

No. 19-701

IN THE
Supreme Court of the United States

LLOYD N. JOHNSON,

Petitioner,

v.

KAREN RIMMER, *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

REPLY BRIEF

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REPLY**I. Respondents Concede The Seventh Circuit Standard Deviated from This Court’s Standard for the Protection of the Mentally Ill in State Custody**

Respondents admit the Seventh Circuit reduced the professional judgment standard for the care of the mentally ill to a “would the worst doctor in America possibly do it” standard by equating it to the standard for the criminally convicted. (Respondents’ Brief at 8). That was precisely what this Court rejected in *Youngberg v. Romero*, 457 U.S. 307, 321-322 (1982), and where the Circuits also disagree. Involuntarily committed persons are entitled to more considerate treatment and conditions of confinement than criminals. *Id.* By adopting the “no minimally competent” professional standard, the Seventh Circuit has all but eliminated this important distinction, treating involuntarily admitted, mentally ill individuals to the same lower standard that sentenced criminals must overcome regarding their §1983 claims. Respondents admit those “who have been involuntarily committed are entitled more considerate treatment” (Respondents’ Brief at 6). By this statement, Respondents admit this Court’s precedents that preclude the lowest-possible-care standard for the mentally ill was ignored by the Seventh Circuit. Worse yet, Respondents attempt to harmonize this standard with U.S. Supreme Court precedent. The quintessential tail wagging the dog argument. Summary judgment should never be granted under these circumstances on smoke and mirrors arguments where the moving party received all reasonable inferences in its favor.

The Seventh Circuit's decision in this matter represents a significant departure from other circuits and the true intention of *Youngberg*. The Seventh Circuit will further entrench itself in this maligned interpretation of the *Youngberg* standard unless this circuit split is reconciled. The Seventh Circuit and the Respondents have thus far successfully eviscerated this Court's precedent and the mentally ill's constitutional protections at every level. Is there no possible justice in this Court of last resort?

II. Respondent Reveals the Scope of the Circuit Split on Jury Power in Civil Rights Cases Where Facts Show Two Possible Suspects

There is a clear circuit split regarding whether a jury can determine culpability amongst several different suspects. The Ninth circuit held, "while no evidence existed to show that any of the defendants personally participated in the assault, the very presence of the officers at the scene may constitute sufficient evidence for a jury to infer that the officers participated in an illegal beating that was shown to have occurred." *Segal v. Los Angeles Cty.*, 852 F.2d 1290 (9th Cir. 1988); and see *Rutherford v. City of Berkely*, 780 F.2d 1444, 1448 (9th Cir. 1986).

The Respondents attempt to refute this clear split between circuits by relying on *Jones v. Williams*, which they argue constrains *Rutherford* and realigns the conflict between circuits. 297 F.3d 930 (9th Cir. 2002). While asserting *Jones* is the controlling authority, the Respondents speciously omit the fact that Mr. Johnson's case was decided at summary judgement. When applied

to decisions of summary judgement, reliance on *Jones* has been rejected by Ninth Circuit courts. *Antoine v. Cty. of Sacramento*, 2007 U.S. Dist. LEXIS 87206 (E.D. Cal. Nov. 26, 2007). The *Antoine* court astutely distinguishes the factual differences between the circumstances and procedural history of *Jones* with those of claims facing summary judgment. *Id.* at *29-31. Respondents here show no constraint in citing inapplicable law, twisting it to suit their unscrupulous ends.

Jones dealt with an impermissible jury instruction that would have invited the jury to find that all of the defendant officers were liable for merely being present at an alleged unreasonable search of plaintiff's home. *Jones*, 297 F.3d at 934-35. Because the plaintiff in *Jones* had no idea which of the officers had destroyed the personal items inside her home, she sought group liability. *Id.* However, the court reasoned that due to the lack of evidence that the officers "who simply remained outside" were integral participants in the unlawful conduct, an instruction to the contrary would have been impermissible. *Id.* at 939. Significantly, while the Ninth Circuit affirmed the district court's refusal to give the instruction, the court nonetheless approved the initial submission of the case to the jury to allow it to hear each party's testimony and to draw all permissible inferences about the liability of the individual officers. See *Id.* at 936 ("The permissible inferences in [plaintiff's] proposed instruction were adequately covered by the fact that the court submitted the case to the jury.").

In contrast to *Jones*, the decision appealed here is on a motion for summary judgment, not an attempt to submit an overarching jury instruction. On summary judgment,

the court must view the evidence most favorably to the party against whom the motion is made and, without weighing the credibility of witnesses, the court must also give that party the benefit of all reasonable inferences from the evidence. *McCollum v. Smith*, 339 F.2d 348, 349 (9th Cir. 1964). If conflicting inferences may be drawn from the facts, the case must go to the jury. *Neely v. St. Paul Fire and Marine Ins. Co.*, 584 F.2d 341, 345 (9th Cir. 1978).

Like in *Antoine*, Mr. Johnson is unable to identify precisely which nurse provided him with the scissors. However, as this decision was made at the summary judgement stage, Mr. Johnson was entitled to all reasonable inferences from the evidence. The conflicting inferences that either Nurse George or a different nurse left the scissors is one that must be presented to a jury under the Ninth and Tenth Circuits. Respondents' argument only further establishes that the *Johnson* decision represents a substantial split by failing to allow these necessary conflicting inferences to be heard by a jury. Following the Seventh Circuit's reasoning, an alternate perpetrator theory is no longer just a defense at trial but a bullet proof strategy to prevent §1987 claims from ever reaching a jury in the first place. Certiorari is warranted to address this split between the circuits.

CONCLUSION

The Respondent resorts to disputing the facts and arguing the record in a summary judgment case where all facts and inferences must favor the non-movant Petitioner. There is a reason the Respondent did so: the decision below created clear conflicts with this Court's precedents, fellow Circuit decisions, and the public policy guiding and governing this area of law. This seventh Circuit Standard cannot be Constitutionally adequate custodial care for the mentally ill in state custody, or the mentally ill in state custody have no remedial civil rights in state custody in America.

For the reasons stated herein this Court should grant certiorari.

Respectfully submitted,

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