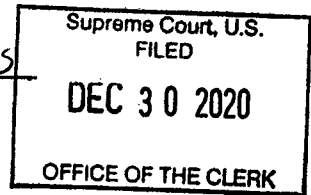


20-6828

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA



MWENDA MURITHI - PETITIONER
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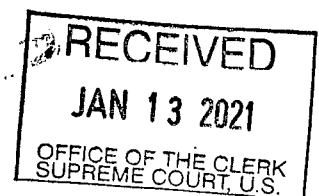
— VS —

BRYAN GLECKLER, TERI ANDERSON,
KIMBERLY BUTLER, JACQUELINE
LASHBROOK AND JEANETTE COWAN - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
7TH CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI

MWENDA MURITHI # M0425
P.O BOX 99, PONTIAC ILL
PONTIAC, IL 61764



QUESTIONS PRESENTED -

- ① Whether or not the district court and the 7th circuit court of appeals superseded this Court's ruling in ANDERSON V LIBBERTY LOBBY INC. 477 US 242, 106 S.Ct 2505 (1986) by holding summary judgment is a proper venue to make credibility determinations?
- ② Whether or not a non-movant's testimony by itself is sufficient to create issues of material fact sufficient to preclude the grant of summary judgment? There is a split among the lower courts and the issue has never been addressed by this Court?

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NO: _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

- The decision of the United States Court of Appeals for the 7th circuit is unreported and a copy is attached as Appendix A to this petition.
- The decision of the United States District Court for the Southern District of Illinois is unreported. A copy is attached as Appendix B to this petition.
- The recommendation of the Magistrate judge is attached as Appendix C to this petition.
- The denial for rehearing en banc by the Court of Appeals

7th circuit is attached as Appendix D to this petition

JURISDICTION

The judgment of the United States Court of Appeals for the 7th circuit was entered on September 30, 2020. An order denying a petition for rehearing en banc was entered on November 25, 2020 and a copy of that order is attached as Appendix D to this petition. Jurisdiction is conferred by 28 U.S.C § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment VIII to the United States Constitution which provides

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Section 5: The Congress shall have power to enforce by appropriate legislation the provisions of this article.

The Amendment is enforced by Title 42 Section 1983 United States Code

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress, except that in any such action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The petitioner's complaint alleged that he was viciously attacked by other inmates shortly after he was denied protective custody placement for a second time and sent back to general population.

The petitioner alleged his second request for protective custody placement had come after prison officials informed him they had thwarted a planned attack on him. Despite citing this fact in his second request form, petitioner was denied protective custody placement due to an Illinois Department of Corrections (I.D.C.) policy not to allow suspected gang members such as himself protective custody unless they informed on gang members or were physically attacked. This allegation was stated in petitioner's grievance that exhausted administrative remedies, which is why Lashbrook, Butler, Anderson and Gleader are respondents. The respondents denied this allegations though they only presented sworn testimony in support of their position.

The district court granted summary judgment to respondents crediting their version of performing an investigation despite both they

and petitioner only presenting sworn testimony in support of their contradictory positions. The court of appeals affirmed the grant of summary judgment for the reasons stated by the district court.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the cruel and unusual punishment clause of the Eighth Amendment to the United States Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. 1331, 1343 (a).

REASONS FOR GRANTING THE WRIT

① Conflicts with Decision of this Court

The holding of the lower courts that summary judgment is a proper venue to make credibility determinations is directly contrary to the holding of this Court in Anderson v Libberly Lobby Inc. 477 U.S. 242, 106 S.Ct 2505 (1986)

which held

"It is not for courts at summary judgment to weigh evidence or determine the credibility of such testimony, we leave those tasks to the factfinders."

In the present case at bar, both petitioner and respondents only presented sworn testimony in support of their conflicting positions. Petitioner stated in his grievance to exhaust remedies, complaint and sworn deposition testimony that his protective custody placement denial was the result of a well known Illinois Department of Corrections policy to deny suspected gang members placement unless they provided information against gang members or were physically attacked / assaulted.

Petitioner further testified that he and an inmate named Allsup had a keep separate order on them so they could never be anywhere near each other, which had been in place prior to him seeking protective custody placement, and that he had been left in unapproved protective custody due to an Illinois departmental rule that required him to be

left in protective custody while he appealed his protective custody placement denial.

Respondents countered by testifying that they denied petitioner protective custody placement after conducting an investigation and being unable to substantiate his claims, and for fear that he might have been trying to target Allsup. They however did not provide any documentation in support of this despite it being in their sole possession, which respondent cited as being troubling and indicative of them never having performed any investigation.

Thus when the district court granted summary judgment for respondents, this was a credibility determination for it required the court to credit the respondents sworn testimony while simultaneously discrediting the petitioner's sworn testimony. The appellate court's ruling affirming the decision was also in conflict with this Court's ruling in Anderson for it superseded it by holding summary judgment is a proper venue to make credibility determinations.

⑧ Conflicts with Decisions of other panels within the 7th Circuit Court of Appeals.

The holding of the lower courts, that a non-movant's testimony by itself is not sufficient to preclude the grant of summary judgment goes against decisions of other panels within the 7th circuit court of appeals as seen in Navejar v Iyiola 718 F 3d 682 (2013), Berry v Chicago Transit Auth. 618 F 3d 688, Buie v Quad/Graphics Inc 366 F 3d 496 (2004), Payne v Pawley 337 F 3d 767 (2003). In these cases it was held that a non movant's testimony by itself was sufficient to create issues of material fact so as to preclude the grant of summary judgment.

In the case at bar, this was held not to be the case for though petitioner and respondents only presented sworn testimony, the lower courts still held that the petitioner needed to corroborate his sworn testimony so as to preclude the grant of summary judgment. This was despite petitioner arguing in his motions that respondents had refused

to furnish him, during discovery, what had led prison officials to advise him to seek protective custody placement on December 4, 2014 citing safety and security concerns.

It was not until respondents had summary judgment granted in their favor, did the petitioner come to learn of the existence of a gang hit list that was possibly in the respondents possession. Petitioner's attempts at acquiring this admissible evidence through the use of inadmissible evidence as stipulated in Federal Rules of Civil Procedure 56(c)(2)-(4), was unsuccessful, for this evidence would have conclusively shown that the respondents were well aware of the danger petitioner faced when they denied him protective custody placement the second time as he had testified in his deposition.

© Importance of the Questions presented

This case presents a fundamental question

Of the interpretation of this Court's decision in Anderson v Libberly Lobby INC 477 US 242, 106 S.Ct 2505 (1986). The question presented is of great importance because it affects plaintiff's in federal courts in all 50 states and the District of Columbia. In light of the potential number of cases where a plaintiff's main evidence is what he/she witnessed, denying them an opportunity to present their testimony to a jury further affects one's right to a fair trial.

The issue's importance is further amplified by the fact that the evidence needed to credit or discredit the petitioner's claims was and still is in the respondents' sole possession. This runs the risk of encouraging defendants to withhold evidence from plaintiffs in the hopes of having lower courts make a credibility determination at summary judgment.

Additionally by this Court never addressing/resolving whether a non-movant's testimony without corroboration is sufficient to preclude the grant of summary judgment, the above stated risk

further heightened. As the panel in Navejar v Iyiola
718 F.3d 692 (7th cir 2013) stated in exasperation

"We long ago buried or at least tried
to bury the misconception that un-corro-
borated statement from the non-movant
cannot prevent summary judgment
because it is self serving."

In light of the whole wide variety of individuals/
entities likely to be affected by this decision, it
begs this Court's attention to answer the
questions presented in this petition.

CONCLUSION

For the foregoing reasons, certiorari should be
granted in this case

Respectfully Submitted

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DECEMBER 28, 2020