medical history or suffering. She did not tell Nurse Clyde that she had been to the emergency room a few days before with withdrawal symptoms, or explain any of her history before she entered the jail. At booking, she reported her last heroin use was five days before even though she used the morning of the emergency room visit only three days before. And she had a positive urine test for opiates on Sunday at booking. Nurse Clyde had the booking intake forms showing drug use, but Madison maintained that she had the flu and was not detoxing from heroin. And, sadly, Madison was not vocal with jail staff about her condition during the days she was in jail.[27]

There is no evidence that Madison vomited or had diarrhea before she arrived at the jail. And the first known vomiting was sometime Sunday afternoon in the booking cell sink before Richens left her shift. No officer passed on any information about Madison in the night.

The next morning, Madison reported vomiting and was given a Gatorade and new sheets. Nurse Clyde took her blood pressure which, according to Nurse Moss, was not elevated to a concerning level and should have been resolved by the Clonodine. Nurse Clyde got approval for the Clonodine prescription and Madison took it for the rest of her stay. No officer reported vomit or diarrhea overnight.

Madison again reported vomiting and diarrhea when she saw Nurse Clyde on Tuesday morning. But the Clonodine was presumably working since Nurse Clyde took a blood pressure and it wasn't "crazy". By that afternoon, Madison seemed sicker, so Richens informed Nurse Clyde that she was still very sick and moved her to court-holding with more Gatorade. Nay saw Madison and didn't report anything to Nurse Clyde or PA Clark.

Madison filled out a medical request on Tuesday afternoon. She still maintained it was the flu, but said she'd been vomiting for 4 days straight. Yet there is nothing to

[27] The court does not expect a suffering inmate to understand their healthcare needs. But in a jail setting, vocal inmates make themselves known and receive more care. Madison did not advocate for her own care and suffered silently.

indicate that was objectively accurate. Based on the evidence, she had first vomited about 48 hours before. And no one knew how much or how often that had happened.[28]

Sometime on Wednesday, Purdee told Nurse Clyde that Madison had been vomiting and gave Gatorade. No other reports about her condition were passed to Nurse Clyde. Nurse Clyde saw Madison in her cell on Wednesday afternoon briefly and gave more Gatorade, but Madison purportedly said she didn't need anything from medical then. At that point, Madison had been sick for about 72 hours. Nurse Clyde's shift ended at 5:00 p.m. and she came back on Thursday at 7:00 a.m.

On Thursday, Purdee may have told Nurse Clyde at some point that Madison was still sick, but PA Clark was in the building with her by 9:00 a.m. seeing patients. And nobody else reported any information to Nurse Clyde about Madison's condition until she was found dead. Jacobs, Purdee, Cook, Thompson, Hackwell, Branson, and Bird all had information about Madison that none of them passed to Nurse Clyde. In fact, Thompson thought Madison looked better on Thursday from her vantage point in the control room.

A review of the jail video described in Attachment 'A' is disturbing. During the 13.5 hours of video, Madison went to the toilet 34 times — about every 24 minutes. But she vomited only 6 times and did not vomit on Thursday. She moved to the door 13 times, drank fluids, refilled her bottle, and was active at times. Perhaps observers thought she looked better. A careful review of the video shows otherwise. But none of that information was passed to Nurse Clyde and most of it happened when she was off-shift.

Importantly, no correctional officer with the same obligations as Nurse Clyde to report medically-concerning information about Madison ever called PA Clark, even though a few had substantial medical training. And most of the day-to-day observations that Madison was sick were never relayed to Nurse Clyde except by Liz Richens on Monday and Tuesday, well within the timeframe where vomiting and diarrhea are expected and unconcerning.

[28] Investigator Shuler alluded to seeing Madison vomit 30 times during her stay when he watched jail video, but the court has no information about the timing of those.

Nurse Ash concluded that "…Ms. Clyde did pretty much the exact same thing, given the same situation, the setting, same level of experience, knowledge, that any other nurse would have done, and in fact, what I would've done." In her opinion, Nurse Clyde's performance did not deviate from the standard of care, in part, because Nurse Clyde did not have enough information to perceive the risk. And she made the proper observations under the circumstances, given what information she knew.

The court agrees with that assessment. Nurse Clyde met with Madison on Monday and Tuesday, taking blood pressure readings both days. The Clonodine was approved, provided, and apparently corrected the blood pressure concern. Madison was experiencing symptoms both days that were normal for her condition then. Madison received plenty of oral fluids. On Wednesday, Nurse Clyde provided more Gatorade and asked Madison if she needed anything else. On Thursday, she had no reports of Madison's worsening condition until it was too late. Nurse Clyde should have checked in more often. But given the information she had, Madison was experiencing normal opiate withdrawal that "never" results in death at the jail within the first 4 days. Thus, the court cannot conclude that Nurse Clyde grossly deviated from the standard of care.

Possible Other Interventions:

The State argues that Nurse Clyde made other omissions that indicate her indifference to Madison's condition. Primarily, a medical watch sheet could have been posted on the cell door, she could have charted better, she could have watched control room video, and she could have done simple skin-tenting tests to check for dehydration.

First, the State introduced a suicide watch sheet that was posted on the court-holding cell next to Madison for the man housed there. Officers initial that sheet every hour as they do cell checks. The State argues that something similar should have been on Madison's cell for medical observations. But the overwhelming testimony at trial was that there had never been such a sheet for medical observation and, although they've used something similar for alcohol withdrawal, it was unheard of then to do that for opiate withdrawal.

Second, virtually everyone agrees (including the court) that Nurse Clyde's medical charting was deficient. Nurse Moss testified that it is impossible to say if better charting might have helped Madison's diagnosis. And Nurse Ash stated that the charting was "woefully inadequate" and a substantial deviation from the standard of care. But she also believes that deficient charting in no way contributed to Madison's death. And the court agrees. In a largely facility where more than one person uses the chart, better charting is crucial. But here, Nurse Clyde prepared the chart primarily for her own use. PA Clark reviews the chart with Nurse Clyde at clinic, but Nurse Clyde was present and personally knew all of the information that should have been in the chart.

Third, Nurse Clyde could have watched control room video to see Madison's condition. But she relies on jail staff to pass along information that they observe. They have similar training. And it is unreasonable to expect the jail nurse to monitor inmate video feeds, besides her regular duties as a nurse. There is a control room operator for that. And correctional officers who are in regular contact with inmates throughout the day are trained and required to report medical concerns the same as the jail nurse.

Finally, the State contends that if Nurse Clyde had done a simple "skin-tenting" test, she would have seen Madison's dehydration with clarity. Skin tenting is a simple test where the skin is pinched between thumb and forefinger. Hydrated skin quickly goes back to normal. Dehydrated skin resembles a "tent" for a time before going back to normal. Nurse Moss didn't know if an LPN was trained in tenting. PA Clark has never trained Nurse Clyde or jail staff on tenting and has never used it in the prison or jail ever. He wouldn't expect any staff to do that for a person in withdrawal because other factors like dry mouth and skin cracking are more observable.

CONCLUSION

There were obvious institutional failures at the Duchesne County Jail that resulted in Madison's death. But the question is whether Nurse Clyde failed to perceive the risk of death from dehydration because her conduct "gross[ly] deviat[ed] from the standard of care that an ordinary person would exercise in all the circumstances."

The symptoms Nurse Clyde knew about were within normal range, for a normal time, for someone experiencing opiate withdrawal. And the correctional officers who

have similar medical training and a duty to report did not report serious concerns about Madison to Nurse Clyde sufficient for her to investigate more. For example, much of the concerning video in Attachment 'A' was after Nurse Clyde was off shift. Nurse Clyde relies heavily on information from correctional officers and inmates since she treats 160-200 inmates and rarely sees the inmates in their cells. And that information was not provided to her.

Nurse Clyde and all of the jail staff should have done things differently. But none of them perceived the risk of death here, even though everyone had similar medical training.

Sadly, Madison was moved to court-holding for closer observation and protection, and she was definitely not observed or protected. But the court is not persuaded beyond a reasonable doubt that Nurse Clyde's failure to perceive the risk of Madison's death was a gross deviation from the standard of care.

VERDICT

The court finds Defendant, Jana Clyde, NOT GUILTY of Negligent Homicide under Utah Code § 76-5-206. The defendant is discharged and any bail or bond is exonerated. This is the final judgment of the court and no additional form of judgment is required.

Dated: 12/5/2022

By: _____
Don M. Torgerson
District Court Judge

ATTACHMENT ‘A’

Court-Holding Cell #1 Camera
11/30/16
4:00 p.m. to 8:00 p.m.

TOILET	VOMIT	DOOR	OTHER
4:03 P.M.			
			4:05 p.m.; Nurse Clyde visits cell and delivers Gatorade. Madison walked to the door to get the bottle. (Approx. 20 seconds)
	4:17 P.M.		
4:36 p.m.			
4:47 p.m.			
		4:57 p.m.	
		4:58 p.m.	
5:12 p.m.			
		5:19 p.m.	
	5:24 p.m.		
		5:31 p.m.	
5:32 p.m.			
5:46 p.m.			
6:00 p.m.			
		6:05 p.m. (crawls back)	
6:20 p.m.			
6:30 p.m.			
6:42 p.m.			
		6:48 p.m.	
		6:53 p.m.	
		7:00 p.m.	
			7:02 p.m.; Refilled Gatorade bottle with water at the sink.
7:10 p.m.			
		7:17 p.m. (crawls back at 7:24 p.m.)	
			7:21 p.m.; Officer Jacobs checks in at cell and speaks with Madison at the cell door for just over a minute.
			7:39 p.m.; Madison drinks Gatorade/Water
7:57 p.m.			

Additional Comments:

- Apparent from the video that Madison is unable to be comfortable. Constantly moving around, flipping her bedding, moving to the floor and back to the bed, to find some relief.

Court-Holding Cell #1 Camera
11/30/16
8:00 p.m. to 12:00 a.m.

TOILET	VOMIT	DOOR	OTHER
		8:23 p.m. Meds delivered. She drinks Gatorade/water.	
8:26 p.m.			
	8:34 p.m.		
8:38 p.m.			
		8:39 p.m.	
	8:58 p.m.		
8:59 p.m.			
	9:04 p.m.		
	9:07 p.m.		
			9:17 p.m.; Officer Jacobs asks about a shower. Madison leaves the cell but sits just outside. Then gather's her bin for Jacobs.
			9:24 p.m.; Officer Jacobs returns to the cell with a new bin and cleaning supplies. He sprays cleaning solution on items.
			9:26 p.m.; Madison sits on the floor and cleans up around the toilet where the bin was. Retrieves new sheets from the bin.
9:50 p.m.			
			10:00 p.m.; Refills Gatorade bottle at the sink.
10:52 p.m.			
			11:50 p.m.; Refills Gatorade bottle at the sink.

Additional Comments:

- Drinks Gatorade/Water on and off regularly during the 4 hours.
- Active and obviously uncomfortable.

Court-Holding Cell #1 Camera
12/1/16
8:00 a.m. to 12:00 p.m.

TOILET	VOMIT	DOOR	OTHER
			8:23 a.m.; Drinks Gatorade/water.
			8:25 a.m.; Drinks Gatorade/water.
8:28 a.m.			
			8:30 a.m.; Refills Gatorade bottle at sink.
8:42 a.m.			
9:12 a.m.			
9:27 a.m.			
9:43 a.m.			
10:01 a.m.			
			10:08 a.m.; Sgt.Purdee, Sgt. Hackford, and Officer Cook speak with Madison through the door. Madison lying down throughout.
10:18 a.m.			
10:30 a.m.			
10:51 a.m.			
			10:52 a.m.; Branson picks up old food from outside the door.
		10:53 a.m.; (leans on wall to get to the door. Walks back to bed eating something from her hand. Leaves food tray at the door)	
10:59 a.m.			
			11:07 a.m.; Refills Gatorade bottle at sink.
11:08 a.m.			
11:14 a.m.			
11:19 a.m.			
11:29 a.m.			
			11:56 a.m.; Officer checks the adjacent cell and initials the paper, but doesn't check Madison's cell.

Additional Comments:

- Still moving uncomfortably the entire time. Constant tossing and turning. Seems more lethargic overall.

Court-Holding Cell #1 Camera
12/1/16
12:00 p.m. to 2:00 p.m.

TOILET	VOMIT	DOOR	OTHER
12:15 p.m.			
12:21 p.m.			
		12:24 p.m.	
12:26 p.m.			
			12:49 p.m.; Drinks Gatorade/water.
			12:52 p.m.; Sits fully up on the bed and drinks more Gatorade/water.
			12:56 p.m.; Seizure begins on the bed. Madison convulses for less than a minute before she falls onto the floor and to a seated position against the wall. Less than one-minute total.
			1:27 p.m.; PA Clark and Nurse Clyde arrive at the cell. Immediately summon help open the cell.

Additional Comments:

- Starting around 12:00 p.m., Madison's behaviors change. She seems to scratch at the walls with her feet and hands.
- Still the same level of tossing/turning.
- Still drinking fluids.
- After her last visit to the toilet, Madison becomes more lethargic. She is moving her limbs more slowly. Her self-soothing behaviors still present (playing with her hair, rubbing her legs together, crying, pulling her knees up, taking her clothes on and off).

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 171800359 by the method and on the date specified.

EMAIL: LONI DELAND LFD_INC@MSN.COM

EMAIL: CRAIG PETERSON CRAIGPETERSON@AGUTAH.GOV

12/05/2022 /s/ SHONETTE OFFUTT

Date: _____ _____

Signature