UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2024

(Argued: May 1, 2025 Decided: November 18, 2026)

No. 24-936

DIANA RENE,

Plaintiff-Appellant,

v.

TANZIA MUSTAFA, M.D., PERSONALLY; EJIKE ONUOGU, M.D., PERSONALLY; TAHIRA N. SIAL, M.D., PERSONALLY; AND BRUNSWICK HOSPITAL CENTER, INC.,

Defendants-Appellees.

Before: MERRIAM and KAHN, *Circuit Judges,* and KOVNER, *District Judge*.*

Plaintiff-appellant Diana Rene arrived at the Stony Brook University Hospital, a state-run facility, complaining about chest pain, weakness, nausea, headaches, and pain in her jaw. Psychiatrist Tanzia Mustafa determined that Rene posed a substantial suicide risk and arranged for her to be transported to a private psychiatric hospital for involuntary commitment. Two staff psychiatrists at the private hospital assessed Rene's suicide risk and ordered her committed there.

* Judge Rachel P. Kovner of the United States District Court for the Eastern District of New York, sitting by designation.

Rene then brought this lawsuit, asserting a Fourth Amendment claim against Dr. Mustafa, Fourth and Fourteenth Amendment claims against the doctors at the private psychiatric hospital, and state law violations. To support her claim that she was subjected to an unreasonable seizure by the physician-defendants, Rene submitted an affidavit stating that Dr. Mustafa had performed only a cursory evaluation that "lasted less than ten minutes," and that her meetings with the doctors at the private hospital were similarly brief. Joint App'x 2962; 2963–67. She also submitted a supplemental expert report opining that the cursory evaluations Rene described would fall substantially below applicable professional standards.

The district court granted summary judgment to defendant-appellees on all federal claims and declined to exercise jurisdiction over the state ones. In granting summary judgment to Dr. Mustafa on Rene's Fourth Amendment claim, the court declined to consider Rene's affidavit and her supplemental expert report—principally relying on the fact that Rene's affidavit expanded on her account in her deposition testimony. As to the psychiatrists at the private hospital, the court held that Rene's federal claims failed because a reasonable jury could not conclude those doctors acted under color of state law. Because this Court agrees with the district court's conclusions as to the private doctors but not with its disposition of Rene's Fourth Amendment claims against Dr. Mustafa, the district court's order is **AFFIRMED** in part and **REVERSED** in part.

Judge Kahn concurs in a separate opinion.

FOR PLAINTIFF-APPELLANT: WILLIAM MICHAEL BROOKS, Center for Justice, Civil Rights, and Liberties, Inc., Port Washington, NY.

FOR DEFENDANTS-APPELLEES: BARBARA D. GOLDBERG (Gregory J. Radomisli, *on the brief*), Martin Clearwater & Bell LLP, New York, NY, *for Tanzia Mustafa, M.D.*

MICHAEL J. DEL PIANO (Amy E. Bedell, *on the brief*), Lewis Johs Avallone Aviles, LLP, Islandia, NY, *for Ejike Onuogu, M.D., Tahira Sial, M.D., and Brunswick Hospital Center*.

RACHEL P. KOVNER, *United States District Judge*:

Plaintiff-appellant Diana Rene arrived at the Stony Brook University Hospital, a state-run facility, complaining about chest pain, weakness, nausea, headaches, and pain in her jaw. Psychiatrist Tanzia Mustafa determined that Rene posed a substantial suicide risk and arranged for her to be transported to a private psychiatric hospital for involuntary commitment. Two staff psychiatrists at the private hospital assessed Rene's suicide risk and ordered her committed there.

Rene then brought this lawsuit, asserting a Fourth Amendment claim against Dr. Mustafa, Fourth and Fourteenth Amendment claims against the doctors at the private psychiatric hospital, and state law violations. To support her claim that she was subjected to an unreasonable seizure by the physician-defendants, Rene submitted an affidavit stating that Dr. Mustafa had performed only a cursory evaluation that "lasted less than ten minutes," and that her meetings with the doctors at the private hospital were similarly brief. Joint App'x 2962; 2963–67. She also submitted a supplemental expert report opining that the cursory evaluations Rene described would fall substantially below applicable professional standards.

The district court granted summary judgment to defendant-appellees on all federal claims and declined to exercise jurisdiction over the state ones. In granting summary judgment to Dr. Mustafa on Rene's Fourth Amendment claim, the court declined to consider Rene's affidavit and her supplemental expert report—principally relying on the fact that Rene's affidavit expanded on her account in her deposition testimony. As to the psychiatrists at the private hospital, the court held that Rene's federal claims failed because a reasonable jury could not conclude those doctors acted under color of state law. Because this Court agrees with the district court's conclusions as to the private doctors but not with its disposition of Rene's Fourth Amendment claims against Dr. Mustafa, the district court's order is affirmed in part and reversed in part.

BACKGROUND

The following facts are taken from the summary judgment record and are uncontested unless indicated otherwise. In or around March 2015, appellant Diana Rene began experiencing an unpleasant taste in her mouth, tension headaches, and pain on the right side of her jaw. Joint App'x 2535–36. Doctors diagnosed her with a salivary gland disorder and performed surgery to address her pain. *Id.* at 2482, 2537. The operation did not cure Rene's symptoms, which continued to worsen. *Id.* at 2483, 2536–39.

On July 24, 2015, Rene went to the Emergency Department of the Stony Brook University Hospital, where she complained of "weakness, chest pain, dizziness, nausea, and facial pain." *Id.* at 2541. She reported that she was "anxious about her medical condition," that her chest pain worsened when she "worried about her health," and that she had "trouble falling asleep" and "woke often at night in a sweat." *Id.* at 2542. At one point, she stated, "I don't know how people live with such pain in their face." *Id.* at 2543. An emergency department physician wrote that Rene "[s]tate[d] that she wants to take her life as a result of these symptoms," and had an "anxious and depressed affect." *Id.* at 2544. The physician requested that Rene undergo a consultation with the hospital's Comprehensive Psychiatric Emergency Program ("CPEP"). *Id.* at 2545.

A psychiatric nurse, a social-work intern, and a psychiatry resident then evaluated Rene. Those providers' notes each documented statements suggesting depression or suicidal ideation, but Rene alleges that the notes do not accurately reflect what she told the professionals. Nurse Thomas Fining wrote that Rene "reported that her quality of life had gone down," that she had "lost her zest for life," that she had thoughts "of wanting to leave this earth," and that she did "not want to be a burden to anyone." *Id.* at 2545–46; *see id.* at 1455–56. He filled out

a suicide risk assessment form stating that, two to five times per week in the past month, Rene had wished to be dead. *Id.* at 2547–48. He marked on the form that Rene did not have spiritual or religious convictions. *See id.* at 1456.

Kristy Graziano, a social work student, recorded that Rene's husband had reported that Rene felt "down in the dumps . . . due to her medical issues" and financial stressors, *id.* at 2550, but that he "denied that she had any history of suicidal statements" or plans, *id.* at 2552. Graziano's report also noted that Rene had lost her fiancé, first husband, and her sister in various accidents. *Id.* at 2556. Her notes report that Rene stated: "I know I said that I wanted to leave this earth, but I do not want to kill myself." *Ibid.* Graziano wrote that Rene said she was "a Christian and love[d her] family too much to" commit suicide. *Ibid.*; *see id.* at 1527. Graziano also wrote that Rene had not "slept in two weeks" and "gets two hours of sleep a night." *Id.* at 2555. Rene told Graziano that she wanted to take medication "to sleep and to calm . . . down so [she] can use [her] coping skills and the supports that" she had, and also that she wanted "to speak with a therapist on how to cope with this stress." *Id.* at 2557.

Finally, psychiatry resident Sridhar Kadiyala evaluated Rene and diagnosed her with "Depression, NOS," *id.* at 1475, 2498, apparently meaning "not otherwise

specified." He wrote that Rene slept two hours a night in the previous three months, felt hopeless, and occasionally thought about hurting herself. *Id.* at 1475–76, 2561–63. He wrote that she had told her primary care provider that she "had thoughts of jumping off a bridge." *Id.* at 1476, 2564. The notes indicate that Rene told Dr. Kadiyala that she "had not had an appetite for three weeks" and "had lost six pounds in one week." *Id.* at 2484–85. Dr. Kadiyala's notes clarified that Rene denied having an intent to hurt herself because she "can't do that to her family," and because she is "Christian and go[es] to church." *Id.* at 1476.

Rene submitted a lengthy affidavit in opposition to defendant-appellees' summary judgment motions disputing that many of the notes accurately reflected what she said. *See id.* at 2950–68. In her affidavit, she denied making the suicidal statements those providers described—such as her alleged statements to Graziano and Fining that she "want[ed] to leave this earth," *id.* at 2954, 2958, and the statements recorded by Dr. Kadiyala that she wanted to take her life, *id.* at 2954, had thoughts of hurting herself, *id.* at 2959, and had told her primary care provider that she had thoughts of jumping off a bridge, *id.* at 2960. She attributed some of the statements in those notes to garbled recording. For instance, she wrote that Fining must have misheard her statement that she "would never want to leave this

earth" because she was "a Christian woman." *Id.* at 2954. And she wrote that she "certainly never acknowledged" to Dr. Kadiyala that she had told her primary care provider she wanted to jump off a bridge; rather, she believed that Dr. Kadiyala may have mistakenly taken that note because another patient in the emergency room that day had "attempted to jump off a bridge," and Rene had instructed Dr. Kadiyala to call her primary care physician. *Id.* at 2960.

Rene stated that if she had told Dr. Kadiyala or anyone else that she was depressed—a proposition she describes as "doubtful"—it was because she "found it depressing" that doctors had not solved her glandular problem, though she "remained very upbeat about life in general." *Id.* at 2958–59. She also wrote that the clinicians misunderstood her remarks about sleep. She wrote that while she had reported "difficulty sleeping," she meant that she was "waking up every two hours," not sleeping only two hours a night. *Id.* at 2957. She denied stating that she had not slept in two weeks. *Ibid.* She further claimed that Fining misinterpreted her comment about "being a burden," which she meant to convey her frustration that her husband frequently had to drive her to doctor's appointments. *Id.* at 2956. The parties agree that Rene told Dr. Kadiyala and

Graziano that she could not commit suicide due to her religious beliefs. *Id.* at 2556, 2564.

Defendant-appellee Mustafa then evaluated Rene, after talking to Dr. Kadiyala and reading portions of Rene's chart. *Id.* at 546, 2503–04. While appellees claim that Dr. Mustafa met with Rene at least four times that night, for a total of about 60 to 80 minutes, *see id.* at 554–55, 2503–07, Rene attests in the affidavit she submitted in opposition to summary judgment that the two met once for "less than ten minutes," some of which they spent discussing a prescription for her glandular problem. *Id.* at 2961–62. At her deposition, Rene testified that her only conversation with Dr. Mustafa lasted "probably 12 to 15 minutes" because she "did ask her about the medication" for her olfactory nerve. *Id.* at 286. Dr. Mustafa "found Rene to be moderately-to-severely depressed, even though she denied suicidal ideation at the time." *Id.* at 2504 (capitalization altered). Dr. Mustafa concluded that Rene's depression had become so severe that she "was not able to use her coping skills"; "felt hopeless, worthless and helpless"; and posed a substantial risk of harm to herself. *Id.* at 2506, 2509. After discussions with staff, she determined that Rene's condition warranted involuntary in-patient

treatment and applied to transfer her to Brunswick Hospital Center, a private psychiatric hospital that provides such treatment. *Id.* at 574–75, 2509–10.

Rene was transported to Brunswick Hospital Center. Consistent with a New York requirement that a physician at a hospital receiving a patient for involuntary in-patient care "confirm[]" the "need for immediate hospitalization" before admission, N.Y. Mental Hygiene Law § 9.37(a), Dr. Ejike Onuogu met with Rene to evaluate her. Joint App'x 2573–74. The parties dispute whether Dr. Onuogu looked at Rene's Stony Brook records during this meeting and whether this second meeting also lasted "less than ten minutes." *Id.* at 2517–18, 2964. Dr. Onuogu concurred with Dr. Mustafa's diagnoses and, over Rene's protestations, authorized her involuntary commitment at Brunswick. *Id.* at 2518–19, 2575–82.

In accordance with a state requirement that continuing involuntary in-patient treatment beyond 72 hours requires "another examining physician" to certify the need for ongoing care, N.Y. Mental Hygiene Law § 9.37(a), physician Tahira N. Sial re-evaluated Rene on July 26 and 27, 2015, Joint App'x 2585, 2594. The parties dispute whether Rene told Dr. Sial that she "felt hopeless," had "suicidal thoughts," or "had been depressed" for months. *Id.* at 2519–20. But

they agree that Dr. Sial ultimately found that Rene posed a "substantial risk of danger to herself because she was suicidal" and certified her for continued treatment. *Id.* at 2591, 2594, 2597. Several days later, Dr. Sial re-evaluated Rene, determined that she posed a lower risk of suicide, and arranged for her discharge. *Id.* at 2601–05.

Rene then filed this lawsuit, challenging her involuntary commitment under Section 1983 and New York law. In the counts relevant to this appeal—the counts that remain after settlement with some additional defendants and withdrawal of certain counts—Rene presses claims against Dr. Onuogu and Dr. Sial (for convenience, the "Brunswick doctors"), as well as Dr. Mustafa. She alleges that Dr. Mustafa committed an unreasonable seizure in violation of the Fourth Amendment and Section 1983 by arranging for Rene to be detained so that she could be transported to Brunswick for involuntary commitment (Count One). *Id.* at 60–61; *see* Compl. ¶¶ 71–72, Joint App'x 108. She further alleges that all three defendant-appellees violated Section 1983 through confinement that was not privileged, in that Rene "did not meet the criteria for hospitalization under Mental Hygiene Law § 9.37 and the defendants departed from accepted professional standards when determining that Ms. Rene warranted involuntary

hospitalization" (Count Five). Compl. ¶¶ 77–78. In addition, she alleges that the Brunswick doctors violated the Fourth Amendment, Fourteenth Amendment, and Section 1983 through her involuntary commitment (Counts Four, Six, and Seven). *Id.* ¶¶ 75–76, 79–82. Finally, she brings state-law claims against Dr. Mustafa and the Brunswick doctors for false imprisonment (Counts Nine, Ten, and Eleven) and medical malpractice (Counts Twelve and Thirteen). *Id.* ¶¶ 85–94.

The parties proceeded to discovery, during which Rene was deposed. *See* Joint App'x 207. Rene stated at her deposition that she told Stony Brook staff she "woke often at night in a sweat" and had "chest pain" when she worried about her health. *Id.* at 364–66. She also recalled telling staff that she had "fe[lt] depressed" about the persistence of her glandular problems and did not "know how people live with such pain in their face." *Id.* at 263–64, 294. However, Rene testified that she did not say she "wanted to take [he]r life as a result of these symptoms." *Id.* at 264. Rene further recalled that after an evaluation by Stony Brook staff and a 12-to-15-minute interview with Dr. Mustafa, she was transferred to Brunswick. *Id.* at 286–87. After her transfer, Dr. Onuogu asked her a "barrage of questions." *Id.* at 411. Rene had difficulty recalling the contents of the questions at the deposition, where she explained that during the interview she

was "in shock" and "still was not processing that they were not letting [her] go home." *Id.* at 411–12. Finally, Rene noted that she met Dr. Sial, told her she was "doing everything [she] was supposed to do" to be released from Brunswick, and was later discharged. *Id.* at 437, 450.

After discovery, defendant-appellees moved for summary judgment, with all the doctors arguing, in part, that their conduct had not violated clearly established Fourth Amendment law, and the Brunswick doctors also arguing that no reasonable jury could find that they were state actors, as required for liability under Section 1983.

Rene filed an affidavit that disputed many of the facts on which defendant-appellees relied in their summary judgment motion. As relevant here, Rene contended that Dr. Mustafa and the Brunswick doctors had each performed cursory evaluations lasting no longer than ten minutes. She also disputed that she had made many of the statements attributed to her in medical records, asserting that the other medical staff who evaluated her at Stony Brook had misheard, misinterpreted, or misrecorded what she had said. *See id.* at 2954–62.

Rene also filed a supplemental expert report by Dr. Peter Stastny, a psychiatrist, who opined that if Rene's account of events were taken as true, each

of the doctors who certified Rene for hospitalization deviated significantly from professional standards.

Dr. Stastny opined that assessments of mental illness and dangerousness each required "a face-to-face evaluation" during which the clinician would obtain information from the patient about her mental state or dangerousness. *Id.* at 2972. While psychiatrists could rely on information from collateral sources, he wrote, a psychiatrist must attempt to confirm with the patient any information the doctor finds important to the assessment, and may not "simply rely on information obtained from collateral sources without also speaking to the patient." *Id.* at 2972–73. In addition, he wrote, a psychiatrist diagnosing a mental health condition such as depression must "gather information to determine" whether a patient's "thinking, behavior, or mood are[,] in fact, a symptom of mental illness," or are instead caused by something else. *Id.* at 2974. For example, he explained, loss of appetite could be "a sign of depression, a symptom of anxiety, or attributable to a physical disorder." *Ibid.* As to risk of suicide, he wrote that a psychiatrist assessing suicidality must "gather information about pertinent risk and mitigating factors," because those factors bear on the likelihood that a person would harm herself. *Id.* at 2974–75.

Turning to Rene's case, Dr. Stastny reasoned that Dr. Mustafa and the Brunswick doctors "did not have any objectively reasonable basis to conclude that Ms. Rene posed a substantial threat of harm to herself." *Id.* at 2981. He wrote that "by conducting a brief face-to-face evaluation, which did not last more than ten minutes, these physicians could not have gathered enough information from Ms. Rene, including attempting to corroborate any information in the chart that these physicians believed was important, as to enable them [to] make an informed decision pertaining to the level of risk that Ms. Rene posed." *Ibid.*; *see also id*. at 2984 ("It would have been impossible to comport with the standards for a mental status and assessment of dangerousness . . . based on an evaluation that lasted ten minutes."). He also reasoned that the rushed timeline of the evaluations would not have permitted the doctors to learn of many risk-mitigating factors in Rene's case—such as her "supportive family, religious convictions that counseled against suicide, and concrete plans for the future"—and prevented them from learning that her physical symptoms such as loss of appetite and chest pain were better explained by physical ailments than mental health considerations. *See id.* at 2979–82, 2992.

The district court granted summary judgment to defendant-appellees on all of Rene's federal claims, and declined supplemental jurisdiction over her state claims. It first rejected Rene's constitutional claims against Mustafa after declining to consider Rene's affidavit and Dr. Stastny's report. *Id.* at 25–26. The court reasoned that Rene's affidavit did not create a material dispute of fact regarding the duration or substance of defendant-appellees' evaluations because it was a "sham affidavit" that contradicted her prior deposition testimony. *Id.* at 49–51. Then, taking as uncontroverted Dr. Mustafa's account of her evaluation—as including "at least three face-to-face interactions" with Rene ranging from 10 minutes to 45 minutes or more—the court held that no reasonable jury could find that Dr. Mustafa violated the Fourth Amendment in arranging Rene's transport for commitment. *Id.* at 64–65. The court found that Dr. Stastny's report did not create a jury question principally because Dr. Stastny's conclusion that Dr. Mustafa fell below applicable professional standards was based on Rene's version of events, including Rene's claim that Dr. Mustafa engaged in "only one[] 10-minute in-person evaluation of Plaintiff." *Id.* at 68–69; *see id.* at 70. It also reasoned that there was "no *per se* rule that a 10-minute evaluation is insufficient for a doctor to make a medical determination such as Mustafa's." *Id.* at 70. At

a minimum, the court reasoned, Dr. Mustafa was entitled to qualified immunity because she did not violate clearly established law. *Id.* at 71.

The district court rejected Rene's fifth cause of action, an additional Section 1983 claim, concluding that the claim "reads as being based upon a violation of" Mental Hygiene Law § 9.37, and was therefore unsustainable because a Section 1983 claim cannot be "based upon a violation of a state statute." *Id.* at 71. The court then rejected the remaining federal claims against the Brunswick doctors, reasoning that those doctors were not state actors under Section 1983, and that in any case qualified immunity shielded their clinical decisions. *Id.* at 87–92. Having granted summary judgment on all of Rene's federal claims, the district court declined to exercise jurisdiction over her state-law claims. *Id.* at 95–97.

Rene appeals. She principally argues that the district court erred in excluding her affidavit as a sham, Appellant Br. 31–48, and in excluding Dr. Stastny's opinion, and that the record, including the erroneously excluded evidence, would permit a reasonable trier of fact to conclude that Dr. Mustafa violated her clearly established Fourth Amendment rights, *id.* at 48–56. Rene also argues that a reasonable jury could conclude that Dr. Onuogu's and Dr. Sial's

conduct was attributable to the state, and that they violated her clearly established rights under the Due Process Clause. *Id.* at 59–67.

STANDARD OF REVIEW

An award of summary judgment is reviewed *de novo*. *Nambiar v. Cent. Orthopedic Grp., LLP*, 158 F.4th 349, 357 (2d Cir. 2025). Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine issue of fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Frost v. N.Y.C. Police Dep't*, 980 F.3d 231, 242 (2d Cir. 2020) (citation and quotation marks omitted). "A fact is material if it might affect the outcome of the suit under the governing law." *Ibid.* (citation and quotation marks omitted). In determining whether there is a genuine issue of material fact, a court evaluates the whole record, resolving all ambiguities and drawing all reasonable factual inferences in favor of the non-movant. *See ibid.* "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial," and summary judgment should be granted. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (internal quotation marks omitted).

DISCUSSION

The district court erred in concluding that appellant presented no triable issue of fact as to her Fourth Amendment claim against Dr. Mustafa, but correctly disposed of appellant's other federal claims. Accordingly, the grant of summary judgment in favor of Dr. Mustafa is reversed, and the disposition of all federal claims other than those against Dr. Mustafa is affirmed. Appellant's state-law claims are reinstated because the district court declined to exercise supplemental jurisdiction over appellant's state-law claims on the ground that all federal claims had been dismissed—a proposition that no longer holds true.

I. Appellant's Fourth Amendment claim against Dr. Mustafa presents a triable issue of fact.

Disputes of fact preclude summary judgment for Dr. Mustafa on appellant's Fourth Amendment claim. Appellant was entitled to rely on her affidavit describing cursory interactions with Dr. Mustafa and others to generate a factual dispute concerning the circumstances surrounding Dr. Mustafa's commitment decision. And her expert's report—opining that the type of brief evaluation appellant described fell well below the standard of care—was enough to generate a jury question concerning whether Dr. Mustafa's decision to confine appellant for transport to a private hospital comported with Fourth Amendment standards.

A. Sham Affidavit Doctrine.

The district court erred in applying the "sham affidavit" doctrine to exclude appellant's affidavit and the expert report relying on it. District courts should not displace the jury's factfinding role by "weigh[ing] evidence or assess[ing] the credibility of witnesses." *Hayes v. N.Y.C. Dep't of Corr.*, 84 F.3d 614, 619 (2d Cir. 1996). A party's sworn statement may be adequate to counter summary judgment and "must be weighed by a trier of fact," even in the face of substantial evidence on the other side. *Scott v. Coughlin*, 344 F.3d 282, 291 (2d Cir. 2003); *see Danzer v. Norden Sys., Inc.*, 151 F.3d 50, 57 (2d Cir. 1998) ("To hold, as defendants ask us to do, that the non-movant's allegations of fact are (because 'self-serving') insufficient to fend off summary judgment would be to thrust the courts—at an inappropriate stage—into an adjudication of the merits.").

The sham affidavit exception is a narrow exception: "[A] party's factual assertion in an affidavit opposing summary judgment, *contradicting* his prior deposition testimony, may be disregarded as a sham attempt to create an issue of fact." *Crawford v. Franklin Credit Mgmt. Corp.*, 758 F.3d 473, 481 (2d Cir. 2014) (emphasis added). By extension, a party also cannot create an issue of fact by submitting an expert report that effectively smuggles in testimony that would contradict the affiant's past statements. *See In re Fosamax Prods. Liab. Litig.*, 707

F.3d 189, 193 (2d Cir. 2013) (per curiam). But an affidavit warrants exclusion only if it presents contradictions that are "real, unequivocal, and inescapable." *Id.* at 194 & n.4 (quoting *Rivera v. Rochester Genesee Reg'l Transp. Auth*, 702 F.3d 685, 696 (2d Cir. 2012)). "If there is a plausible explanation for discrepancies in a party's testimony, the court considering a summary judgment motion should not disregard the later testimony because of an earlier account that was ambiguous, confusing, or simply incomplete." *Langman Fabrics v. Graff Californiawear, Inc.*, 160 F.3d 106, 112 (2d Cir. 1998). Evidence that "amplifies or explains, but does not merely contradict" prior testimony may not be excluded at summary judgment. *Ibid*. (citation omitted). For instance, an expert's statement that he "did not know that" a patient was on a drug unequivocally contradicted his prior testimony that he *did* know she was on that drug. *Fosamax*, 707 F.3d at 194. But if an affiant "does not allege the occurrence of something that he previously described as not happening," the affiant's testimony does not create a "real, unequivocal, and inescapable contradiction." *Rivera*, 743 F.3d at 22–23 (2d Cir. 2014) (declining, at summary judgment, to discount plaintiff's deposition testimony that coworkers called him ethnic slurs even though prior filings stated a different "number of times he was subjected to such slurs" (emphasis omitted));

see Langman, 160 F.3d at 112 (declining to exclude later account that offered "additional factual details" coloring earlier account that witness "was uncertain").

Under these principles, the district court erred in excluding Rene's affidavit. The court excluded Rene's affidavit without finding it unequivocally contradicted by her deposition testimony; the court instead observed that both Rene's affidavit and her deposition testimony discussed the same topic—"what [Rene] meant by her responses to various Stony Brook and [Brunswick] Hospital [Center] personnel evaluators"—and it reasoned that Rene's opportunity to explain those statements "was during her deposition when those issues were being explored" and not in a "post-deposition affidavit." Joint App'x 50. The purported "inconsistencies" identified by the district court, *see id*. 49, 50 n.13, do not rise to the level of unequivocal contradictions but instead attempt to offer "additional factual details." *Langman*, 160 F.3d at 112. A party is entitled to make factual submissions that expand on her earlier testimony so long as the new statements do not unequivocally or inescapably contradict the earlier ones.

While appellees now scour the record for contradictions that could support exclusion, they identify at most discrepancies that could lead jurors to doubt appellant's affidavit, not fatal inconsistencies that warrant disregarding the

affidavit completely. Dr. Mustafa points to portions of Rene's affidavit in which she provides new context—for example, Rene's explanation in her affidavit that her statement to doctors that she "d[id]n't know how people live with such pain in their face," Joint App'x 263–64, "was a statement of frustration," not "an expression of" suicidal thought, *id.* at 2954; *see* Mustafa Br. 37. But that explanation is not a contradiction. Nor is Rene's deposition testimony that she told staff that she felt "depressed" because she worried that her health situation was "not resolving," Joint App'x 293–94, unequivocally contradicted by her later explanation that she was not depressed *generally*, but found the inability to cure her condition depressing. *See* Mustafa Br. 38. A witness does not unequivocally contradict her prior testimony by providing context or explanations, even if a jury would be free not to credit them.

For their part, although Drs. Onuogu and Sial offer five pages of quotations from appellant's deposition testimony that they allege to be inconsistent with appellant's affidavit, they provide arguments about only two supposed contradictions. *See* Onuogo & Sial Br. 41–46. First, they compare appellant's testimony that Dr. Onuogu asked her a "barrage of questions" while she was "in shock," Joint App'x 411, against the claim in her affidavit that Dr. Onuogu asked

her "a few questions" that duplicated the ones asked of her at Stony Brook, *id.* at 2964. But that difference in degree does not amount to an insurmountable contradiction. *See, e.g.*, *Rivera*, 743 F.3d at 22–23 (finding variance in "the *number of times*" affiant stated he was subjected to slurs insufficient to render statement incredible as matter of law or to constitute a "real, unequivocal inescapable contradiction"). And while appellees point to appellant's shock as evidence that she was "unable to process" the events of July 2015, Onuogu & Sial Br. 39, a witness's later account that adds "far more detail[]" to an "avowedly uncertain" earlier account does not contradict prior testimony. *Langman*, 160 F.3d at 112 (permitting jury to consider an "expanded version" of testimony, even though it could conclude the "later elaboration suggests fabrication"). For the same reason, the Brunswick doctors cannot establish an unequivocal contradiction by pointing to the affidavit's statements that appellant "was sexually active with [her] husband," Joint App'x 2965, despite the caveat in her deposition that she "c[ould]n't remember" if she and her husband were "having intimate relations" at the time, *id.* at 336.

Finally, appellees claim that Rene's affidavit contradicts doctors' "contemporaneous medical records," Onuogu & Sial Br. 35; *see also* Mustafa Br. 41,

echoing the district court's critique of the affidavit as speculative, Joint App'x 50. But this does not compel a finding that Rene's affidavit is a sham. The sham affidavit doctrine wards against manufactured evidence contradicting an affiant's *own* testimony. *Hayes*, 84 F.3d at 619; *Fosamax*, 707 F.3d at 193–94. A plaintiff is "entitled to rely on h[er] own testimony" at summary judgment, *Rentas v. Ruffin*, 816 F.3d 214, 221 (2d Cir. 2016), even if other parts of the record contradict it, *Frost*, 980 F.3d at 247–48 (rejecting argument to exclude declaration as sham "based on its . . . lack of support in the record"). And while Dr. Mustafa observes that a district court cannot consider evidence so "blatantly contradicted by the record" that "no reasonable jury could believe it," *Scott v. Harris*, 550 U.S. 372, 380 (2007), the rule does not permit a district court to discredit a patient's affidavit solely "on the basis of [its] disparity" with "medical records," *Coughlin*, 344 F.3d at 289–90.

Kulak v. City of New York, 88 F.3d 63, 76 (2d Cir. 1996), on which appellees rely, is inapposite. There, this Court found that an expert report relying on "bare denials of statements allegedly made by patients" did not create an issue of material fact. *Id.* at 76–77. But the *Kulak* Court distinguished the bare denials before it from a case in which a patient conceded that she had made "some of the statements the doctors claimed to rely upon in confining her, but claimed that she

also made related statements ignored by the doctors 'that would permit competing inferences to be drawn as to the meanings of the undisputed events.'". *Id.* at 76 (quoting *Rodriguez v. City of New York*, 72 F.3d 1051, 1064 (2d Cir. 1995)). That is precisely appellant's situation. Rene does not "simply den[y] every allegation," but rather supplements her hospital records with context. *Ibid.*; *see, e.g.*, Joint App'x 2957–59 (acknowledging that she wept at the hospital, may have said that she had not been sleeping, and may have expressed that she "felt hopeless at times about [her] medical situation"); *id.* at 2956 (acknowledging that appellant may have said she did "not like being a burden to [her] family" but explaining that she did not mean the statement to express a desire to commit suicide).

For the foregoing reasons, the district court erroneously excluded appellant's affidavit. It therefore also erred in excluding Dr. Stastny's report for its "reliance upon" the affidavit. *Id.* at 70.

B. A genuine dispute of fact exists regarding whether Dr. Mustafa violated Rene's clearly established Fourth Amendment rights.

With the record expanded, Rene established a jury question on her claim that Dr. Mustafa violated her Fourth Amendment right against unreasonable seizures by authorizing her commitment at Brunswick. Although "confinement of the mentally ill by state action is generally analyzed under the

due process clause," this Circuit recognizes a Fourth Amendment right against involuntary hospitalizations, which are "tantamount to the infringement of being arrested." *Glass v. Mayas*, 984 F.2d 55, 58 (2d Cir. 1993) (citation omitted). No party disputes that appellant was involuntarily hospitalized without a warrant. Accordingly, the Fourth Amendment requires that the seizure be "made only upon probable cause, that is, only if there are reasonable grounds for believing that the person seized is dangerous to herself or to others." *Anthony v. City of New York*, 339 F.3d 129, 137 (2d Cir. 2003) (quotation marks and citation omitted). That standard "closely relate[s]" to that applied to similar claims under the due process clause, which prohibits commitment decisions "made on the basis of substantive and procedural criteria that are substantially below the standards generally accepted in the medical community." *Lurch v. Chaput*, No. 22-798, 2023 WL 2469943, at *1 (2d Cir. Mar. 13, 2023) (summary order) (quoting *Bolmer v. Oliveira*, 594 F.3d 134, 142 (2d Cir. 2010)).

Moreover, a state actor like Dr. Mustafa—a clinician at a public hospital—is entitled to qualified immunity from damages unless her conduct "violate[s] clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A defendant "is not

liable if he did not violate clearly established law *or* it was objectively reasonable for him to believe that he was not violating clearly established law." *Luna v. Pico*, 356 F.3d 481, 490 (2d Cir. 2004). In the probable-cause context, the availability of qualified immunity turns on whether it was "objectively reasonable for [the defendants] to believe that probable cause existed" or whether those "of reasonable competence could disagree on whether the probable cause test was met" at the time of the seizure. *Myers v. Patterson*, 819 F.3d 625, 633 (2d Cir. 2016) (citation omitted).

Taking into account appellant's affidavit and Dr. Stastny's supplemental expert report, appellant has adduced evidence from which a jury could conclude that Dr. Mustafa violated clearly established Fourth Amendment law. Construing the evidence in appellant's favor, a jury could credit appellant's statement that Dr. Mustafa met with her once, for less than ten minutes, Joint App'x 2961–62, during which appellant never expressed thoughts of suicide or "an intent to want to take [her] life," *id.* at 2954. A jury could also believe appellant's testimony that she never made such statements to other staff members at Stony Brook, who wrote the notes on which Dr. Mustafa relied. *Id.* at 280.

Given appellant's account of the facts, the jury could credit Dr. Stastny's testimony that professional norms required a psychiatrist making a commitment decision to attempt to corroborate any important statements in a patient's chart by interviewing the patient herself, and to investigate factors that mitigated against suicide risk in order to "make an informed decision" about her risk levels. *Id.* at 2981. A jury could conclude, as Dr. Stastny did, that Dr. Mustafa interviewed Rene once, for only about ten minutes,[1] that she could not have made an informed decision after such a brief interview, and that she therefore "deviated significantly from minimal professional [psychiatric] standards." *Id.* at 2971; *see id.* at 2984 (Dr. Stastny's conclusion that "[i]t would have been impossible to comport with the standards for a mental status and assessment of dangerousness . . . based on an evaluation that lasted ten minutes"); *id.* at 2981 (Dr. Stastny's conclusion that a face-to-face evaluation that "did not last more than ten minutes" would not permit physicians to gather sufficient information to "make an informed decision pertaining to the level of risk that Ms. Rene posed").

[1] Even if the jury credited only Rene's deposition testimony, rather than her affidavit, she testified that her only meeting with Dr. Mustafa lasted "probably 12 to 15 minutes" including a discussion about medication for her olfactory nerve. Joint App'x 286. A reasonable jury could just as easily conclude that an additional two to five minutes did not alter the conclusion that Dr. Mustafa did not spend enough time with Rene to reach an informed conclusion.

Those reasons permit the jury to conclude that Dr. Mustafa could not have made an objectively reasonable determination of probable cause, precluding her qualified immunity defense.

II. The district court correctly dismissed appellant's Section 1983 claim that was based on state-law violations.

The district court correctly dismissed appellant's fifth cause of action under Section 1983 because it was predicated "upon a violation of MHL § 9.37" rather than the Fourth Amendment. *Id.* at 71–73. A Section 1983 violation "must be based on a violation of federal constitutional or statutory law, not state law." *P.C. v. McLaughlin*, 913 F.2d 1033, 1045 (2d Cir. 1990). Appellant argues that the district court should have construed her complaint to present a Fourth Amendment false-imprisonment claim because the substantive elements of such claims are determined by reference to New York false imprisonment law.

The district court did not err in adopting a different reading of the complaint. Appellant's fifth cause of action states only that appellant "did not meet the criteria for hospitalization under Mental Hygiene Law § 9.37" and that defendants' conduct "departed from accepted professional standards," without reference to any constitutional claim, while appellant's other Section 1983 claims in the complaint expressly identified the constitutional provisions at issue. Joint

App'x 108–10. New York tort law is "a source of persuasive authority," but it is not "binding precedent" in the Section 1983 context. *Uviles v. City of New York*, 130 F.4th 27, 37 n.12 (2d Cir. 2025) (citation omitted). An overlapping body of substantive law did not require the district court to construe the fifth cause of action as a Fourth Amendment claim. The district court's dismissal on grounds that a Section 1983 claim cannot rest on a state-law violation is accordingly affirmed.

III. Appellant has not adduced evidence from which a reasonable factfinder could conclude that Dr. Onuogu and Dr. Sial acted under color of state law.

Rene has not put forward evidence that would permit a jury to conclude that the Brunswick doctors acted under color of state law, as required for liability under Section 1983. Section 1983 applies only to "state actors or private parties acting under the color of state law." *Betts v. Shearman*, 751 F.3d 78, 84 (2d Cir. 2014) (quotation marks omitted). Dr. Onuogu and Dr. Sial were physicians at a private hospital. Joint App'x 2568, 2573, 2584. Private parties act under color of state law if "(1) the [private] entity acts pursuant to the 'coercive power' of the state or is 'controlled' by the state"; (2) "the state provides 'significant encouragement' to the entity, the entity is a 'willful participant in joint activity with the [s]tate,' or the entity's functions are 'entwined' with state policies"; or

(3) "the entity 'has been delegated a public function by the [s]tate.'" *Sybalski v. Indep. Grp. Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir. 2008) (per curiam) (alteration in original) (quoting *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 296 (2001)); *McGugan v. Aldana-Bernier*, 752 F.3d 224, 229 (2d Cir. 2014). "The purpose of this requirement is to assure that constitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

On appeal, Rene focuses on the second option, asserting that Drs. Onuogu and Sial engaged in joint action with the state by unquestioningly relying on Dr. Mustafa's chart instead of conducting an independent medical evaluation. Under this state-actor test, commonly dubbed the joint action doctrine, private parties qualify as state actors if the State significantly intruded upon a private entity's affairs—in other words, "only when it has exercised coercive power or has provided such significant encouragement" that the private actors' "choice must in law be deemed to be that of the State." *Ibid.*; *see Rendell-Baker v. Kohn*, 457 U.S. 830, 841–42 (1982) (examining "interest" the State displayed in a school's affairs and how "intrusive" governing regulations were); *Brentwood Acad.*, 531 U.S. at

296–98 (focusing on whether private institution was entwined with state "control"). A state does not exercise coercive power or provide significant encouragement if the private party's "conduct is not compelled by the state but is merely permitted by state law." *Cranley v. Nat'l Life Ins. Co. of Vt.*, 318 F.3d 105, 112 (2d Cir. 2003). In addition, the state's establishment of "procedures for protecting" patient rights does not alone "amount to 'significant encouragement,' 'willful particip[ation],' or state 'entwin[ement].'" *Sybalski*, 546 F.3d at 258 (citation omitted); *see Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1974); *Am. Mfrs. Mut. Ins. v. Sullivan*, 526 U.S. 40, 52 (1999) (citation omitted) (holding that "extensive state regulation of private activity" alone does not deputize private actors as state agents).

Alternatively, "a willful participant in joint action with the State or its agents" acts under color of state law. *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980) Specifically, a private party and state actor who share a "common goal" of violating a person's rights and then coordinate "pursuant to an[] agreement or plan" act jointly in that shared mission. *Betts*, 751 F.3d at 85–86 (citation omitted) (discussing example where private guard and police officer "worked in tandem to" fabricate reason to arrest a plaintiff for shoplifting); *see Ginsberg v. Healey Car*

& Truck Leasing, Inc., 189 F.3d 268, 272–73 (2d Cir. 1999). This kind of joint-action charge requires evidence of "some agreement between private and public actors to violate plaintiff's constitutional rights." *Betts*, 751 F.3d at 85 (quoting *Cunningham v. Southlake Ctr. for Mental Health, Inc.*, 924 F.2d 106, 107 (7th Cir. 1991)). By contrast, "merely resorting to [state procedures] and being on the winning side of [those procedures] does not make a party a co-conspirator or a joint actor." *Dennis*, 449 U.S. at 27–28 (noting that litigant does not act jointly with a judge simply by suing someone and winning).

Against these lodestars, appellant presents two arguments. First, appellant observes that New York Mental Hygiene Law § 9.37 empowers a private hospital to receive a patient if "the Director of Community Services" or their designee believes that the patient requires immediate care. Appellant Br. 62. Because New York created the role of director of community services, appellant argues, Brunswick Hospital Center entered "an ongoing relationship" with New York that converted Dr. Onuogu and Dr. Sial into state actors who received patients from state hospitals. *Id*. Second, appellant claims that the private physicians jointly participated in Dr. Mustafa's acts by relying on her clinical

determinations without exercising "independent medical evaluations." *Id.* at 59 (capitalization altered).

The first argument fails because this Court has already held that the state does not deputize a private physician as a public official simply by "endow[ing]" them "with the authority to involuntarily hospitalize" a patient in their clinical discretion, but without "compel[ling] them to do so." *McGugan*, 752 F.3d at 229 (citing *Doe v. Rosenberg*, 166 F.3d 507 (2d Cir. 1999) (per curiam)). Nor is it enough that the physicians are "extensively regulated," because the "mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for the purposes of the Fourteenth Amendment." *Blum*, 457 U.S. at 1004 (quoting *Jackson*, 419 U.S. at 350). *Blum* is instructive. There, New York required private nursing home physicians to complete "patient care assessment forms designed by the State" before discharging Medicaid patients from nursing homes or transferring them to lower levels of care. *Id.* at 1005–06, 1008. Because the private "physicians, and not the forms, ma[d]e the decision" as to what level of nursing home care was "medically necessary," under the Medicaid program, the Supreme Court found that the State did not make the assignments. *Id.* at 1006–07. So too here. New York authorizes private commitment through the

New York State mental hygiene law, but does not compel it: A "staff physician" at a private hospital determines whether to admit a patient certified for involuntary hospitalization, and the hospital director "may" make the choice to admit them. N.Y. Mental Hygiene Law § 9.37(a). On this record, a reasonable jury could not conclude based on the framework established by Section 9.37 that the State coerced or encouraged Dr. Onuogu or Dr. Sial to commit appellant. *See, e.g.*, *Jackson*, 419 U.S. at 350; *Bryant v. Iheanacho*, 859 F. App'x 604, 605 (2d Cir. 2021) (summary order) (finding doctors at private hospitals were not state actors because they "personally evaluated" the plaintiff patient).

Appellant's second argument fails as well, because the conduct appellant alleges—excessive reliance by private evaluators on a state doctor's report—does not reflect "significant encouragement" or coercion on the part of the State. *Blum*, 457 U.S. at 1004; *see Rendell-Baker*, 457 U.S. at 841. To be sure, a jury crediting appellant's account could find Dr. Onuogu's and Dr. Sial's evaluations of appellant were hasty or substandard. *See* Joint App'x 2964 (appellant's statement that Dr. Onuogu met with her for "less than ten minutes" while copying information from other documents); *id.* at 2965 (appellant's statement that Dr. Sial called her "a very sick woman" as soon as the two met). But a joint-action finding

turns on meaningful intrusion by the state in a private actor's decision—an exercise of coercive power or at minimum "significant encouragement," *Blum*, 457 U.S. at 1004—not on whether private actors were lackadaisical in their work. Thus, even if a jury inferred that the Brunswick doctors gave undue credence to the observations and assessments of earlier evaluators such as Dr. Mustafa, that would not suggest that Dr. Mustafa or other state actors "significant[ly] encouraged" or "coerc[ed]" them to adopt the Stony Brook doctors' views as their own. *Ibid.*

Appellant identifies no prior decision holding that a private doctor becomes a state actor by placing excessive weight on the analysis of a doctor who worked for the state when the private doctor also conducts her or his own psychiatric evaluation. Appellant points to several district court decisions finding state action where private doctors committed patients based *solely* on a request from a state physician, without performing any independent medical evaluation at all. *See, e.g.*, *Tewksbury v. Dowling*, 169 F. Supp. 2d 103, 110 & n.5 (E.D.N.Y. 2001). But district courts have consistently drawn a line between those no-evaluation cases and cases like this one, in which private doctors did evaluate a patient before committing her. *See Bryant v. Steele*, 462 F. Supp. 3d 249, 268 (E.D.N.Y. 2020)

(suggesting that private doctors could be state actors if they did not evaluate plaintiff, but awarding summary judgment to private doctors after finding no genuine dispute of fact that they did so); *see also Iheanacho*, 859 F. App'x at 605–06 (accepting parties' premise that doctors "would not be state actors for purposes of § 1983 . . . if [they] personally evaluated" the plaintiff and upholding grant of summary judgment to doctors because record showed that they did so). Because a jury here would have to conclude that independent evaluations *were performed* by the Brunswick doctors, even if those evaluations were arguably lacking, the no-evaluation cases on which appellant relies do not support her.[2] The Court thus does not need to reach the question of whether state action can be found in no-evaluation cases.

[2] In her statement of facts, Rene highlights the deposition testimony of Brunswick Hospital Center's admissions director that he could not recall an occasion during his 21-year tenure in which a patient had been "accepted and brought to the ward, and then . . . a psychiatrist evaluating" her had said "the patient does not meet the criteria for involuntary admission." Joint App'x 2079; *see* Appellant Br. 24. But appellant makes no argument in her brief that state action can be inferred from that testimony. That is understandable because determining whether that statistic reflects inappropriate deference to State actors would require evidence regarding whether any of those prior admissions were in fact erroneous—as opposed to simply reflecting that those prior involuntary commitments were judgments on which doctors appropriately agreed.

IV. Appellant's state-law claims are reinstated.

Under 28 U.S.C. § 1367(c)(3), a "district court[] may decline to exercise supplemental jurisdiction . . . if [it] has dismissed all claims over which it has original jurisdiction." Here, the district court declined supplemental jurisdiction over Rene's state-law claims after granting summary judgment for appellees on her claims under federal law. Because the Court vacates the dismissal of appellant's Fourth Amendment claim against Dr. Mustafa, at least one federal claim persists on remand. The Court therefore also vacates the dismissal of appellant's state-law claims.

CONCLUSION

For the reasons stated, the judgment below is AFFIRMED in part and REVERSED in part. The judgment is reversed to the extent it grants summary judgment to Dr. Mustafa as to appellant's Fourth Amendment claim. Appellant's state-law claims are reinstated. The judgment is otherwise affirmed, and the case is REMANDED to the district court for further proceedings consistent with this opinion.

MARIA ARAÚJO KAHN, Circuit Judge, concurring in part:

I agree with the Majority's opinion insofar as it affirms the district court's grant of summary judgment as to Dr. Sial and Dr. Onuogu in Parts II and III and insofar as it vacates the dismissal of Rene's state law claims in Part IV. Although I agree with the Majority's decision to reverse the district court's grant of summary judgment as to Dr. Mustafa in Part I, I write separately because, on the current record, it is not clear to me whether Rene's post-deposition affidavit and Dr. Stastny's supplemental report relying on the affidavit present a material factual dispute that would preclude summary judgment on the ground of qualified immunity. Assuming, *arguendo*, that the district court should have accepted Rene's affidavit and Dr. Stastny's supplemental report, I agree that a factual dispute exists as to how much time Dr. Mustafa spent directly examining Rene. What is unclear from the record before us is whether the length of time spent in face-to-face examination is material to the standard of care. Because the factual dispute arises from Rene's post-deposition affidavit and Dr. Stastny's supplemental report, which the district court did not accept, limited discovery should be permitted as to whether a minimum length of time for face-to-face examination, by itself, is material to the standard of care.

Dr. Mustafa claims that she personally saw Rene at least four times for a total of sixty to eighty minutes. *See* Joint App'x 554–55. Accepting Rene's version of the facts as set forth in her affidavit, rather than her testimony,[1] Dr. Mustafa spent no more than ten minutes face-to-face with her. *Id.* at 2962 ¶ 57. Although the district court rejected Rene's affidavit as self-serving, it noted that "there is no *per se* rule that a 10-minute evaluation is insufficient for a doctor to make a medical determination such as Mustafa's." *Rene v. Mustafa*, No. 16-CV-4072(JS)(ST), 2024 WL 1332556, at *15 (E.D.N.Y. Mar. 28, 2024). The district court's observation is not incorrect. The record is devoid of any expert testimony regarding whether the length of face-to-face time is by itself a violation of the standard of care.

The materiality of the factual dispute is particularly relevant given all of the undisputed facts in this case. It is undisputed that Dr. Mustafa had access to and reviewed the medical records containing observations of other medical staff who examined Rene upon her admission to the emergency room. *See* Joint App'x 2508 ¶¶ 105–06. Specifically, these medical records indicated that Rene stated to the emergency department doctor that she "want[ed] to take her life as a result of [her]

[1] During her deposition, Rene could not remember certain details regarding her interaction with Dr. Mustafa and estimated that she spoke with Dr. Mustafa for "probably 12 to 15 minutes." Joint App'x 283–87. In her subsequent affidavit, Rene is certain that the amount of time was "less than ten minutes." *Id.* at 2962 ¶ 57.

symptoms," *id.* at 1552–53, and that she reported to the psychiatric nurse that the "quality of her life ha[d] gone down and she ha[d] lost her zest for life," that she had "thoughts of wanting to leave this earth," and that she "[did not] want to be a burden to anyone," *id.* at 1455, 2486–88 ¶¶ 37–41. The records also documented that, during the month prior to presenting to the emergency department, Rene reported that she wished to be dead at a frequency of "2 – 5 times a week" to stop the pain she was experiencing. *Id.* at 1457, 2488–90 ¶¶ 43–47. The social work intern's report indicated that Rene stated that she worried nonstop, that she did not feel like doing the things that she used to enjoy, and that she had said that she wanted to leave the earth. *Id.* at 1527, 2491–92 ¶¶ 49–54. Finally, Rene's medical chart noted that she reported being depressed and acknowledged experiencing crying episodes, helpless and hopeless ideation, occasional thoughts of hurting herself, including thoughts of jumping off a bridge, and that she engaged in self-isolation. *Id.* at 1475–76, 2492–97 ¶¶ 55–69.

Consistent with her medical records, Rene also admits making certain statements to Stony Brook staff including that she "worrie[d] nonstop and fe[lt] depressed because she worrie[d] that her health issues were not resolving," *id.* at 2486 ¶ 35, "[did not] know how people live with such pain in the face," *id.* at 2483–

84 ¶ 24, "had not had an appetite for three weeks," *id.* at 2484–85 ¶ 28, "was not sleeping," *id.* at 2485 ¶ 30, was "not going out with friends" and did "not feel like doing the things that she used to enjoy," *id.* at 2485–86 ¶¶ 32–33. As the Majority accurately notes, in her post-deposition affidavit, Rene provides benign explanations for many of her statements. *See* Majority at 8–9. Despite Rene's after-the-fact explanations of what she intended to say, the parties do not dispute the actual content of the medical records. *See* Joint App'x 2486–502, 2514 ¶ 123. Nor does Rene deny that she was examined by the psychiatric resident working under Dr. Mustafa's supervision, who subsequently discussed the case with Dr. Mustafa. *See id.* at 2501 ¶¶ 82–84. These contemporaneous observations by other medical providers, as documented in Rene's medical chart, were undisputedly part of the examination process that led to Dr. Mustafa's medical assessment.[2] *See id.* at 2508 ¶ 106.

Although I concur in the judgment, I find that further discovery is warranted to determine the materiality of the factual dispute—the length of face-to-face examination time by Dr. Mustafa—to the standard of care. *See Hunter v.*

[2] It is undisputed that, upon arrival at Brunswick Hospital Center, Rene signed a consent form for psychiatric treatment, *see* Joint App'x 2148, and was evaluated by two additional physicians that independently came to the same conclusion as Dr. Mustafa, namely, that Rene posed a substantial risk of harm to herself because she was at risk of suicide. *See id.* at 2509 ¶ 108, 2518–19 ¶ 139, 2524 ¶ 158.

Bryant, 502 U.S. 224, 227 (1991) ("[W]e repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation."). Accordingly, I would remand for such narrowly tailored discovery, without prejudice to the renewal of a motion for summary judgment. *See Demarco v. Sadiker*, 199 F.3d 1321, No. 99-7405, 1999 WL 1024696 at *3–4 (2d Cir. 1999). For these reasons, I respectfully concur.