No. 18-9714

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN STEPHEN ROUTT -PETITIONER

vs.

LATANYA HOWARD, et al. - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

THE TENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JOHN STEPHEN ROUTT -Pro Se

8607 S.E. FLOWER MOUND RD.

LAWTON, OKLAHOMA, 73501

QUESTION(S) PRESENTED

QUESTION 1

Is a Defendant entitled to qualified immunity when a Petitioner cites the "squarely governing' case through a quote of a case with similar facts? And/or is the rule and procedure of the tenth on qualified immunity, the same or similar to the rule that was struck down in Elder v. Holloway, 510 US 510,514-15, 114 S Ct 1019, 127 L Ed 2d 344 (1994).

QUESTION 2

Is a pretrial detainee entitled to due process, at some point, when placed in disciplinary segregation for an alleged rule violation?

QUESTION 3

Does a Pretrial detainee have to meet the Eighth Amendment standard when challenging the conditions of confinement?

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:

JESSICA HARRIS

STEVE BROWN

TABLE OF CONTENTS

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.....2

STATEMENT OF THE CASE.....3

REASON FOR THE GRANTING OF THE WRIT.....5

CONCLUSION.....13

INDEX TO APPENDICES

APPENDIX A United States Court of Appeals order and Judgment

APPENDIX B United States District Court Opinion and order

APPENDIX C United States Court of Appeals Order denying Rehearing or rehearing en banc

APPENDIX D Jail incident report

APPENDIX E Request/grievance # 1295055

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

Bell v. Wolfish, 441 U.S. 520, 99 S. Ct. 1861, 60 L. Ed. 2D 447 (1979).....6,9,10,11,12,13

Benjamin v. Fraser, 264 F.3d 175, (2d Cir. 2001).....9-10

Bosse v. Oklahoma, - U.S. -, 137 S. Ct. 1, 196 L. Ed. 2D 1, 3 (2016).....12

City of Revere v. Massachusetts General Hospital, 436 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).....12

Dilworth v. Adams, 841 F.3d 246, (4th Cir. 2016).....10

Elder v. Holloway, 510 US 510, 114 S Ct 1019, 127 L Ed 2d 344 (1994).....7,8

Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005).....8

Hatch v. D.C., 184 F.3d 846, 849 (D.C. Cir. 1999).....9

Harris v. Adams 410 F. Supp.2d 707 (S.D. Ohio 2005).....7

Higgs v. Carver, 286 F.3d 437, (7th Cir. 2002).....10

Holly v. Woolfolk, 415 F.3d 678, (7th cir. 2005).....10

Hudson v. McMillian, 503 U.S. 1, 112 S.Ct. 995, 117 L.Ed. 2D 156 (1992).....6

Ingram v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977).....12

Kisela v. Hughes, 584 U.S. -, 138 S.Ct. 1446, 2002 L.Ed.2d 449, (2018).....5

Kingsley v. Hendrickson, - U.S. -, 135 S.Ct. 2466, 192 L. Ed. 2D 416 (2015).....5,6,9

McNeil v. U.S., 508 U.S. 106, 113, 113 S. Ct. 1980, 124 L.Ed.2d 21 (1993).....5

Mitchell v. Dupnik, 75 F.3d 517, (9th Cir. 1996).....10

Moore v. Holbrook, 2 F.3d 697 (6th Cir. 1976).....7

Patterson v. Coughlin, 761 F.2d 886 (2d Cir. 1985); cert. Denied, 474 U.S. 1100 (1986).....10

Rapier v. Haris, 172 F.3d 999, (7th Cir. 1999).....10

Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995).....13

Stevenson v. Carroll, 495 F.3d 62, (3d Cir. 2007); cert. Denied 128 S.Ct. 1223 (2008).....10

Suprenant v. Rivas, 424 F.3d 4, (1st Cir. 2005).....9,10

Turner v. Safeley, 482 U.S. 78, 107 S Ct 2254, 96 L Ed 2d 64 (1987).....7,9,10-11

Walker v. Navarro Co. Jail, 4 F.3d 410, (5th Cir. 1993).....10

Whitley v. Albers, 475 U.S. 312 106 S. Ct. 1078, 89 L. Ed. 2D 251 (1986).....7

Wilkinson v. Austin, 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2D 174 (2005).....9

Wolff v. McDonnell, 418 US 539, 94 S Ct 2963, 41 L Ed 2d 935 (1974).....7,9.11

Zarnes v. Rhodes, 64 F.3d 285, (7th Cir. 1995).....10

Ziglar, vs. Ahmer Iqdal Abbasi, 582 US ___, 137 S Ct 1843,1867, 198 L Ed 2d 290 (2017).....6

OTHER

Civil Rights Act of 1871.....7

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

The opinion of the United States Court of Appeals appears at appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States court of appeals decided my case was March 1, 2019.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 4, 2019, and a copy of the order denying rehearing appears at appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eleventh Amendment, U.S. Constitution

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State

Fourteenth Amendment, U.S. Constitution, Section 1

1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a civil rights action under 42 U.S.C. §1983, brought by a pretrial detainee who alleges that Defendant Jessica Harris(hereinafter Harris) violated his rights by participating in the use of excessive force on him. The Plaintiff alleged, in a declaration under the penalty of perjury, that on November 20th, 2016, he was in the medical unit at the Tulsa County Jail and a male detention officer (DO) was called to escort him back to his housing pod after he was being argumentative. The Plaintiff followed the DO's order to leave medical and as soon as the Plaintiff exited medical and got to the right side of the hall, this DO grabbed the Plaintiff's left arm, put it behind his back and slammed him against the wall, then briefly let go and grabbed his left arm again and slammed him against the wall a second time. While this was happening, Defendant Howard and Harris was approaching the Plaintiff and this DO, but did nothing about it. Once the Plaintiff got to Defendant Howard, who is a Sargent, he stopped and talked to her, she stopped to listen. The Plaintiff was being loud and cursing, but nothing more. As soon as this DO caught up to the Plaintiff, he immediately grabbed the Plaintiff's left arm and twisted it behind his back and arched his back in an awkward position. That is when Defendant Harris grabbed the Plaintiff's right arm extended it out and they proceeded to push him up the hall to the operations desk, up the J-hall hallway and into housing pod J-7, where they took him to his cell and slung him forward, and then shoved his arms so that he was shoved into the cell injuring his neck, back and popping something in his neck and throat area. The petitioner argued that the force was used to cause injury and punishment in a malicious and sadistic manner. The District Court granted qualified immunity for failing to present any existing precedent. Appendix B at 15-16.The Court of Appeals affirmed immunity on failure to present any precedent squarely governing the alleged facts and the Two cases cited do not qualify as clearly establish weight of authority from other courts. Appendix A at 8

The Plaintiff alleges that Defendant Steve Brown (hereinafter Brown) violated his rights by not providing him with notice, hearing, or the opportunity to be heard in punishing him for a rule violation. The Plaintiff alleged, in a declaration under the penalty of perjury, that on December 15th, 2016,

Defendant Brown violated his rights by placing him in disciplinary segregation lock down for an alleged hindering rule violation, without providing him with a written notice of the alleged violation, a hearing, or an opportunity to be heard in his own defense. The District Court denied relief for failing to state a plausible fourteenth amendment claim. Appendix B at 19. The Court of Appeals affirmed the dismissal of the claim. Appendix A at 13.

That Defendant Brown violated his rights by blanket punishing him and the whole pod for an item found in a common area, for an alleged sharpened tooth brush. The Plaintiff alleged, in a declaration under the penalty of perjury, that on September 27th, 2016, Defendant Brown violated his right by blanket punishing him for an alleged sharpened tooth brush that was found in a shower that was in a common area by locking the whole pod down for seventy two (72) hours as punishment. The District Court denied as failure to state a plausible due process claim. Appendix B at 19. The Court of Appeals affirmed. Appendix A at 12.

And that Defendant Brown subjected the Plaintiff to punishment by beating on the glass on the cells, yells in the cell doors, yelling across the housing pod at the trustees and talks loud through out the night from 12:00 pm to 8:00 am every night he works, on purpose. The Plaintiff alleged, in a declaration under the penalty of perjury, that Defendant Brown was violating the Plaintiff's right to be free from punishment. The Plaintiff states that Defendant Brown would takes his keys and knock on the cell glass as loud as he could, yells in the cells, yells across the pod at the trustees, and talks loud all night. The District Court denied relief as failing to state a plausible eighth amendment claim. Appendix B at 20. The Court of Appeals affirmed as leaving the decision to the expertise to corrections officials. Appendix A at 12.

REASONS FOR GRANTING THE PETITION

QUESTION (1)

Most incarcerated individuals use some sort of handbook of legal rights and procedure because they lack access to counsel. These books are only guides but most pro se incarcerated litigants learn to respond and file pleadings through them. In A jailhouse lawyer's manual 4th edition, Columbia Human rights Law Review, it teaches to find cases that is identical in facts to yours. Id at 23 (d)(...In researching for cases, you are searching, optimally, for a case that is identical to your case).[1] As such that is what I did and many other pro se litigants do, found a case that was close in facts to mine and cited the "squarely governing" law. Further, this Honorable Court teaches that: "`[S]pecificity is especially important in the Fourth Amendment context, where the Court has recognized that it is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." Use of excessive force is an area of the law ``in which the result depends very much on the facts of each case," and thus police officers are entitled to qualified immunity unless existing precedent ``squarely governs" the specific facts at issue. Precedent involving similar facts can help move a case beyond the otherwise ``hazy border between excessive and acceptable force" and thereby provide an officer notice that a specific use of force is unlawful." **Kisela v. Hughes, 584 U.S. -, 138 S.Ct. 1446, 1152, 2002 L.Ed.2d 449, (2018)**. Since the Petitioner was a pre trial detainee, the fourth amendment objective reasonableness standard applies **Kingsley v. Hendrickson, - U.S. -, 135 S.Ct. 2466, 2475, 192 L. Ed. 2d 416 (2015)** and thus, the petitioner did just as the precedent teaches. Thus, the Court of appeals is deny indigent pro se litigants the ability to litigate their excessive force claims when following the teachings of this Honorable Court and manuals in which they learn to file their pleadings, citing the "squarely governing" case by quoting a case with similar facts. In **McNeil v. U.S., 508 U.S. 106, 113, 113 S. Ct. 1980, 124 L.Ed.2d 21 (1993)**, this Honorable Court held that: "Our rules of procedure are based on the assumption that

1 The Petitioner did not gain access to this manual until after he was transported to prison and after he filed his response in the District Court.

litigation is normally conducted by lawyers. While we have insisted that the pleadings prepared by prisoners who do not have access to counsel be liberally construed and have held that some procedural rules must give way because of the unique circumstance of incarceration. As qualified immunity is only for those who don't plainly violate the law. **Ziglar, vs. Ahmer Iqbal Abbasi, 582 US ___, 137 S Ct 1843,1867 198 L Ed 2d 290 (2017)**(In light of these concerns, the Court has held that qualified immunity protects ``all but the plainly incompetent or those who knowingly violate the law). In this case, Defendant Harris clearly used force to cause injury to the petitioner.[2] The petitioner provided the "squarely governing" case by quoting a District Court case with similar facts, shoving a detainee in a cell. Thus, the petitioner is, in effect, being denied the ability to litigate his viable claim simply because he is not a lawyer and pleaded his case the only way he knew how. Even the District Court stated: "...Routt's allegations may be sufficient to state a plausible claim that Harris violated his fourteenth amendment right to be free from the use of excessive force. Nonetheless, Routt fails to cite any 'existing precedent placing the conclusion that Harris acted unreasonably...." Appendix B at 15. Even then, the District Court stated that this Court "requires the specificity in the fourth amendment context". **Id**. The Petitioner argued that Harris acted in a malicious and sadistic manner to cause injury and punish him.[3] Any time force is used maliciously and sadistically to cause harm, contemporary standards of decency always are violated, whether there is significant injury or not. **Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995, 117 L.Ed. 2d 156 (1992)**. And in **Kingsley 135 S.Ct. At 2475,** the Court stated: "And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less ``maliciously and sadistically."

In the Petitioner's opening brief in the Court of Appeals, he stated:

> "In **Kingsley,** The court stated that detainees are protected from excessive force that amounts to punishment. **ID 135 S.Ct. At 2472-73; Bell v. Wolfish, 441 U.S. 520, 539, n. 20, 99 S. Ct. 1861, 60 L. Ed. 2D 447 (1979)**".

2 The force used was used in a more violent manner than words describe and the petitioner sought the video to show this.

3 The injury is sufficient enough that the Doctors have ordered a MRI and swallow study, along with the petitioner suffering with nerve pain and numbness in his leg and pain in his back. In which he is being treated for the nerve pain in his leg.

He then goes on to state that:

> In **Harris v. Adams 410 F. Supp.2d 707 (S.D. Ohio 2005)**, the court was faced with a similar situation. There, the Plaintiff claimed: "He was pushed into a cell hurting his knee badly". **Id.** There the court was faced with a Motion to Dismiss, as in this case. The Court stated:
>
> > "It is well-established that pretrial detainees are afforded the same protection under the Fourteenth Amendment, to be free from excessive use of force that convicted prisoners are entitled to under the Eighth Amendment. Bell v. Wolfish, 441 U.S. 520, 535 (1979). It is also established that subjecting pretrial detainees to the 'unnecessary and wanton infliction of pain,' is a violation of their Fourteenth Amendment rights. Whitley v. Albers, 475 U.S. 312, 319 (1986). Wantonness constitutes malicious and sadistic acts whose very purpose is to inflict harm. Moore v. Holbrook, 2 F.3d 697, 700 (6th Cir. 1976)".

The Courts below had a duty to protect the constitutional right of the Petitioner to be free from excessive force. **Turner v. Safeley, 482 U.S. 78, 84, 107 S Ct 2254, 96 L Ed 2d 64 (1987)**(The first of these principles is that federal courts must take cognizance of the valid constitutional claims of prison inmates). And in **Wolff v. McDonnell, 418 US 539, 94 S Ct 2963, 41 L Ed 2d 935 (1974)**, the Court held: "...it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." **Id 481 U.S. at 578.** The Court goes on to state: "It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ. The recognition by this Court that prisoners have certain constitutional rights which can be protected by civil rights actions would be diluted if inmates, often "totally or functionally illiterate," were unable to articulate their complaints to the courts". **Id U.S. at** 579. The fact that this Petitioner and many others like him, quote a District Court case with the governing case, should not be denied the ability to litigate their viable claim simply because of quoting a District Court in which the governing law was stated. Further, the Court of Appeals should have used its full knowledge of its own and other relevant precedents when engaging in a review of a qualified immunity judgment. **Elder v. Holloway, 510 US 510, 516, 114 S Ct 1019, 127 L Ed 2d 344 (1994)**(A court engaging in review of a qualified immunity judgment should therefore use its "full knowledge of its own [and other relevant] precedents). In the Tenth Circuit, that court has stated that: "We do not, however, take on the

responsibility of serving as the litigant's attorney in constructing arguments and searching the record." Appendix A at 4(citing **Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005)**) The rule and procedure that the Tenth Circuit Court of Appeals uses, allows for officials to use force without deterring the unlawful action or compensating their victims. **Elder, 510 U.S. at 515**. Such a rule and procedure could have "a number of untoward effects. It could occasion appellate affirmation of incorrect legal results." **Elder, 510 U.S. at 515 fn3**. The petitioner was specific in the force that was used and how it was used. The Court of Appeals only had to determine whether the law was clearly established. The Court of Appeals refused to use it's own knowledge of it's own precedent or that from other courts. Appendix A at 8(Mr. Routt has failed to provide any precedent that "squarely governs" these alleged facts). In which the Court of Appeals should have according to **Elder, 510 U.S. at 516**. Thus, the practice in the Tenth Circuit allows for officials unlawful conduct to go unpunished. **Elder, 510 U.S. at 515**.

QUESTION (2)

There are hundreds of detainees that enter the Tulsa County Jail each year and each one of them are subjected to being punished for an alleged rule violation by a Detention staff by the filing of an incident report, the placing the detainee on a disciplinary segregation lock down and not providing the detainee with a copy of incident report, a hearing or an opportunity to defend against the alleged rule violation. In which, this is the normal course of punishment imposed by the detention staff at the Tulsa County Jail. See Appendix D and E(request # 1295055). This course of punishment allows the Detention staff to "side step" the constitutional command required of the due process clause.[4] Not only is the action by Defendant Brown Arbitrary, but the petitioner did not violate any rule and was punished arbitrarily with no recourse to correct the wrongful punishment. Appendix E(request # 1295055). The whole incident report is false as to what took place and the Petitioner was never given the chance to defend against the false allegations.

4 The defendant's admitted that it was disciplinary segregation. Defendant's reply brief at 24, Court of appeals.

In **Bell v. Wolfish, 441 US 520, 99 S Ct 1861, 60 L Ed 2d 447 (1979)**, the Court stated that: "pretrial detainees have not been convicted of the crimes with which they are charged. For that reason, they retain a liberty interest in freedom from punishment." **Id 441 U.S. at 535-37**. "Though loss of freedom of choice and privacy are inherent incidents of pretrial detention, discrete punitive measures imposed during pretrial detention intrude on a protected liberty interest. **Id U.S. at 537**. See also **Kingsley 135 S.Ct. At 2475**(pretrial detainees (unlike convicted prisoners) cannot be punished at all). And that "pretrial detainees, who have not been convicted of any crimes, retain at least those constitutional rights that we have held are enjoyed by convicted prisoners". **Bell, 441 U.S. at 545**. In **Wolff , 418 US at 555-556,** the court held that inmates enjoy the protection of due process in disciplinary proceedings. There, the Court required that: "Advanced written notice of the rule violation, that there be a written statement by the fact finders as to the evidence relied on and reasons for any disciplinary action, and that the inmate should be allowed to call witnesses and present documentary evidence, and that a hearing be held before an impartial hearing body. The Court held that "there was no iron curtain drawn between the Constitution and the prisons of this country". **Id 418 US at 556; Turner , 482 U.S. at 84,** (Prison walls do not form a barrier separating prison inmates from the protections of the Constitution).Since pretrial detainees have a liberty interest in freedom from punishment, **Bell, U.S. at 537**, they would have a right to the protection of due process in any punishment taken against them at some point. **Wilkinson v. Austin, 545 U.S. 209, 220-24, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005)**(Due Process Clauses prohibit government from infringing on prisoner's liberty interest without due process of law);**Hatch v. D.C., 184 F.3d 846, 849 (D.C. Cir. 1999)**(due process protections require prisoner's not be subjected to arbitrary deprivation of liberty). The Court of Appeals in this case has drawn a line between the detainees and the constitution. Other courts have treated this type of segregation as punishment and required due process protection. **Suprenant v. Rivas, 424 F.3d 4, 13-14 (1st Cir. 2005)**(treating disciplinary segregation as punishment);**Benjamin v. Fraser, 264 F.3d 175, 190 (2d Cir. 2001)**(contrasting hearing required by

Wolff with more minimal process required for prison administrative actions);**Stevenson v. Carroll, 495 F.3d 62, 70-71 (3d Cir. 2007); cert. Denied 128 S.Ct. 1223 (2008)**(detainees are entitled to the usual procedural safeguards for administrative or disciplinary confinement...); **Dilworth v. Adams, 841 F.3d 246, 252 (4th Cir. 2016)**(We join our sister circuits and hold that Dilworth, as a pretrial detainee, was entitled under Bell to procedural due process in connection with any punishment imposed on him...); **Higgs v. Carver, 286 F.3d 437, 438 (7th Cir. 2002)**(same); **Holly v. Woolfolk, 415 F.3d 678, 679-80 (7th cir. 2005)**(noting holdings that any non-trival punishment of a person not yet convicted is a sufficient deprivation of liberty to entitle him to due process of law); **Rapier v. Haris, 172 F.3d 999, 1005 (7th Cir. 1999)**(applying Bell v. Wolfish punishment analysis to due process claim); **Zarnes v. Rhodes, 64 F.3d 285, 292 (7th Cir. 1995)**(pre-trial detainees can not be punished without due process); **Mitchell v. Dupnik, 75 F.3d 517, 524 (9th Cir. 1996)**(Pretrial detainees may be subjected to disciplinary segregation only with a due process hearing). The Plaintiff was locked in his cell for twenty three (23) hours a day for three (3) days. He was denied the privileges that the other detainees enjoyed. Access to telephones, recreation, television, and contact with other detainees. Other courts have not had a problem classifying this sort of disciplinary segregation as punishment under **Bell**. See **Patterson v. Coughlin, 761 F.2d 886 (2d Cir. 1985); cert. Denied, 474 U.S. 1100 (1986)**(finding that inmate's placement in isolation without a hearing violated the due process clause); **Dilworth , 841 F.3d at 253 (4th Cir. 2016)** (citing Kirk v. Boyles, 2010 WL 2720886, at *2 (E.D. Cal. July 8 2010) (unpublished)(magistrate report)(rejecting argument that three-day disciplinary confinement is de minimis), adopted by, 2010 WL 3516630 (E.D. Cal. Sept. 8, 2010); See also **Suprenant, 424 F.3d at 13-14** (treating disciplinary segregation as punishment); **Walker v. Navarro Co. Jail, 4 F.3d 410, 412 (5th Cir. 1993)**(due process claim stated when detainee was placed in solitary confinement for five days for purpose of disciplinary punishment); **Higgs , 286 F.3d at 438 (7th Cir. 2002)**(same); **Mitchell , 75 F.3d AT 524 (9th Cir. 1996)**(same). When such constitutional violation occurs, the Courts have a duty to protect these constitutional rights. **Turner , 482 U.S. at 84** ((qouting Procunier v Martinez, 416

US, 396, 405-406, 94 S Ct 1800,40 L Ed 2d 224(1974)) Because prisoners retain these rights, "[w]hen a prison regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights."). In this case, the Court of Appeals was in error in failing to protect the constitutional rights of this Petitioner and the other pretrial detainees in the Tulsa County Jail. The Petitioner has maintained that he did not violate a rule. Defendant Brown called the Petitioner over to his desk and He never hindered in defendant Brown's duty as an officer. The report is a false. The Courts below are taking on face value, the report without the Petitioner ever being able to disprove the report, just as was done in the jail. Thus, denying this Petitioner the ability to prove his innocence in violation of due process outlined in **Wolff.**

The Petitioner was even subjected to punishment when Defendant Brown locked the whole pod down for an item in a common area as punishment and thus, violated due process as well in this incident as pretrial detainees are not to be punished. Another normal course of action taken by the staff at the Tulsa County Jail. The jail staff normally blanket punishes the detainees without providing any due process.

QUESTION 3

The Court of Appeals and the District Court required the Petitioner to show that the Eighth Amendment was not violated. The Plaintiff was a pretrial detainee and thus, Due process controls this allegation. In **Bell, 441 U.S. 520, 535,** The Court stated:

> "In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law."

Thus, the proper inquiry is whether the actions of Defendant Brown amounted to punishment. **Id.** The lower courts was in error in evaluating this claim under the Eighth Amendment. This Honorable Court

has explicitly stated that the Eighth amendment does not apply to pretrial detainees. **Bell, 441 U.S. at 535 fn 16,** where the court noted:

> "The Court of Appeals properly relied on the Due Process Clause rather than the Eighth Amendment in considering the claims of pretrial detainees. Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be "cruel and unusual" under the Eighth Amendment. The Court recognized this distinction in Ingraham v Wright, 430 US 651, 671-672, n 40, 51 L Ed 2d 711, 97 S Ct 1401 (1977)."

See also **City of Revere v. Massachusetts General Hospital, 436 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983)** ([T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law."); **Ingram v. Wright, 430 U.S. 651, 671-72, n. 40 97 S.Ct. 1401, 1412, n. 40, 51 L.Ed.2d 711 (1977)**(. Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions). Thus, **Bell**, required the lower Courts to have determine whether the actions of Defendant Brown Amounted to punishment. See **Bosse v. Oklahoma, - U.S. -, 137 S. Ct. 1, 2; 196 L. Ed. 2D 1, 3 (2016)**(``[I]t is this Court's prerogative alone to overrule one of its precedents" ... ``Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality."). The law is clear, that a pretrial detainee's condition of confinement claim must be decided under **Bell**, which requires an analysis under the due process clause. A claim of a condition of confinement asserted by a pretrial detainee must be whether the action amounts to punishment. **Id 441 U.S. at 535** (we think that the proper inquiry is whether those conditions amount to punishment of the detainee).

In **Bell, 441 U.S. at 535**, the Court was clear in the procedure to evaluate a condition of confinement claim brought by a pretrial detainee. **Id** (In evaluating the constitutionality of conditions or restrictions of pretrial detention that implicate only the protection against deprivation of liberty without due process of law, we think that the proper inquiry is whether those conditions amount to

punishment of the detainee. For under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law). In **Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995),** the Court stated the difference between a convicted inmate and a pretrial detainee. There, the court explained:

> "Prison regulations providing for procedures in connection with punishment will not give rise to a protected liberty interest unless the punishment in question 'imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.'

Id 515 U.S. at 484, 115 S.Ct. 2293. The Court reasoned that was so because:

> "A wide range of 'discipline by prison officials...falls within the expected perimeters of the sentence imposed by a court of law.'"

Id 515 U.S. at 485. The Court goes on to explain:

> "But pretrial detainees, as we have explained, have not been convicted or sentenced by a court of law and thus, fall plainly outside this rationale."

Thus, the Eighth Amendment and it's analysis does not apply to pretrial detainees. The Court in **Sandin**, expressly distinguished **Bell**. **Id 515 U.S. at 484** (rejecting prisoner's reliance on **Bell** because **Bell** dealt with the interest of pretrial detainees and not convicted prisoners). Here, the lower courts were clear in their analysis under the Eighth Amendment, which does not apply to pretrial detainees.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Date: June 5 2019