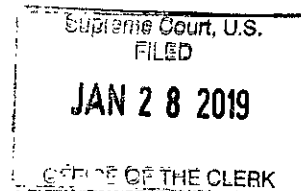


No. 18-8418

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL



MARVIN III WADDLETON — PETITIONER
(Your Name)

vs.

BERNADETTE RODRIGUEZ et, al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARVIN III WADDLETON
(Your Name)

1697 Fm. 980
(Address)

Huntsville, Texas 77343-3314
(City, State, Zip Code)

936- 295-5756
(Phone Number)

QUESTION(S) PRESENTED

The core of the inquiry...That once the provisions of 42 USCS 1997, and Clear Established Law has been properly satisfied to over come Quailfied Immunity. The District Court resolved whether Force was applied in good faith violated the 6th and 14th Confrontation clause. The Fifth, Sixth and Tenth Circuit Court of appeals continue to resolve issues in dispute at summary judgment without a Trial to cross examine.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RESPONDENTS:

OLUFOLA, OLUGBENGA,

DACHO ONGUDU,

AIMEE SALINAS,

CANDICE MOORE,

LOIRE HUDSON,

JACQULAN JAMERSON,

TABLE OF CONTENTS

| | |
|--|---|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | |
| STATEMENT OF THE CASE | |
| REASONS FOR GRANTING THE WRIT | |
| CONCLUSION..... | |

INDEX TO APPENDICES

APPENDIX A UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

APPENDIX B UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF TEXAS,

APPENDIX C UNITED STATES Magistrate Finding and Recommendations;

APPENDIX D UNITED STATES COURT OF APPEAL DENIAL OF REHEARING:

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

| CASES | PAGE |
|--|-------|
| Anderson v. Creighton 107 S.Ct. 3034 | 6, |
| Anderson v. Liberty Lobby 106 S.Ct. 2505 | 8, |
| Ashcroft v. al Kidd 131 S.Ct. 2074 | 6, |
| Brosseau V. Haugen, 125 S.Ct. 596 | 6, |
| Brown, V. Lippard, 472 F.3d 384, | 9, |
| Camereta v. Greene 131 S.Ct. 2020 | 6, |
| Coy v. Iowa, 108 S.Ct. 2798, | 11, |
| Crawford v. Washington, 124 S.Ct. 1354 | 11, |
| Cruiley v. City of St Paul 324 F3d 1003, | 7, |
| Davis v. Washington, 126 S.ct. 2266, | 11, |
| Diaz v. Massachutts, 129 S.Ct. 2527, | 9, |
| Glen v. City of Tyler, 242 F3d, 307, | 7, |
| Gomez v. Chandler, 163 F3d 921, | 9, |
| Graham v. Connor, 490 U.S. 386, | 8, |
| Hope V. Pelzer 122 S.Ct. 2508, | 6,8, |
| Hudson v. McMillians, 112 S.Ct. 995 | 6, |
| Kentucky v. Stincer, 107 S.Ct. 2658, | 9,11, |
| Motes V. United States, 20 S.ct. 993, | 9, |
| Overton v. Bazzetta, 128 S.Ct. 2162 | 9, |
| Pearson v. Callahan 129 S.Ct. 808 | 6,8, |
| Reichle v Howards, 132 S.Ct. 2088, | 6, |
| Saucier, V. Katez, 533 U.S. 194, | 8, |
| Scott v. HArris, 127 S.Ct. 1769, | 8, |
| Traver v. City of Edna, 401 F3d 745, | 7, |
| Turner v. Safely, 107 S.ct. 2254, | 9, |
| Wilkins v. Gaddy, 130 S.Ct. 1175, | 6, |

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A' to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B' to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 07, 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 01, 2018, and a copy of the order denying rehearing appears at Appendix D'.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Sixth amendment Confrontation clause and Right to a Jury.

United States Constitution Eight amendment Cruel and Unusual Treatment-Punishment

Civil Rights of Institutionalized Person Act- 42 U.S.C. § 1997 (e) Prison Litigation Reform Act.

42 U.S.C.S. § 1983

United States Constitution 14 Fourteenth amendment Equal protection and due process clause as applied to the States.

STATEMENT OF THE CASE

The core of this case involve a minority African Indian American Citizen born cripple, disable now, now in a State of Texas prison. Assaulted, Harrassed and Retaliated against by person's working under color of state Law in the south Unreasonable excessive force placed Ptetioner in fear of causing serious body harm to his person by corporal punishment. The defendants denial of Access to Court and Conspired to deny Medical treatement some 21 days after causing permanent serious bodily injury.

On the 04th of October 2012, thereby having an official Administration pass for the Law Library from 7:00 to 9:00am presented pass to Ms. C. Moore and signed the Log, as she inspected my legal material for contraband (ie. weapons phones, drugs, or money). In retaliation for filing a greivance that her befriended in the Greivance Department would not process that filed another that caused her to get fired. See Intial dis. p. 60,61 Grievance 2012196172 on 7/13/2012 T. McCullough did not process had to file grievance on her. And the retaliation for filine complaint on the condition of confinement (ie unreasonable visual cavity search). Ms. Moore claimed that a scratch piece of paper that had x,o. from a domino game was contraband and to leave the Law library, which I refused. Legal material is confidential and can not be subjected to unreasonable search by reading without prior written Authorization from the Warden before legal material can be read. TDCJ policy I-185-186, See Also Ruiz v. Estella, 666 F2d. 854,871; See (Inital. Discl. p.65) a scratch paper that had x and o, non threaten non-dangerous peice of paper. When Waddleton stated that Ms. Moore cannot run this Law Library making her own rules, that must be removed from her position, that her acts violate Federal law and TDCJ Polict. She made a false allegation that he threaten her to justifiy calling ICS which I did not.

STATEMENT OF THE CASE

Having done nothing wrong and TDCJ Policy supersede an order by an Officer, but being a control freak, Abuse of Office, irrational and overbearing. When Lt. Rodriguez arrived at the Law Library was sitting down at my assigned table doing my research, which was Authorized to be in such place, explained to her and showed the peice of paper kthat Ms. Moore was going berserk over. She then asked me to leave with and we proceeded to leave and then thats when Ms. Moore claimed that I'd threaten her and at that point almost out the door was ordered to be placed in cuffs, which I did without any aggression or resistance. Was ordered to turn around for cuffs, stated that I've got a front handcuff pass See (Supp. Discl. p 563, 6-26/12 x 6 months) presented it to Sgt. Salinas, she readed it gave it back and placed the handcuffs on. In the process had set my Legal Material on a table or kart, the other Olufola, Olugenga tryed to force me to leave it, and applied pressure to prevent me from getting it, Sgt. Salines ordered his to get it. In requesting that they give me my Legal property that they had no right to confiscate, so we stopped at 12 Building gate until they gave my legal materisl, which they did.

When Lt. Rodriguez ordered them to place me on the wall which had nothing to do with proceeding to the door of 11 building other than a malicious, sadist-ically and wanton act to cause me harm. Rodriguez and Salines placed there hand on my back and started pushing force to walk faster to ram my head into the wall. For fear of falling and stracking my head on the wall turned and put my back against the wall, hands down holding my Legal material under my arm and hands cuff holding my cane. She then ordered the 10 or so officers to slam me to the ground. Those group of Officers attacked me jumping on my back lick a pack of wild dogs. As we fell I rolled to keep them from falling on me. This is not shown on the DVD. Once on the ground Sgt. Salines was sitting on my shoulder which caused injury also.

STATEMENT OF THE CASE

In a effort to conspire to cover injurys Lt. Rodriguez only took pictures of my face and Nurse Roell just looked through the door which had plexglass and mostly covered with steel. Then after sending a sick call about the injuries and Medication that was destoryed, P.A. L. Hudson refuse to exmine the injuries from the U.O.F. and only refile the Medication. See (Supp-Disclo. p. 635).

Lt. B. Rodriguez continue malicious, sadisitically and wanton acts continue again once housed on 12 building. After she threaten U.O.F. of use of five (5) man team for not submitting to handcuffs behind my back for cell search. Pass didnot expire until 1/26/13, See (Supp. Discl. p. 563). Because 11 and 12 building on the McConnell Unit where most deaths of inmates occur, knew at that point... my life was at risk. With each filing by the Defendants and the Court has added a twist to the facts without any referance to where that information can be found.

WITHOUT A JURY TRIAL TO CROSS EXAMINE THE DVD, DEFENDANTS, WITNESS AND PRESENT OTHER EVIDENCE AS TO DETERMINE HOW THE FORCE WAS APPLIED WOULD VIOLATE THE RIGHT TO JURY TRIAL AND CONFRONTATION CLAUSE OF THE SIXTH AMENDMENT:

REASONS FOR GRANTING THE PETITION

To prevent the Abuse of Court discretion by the District court and Circuit Appeals court at Summary judgment stage without a trial to cross-examine the Defendants credibility determinations of the weight of the evidence and the drawing of legitimate inferences from the facts are jury functions, not those of a judge. Whether force was applied in good faith or malicious and sadistically are for the jury.

The District court dismissal was based on that the defendants were entitled to qualified immunity.

Qualified immunity shall be granted when on the ground that a purported right was not clearly established by prior case law. *Pearson v. Callahan*, 555 U.S. 223, 236, 129 S.Ct. 808, (2009); *Camereta v. Greene*, 563 U.S. ____ 131 S.Ct. 2020, (2011); The right allegedly violated must be clearly established not as a broad general proposition. *Reichle v. Howards*, 566 U.S. 658, 132 S.Ct. 2088, (2012); *Brosseau v. Haugen*, 543 U.S. 194, 198, 125 S.Ct. 596, (2004); That every reasonable official would [have understood] that what he is doing violates that right. *Ashcroft v. al-Kidd* 563 U.S. ____ 131 2074, (2011) QUOTING *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034 (1987);

The right of prisoner's from excessive force that cause injury. See *Wilkins v. Gaddy*, 130 S.Ct. 1175, 1176 (2010): has sustain *Hudson v. McMillians*, 503 U.S. 1, 4, 112 S.Ct. 995, (1992) That the use of excessive force against a prisoner may constitute cruel and unusual punishment [even] when the inmate does not suffer serious injury. Then when handcuff are used to cause injury by being too tight or for long periods of time has clearly been established. *Hope v. Pelzer*, 536 U.S. 730, 122 S.Ct. 2508 (2002):

Inmate was subjected to cruel and unusual punishment in violation of the eighth amendment when prison guards handcuffed him to hitching post for disruptive behavior, despite having him already been subdued; In Glenn v. City of Tyler, 242 F3d 307,314; Held that handcuffing too tightly, without more does not amount to excessive force. Accordly Crusly v. City of St. Paul 324 F3d 1003,1008; reaffirming a prior holding requiring medical records establishing permanent injury before allowing the application of handcuff to give rise to an excessive force claim. See also Tarver v. City of Edna, 401 F3d 745 (5th Cir. 2005) at 752; Mr. Waddleton suffered injury to his right shoulder, both wrist, and both ankles, and back when security staff an already handcuffed disable prisoner. Slammed him to the ground then piled on top of him, some siting on top on his side. Picked him up by the cuffs and leg restrains and placed on the gurney, applied unnecessary pressure on the handcuffs and leg shakles to the point the cuffs cut into his skin and has caused permanent nerve damage, broken viens that has caused circulation problems. See (Supp. Discl. p. 274-75) Clinic Notes from 10/25/12 by Echavarry Erick Pa. Post U.O.F. report cuts bruises, Nerve extremely pain; (Supp. Discl. p. 271-73) 11/13/12 MD Theresa, Whitt in pain, hands loss senation in both index fingers neuropathy affecting bilateral index finger; (Supp Disclo. p. 254-55). On the 3/13/13 by MD. T. Whitt U.O.F. numbness peroneal nerve, Hypersensitivity: of lateral foot and ankles. Due to the 25 minutes or so that the cuffs were to tight that has caused damage to the blood veins, Hematone around the area. cuffs around my ankles, caused circulation problems after almost 6 years. Reaffirming a prior holding requiring Medical records establishing permanent injury before allowing the application of handcuffs to give rise to an excessive force claim. Cruiley v City of St. Paul 324, F3d 1008; Tarver.v. City of Edna, 410 F3d 752;

In the qualified immunity context at summary judgment the court engage in a two pronged inquire. (1). The facts taken in the light most favorable to the party show that the officer conduct violated a Federal right. *Saucier v. Katez*, 533 U.S. 194,201. Excessive force during an investigation or arrest, the Federal right at issue is the Fourth right against unreasonable seizures. Under a prisoner it's an Eighth amendment right. *Graham V. Connor*, 490 U.S. 386,394; *Hope v. Pelzer* 536 U.S. 733,739, 122 S.Ct. 2508 (2002). The second prong of the qualified immunity analysis asks whether the right in question was clearly established at the time of the violation. Government actors are sheilded from liability for civil damages, if their actions did not violate clear established statutory or constitutional rights of which a reasonable person would have know. Courts have discretion to decide the order in which to engage those two prongs. *Pearson v. Callahan*, 555 U.S. 223,236; But : under either prong courts may not resolve geninue disputes of facts in favor of the party seeking summary judgment.

The standard for granting summary judgment "mirriors the standard for judgment as a matter of law, court should review all the evidence inthe record it may not not make creditable determination or weigh the evidence. *Anderson v. Liberty Lobby Inc*, 477 U.S. 242 250-1, 106, S.Ct. 2505, (1986). When opposing parties tell two different stories, one of which is blatanlty contracticted by the record, so that no reasonable jury could believe it a court should not adopt that version of the facts for purposes of ruling on a Motion for summary judgment. *Scott v. Harris*, 550 U.S. 372, 127 S.Ct. 1769 (2007). Credibility determinations, the weighing of the evidence and the drawing of legitimate inferences from thefacts are the jury functions, not those of a judge . *Id Liberty Lobby Supra* at 255.

Written deposition subject to cross-examination was not admissible because witness was available. *Motes v. U.S.* 178 U.S. 458, 467, 470-71, 20 S.Ct. 993 (1900). The D.V.D. that the defendants provided has omitted the parts which show there unlawful acts of Bad Faith, and the editing by adding parts to another Use of Force other than the plaintiff. The D.V.D. does not show completely what occurred nor the actual time that the cuffs cutting into my ankles and wrist causing permanent damage. In *Melendez Diaz v. Massachusetts*, 557 U.S. 305, 129 S.Ct. 2527, (2009), held that at drug trial, of Affidavits of State Laboratory analysis who did not testify at trial held to violate accused right under Sixth amendment to confront witness against him because affidavits were testimonial. Mr. Waddleton has the right to confront the individual that made the DVD and to show at trial the parts omitted and added that the D.V.D. has been edited altered to cover the liability actions of the Defendants. The Plaintiff was sitting at his assigned table and had requested a Supervisor to settle the dispute about the piece of paper that had o and x See (Inti. Discl. p. 56) As in *Brown v. Lippard*, 472 F3d 384 386, (2006) A brief exchange ensued in which Lippard indicated Brown's rec'd privileges were denied. Brown believing Lippard was set on harassing him asked to speak with a superior Officer and sat down to wait for one to arrive. See also *Gomez v. Chandler* 163 F3d 921 (5th Cir. 1999).

The *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, Comes to the S.Ct after a full trial and the Court's opinion in that case relied heavily on testimony elicited at trial in evaluating the reasonableness of the regulation. Also *Overton v. Bazzetta*, 539 U.S. 126, 133, 123 S.Ct. 2162, (2003). The right to cross-examine the individual that made the DVD ensure the integrity of the fact-finding process. *Kentucky*, 482 U.S. 730 736.

On the 12th of November 2015, the Defendants filed a Motion for Summary Judgment. And on the 11/19/15 mailed on the 12/03/15 sent notice of another copy of the DVD that was sent to me on Nov. 10. 2015. However, I did not receive the notice until 12/08/15 and viewed the DVD on the 12/10/15 the day I'd mailed my reply. Nowwithstanding, having view two other different DVD in July, now the Defendants present two more different DVD which still donot show the complete incident. That in itself should give pause as to reasonable doubt that the defendants have tampered with evidence. See Exhibit 1. As long as the Courts and Prosecutor condone the assault and killing of citizen, people in the U.S.A simply because they are Public Servants or Peace Officers, then You'll have only given them a liecense to kill and assault.

The D.V.D. does not show Mr. Waddleton sitting at his table doing his research when Lt. Rodriguez arriveed, nor the Officers pushing him at a fast paces towards the wall , which had nothing to do with going to 11 or 12 Building, where Officers once isolated and handcuff assault and Kill Offenders on the McConnell Unit Beeville Texas.

Without a jury ttrial to confront the defendants and show the parts omitted by the defendants DVD Use of Force of the malicious and sadisticaly actions ordered by Lt. Rodriguez without any reason did not resist being escorted to 11 Building, other than to get my Legal material. Futhermore, ther's nothing in the record to support the attorney general theory other than the altered D VD thats take two different incident and person's to make there theory-story seem true . A summons was issued (Doc. 12) Under seal as to Lt. Bernadetta Rodrigues, Aimee Salinas and Ongudu on the 04/21/15 filed hand delivered to USm. Thus all defendants have been notified but the Lt. Rodriguez that gave the orders have fail to respond and the District Court proceeded without the main individual.

Thus, after reviewing the last DVD on the 10th of December 2015, saw Cpt. Jamerson while at 11 building, when asking for some one to check and loosen the leg and wrist cuff. But she done nothing. Because, the District court denied me to amend to add C. Moore, Cpt. Jamerson, L. Hudson and Roell for the denial of medical treatment from the injuries, which also is a violation of the eighth amendment.

To confront Lt. Rodriguez about her motive and the individual that made the D.V.D. and to show at trial the parts omitted, added, that the DVD had been altered to cover the liability actions of the Defendants.

In Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266 (2006); Amy was subpoenaed, but she did not appear at the subsequent bench trial. In Crawford v. Washington, 541 U.S. 36, 53-54, 124 S.Ct. 1354 (2004). Held that this provision bars "admission of testimonial statements of the witness who did not appear at trial unless they were unavailable to testify, and defendant had had a prior opportunity for cross-examination. Subject to the confrontation clause statements taken by police officers in the course of interrogations, recording while she was in police custody after having been given Miranda warnings as a possible suspect herself. Like the eye witness who has fabricated his account to the police-court the analyst who provides false results may under oath in open court, reconsider his false testimony. Coy v. Iowa, 487 U.S. 1012, 1019, 108 S.Ct. 2798, (1988). The right to cross-examine the accuser both ensure the integrity of the fact-finding process. Kentucky v. Stincer, 482 U.S. 730, 736 107 S.Ct. 2658, (1987); The Confrontation Clause guarantees the defendant a face to face meeting with witness appearing before the trier of fact. Id. at 748-750; To determine the issue of good or bad faith of the Officers cannot be done without a trial to cross examine the person that made the DVD and the Defendants.

To sustain a claim of excessive force in violation of the 8th amendment a show of medical records to support the injury, which Mr. Waddleton has provided. Thus, the issue as to good or bad faith has been opposed by both sides as to what happen that only can be resolve in a jury trial to confront the person that made the DVD , Defendants , Witness and present other evidence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marvin III Waddleton

Date: January 27, 2019