Appendix

Appendix A

FILED
United States Court of Appeals
Tenth Circuit

December 29, 2020

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ANTONIO DEWAYNE HOOKS,

Plaintiff - Appellant,

v.

KAYODE ATOKI; BETHANY POLICE DEPARTMENT; OKLAHOMA COUNTY JAIL; ARMOR CORRECTIONAL HEALTH SERVICES INC; CHRIS HARDING, Bethany Police Officer, in his official and individual capacity; JAMES IRBY, Bethany Police Officer, in his official and individual capacity; JOHN WHETSEL, Sheriff, in his official and individual capacity; DR. JERRY CHILDS, Oklahoma County Jail, Armor Correctional Health Inc., in his official and individual capacity,

Defendants - Appellees.

No. 19-6093

Appeal from the United States District Court
for the Western District of Oklahoma
(D.C. No. 5:17-CV-00658-D)

Daniel S. Brookins (Gordon D. Todd with him on the briefs), Sidley Austin LLP, Washington, DC, for the Plaintiff - Appellant.

Carson C. Smith (Robert S. Lafferrandre with him on the briefs), Pierce Couch Hendrickson Baysinger & Green, L.L.P., Oklahoma City, Oklahoma, for named Defendants – Appellees Chris Harding and James Irby, in their individual and official capacities as Bethany Police Officers.

Austin J. Young (Sean P. Snider and Anthony C. Winter with him on the briefs), Johnson Hanan Vosler Hawthorne & Snider, Oklahoma City, Oklahoma, for Defendants – Appellees Armor Correctional Health Services, Inc. and Jerry Childs, Jr., D.O.

Rodney J. Heggy (Aaron Etherington with him on the briefs), Assistant District Attorneys, Oklahoma County District Attorney's Office, Oklahoma City, Oklahoma, for Appellees – Defendants Kayode Atoki and Sheriff John Whetsel.

Antonio DeWayne Hooks also filed pro se briefing on his own behalf.

Before **HARTZ**, **EBEL**, and **McHUGH**, Circuit Judges.

McHUGH, Circuit Judge.

In this civil rights lawsuit, Antonio Dewayne Hooks alleges that Officers Chris Harding and James Irby of the Bethany, Oklahoma, Police Department used excessive force against him in the course of an arrest, and, separately, that Officer Kayode Atoki exhibited deliberate indifference by failing to intervene during a vicious, gang-related jailhouse assault.[1] The district court screened and dismissed Mr. Hooks's excessive force claim prior to discovery.[2] And after limited discovery, the district court granted Officer Atoki's motion for summary judgment on the deliberate indifference claim.

[1] Because Mr. Hooks proceeded pro se in the district court, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

[2] Mr. Hooks raised other claims that the district court screened and dismissed. Except where noted, those claims are not at issue in this appeal.

We affirm, in part and reverse, in part. Specifically, we reverse the district court's dismissal of Mr. Hooks's excessive force claim because some of his allegations are not barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). We affirm the district court's grant of summary judgment to Officer Atoki on Mr. Hooks's deliberate indifference claim. We also take this opportunity to clarify that our recent discussion of the deliberate indifference standard in *Strain v. Regalado*, 977 F.3d 984 (10th Cir. 2020), applies outside the medical context.

I. BACKGROUND

A. *Factual History*

1. Claims Dismissed Prior to Discovery

"In determining whether a dismissal is proper, we must accept the allegations of the complaint as true and construe those allegations, and any reasonable inferences that might be drawn from them, in the light most favorable to the plaintiff." *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007) (quotation marks omitted).

a. *The arrest and resulting charges*

On September 30, 2016, Officer Harding approached a vehicle with his gun drawn and ordered Mr. Hooks to put his hands on the dash. Mr. Hooks complied, at which point Officer Harding opened the car door and removed Mr. Hooks. Officer Harding then attempted to maneuver Mr. Hooks to a police car, without explanation or the use of handcuffs. Mr. Hooks pulled away, as if to say, "[W]hat are you doing!" ROA, Vol. I at 1445. Officer Harding and Officer Irby then wrestled Mr. Hooks between two cars, at which point Officer Irby tased Mr. Hooks. Mr. Hooks dropped

to the ground, hit his head, landed on his stomach, and lay there, not moving. Officer Irby tased Mr. Hooks again. Then, Officer Harding placed Mr. Hooks in a chokehold.

In response to the altercation, on October 18, 2016, the Oklahoma County district attorney filed a criminal information charging Mr. Hooks with two counts of assault and battery upon a police officer, one count of possession with intent to distribute a controlled substance, and one count of possession of a controlled substance within 2,000 feet of a school or park. The two assault and battery counts were specifically based on Mr. Hooks "pushing and stricking (sic)" Officers Harding and Irby. Bethany App. at 35.

Mr. Hooks entered a plea of no contest on the two assault and battery counts, as well as a lesser-included count of simple drug possession. In exchange, the district attorney agreed to dismiss the drug distribution charge, as well as the charge of possession near a school or park. The court accepted Mr. Hooks's plea and sentenced him to concurrent four-year terms of imprisonment on each count.

b. *Booking and housing procedures*

When Mr. Hooks arrived at the county jail in the early morning hours of October 1, 2016, an unnamed guard fingerprinted him. The guard did not ask Mr. Hooks about his gang affiliations, in violation of jail policy. Typically, the jail houses rival gang members in different parts of the jail for safety reasons.

On October 5, 2016, a second unnamed guard moved Mr. Hooks from the 4D pod to the 4A pod. The 4A pod was reserved for members of the "bloods" gang.

Mr. Hooks was a member of the rival "crips" gang, as apparent from Mr. Hooks's tattoos. Jail officials were aware of Mr. Hooks's gang affiliation.

2. Claim Dismissed at Summary Judgment

After the transfer to the 4A pod, Mr. Hooks showered, walked around the pod, and got in line to order something from the canteen. Inmates place orders to the canteen system using computer screens on the wall in front of the pod guard office. The guards can see into the pod through the office window, and the pod is surveilled continuously by several video cameras.

Through the office window, Mr. Hooks could see Officer Atoki working at an office computer.[3] Then, someone knocked Mr. Hooks unconscious from behind. The video from 4A pod camera #2, from 9:42:07 to 9:42:14, shows three assailants kicking and stomping on Mr. Hooks in the bottom righthand corner of the screen. Two of the assailants then walk away, and one of the three assailants kicks or stomps on Mr. Hooks twice more. At 9:42:28, a white[4] jail employee, identified as Noel Covarrubias, walks up to the window of the pod office and looks down to see what is

[3] Mr. Hooks did not know the officer's identity at the time of the attack. Later, Mr. Hooks saw the same officer and asked a prison deputy who he was. The prison deputy identified the officer as the floor unit manager. Officer Atoki was the floor unit manager at the time of the attack. Officer Atoki denies that he was in the pod office at the time of the attack and asserts that he was working in his own separate office, just outside the pod.

[4] Officer Atoki is black.

happening.[5] At 9:42:43, one of the assailants resumes kicking and stomping on Mr. Hooks for two seconds. At 9:42:56, three guards, including Officer Atoki, enter the pod and see Mr. Hooks's body on the ground. At 9:44:02, two guards escort one of the assailants out of the pod in handcuffs. And at 9:44:15, four or more additional guards enter the pod. Then, at 9:45:10, guards enter the pod with a gurney for Mr. Hooks.

Camera #3 offers a different, partial view of the pod office. At no point before, during, or immediately after the attack is anyone visible through the window of the pod office.

Camera #4 offers a third view of the attack, also in the bottom righthand corner of the screen. This video shows one of the assailants leave Mr. Hooks at 9:42:18, trade shoes with another inmate, and then return to kick Mr. Hooks five more times at 9:42:43.

B. *Procedural History*

On June 14, 2017, Mr. Hooks filed a complaint in the United States District Court for the Western District of Oklahoma. Mr. Hooks amended his complaint soon thereafter. The defendants then moved to dismiss, and a magistrate judge recommended that their motions be granted. On April 16, 2018, the district court

[5] In his incident report, Mr. Covarrubias stated he "could hear the commotion but not immediately see the cause," which is why he "moved to the window to get a better view." ROA, Vol. I at 666.

adopted the magistrate judge's recommendation and also granted Mr. Hooks leave to amend his complaint.

1. The Operative Complaint

On May 7, 2018, Mr. Hooks filed a second amended complaint against Officer Harding, Officer Irby, an unnamed booking guard, an unnamed classification guard, unnamed booking nurses, Officer Atoki, Sheriff John Whetsel, the jail's doctor,[6] and the jail. Claim I alleged deliberate indifference by the doctor for twisting wires in Mr. Hooks's mouth. Claim II alleged excessive force by Officers Harding and Irby. Claim III alleged that Sheriff Whetsel and Officer Atoki failed to protect Mr. Hooks from the attack. Claim IV alleged deliberate indifference by Sheriff Whetsel and the booking guard for failing to ask about Mr. Hooks's gang affiliations. Claim V alleged deliberate indifference by Sheriff Whetsel and an unnamed guard for moving Mr. Hooks from the 4D pod to the 4A pod. Claim VI alleged deliberate indifference by the jail, the unnamed booking nurses, and the doctor for failing to place Mr. Hooks on medical status upon his arrival at the jail.

2. Motions to Dismiss

The defendants again moved to dismiss, and a magistrate judge recommended that those motions (except as to Officer Atoki) be granted under 28 U.S.C. § 1915A (requiring that courts promptly screen prisoner complaints against governmental

[6] Mr. Hooks named "Armor Correctional Health Inc." as a defendant but his allegations are directed against the jail's doctor. We liberally construe the second amended complaint accordingly. *See James*, 724 F.3d at 1315.

entities or their officers or employees). First, the magistrate judge recommended the deliberate indifference claims against Sheriff Whetsel be dismissed because Mr. Hooks had not alleged the Sheriff's personal involvement in any of the described conduct. Second, the magistrate judge recommended the deliberate indifference claims against the doctor and the jail be dismissed because Mr. Hooks merely disagreed with the doctor's chosen course of treatment and had not alleged subjective indifference. In addition, Mr. Hooks failed to allege subjective indifference by the booking nurses. Third, the magistrate judge recommended the excessive force claim against Officers Harding and Irby be dismissed under *Heck v. Humphrey*. Fourth, the magistrate judge liberally construed Mr. Hooks's complaint as alleging an official capacity claim against the City of Bethany and Oklahoma County and recommended that any such claim be dismissed because Mr. Hooks had not alleged an unconstitutional custom or policy. On June 26, 2018, the district court adopted the magistrate judge's recommendation.

With respect to Officer Atoki's motion to dismiss, the magistrate judge recommended that it be denied on the individual capacity claim and granted on the official capacity claim. Specifically, the magistrate judge found that Mr. Hooks had alleged a plausible claim of deliberate indifference based on Officer Atoki's failure to respond more effectively to the attack. In addition, the magistrate judge found that

Officer Atoki was not entitled to qualified immunity. The district court adopted the magistrate judge's recommendation.[7]

3. Motion for Summary Judgment

Officer Atoki then moved for summary judgment. A magistrate judge recommended that the motion be granted, seemingly for two distinct reasons. First, the magistrate judge reasoned that Mr. Hooks had failed to show causation because the attack against him lasted "less than one minute," so Officer Atoki's intervention could not have made a difference. ROA, Vol. III at 160. Second, the magistrate judge reasoned that Mr. Hooks had failed to show subjective indifference because, at most, his version of events suggested that Officer Atoki "changed post positions without waiting for the replacing pod officer to be in a position to monitor the pod." ROA, Vol. III at 163–64. In other words, Mr. Hooks had not shown that Officer Atoki was subjectively aware of the attack at the outset.

On June 4, 2019, the district court adopted the magistrate judge's recommendation and entered judgment. Specifically, the district court agreed with the magistrate judge's analysis of causation and subjective indifference. And the district court thought it "clear" that Officer Atoki "never approached the window closely enough to see the attack . . . because he does not appear in any video recording of the office window." ROA, Vol. III at 181.

[7] Mr. Hooks then filed a premature notice of appeal that we dismissed for lack of appellate jurisdiction.

Mr. Hooks filed a timely notice of appeal.

II. DISCUSSION

Mr. Hooks argues (1) it was error for the district court to dismiss his excessive force claim, (2) the district court applied the wrong legal standard to his deliberate indifference claims, and (3) the district court erred in granting summary judgment to Officer Atoki. We address these arguments in the order presented.

A. *The District Court Erred in Dismissing Mr. Hooks's Excessive Force Claim*

"We apply the same standard of review for dismissals under § 1915(e)(2)(B)(ii) that we employ for Federal Rule of Civil Procedure 12(b)(6) motions to dismiss for failure to state a claim." *Kay*, 500 F.3d at 1217. That means "we look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief." *Id.* at 1218 (internal quotation marks omitted).

"In *Heck*, 512 U.S. at 480–87, the Supreme Court held that a plaintiff could not bring a civil-rights claim for damages under § 1983 based on actions whose unlawfulness would render an existing criminal conviction invalid." *Havens v. Johnson*, 783 F.3d 776, 782 (10th Cir. 2015). "An excessive-force claim against an officer is not necessarily inconsistent with a conviction for assaulting the officer." *Id.* "For example, the claim may be that the officer used too much force to respond to the assault or that the officer used force after the need for force had disappeared." *Id.* "To determine the effect of *Heck* on an excessive-force claim, the court must compare the plaintiff's allegations to the offense he committed." *Id.*

1. The Offense Committed

Mr. Hooks pleaded no contest to two counts of assault and battery of a police officer. The Oklahoma crime of assault and battery upon a police officer applies to "[e]very person who, without justifiable or excusable cause knowingly commits battery or assault and battery upon the person of a police officer." Okla. Stat. Ann. tit. 21, § 649(B). The criminal information filed against Mr. Hooks vaguely referred to him "pushing and stricking (sic)" the two officers.

2. Mr. Hooks's Allegations

Mr. Hooks alleged that Officers Harding and Irby employed excessive force during his arrest, in violation of his Fourth Amendment rights.

> The Fourth Amendment forbids unreasonable seizures, including the use of excessive force in making an arrest. To determine whether the force used in a particular case is excessive "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake." *Graham v. Connor*, 490 U.S. 386, 396 (1989) (internal quotation marks omitted). The ultimate question "is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them." *Id.* at 397 (internal quotations marks omitted). This determination "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Id.* at 396.

Casey v. City of Fed. Heights, 509 F.3d 1278, 1281 (10th Cir. 2007).

Here, Mr. Hooks pleaded no contest to a severe crime (assaulting a police officer) that inherently poses an immediate threat to the safety of officers. In

addition, Mr. Hooks alleges he was actively resisting arrest. Consequently, there is no doubt the officers were justified in employing *some* force against Mr. Hooks.

The inquiry is nevertheless complicated because Mr. Hooks's second amended complaint alleges several distinct uses of force. First, Officer Harding removed Mr. Hooks from the car. Second, Officer Harding tried to move Mr. Hooks toward the police car. Third, Officers Harding and Irby wrestled Mr. Hooks between two cars. Fourth, Officer Irby tased Mr. Hooks. Fifth, Officer Irby tased Mr. Hooks again. And sixth, Officer Harding placed Mr. Hooks in a chokehold.

3. Analysis

Heck bars Mr. Hooks from recovering damages based on the first four alleged uses of force. Mr. Hooks's no contest plea to two counts of assault and battery of a police officer means he admitted repeatedly hitting the officers before he was subdued. For Mr. Hooks to prevail on his excessive force claim with respect to these uses, he would need to prove that it was unreasonable for the officers to defend themselves by subduing him. In other words, Mr. Hooks would need to show "he did nothing wrong." *Havens*, 783 F.3d at 783. That inquiry would necessarily entail an evaluation of whether and to what extent Mr. Hooks used force against the officers, an inquiry that would take aim at the heart of his criminal plea, thereby violating the spirit of *Heck*.[8]

[8] *Heck* also does not bar a claim "that [an] officer used too much force to respond to the assault." *Havens v. Johnson*, 783 F.3d 776, 782 (10th Cir. 2015).

The fifth and sixth uses of force are different. Those allegations align with the examples we articulated in *Havens*, i.e., "the claim may be . . . that the officer used force after the need for force had disappeared." *Id.* at 782. Mr. Hooks alleges that after Officer Irby tased him once, he fell, hit his head, and lay unmoving, on his stomach on the ground. Yet, Officer Irby tased him again and Officer Harding placed him in a chokehold. An officer can be liable for using excessive force against a suspect who "no longer posed a threat." *Estate of Smart by Smart v. City of Wichita*, 951 F.3d 1161, 1176 (10th Cir. 2020). Drawing all reasonable inferences in Mr. Hooks's favor, it is plausible that the officers were on notice that Mr. Hooks no longer posed a threat after he collapsed on his stomach on the ground.

Our decision in *Martinez v. City of Albuquerque*, 184 F.3d 1123 (10th Cir. 1999), explains how a district court should proceed when some factual allegations are barred by *Heck* and others are not. "If this case proceeds to trial while [Mr. Hooks's] state court conviction remains unimpaired, the court must instruct the jury that [Mr. Hooks's] state arrest was lawful per se." *Id.* at 1127. "The question for the jury is whether the police officers utilized excessive force in making that arrest." *Id.* "Otherwise, the jury might proceed on the incorrect assumption that the police officers had no probable cause to arrest [Mr. Hooks], and thus reach a verdict inconsistent with [Mr. Hooks's] criminal conviction." *Id.*

Nothing in the allegations relevant to the first four uses of force in the second amended complaint rise to that level.

The district court adopted the magistrate judge's analysis without additional comment. The magistrate judge made two errors. First, the magistrate judge noted that Mr. Hooks's second amended complaint did not mention his assault on the officers but failed to explain why that omission *necessarily* means that every use of force in the second amended complaint is barred by *Heck*. Our cases have consistently drawn a distinction between reasonable force used to subdue a suspect and unreasonable force used thereafter. *See, e.g.*, *Havens*, 783 F.3d at 782; *Estate of Smart*, 951 F.3d at 1176.

Second, the magistrate judge misinterpreted Mr. Hooks's no contest plea. Specifically, the magistrate judge determined that Mr. Hooks had pleaded no contest to *aggravated* assault and battery of a police officer, apparently because a citation to the aggravated assault and battery statute appears on the state court's electronic docket.

That citation in the state court's electronic docket appears to be a mistake, based on three considerations. First, the word "aggravated" did not appear in the criminal information. Second, Officer Harding's affidavit of probable cause states he and Officer Irby suffered only "minor cuts and bruises" during the altercation. Bethany App. at 39. Such injuries would not meet Oklahoma's definition of aggravated assault and battery. Okla. Stat. Ann. tit. 21, § 646. And third, the state court did not cite the aggravated assault and battery statute when it accepted Mr. Hooks's plea and imposed a sentence.

The officers defend the magistrate judge's decision by comparing the facts of this case to those in *Havens*, *DeLeon v. City of Corpus Christi*, 488 F.3d 649 (5th Cir. 2007), and *Wilson v. Rokusek*, 670 F. App'x 662 (10th Cir. 2016) (unpublished). None of those three cases applies.

Havens involved a plaintiff who pleaded guilty to an attempted assault on a police officer by either hitting or trying to hit the officer with a car. 783 F.3d at 779–80. The plaintiff then filed an excessive force complaint that "denied any wrongdoing." *Id.* at 781. Specifically, the complaint "said that he at no time attempted to resist arrest, claiming that the officers . . . caused [the plaintiff] to lose control of the vehicle which resulted in the vehicle lurching forward under its own volition." *Id.* (internal quotation marks omitted). We held that *Heck* applied because the guilty plea and the civil complaint were "incompatible." *Id.* at 783. Here, by contrast, Mr. Hooks has alleged an excessive force claim based on the officers' conduct after they subdued him. We expressly left open the possibility that such a claim might be viable in *Havens*.

The Fifth Circuit's decision in *DeLeon* is also inapposite. There, the plaintiff and a police officer got into a fight that ended when the police officer shot the plaintiff several times. 488 F.3d at 651. The plaintiff pleaded guilty to aggravated assault of a police officer. *Id.* Then, the plaintiff filed a civil rights complaint alleging "that he did nothing wrong, that he simply defended himself." *Id.* at 656. The court held there was "no alternative pleading or theory of recovery that would allow this claim for excessive force to proceed without interfering with" the guilty

plea. *Id.* Here, by contrast, Mr. Hooks admits he initially resisted arrest, "pull[ing] away" from Officer Harding and "wrestling" with both officers. ROA, Vol. I at 1445. But he claims the officers continued to use force after he was subdued. Accordingly, we have identified one theory that would interfere with Mr. Hooks's no contest plea and one that would not.

Our decision in *Wilson* is inapplicable for essentially the same reason. There, the plaintiff ran from a police officer, "stole his service vehicle, hit him with the vehicle, and then swerved at another officer." 670 F. App'x at 663. The officer eventually shot the plaintiff in the arm. *Id.* After being convicted of battery against a law enforcement officer, the plaintiff filed a civil action, alleging excessive force. *Id.* But in direct conflict to his battery conviction, the plaintiff "maintain[ed] that he did not drive the service vehicle into" the officer. *Id.* Mr. Hooks's allegations are more nuanced than that, for all the reasons already explained.[9]

[9] In his pro se opening brief, Mr. Hooks also argues the district court erred by dismissing his claim against the jail doctor. Specifically, Mr. Hooks alleges that a jail doctor twisted the wires that were then holding his jaw in place in a mistaken attempt to fix a problem with the wires. The twisting resulted in terrible pain.

"[O]ur caselaw firmly establishes that a doctor's exercise of considered medical judgment fails to fulfill the subjective component [of deliberate indifference], absent an extraordinary degree of neglect—*viz.*, where a prison physician responds to an obvious risk with patently unreasonable treatment." *Spencer v. Abbott*, 731 F. App'x 731, 745 (10th Cir. 2017) (unpublished) (internal quotation marks omitted). "[T]he fact that [a doctor's] reasoning may have amounted to negligence is immaterial." *Id.* at 744. Mr. Hooks does not allege the doctor was engaged in anything other than a good faith (if mistaken) attempt to fix the problem. An honest mistake in selecting a course of treatment does not amount to deliberate indifference.

B. *The District Court Did Not Err in Applying a Subjective Intent Standard to Mr. Hooks's Deliberate Indifference Claims*

Mr. Hooks's second argument is that the district court applied the wrong legal standard to his deliberate indifference claims. As a pretrial detainee, Mr. Hooks's claims arise under the Fourteenth Amendment. *See Burke v. Regalado*, 935 F.3d 960, 991 (10th Cir. 2019). In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the Supreme Court "held that a plaintiff may establish an excessive force claim under the Fourteenth Amendment based exclusively on objective evidence." *Strain*, 977 F.3d at 990.

During the pendency of this appeal, we decided *Strain*. There, we "decline[d] to extend *Kingsley* to Fourteenth Amendment deliberate indifference claims" for three reasons. *Id.* at 991.

> First, *Kingsley* turned on considerations unique to excessive force claims: whether the use of force amounted to punishment, not on the status of the detainee. Next, the nature of a deliberate indifference claim infers a subjective component. Finally, principles of *stare decisis* weigh against overruling precedent to extend a Supreme Court holding to a new context or new category of claims.

Id.

In a Rule 28(j) letter, Mr. Hooks argues *Strain*'s analysis was limited to "deliberate indifference to *medical needs*." And to the extent *Strain* went further, Mr. Hooks argues we should treat those statements as dicta. Neither of those argument is persuasive.

1. What Did *Strain* Hold?

Although our opinion in *Strain* addressed a claim of medical indifference, every aspect of its reasoning applies more broadly, to Fourteenth Amendment deliberate indifference claims, including those based on a failure to prevent jailhouse violence.

First, the panel in *Strain* noted that the Supreme Court's *Kingsley* decision addressed only excessive force claims. And we further clarified that excessive force claims serve a different purpose than deliberate indifference claims. "Excessive force requires an affirmative act, while deliberate indifference often stems from inaction." *Strain*, 977 F.3d at 991. "Thus, the force of *Kingsley* does not apply to the deliberate indifference context, where the claim generally involves inaction divorced from punishment." *Id.* at 992.

Second, we explained that an inquiry into a defendant's subjective intent is inherent in the concept of deliberate indifference. "[A]n official's intent matters not only as to what the official did (or failed to do), but also why the official did it." *Id.* "Removing the subjective component from deliberate indifference claims would thus erode the intent requirement inherent in the claim." *Id.* at 993.

Third, we explained that stare decisis counseled in favor of our interpreting *Kingsley* narrowly. "Extending *Kingsley* to eliminate the subjective component of the deliberate indifference standard in the Tenth Circuit would contradict the Supreme Court's rejection of a purely objective test . . . and our longstanding precedent." *Id.*

None of the arguments we discussed in *Strain* are unique to an inmate's medical needs. This case provides a good illustration of that fact: Mr. Hooks does not allege that Officer Atoki employed excessive force, Officer Atoki's subjective intent is relevant to his motive, and Supreme Court precedent prior to *Kingsley* addressed facts like those at issue in this case. *See Farmer v. Brennan*, 511 U.S. 825, 830 (1994).

In fact, *Strain*'s discussion of *Farmer* strongly suggests that *Strain*'s analysis was not limited to the medical context. *Farmer* involved a claim that prison officials were deliberately indifferent to an incident where the plaintiff "was beaten and raped by another inmate." *Id.* The Supreme Court determined that deliberate indifference "requires consciousness of a risk" on the part of a defendant. *Id.* at 840. In *Strain*, we rejected a broad reading of *Kingsley*, in part, because it would contradict *Farmer* on that point. 977 F.3d at 992–93. Quite simply, that line of reasoning in *Strain* could not have been limited to the medical context, because *Farmer* was not a case about medical treatment.

2. Was *Strain*'s Discussion of *Kingsley* Dicta?

Contrary to Mr. Hooks's assertion, these aspects of *Strain* were not dicta. *Strain* analyzed *Kingsley* to determine the scope of the Supreme Court's holding, and defining that scope was necessary to this court's holding.

"Dicta are statements and comments in an opinion concerning some rule of law or legal proposition not necessarily involved nor essential to determination of the case in hand." *Thompson v. Weyerhaeuser Co.*, 582 F.3d 1125, 1129 (10th Cir. 2009)

(internal quotation marks omitted). *Strain*'s interpretation of *Kingsley* was essential to its holding that a plaintiff claiming deliberate indifference must demonstrate a defendant's subjective awareness. Otherwise, we would not have proceeded to apply our pre-*Kingsley* deliberate indifference standard to the *Strain* plaintiff's claims. *See Strain*, 977 F.3d at 993–97.[10]

C. *The District Court Did Not Err in Awarding Summary Judgment to Officer Atoki*

The district court granted summary judgment to Officer Atoki because it determined there was no genuine dispute as to his subjective indifference or as to causation. We agree with the district court as to Officer Atoki's subjective indifference and consequently do not address the issue of causation.

1. Summary Judgment Standard

"We review a grant of summary judgment de novo and apply the same legal standard used by the district court." *Timmons v. White*, 314 F.3d 1229, 1232 (10th Cir. 2003). Summary judgment is appropriate "if the movant shows that there is no

[10] Mr. Hooks argues, in a footnote in his opening brief, that he has stated a plausible claim against the unnamed booking guard regardless of whether *Kingsley* applies. This is so, he argues, because the guard "*knew* of [Mr. Hooks's] gang affiliation but *still* chose to house him with a rival gang." Appellant Br. at 33 n.14 (emphasis in original).

This argument is waived. *See United States v. Walker*, 918 F.3d 1134, 1153 (10th Cir. 2019) ("Arguments raised in a perfunctory manner, such as in a footnote, are waived." (quotation marks omitted)). Other than the single footnote, all references to the booking and classification process in the argument section of Mr. Hooks's opening brief are predicated on our agreeing with him that *Strain* is not controlling.

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).

"An issue is 'genuine' if there is sufficient evidence on each side so that a rational trier of fact could resolve the issue either way." *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). "An issue of fact is 'material' if under the substantive law it is essential to the proper disposition of the claim." *Id.*

2. Analysis

"[P]rison officials have a duty to 'provide humane conditions of confinement,' including 'tak[ing] reasonable measures to guarantee the safety of . . . inmates.'" *Requena v. Roberts*, 893 F.3d 1195, 1214 (10th Cir. 2018) (alteration and omission in original) (quoting *Farmer*, 511 U.S. at 832). "This duty includes 'a duty to protect prisoners from violence at the hands of other prisoners.'" *Id.* (quoting *Farmer*, 511 U.S. at 833). Yet, "prison officials who act reasonably cannot be found liable." *Farmer*, 511 U.S. at 845.

So, to prevail, Mr. Hooks must demonstrate that Officer Atoki responded unreasonably to the attack. *See id.* at 844 (explaining that "prison officials who actually knew of a substantial risk to inmate health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted"). Because we affirm based on Mr. Hooks's failure to demonstrate a genuine issue as to whether Officer Atoki acted unreasonably, we do not address the issue of objective harm or subjective awareness.

The district court granted Officer Atoki's summary judgment motion, because the district court thought it "clear" that Officer Atoki "never approached the window closely enough to see the attack . . . because he does not appear in any video recording of the office window." ROA, Vol. III at 181. This analysis is based on a version of the facts contrary to Mr. Hooks's testimony and, therefore, contrary to our summary judgment standard.

Viewing the record in the light most favorable to Mr. Hooks, Officer Atoki was in the pod office when the attack started. He was positioned somewhere Mr. Hooks could see him through the window, but not in view of camera #2 or camera #3. From those facts, it is also reasonable to infer that, like Mr. Covarrubias, Officer Atoki could hear the commotion outside the pod window. These facts and inferences are enough to establish Officer Atoki's subjective awareness of the attack but are not enough to establish that he acted unreasonably.

Mr. Hooks does not argue Officer Atoki should have intervened before or during the first attack, from 9:42:07 to 9:42:14. Rather, Mr. Hooks argues Officer Atoki should have stopped the second attack, when one of the assailants returned to resume kicking Mr. Hooks in the head, at 9:42:43. The video evidence indicates that fifteen seconds passed between the time Mr. Covarrubias looked out the window, at 9:42:28, and the time of the assailant's return, at 9:42:43. No reasonable juror could find that response time unreasonable.

Even if we consider the twenty-eight seconds that elapsed between the time Mr. Covarrubias looked out the window and the time Officer Atoki responded with

other guards, at 9:42:56, the result is the same. No reasonable juror could conclude that Officer Atoki sat in the pod office, heard a commotion, waited for Mr. Covarrubias to look out the window, presumably heard Mr. Covarrubias describe what was going on, deliberately decided not to respond, yet nonetheless arrived with the other guards, all in the span of twenty-eight seconds.[11] *See Deherrera v. Decker Truck Line, Inc.*, 820 F.3d 1147, 1159 (10th Cir. 2016) ("On summary judgment, although we must draw all factual inferences in favor of the nonmovant, those inferences must be reasonable." (internal quotation marks omitted)). In other words, between the point at which Officer Atoki, if stationed in the pod, would have been made aware of the first attack (that is, when Mr. Covarrubias went to the window), and the point at which Officer Atoki entered the pod with the required backup, not enough time elapsed for a reasonable juror to deem his response unreasonable. Thus, even if we accept Mr. Hooks's version of the facts, a reasonable jury could not conclude that Officer Atoki was deliberately indifferent.

[11] As the district court found, "it is undisputed that a detention office[r] could not respond to a disturbance without backup." ROA, Vol. III at 181.

III. CONCLUSION

We reverse and remand for further proceedings on Mr. Hooks's excessive force claim against Officers Harding and Irby. We otherwise affirm.[12]

We remind Mr. Hooks that he is obligated to continue making partial payments until the entire filing fee associated with this appeal has been paid.

[12] Mr. Hooks's pro se motion asking that we order his transfer to Joseph Harp Medical Prison is denied. Mr. Hooks filed an action in district court challenging the warden's denial of his transfer request, which is the proper course for such a challenge. *See Hooks v. Yandell*, No. CIV 18-399-RAW-SPS, 2020 WL 5898782 (E.D. Okla. Oct. 5, 2020). The district court dismissed Mr. Hooks's complaint and entered judgment in favor of the defendants. *Id.* Mr. Hooks has appealed to this court, and his claims will be considered in that separate proceeding. *See Hooks v. Yandell*, No. 20-7061.

Appendix B

FILED
United States Court of Appeals
Tenth Circuit

December 29, 2020

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ANTONIO DEWAYNE HOOKS,

Plaintiff - Appellant,

v.

KAYODE ATOKI; BETHANY POLICE DEPARTMENT; OKLAHOMA COUNTY JAIL; ARMOR CORRECTIONAL HEALTH SERVICES INC; CHRIS HARDING, Bethany Police Officer in his official and individual capacity; JAMES IRBY, Bethany Police Officer in his official and individual capacity; JOHN WHETSEL, Sheriff in official and individual capacity; DR. JERRY CHILDS, Oklahoma County Jail Armor Correctional Health Inc in his official and individual capacity,

Defendants - Appellees.

No. 19-6093
(D.C. No. 5:17-CV-00658-D)
(W.D. Okla.)

JUDGMENT

Before **HARTZ**, **EBEL**, and **McHUGH**, Circuit Judges.

This case originated in the Western District of Oklahoma and was argued by counsel.

The judgment of that court is affirmed in part and reversed in part. The case is remanded to the United States District Court for the Western District of Oklahoma for f

further proceedings in accordance with the opinion of this court.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

Appendix C

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANTONIO DEWAYNE HOOKS, Plaintiff, BETHANY POLICE DEPARTMENT, et. al., Defendants.	)	CIV-17-658-M

SUPPLEMENTAL REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brings this civil rights action under 42 U.S.C. § 1983. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B).

I. Background

Plaintiff's claims initially arise out of his arrest by Defendants Chris Harding and James Irby, each of whom are officers with the Bethany Police Department. Doc. #86, Second Amended Complaint ("Am. Comp.") at 13-14. Plaintiff was subsequently charged with two counts of Assault & Battery Upon a Police or Other Law Officer, Possession of a Controlled Dangerous Substance With Intent to Distribute, and Possession of a Controlled Dangerous Substance Within 2,000 Feet of a Park – Cocaine. Oklahoma Supreme Court Network, Okla.

Cnty. Dist. Ct. Case No. CF-16-8283.[1] On October 23, 2017, Plaintiff entered a plea of *nolo contendere* to each of these charges. *Id.*[2] Plaintiff was sentenced to incarceration of four years with credit for time served. *Id.*

Prior to his sentencing, Plaintiff was booked into the Oklahoma County Jail on October 1, 2016, as a pre-trial detainee. Am. Comp. at 16, 19. Plaintiff contends that when he was booked into the jail, he had a swollen face and stitches in his eye brow. Am. Comp. at 19. He states that he passed by two nursing stations and contends it was obvious he needed to be placed in 13B or 13D in medical status. *Id.*

He further alleges that on October 5, 2016, a classification guard moved him from 4D classification to 4A, which is a segregated pod for rival gang members. Am. Comp. at 18. Plaintiff contends the initial booking guard on October 1, 2016, and the classification guard who moved him on October 5, 2016, failed to follow policy and procedure by not inquiring as to his gang affiliation or as to whether he needed to be housed with his gang. Am. Comp. at 16, 18. He also claims the jail staff overlooked their own records of his gang affiliation and

[1] http://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2016-8283&cmid=3460519

[2] At some point, Plaintiff's third charge was amended to Possession of Controlled Dangerous Substance. *Id.*

photographs of his gang tattoos. Am. Comp. at 19. He contends this resulted in his being housed with rival gang members who subsequently committed an assault on Plaintiff and he nearly lost his life. Am. Comp. at 14, 17, 18, 20. As referenced in Plaintiff's Second Amended Complaint and verified by state records, three individuals were charged with Assault & Battery by Means or Force as is Likely to Cause Death and Conspiracy to Commit a Felony, to Wit: Assault & Battery by Means or Force Likely to Cause Death. *See* Oklahoma Supreme Court Network, Okla. Cnty. Dist. Ct. Case No. CF-16-8322;[3] *see also* Doc. #88 at 11-12; Doc. #89 at 5-6 (wherein Defendants Oklahoma County Sheriff John Whetsel and Kayode Atoki describe in separate Motions to Dismiss the alleged assault perpetrated on Plaintiff by three other pre-trial detainees, each of whom are named as defendants in CF-16-8322).

Following this assault, Plaintiff was transferred to OU Medical Center where he was treated for his injuries. Am. Comp. at 12-13. When he returned to the Oklahoma County Jail, his jaw was wired shut. *Id.* In early November 2016, Defendant Jerry Childs, D.O. examined Plaintiff and attempted to "twist[] the wires back together" causing one of the screws to later fall out. Am. Comp. at 12.

[3] http://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2016-8322.

Plaintiff subsequently returned to OU Medical Center where he was seen by a plastic surgeon. Am. Comp. at 13.

By this action, Plaintiff asserts claims of excessive force against Defendants Harding and Irby. Am. Comp. at 13-14. Plaintiff asserts claims of deliberate indifference against Defendant Sheriff Whetsel based on the booking guards' failure to classify Plaintiff as a specific gang member and house him accordingly. Am. Comp. at 16-20. Plaintiff asserts a failure to protect claim against Sheriff Whetsel and Defendant Atoki, whom he identifies as the "4th floor unit manager." Am. Comp. at 16-17. With regard to Dr. Childs and Armor Health Correctional Services, Inc. ("Armor"), Plaintiff asserts claims of deliberate indifference. Am. Comp. at 12-13, 19-20.

II. Screening of Prisoner Complaints

A federal district court must review complaints filed by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The same screening of a civil complaint filed *in forma pauperis* is required by 28 U.S.C. § 1915(e)(2). After conducting an initial review, a court must dismiss a complaint or any portion of it presenting claims that are frivolous, malicious, fail to state a claim upon which relief may be

granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b), 1915(e)(2)(B).

In conducting this review, the reviewing court must accept the plaintiff's allegations as true and construe them, and any reasonable inferences to be drawn from the allegations, in the light most favorable to the plaintiff. *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). Although a pro se litigant's pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519, 520 (1972), "[t]he burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to suggest' that he or she is entitled to relief." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247–1248 (10th Cir. 2008) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). The allegations in a complaint must present "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Further, a claim is frivolous "where it lacks an arguable basis either in law or in fact" or is "based on an indisputably meritless legal theory." *Neitzke v. Williams*, 490 U.S. 319, 325, 327 (1989).

III. Sheriff Whetsel

Plaintiff asserts claims of deliberate indifference against Sheriff Whetsel in relation to Plaintiff's classification and placement within the Oklahoma County Jail. Plaintiff complains that unknown jail staff failed to follow proper jail policies

and procedures when booking him into the Oklahoma County Jail. Am. Comp. at 16-20. In support, Plaintiff states the following:

> Deliberate indifference The booking guard ? that finger printed me 10-1-16 about 2:30 AM didn't follow policy and procedure and ask me my gang affiliation, or did I need to be house with my gang everytime I have been housed with my gang from the booking guard asking these questions. This time they didn't ask or take notice to their own records of my gang affiliation.
>
> The gangs were segregated from each other in the jail due to high level of violence. and retaliation from incidents that happened on the streets. Sheriff John Whetsel was very much aware of the gang problems he had in Okla. County jail that the reason the jail was segregated. Mr. Whetsel Job to insure staff is following policy and procedure!

Am. Comp. at 16-17. Plaintiff makes similar allegations regarding the classification guard who moved him on October 5, 2016. Am. Comp. at 18-19.

Plaintiff also asserts a deliberate indifference claim against Sheriff Whetsel based on the allegations supporting the same claim against Defendant Atoki. Specifically, Plaintiff alleges Defendant Atoki failed to protect Plaintiff when he was being assaulted by other inmates. In support, Plaintiff states the following:

> failure to protect 10-5-16 Kayode Atoki was working outside of his Job detail! At the time of my incident CF-16-8322 Mr. Atoki was 4 floor unit manager, but he was working as pod officer none contact guard this day. Before my attack started I noticed Mr. Atoki was paying attention to the computer, and not over seeing the pod like the pod officer was suppose to be doing! When this Attack started I was knocked out. I don't How aware Mr. Atoki when this attack started. This happen right in front of the pod office right in Mr. Atoki

> line of sight if he would have been doing the duties of a pod officer. They say the individual involved in my attack left and took his shoes off came back with sandals on and continued stomping my face.
>
> This incident CF-16-8322 happened right in front of pod office in Mr. Atoki line of sight. To much damage was done multiple broken bones in my face (life support) massive reconstructive surgery. Mr. Atoki ranked up Sgt after this incident Mr. Atoki was move to 8th floor was I was located after this Complaint was filed.

Am. Comp. at 14-15.

Personal participation is necessary for individual liability under Section 1983. *See Bennett v. Passic*, 545 F.2d 1260, 1262-63 (10th Cir. 1976) ("Personal participation is an essential allegation in a § 1983 claim."). Plaintiff does not allege Sheriff Whetsel personally participated in any of the actions or events underlying his claims. Instead, with regard to his booking and classification, Plaintiff merely states that Sheriff Whetsel was aware of the jail's policies and procedures, was aware of gang violence in general that occurred in the jail, and that it was Sheriff Whetsel's job to make sure staff followed policies and procedures. Am. Comp. at 17. Thus, Plaintiff's allegations against Sheriff Whetsel are not based on the Sheriff's own actions but solely on his supervisory status. Although a supervisor may be held liable if he is affirmatively linked to the constitutional violation, "Section 1983 does not authorize liability under a theory of respondeat superior." *Brown v. Montoya*, 662 F.3d 1152, 1164 (10th

Cir. 2011). As a result, government officials have no vicarious liability in a §1983 suit for the misconduct of their subordinates because "there is no concept of strict supervisor liability under section 1983." *Jenkins v. Wood*, 81 F.3d 988, 994 (10th Cir. 1996) (quotations omitted).

Instead, a supervisor is liable only if he is "personally involved in the constitutional violation, and a sufficient causal connection [] exist[s] between the supervisor and the constitutional violation." *Serna v. Colo. Dep't of Corr.*, 455 F.3d 1146, 1151 (10th Cir. 2006) (quotations omitted); *see also Schneider v. Grand Junction Police Dep't*, 717 F.3d 760, 767 (10th Cir. 2013) (requiring a plaintiff to show an "affirmative link" between the supervisor and the constitutional violation). Thus, Plaintiff must base supervisory liability "'upon active unconstitutional behavior' and 'more than a mere right to control employees.'" *Davis v. Okla. Cnty.*, No. CIV–08–0550–HE, 2009 WL 2901180, at *4 (W.D. Okla. Sept. 3, 2009) (quoting *Serna*, 455 F.3d at 1153).

Plaintiff's allegations are wholly insufficient to establish supervisory liability against Sheriff Whetsel. Plaintiff fails to allege any affirmative link between Sheriff Whetsel and Plaintiff's classification. He does not indicate Sheriff Whetsel was aware of Plaintiff's classification or the jail staff's alleged failure to follow procedure. Nor does he allege Sheriff Whetsel was in any way

involved in Plaintiff's classification or in determining where Plaintiff was housed.

With regard to claims based upon Plaintiff's assault, Plaintiff does not set forth any factual allegations that would reasonably support an inference that Sheriff Whetsel was aware Plaintiff faced a particular risk of harm at the hands of other inmates or was present when the assault occurred. Accordingly, it is recommended the individual capacity claims against Defendant Whetsel be dismissed for failure to adequately allege personal participation. *Trujillo v. Williams*, 465 F.3d 1210, 1227–28 (10th Cir. 2006) (upholding dismissal of Section 1983 claims because the complaint did not indicate personal participation by the named defendants).

IV. Dr. Childs and Armor

A. Medical Care

Plaintiff's Second Amended Complaint includes claims of deliberate indifference against Defendants Armor and Dr. Childs, pursuant to 42 U.S.C. §1983. These claims are based upon Dr. Childs' medical treatment of Plaintiff. "A prison official's deliberate indifference to an inmate's serious medical needs is a violation of the Eighth Amendment's prohibition against cruel and unusual punishment." *Mata v. Saiz*, 427 F.3d 745, 751 (10th Cir. 2005). The Tenth Circuit recognizes two types of conduct amounting to deliberate indifference in the

context of prisoner medical care. "First, a medical professional may fail to treat a serious medical condition properly." *Sealock v. Colo.*, 218 F.3d 1205, 1211 (10th Cir. 2000). When this type of conduct is alleged, "the medical professional has available the defense that he was merely negligent in diagnosing or treating the medical condition, rather than deliberately indifferent." *Id.* (citing *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976)). Second, prison officials may "prevent an inmate from receiving treatment or deny him access to medical personnel capable of evaluating the need for treatment." *Id.* (citing *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980)). Plaintiff relies on the first example, arguing Dr. Childs failed to properly treat the injury Plaintiff suffered to his face.

As previously noted, the deliberate indifference test has an objective and subjective component. *Mata*, 427 F.3d at 751. To satisfy the objective component, "the alleged deprivation must be 'sufficiently serious' to constitute a deprivation of constitutional dimension." *Self v. Crum*, 439 F.3d 1227, 1230 (10th Cir. 2006) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). "A medical need is sufficiently serious 'if it is one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention.'" *Sealock*, 218 F.3d at 1209 (quoting *Hunt v. Uphoff*, 199 F.3d 1220, 1224 (10th Cir. 1999)). The question

raised by the objective prong "is whether the alleged harm . . . is sufficiently serious . . . , rather than whether the symptoms displayed to the prison employee are sufficiently serious." *Mata*, 427 F.3d at 753.

To satisfy the subjective component, there must be evidence that "the official 'knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.'" *Mata*, 427 F.3d at 751 (quoting *Farmer*, 511 U.S. at 837) (alteration omitted). The subjective component may be satisfied if the jury can "infer that a prison official had actual knowledge of the constitutionally infirm condition based solely on circumstantial evidence, such as the obviousness of the condition." *Tafoya v. Salazar*, 516 F.3d 912, 916 (10th Cir. 2008) (citing *Farmer*, 511 U.S. at 842).

Such inference cannot be drawn when an inmate voices a "mere[ ] disagree[ment] with a diagnosis or a prescribed course of treatment," *Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 811 (10th Cir. 1999), because the inmate has a constitutional right only to medical care, but "not to the type or scope of medical care which he personally desires." *Henderson v. Sec'y of Corr.*, 518 F.2d 694, 695 (10th Cir. 1975) (quoting *Coppinger v. Townsend*, 398 F.2d 392, 394 (10th Cir. 1968)). Instead, the subjective component of this inquiry requires an inmate

to provide evidence, whether direct or circumstantial, from which a jury could reasonably infer the medical officials consciously disregarded an excessive risk to the inmate's health or safety. *Self*, 439 F.3d at 1235. The Eighth Amendment protects inmates from the "infliction of punishment," it does not give rise to claims sounding in negligence or medical malpractice. *Id.* (quoting *Farmer*, 511 U.S. at 838); *see also Mata*, 427 F.3d at 758-59. Consequently, even if a prison official's actions fell below a reasonable standard of care, "'the negligent failure to provide adequate medical care, even one constituting medical malpractice, does not give rise to a constitutional violation.'" *Self*, 439 F.3d at 1233 (quoting *Perkins*, 165 F.3d at 811).

Presuming without deciding that Plaintiff can satisfy the objective component, Plaintiff has not presented sufficient factual allegations to support the subjective component of his claim. Plaintiff does not allege Dr. Childs failed or refused to provide medical care. Instead, he disagrees with Dr. Childs' treatment based on the fact that Dr. Childs' attempt to twist the wires together resulted in Plaintiff losing one of the screws in his mouth. Am. Comp. at 12-13. He also complains that Dr. Childs treated him at all, stating that "Dr. Childs should have originally sent me back to OU medical without trying to play a Doctor that does surgery, when he's only a jail physician." Am. Comp. at 13. Significantly,

however, Plaintiff is not entitled to a particular course of treatment. *Callahan v. Poppell*, 471 F.3d 1155, 1160 (10th Cir. 2006); *see also Dulany v. Carnahan*, 132 F.3d 1234, 1240 (8th Cir. 1997) ("[A] prison doctor remains free to exercise his or her independent professional judgment and an inmate is not entitled to any particular course of treatment."); *Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir.1996) ("Medical decisions that may be characterized as 'classic examples of matters for medical judgment,' such as whether one course of treatment is preferable to another, are beyond the [Eighth] Amendment's purview." (quoting *Estelle*, 429 U.S. at 107) (alterations omitted)).

At worst, Dr. Childs may have committed malpractice, but the Eighth Amendment does not redress such a claim. *See Estelle*, 429 U.S. at 107 (noting medical malpractice that does not fall under the Eighth Amendment); *see also Dawson v. Lloyd,* 642 F. App'x 883, 886 (10th Cir. 2016) (finding that "any arguable mistake or negligence" in nurses' administration of medication is insufficient to meet the subjective prong of deliberate indifference); *Tyler v. Sullivan*, No. 95-1232, 1996 WL 195295, *2 (10th Cir. April 22, 1996) (holding that "[a] difference of opinion as to the kind and timing of medical treatment does not rise to the level of an Eighth Amendment violation"); *Gumm v. Fed. Bureau of Prisons*, No. CIV-06-866-R, 2007 WL 3312785, at *8 (W.D. Okla. Nov. 6,

2007) ("Plaintiff's claims concerning P.A. Mier's 'improper' splint placement do not show deliberate indifference [] because mere negligence in treating a medical condition does not amount to a violation of the Eighth Amendment."); *Redding v. Marsh*, 750 F. Supp. 473, 478 (E.D. Okla. 1990) (holding that whether an alternative method of treatment was preferable "is a question directed towards a negligence claim" and not actionable under the Eighth Amendment).

To succeed on an Eighth Amendment claim, as opposed to a medical malpractice claim under state tort law, a plaintiff is required to identify "acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle*, 429 U.S. at 106. Because Plaintiff failed to show such deliberate indifference, his claims based upon Dr. Childs' medical treatment should be dismissed.

B. Classification and Placement

Plaintiff also asserts a deliberate indifference claim against Dr. Childs and Armor based upon the booking nurses' failure to place him in a particular pod based on his medical status. Am. Comp. at 19-20. He alleges the nurses' failure to place him in a different pod resulted in him being housed with rival gang members who subsequently assaulted Plaintiff. *Id.*

(i). Dr. Childs

Personal participation in an alleged constitutional deprivation is a required element of a 42 U.S.C. § 1983 action against an individual. *See Fogarty v. Gallegos*, 523 F.3d 1147, 1162 (10th Cir. 2008) ("Individual liability under §1983 must be based on personal involvement in the alleged constitutional violation." (quotations omitted)). Plaintiff does not set forth any allegation that Dr. Childs was involved in Plaintiff's booking process. He does not allege Dr. Childs was even aware of where Plaintiff was housed upon booking, much less was involved in the decision-making process. Accordingly, the Court should dismiss this claim against Dr. Childs.

(ii). Armor

Plaintiff's claim as asserted against Armor should also be dismissed. As previously noted, an Eighth Amendment claim of this nature requires both an objective and subjective component. *Mata*, 427 F.3d at 751. Under the subjective component, Plaintiff must sufficiently allege the booking nurses (1) knew Plaintiff faced a substantial risk of serious harm and (2) disregarded that risk by failing to take reasonable measures to abate it. *Espinoza v. Brewster*, No. CIV-16-55-F, 2016 WL 3749033, at *6 (W.D. Okla. April 5, 2016) (citing *Farmer*, 511 U.S. at 837). Plaintiff has not set forth any allegations allowing for an inference that the booking nurses were aware Plaintiff faced a substantial risk of harm by rival gang

members. Accordingly, Plaintiff has not adequately asserted an Eighth Amendment claim and it should be dismissed.

V. Harding and Irby

Plaintiff asserts Eighth Amendment claims against Defendants Harding and Irby based on alleged excessive force during his arrest. Am. Comp. at 13-14. In describing the events of his arrest, Plaintiff states the following:

> Chris Harding approached Asheena Yarbough car with his gun drawn ordering me to place my hands on the dash, which I did. Chris Harding opened my door, and begun removing me from car. Once out of the car Chris Harding begun trying to take me to the police car without telling me why he was containing me. Chris Harding didn't try to place hand cuffs on me. So I pulled away from him like what are you doing! Chris Harding and James Irby begun wrestling with me. Chris Harding then pushed me between both cars and yelled for James Irby to taser me causing me to drop to the ground and hit my head on ground repeatedly and left me laying on my stomach, not moving at all. Chris Harding ordered James to taser me again. After the second round of tasering, Chris Harding dropped to his knees then place me in a choke hold until Asheena started screaming!

Am. Comp. at 13.

In determining whether a § 1983 claim is barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), the court must consider the relationship between the § 1983 claim and the conviction, including asking whether the plaintiff could prevail only by "negat[ing] an element of the offense of which he [was] convicted." *Id.* at 486 n.6. In a recent case, the Tenth Circuit, quoting from *DeLeon v. City of Corpus*

Christi, 488 F.3d 649 (5th Cir. 2007), explained that sometimes an "excessive-force claim must be barred in its entirety because the theory of the claim is inconsistent with the prior conviction." *Havens v. Johnson*, 783 F.3d 776, 782 (10th Cir. 2015). In *DeLeon*, the court adopted the following reasoning from a prior unpublished opinion:

> [The plaintiff's] claims are not that the police used excessive force after he stopped resisting arrest or even that the officers used excessive and unreasonable force to stop his resistance. Instead, [he] claims that he did nothing wrong, but was viciously attacked for no reason. He provides no alternative pleading or theory of recovery . . . . [The plaintiff's] claims are distinguishable from excessive force claims that survive *Heck's* bar . . . . [The] suit squarely challenges the factual determination that underlies his conviction for resisting an officer. If [the plaintiff] prevails, he will have established that his criminal conviction lacks any basis.

DeLeon, 488 F.3d at 657 (citation omitted).

Similarly, in *Havens*, the plaintiff pleaded guilty to attempted first-degree assault of a defendant detective. *Havens*, 783 F.3d at 783. The court noted that the plaintiff "pleaded guilty to intentionally taking a substantial step toward causing serious bodily injury" to the detective by gunning the engine of his car "in an effort to get away" while the detective was in front of his car. *Id.* The court found the plaintiff's plea incompatible with his § 1983 claim because his complaint did not allege that the defendant used excessive force in response to an attempted assault by the plaintiff. *Id*. Instead, the plaintiff contended that the

detective's use of force was unreasonable because the plaintiff "did not have control of the car, he did not try to escape, he never saw [the detective], he did not drive toward [the detective], and he was hit by police vehicles and shot almost instantly after arriving on the scene." *Id.* The court stated, "This case is like *DeLeon*," and determined that the plaintiff's contention that "he did nothing wrong and did not intend or attempt to injure [the defendant] . . . could not sustain the elements of attempted first-degree assault under Colorado law and the factual basis for [the plaintiff's] plea." *Id.*

Here, Plaintiff was charged with two counts of Assault & Battery Upon a Police or Other Law Officer under Okla. Stat. tit. 21, §§ 646, 649-649.2, 650.[4] Additionally, Plaintiff pleaded *nolo contendere* to each charge and was sentenced accordingly. *Id.* Pursuant to the Oklahoma statutes under which Plaintiff was charged, Plaintiff, "without justifiable or excusable cause," inflicted great bodily injury upon each officer that included "bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death." Okla. Stat. tit. 21, §§646, 649, 650.

[4] http://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2016-8283&cmid=3460519

Plaintiff asserts that Officer Irby tasered him when Plaintiff was already laying on the ground and Officer Harding subsequently held him in a choke-hold, choking him until a third party present at the scene started screaming. *See supra*. However, just as in *Havens*, Plaintiff does not allege Defendants used excessive force in response to an assault by the plaintiff. Am. Comp. at 13. According to Plaintiff, his only action was to pull away from Harding. *Id.* Plaintiff merely pulling away from Harding would not sustain the elements of assault under Oklahoma law and the factual basis for Plaintiff's plea of *nolo contendere*. Okla. Stat. tit. 21, §§ 646, 649, 650; *see Havens*, 783 F.3d at 784. Therefore, Plaintiff's excessive force claim against Defendants Irby and Harding should be dismissed. *See Fottler v. United States*, 73 F.3d 1064, 1065 (10th Cir. 1996) (citing cases).

VI. Official Capacity Claims

Plaintiff asserts claims against the individual Defendants in their official and individual capacities. Am. Comp. at 7-9. Claims against an official in his official capacity are essentially claims against the entity that the official represents. *Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010). Here, the individual Defendants arguably represent the City of Bethany and Oklahoma County. A municipality or county cannot be held responsible for the unconstitutional acts of its officers absent some wrongful action by the

municipality or county. To state a claim under § 1983 against a municipality or county, a plaintiff must show "(1) a municipal [or county] employee committed a constitutional violation, and (2) a municipal [or county] policy or custom was the moving force behind the constitutional deprivation." *Cordova v. Aragon*, 569 F.3d 1183, 1193 (10th Cir. 2009) (quotations omitted).

In the present case, the Court has already concluded Plaintiff has failed to sufficiently allege a viable constitutional claim against Sheriff Whetsel, Dr. Childs, Officer Harding, and Officer Irby. Moreover, Plaintiff does not identify any policy or custom motivating Defendants' allegedly unlawful actions. Therefore, Plaintiffs' official capacity claims against these Defendants should be dismissed.

RECOMMENDATION

Based on the foregoing findings, it is recommended that Plaintiff's claims against Defendants Sheriff John Whetsel, James Irby, Chris Harding, Jerry Childs, D.O., and Armor be dismissed WITHOUT PREJUDICE pursuant to 28 U.S.C. §§1915A(b), 1915(e)(2)(B) for failure to state a claim upon which relief may be granted. In light of this recommendation, the undersigned also recommends the Motion to Dismiss Second Amended Complaint by Defendant John Whetsel in

his Individual Capacity with Brief in Support (Doc. #88) be denied as moot.

Plaintiff is advised of the right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by June 4th, 2018, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Supplemental Report and Recommendation would waive appellate review of the recommended ruling. *Moore v. United States*, 950 F.2d 656 (10th Cir. 1991); *cf. Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Supplemental Report and Recommendation does not dispose of all issues referred to the undersigned Magistrate Judge in the captioned matter.

Dated this 15th day of May, 2018.

GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE

Appendix D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

ANTONIO DEWAYNE HOOKS, Plaintiff, vs. BETHANY POLICE DEPARTMENT, et al., Defendants.	)	Case No. CIV-17-658-M

ORDER

On May 15, 2018, United States Magistrate Judge Gary M. Purcell issued a Supplemental Report and Recommendation in this civil rights action brought pursuant to 42 U.S.C. § 1983. The Magistrate Judge recommended that plaintiff's claims against defendants Sheriff John Whetsel, James Irby, Chris Harding, Jerry Childs, D.O., and Armor be dismissed without prejudice pursuant to §§ 1915A(b), 1915(e)(2)(B) for failure to state a claim upon which relief may be granted and that defendant John Whetsel's Motion to Dismiss Second Amended Complaint be denied as moot. Plaintiff was advised of his right to object to the Supplemental Report and Recommendation by June 4, 2018. On May 31, 2018, plaintiff filed his objection.

Having carefully reviewed this matter de novo, the Court:

(1) ADOPTS the Supplemental Report and Recommendation [docket no. 91] issued by the Magistrate Judge on May 15, 2018;

(2) DISMISSES plaintiff's claims against defendants Sheriff John Whetsel, James Irby, Chris Harding, Jerry Childs, D.O., and Armor without prejudice pursuant to §§ 1915A(b), 1915(e)(2)(B) for failure to state a claim upon which relief may be granted; and

(3) DENIES defendant John Whetsel's Motion to Dismiss Second Amended Complaint [docket no. 88] as MOOT.

IT IS SO ORDERED this 7th day of June, 2018.

Vicki Miles-LaGrange

VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE

Appendix E

October 21, 2020

By CM/ECF

Christopher M. Wolpert
United States Court of Appeals for the Tenth Circuit
Byron White United States Courthouse
1823 Stout Street
Denver, CO 80257

Re: Hooks v. Atoki, et al., 10th Cir. Case No. 19-6093

Dear Mr. Wolpert:

Pursuant to Rule 28(j), I respond to Rodney Heggy's October 20, 2020 letter. Mr. Heggy's letter overstates the impact of *Strain v. Regalado*, No. 19-5071, 2020 WL 5985993 (10th Cir. Oct. 9, 2020), on the this case. Without question, *Regalado* does not "devolve this matter to a simple review of the Summary Judgment granted to Defendant Atoki."

Even if *Regalado* could bear the weight Mr. Heggy places on it, the majority of the issues in this case would remain unaffected. At most, *Regalado* resolves whether *Kingsley* alters the standard for pretrial detainee's claims of deliberate indifference. That it does so, however, is not nearly as clear as Mr. Heggy's letter assumes. *Regalado* evaluated claims of deliberate indifference to *medical needs*—"nothing more, nothing less." 2020 WL 5985993, at *2, 4 ("We . . . hold that deliberate indifference to a pretrial detainee's serious *medical needs* includes both an objective and a subjective component . . . ." (emphasis added)). As such, it is not on point for Mr. Hooks's claims of deliberate indifference against Mr. Atoki, the booking guard, or the classification guard. Any language in the *Regalado* opinion indicating otherwise should be treated as *dicta* because it was not necessary to resolving whether *Kingsley* changed the standard for deliberate indifference to medical needs. *See Kansas Nat. Res. Coal. v. United States Dep't of Interior*, 971 F.3d 1222, 1256 (10th Cir. 2020) (statements not necessary to outcome are *dicta*).

Indeed, counsel for Armor, who also represented the Armor defendants in *Regalado*, went to great lengths to argue that the medical context is unique. *See, e.g.*, Armor Br. 18 ("[U]nlike the defendants in *Kingsley*, these Appellees act not as law enforcement officers but as medical professionals . . . ."). These arguments apparently persuaded the panel in *Regalado*, *see* 10th Cir. No. 19-5097, Armor Br. 20 (same argument), but they should not carry the day here when resolving

claims that do not involve those considerations. *See* Reply Br. 11 n. 3. And in all events, *Regalado* rests on questionable footing, *see id.* at 10-22, and should be limited to its facts.

Best regards,

Daniel S. Brookins
Associate

cc: All Counsel of Record (by CM/ECF)

Appendix F

ORAL ARGUMENT REQUESTED

No. 19-6093

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Antonio Dewayne Hooks,

Plaintiff-Appellant,

v.

Kayodi Atoki, Bethany Police Department, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Oklahoma, No. 5:17-cv-00658-D, Timothy D. DeGuisti, Chief Judge

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OPENING BRIEF OF APPELLANT

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June 1, 2020

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STATEMENT REGARDING PRIOR RELATED APPEALS

Mr. Hooks filed a prior appeal in the Tenth Circuit (No. 18-6128). That appeal was dismissed for lack of jurisdiction under 28 U.S.C. § 1291. *See* R. Vol. II. at 33.

JURISDICTIONAL STATEMENT

This court has jurisdiction under 28 U.S.C. § 1291 because the district court's order granting summary judgment to defendant concluded the district court litigation. *See* R. Vol. III at 173 (order entering summary judgment). The court's jurisdiction enables it to review earlier interlocutory orders, including those dismissing the other defendants from the case. *See Long v. St. Paul Fire & Marine Ins. Co.*, 589 F.3d 1075, 1078 (10th Cir. 2009) ("[E]arlier interlocutory orders merge into the final judgment and are reviewable on appeal."); *McBride v. CITGO Petroleum Corp.*, 281 F.3d 1099, 1104 (10th Cir. 2002) (same).

STATEMENT OF THE ISSUES

1. Whether *Heck v. Humphrey*, 512 U.S. 477 (1994), requires dismissal of an excessive force claim brought by a pro se plaintiff under 42 U.S.C. § 1983 when the theory of the claim—that the officers tased and choked Mr. Hooks after he was subdued—does not implicate Mr. Hooks's convictions for assaulting the officers before he was subdued.

2. Whether the district court erred in applying the Eighth Amendment's subjective intent standard to Mr. Hooks's claims of deliberate indifference despite the Supreme Court's holding in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015), that pretrial detainees like Mr. Hooks cannot be punished at all, let alone "maliciously and sadistically."

3. Whether, even if *Kingsley* somehow does not apply, the district court erred in awarding summary judgment to Captain Kayodi Atoki when there were facts from which a jury could reasonably infer that defendant Atoki had subjective knowledge of the assault and that a faster response time by defendant Atoki would have prevented the second attack on Mr. Hooks.

STATEMENT OF THE CASE

1. Factual Background[1]

On September 30, 2016, Mr. Hooks and Asheena Yarbough were stopped by police officers Chris Harding and James Irby. *See* R. Vol. I at 1445 (Second Amended Complaint). Because Mr. Hooks was the subject of two warrants, Officers Harding and Irby attempted to arrest Mr. Hooks. *See id.* at 653. Mr. Hooks resisted arrest and assaulted the officers. *See id.* Accordingly, defendant Irby tased Mr. Hooks, causing him to fall to the

[1] With the exception of the individual capacity claim against defendant Atoki, all of Mr. Hooks's claims were dismissed for failure to state a claim. The facts relating to the dismissed claims are taken primarily from the complaint because the district court was required to accept all well-pled factual allegations as true at the motion to dismiss stage. *See Peterson v. Grisham*, 594 F.3d 723, 727 (10th Cir. 2010) ("The court's function on a Rule 12(b)(6) motion is . . . to assess whether the plaintiff's . . . complaint alone is legally sufficient to state a claim for which relief may be granted. We accept all well-pled factual allegations as true and view these allegations in the light most favorable to the nonmoving party." (citation and internal quotation marks omitted)); *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007) ("We apply the same standard of review for dismissals under § 1915(e)(2)(B)(ii) that we employ for Federal Rule of Civil Procedure 12(b)(6) motions to dismiss for failure to state a claim.").

ground and no longer "mov[e] at all." *See id.* at 1445. Even though Mr. Hooks "was no longer combative," *id.* at 1522, defendant Irby tased Mr. Hooks again, and defendant Harding placed Mr. Hooks in a chokehold, *id.* at 1445.

At some point during the course of the arrest, defendant Harding found a bag of cocaine near the car. *See id.* at 653. As a result of this and Mr. Hooks's assault on the officers, Mr. Hooks was charged with two counts of assault and battery on a peace officer (Okla. Stat. tit 21, § 649.B) (counts 1 and 2), possession of a controlled dangerous substance with intent to distribute (Okla. Stat. tit. 63, § 2-401.A1) (count 3), and one count of possession of a controlled dangerous within 100 feet of a park (Okla. Stat. tit. 63, § 2-402.C) (count 4). *See* Okla. Case No. CF-2016-8283.[2] As part of a negotiated plea agreement, Mr. Hooks pleaded *nolo contendere* to counts 1, 2, and amended count 3.[3] *See id.* The state dismissed Count 4. *See id.* Additionally, the plea contained a section called "Offer of Proof" with the following hand-written text: "The State would prove in Oklahoma Co. on 9/30/16 the Defendant repeatedly struck Off. Harding and Off. Irby and possessed cocaine." Aple. Appx. at 48 (filed on Sept. 18, 2019).

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[2] The docket can be viewed by entering the case number on the Oklahoma State Court's Network's docket search page: https://www.oscn.net/dockets/search.aspx.

[3] Count 3 was amended to possession alone. *See id.*

After the encounter with defendants Harding and Irby, Mr. Hooks was taken to a local hospital for medical treatment of the injuries the officers inflicted. *See* R. Vol. I at 1451. He was then transferred to the Oklahoma County Detention Center. *See id.* Upon arriving at the Oklahoma County Detention Center, Mr. Hooks went through booking and was initially housed in pod 4D, where he stayed from October 1, 2016 until early in the morning of October 5, 2016. *See id.* at 1448-51. On the morning of October 5, 2016, a classification guard moved Mr. Hooks out of pod 4D and placed him in pod 4A. *See id.* at 1450-51. The classification guard had access to Mr. Hooks's records and pictures that showed that Mr. Hooks was a member of the Rollin' 90s Crips.[4] *See id.* at 1451. Despite this knowledge the classification guard still placed Mr. Hooks in pod 4A—a pod filled with Bloods, a rival gang. *See id.*

On his first morning in pod 4A, Mr. Hooks got in line to order items from the commissary. As he was waiting in line, Demilio Woodward came up from behind Mr. Hooks and hit him, knocking him instantly unconscious. *See* 4th Floor Adam Pod 2 & 4 at 9:42:03.[5] Within four seconds, two other

[4] Although Mr. Hooks repeatedly submitted requests to the jail asking for the names of the classification guard and the booking guard, the jail never provided that information. *See, e.g.*, R. Vol. I at 990, 1039, 1195.

[5] The footage was filed on October 21, 2019 as a supplemental record on appeal. It is currently on file with the Tenth Circuit in CD-ROM format.

individuals—Anthony Durham and Dewayne Smith—had joined in the attack on Mr. Hooks. *See* 4th Floor Adam Pod 1 & 3 at 9:42:05-07. While Mr. Hooks lay unconscious on the ground, the three men stomped on his face and kicked him. *See* 4th Floor Adam Pod 4 at 9:42:07-14. At 9:42:14 a.m., Mr. Woodward and Mr. Durham began to move away from Mr. Hooks, but Mr. Smith continued stomping on Mr. Hooks's face until 9:42:17 a.m. *See* 4th Floor Adam Pod 4 at 9:42:14-17.

It is undisputed that no member of the jail staff responded to the attack—much less called it in—during these first 14 seconds, even though the attack caused a substantial stir in the pod. Indeed, the call for help would not come for at least another 19 seconds. *See* 4th Floor Adam Pod 2 at 9:42:34-36; *see* R. Vol. III at 54 (defendant Atoki's list of undisputed facts) (stating that the call for help was made after 9:42:34). The jail's undeniably slow response is important because the assault had not yet ended. At 9:42:17, Mr. Smith strolled across the jail and exchanged shoes with another inmate. *See* 4th Floor Adam Pod 4 at 9:42:35. He then returned to where Mr. Hooks lay—still unconscious—and, at 9:42:42, began viciously stomping on Mr. Hooks's face again. *See* 4th Floor Adam Pod 4 at 9:42:42-45.

At 9:42:55, 52 seconds after the attack began, Captain Kayodi Atoki, the Fourth Floor Unit Manager, and two other guards walked into the pod.

Their slow arrival was detrimental to Mr. Hooks—his injuries were already life threatening. As Deputy Lira stated in an incident report:

> I observed Inmate Hooks to be bleeding heavily from his nose and mouth. Inmate Hooks was unresponsive, and appeared to be having a seizure, as his body was rigid. I observed a large pool of blood underneath his head. Inmate Hooks was unable to breathe due to the amount of blood coming from his mouth and nose.

R. Vol. I at 659 (Report of Dep. S. Lira); *see also* R. Vol. I at 658 (Report of Cpt. T. Hardin) ("[H]is face [was] covered in blood, a pool of blood on the floor just under his head. [He] was making noise as if he were struggling to breath[e] and several officers were . . . holding him . . . to assist him in maintaining an open airway.").

A few additional details about the assault bear mentioning. At 9:41 a.m., as he was walking up to the terminal, Mr. Hooks observed defendant Atoki sitting in the pod-monitoring booth. *See* R. Vol. III at 123. More specifically, Mr. Hooks saw defendant Atoki looking at a computer in the booth. *See id.* Defendant Atoki, however, cannot be seen in the portion of the pod-monitoring booth shown in the video footage. *See* 4th Floor Adam Pod 2. The video footage only shows about half of booth. *See id.* Moreover, from the time the recording begins (9:40:34) until 9:42:28, nobody can be seen in the half of the booth displayed in the camera footage. *See id.*

At 9:42:28, 25 seconds after the assault started, Noel Covarrubias, a jail guard, can be seen in camera angle 2, moving towards one of the windows

in the pod office. *See* 4th Floor Adam Pod 2; *see also* R. Vol. I at 666. Once he gets to the window, he looks down at where Mr. Hooks lays unconscious, and then, a few seconds later, retreats out of view of the camera at 9:42:36. *See* 4th Floor Adam Pod 2. In his report of the incident, Mr. Covarrubias states:

> At approximately 0942 hours on the day of October 5, 2016, during recreation for cells 26-50 in pod 4A, I suddenly heard a commotion coming from the pod. As the source originated at the base of the pod office, I could hear the commotion but not immediately see the cause, so I moved to the window to get a better view.

R. Vol. I at 666. After observing the gruesome scene at the base of the booth, Mr. Covarrubias called in the incident. *See id.*

Despite Mr. Covarrubias's status as a crucial witness, he was never deposed in connection with this event. Yet, the district court still granted summary judgment to defendant Atoki. The district court's willingness to enter summary judgment without *any* testimony from Mr. Covarrubias is one of many signs that the summary judgment decision was premature. In the absence of full testimony from Mr. Covarrubias, a reasonable inference from the video is that Mr. Covarrubias called in the incident at 9:42:36 when he retreats out of camera view. *See* 4th Floor Adam Pod 2 at 9:42:36; *see also* R. Vol. III at 54 (listing this as an undisputed fact).

2. Procedural History

On June 15, 2017, Mr. Hooks filed a civil rights complaint under 42 U.S.C. § 1983 that he amended just over a month later. *See* R. Vol. I at 4-5.

The magistrate recommended dismissing, without prejudice, the entirety of Mr. Hooks's complaint for failure to state a claim. *Id.* at 1381-1419. The district court adopted the magistrate's report and recommendation. *Id.* at 1431.

Mr. Hooks then filed a second amended complaint ("operative complaint"). *Id.* at 1433. In the operative complaint, Mr. Hooks listed nine defendants: Chris Harding, James Irby, the Armor Correctional Health Booking Nurses, the Oklahoma County Booking Guard, the Oklahoma County Classification Guard, Kayodi Atoki, Sherriff John Whetsel, Dr. Jerry Childs, and Armor Correctional Health, Inc. *See id.* at 1433-35. He asserted the following claims: (1) deliberate indifference against Dr. Jerry Childs and Armor Correctional Health, Inc. for failing to provide adequate medical care in the aftermath of the gang assault; (2) excessive force against defendants Harding and Irby for tasing and choking him after he was subdued; (3) deliberate indifference against defendant Atoki for failing to intervene or call for help when Mr. Hooks was assaulted within several feet of the base of the pod-monitoring booth where defendant Atoki sat; (4) deliberate indifference on the part of the booking guard for failing to ask for Mr. Hooks's gang affiliation; (5) deliberate indifference against the classification guard who knew of Mr. Hooks's gang affiliation yet housed Mr. Hooks with a rival gang nonetheless; and (6) deliberate indifference against Armor Correctional and

the booking nurses who, despite observing his injuries from the altercation with defendants Harding and Irby, did not put him in medical housing. *See id.* at 1433-52.

On May 15, 2018, the magistrate issued another report and recommendation. *See* R. Vol. I at 1496. This time the magistrate recommended dismissing all of the claims except for those against defendant Atoki, which the magistrate postponed resolving until Mr. Hooks responded to defendant Atoki's motion to dismiss. *See id.*; *id.* at 1494-95. The magistrate recommended dismissing the excessive force claims against defendants Harding and Irby under *Heck v. Humphrey*, 512 U.S. 477 (1994). *See* R. Vol. I at 1511.

Additionally, the magistrate analyzed the deliberate indifference claims under the Eighth Amendment standard, which requires proof of both an objective and a subjective element. *See id.* at 1505. Mr. Hooks, however, was a pretrial detainee and "[t]he rights of pretrial detainees, 'those persons who have been charged with a crime but who have not yet been tried on the charge,' are not controlled by the cruel and unusual punishment clause of the Eighth Amendment because the Fifth and Fourteenth Amendments prohibit punishment 'prior to an adjudication of guilt in accordance with due process of law.'" *Berry v. City of Muskogee*, 900 F.2d 1489, 1493 (10th Cir. 1990) (quoting *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)). Although the magistrate

recognized Mr. Hooks's status as a pretrial detainee, R. Vol. I at 1497, the court never considered whether that meant Mr. Hooks's claims should have analyzed under the Fourteenth Amendment or whether the Fourteenth Amendment imposes a different standard than the Eighth Amendment, *see, e.g.*, *id.* at 1505.[6] And finally, the magistrate evaluated the claims against the classification guard and the booking guard as claims against Sherriff Whetsel only; the magistrate never considered whether Mr. Hooks had adequately pleaded claims against the classification guard or the booking guard. *Cf. id.* at 1500-04.

Mr. Hooks objected to the report and recommendation. *See id.* at 1522. He objected to the magistrate's *Heck v. Humphrey* analysis on the grounds

[6] In his motion for summary judgment, defendant Atoki contended that Mr. Hooks was only a pretrial detainee as to the charges that formed the basis of the arrest warrants and the four charges arising out of Mr. Hooks's encounter with defendants Harding and Irby. *See* R. Vol. III at 51. Defendant Atoki further contended that Mr. Hooks was not a pretrial detainee as to his pending revocation of his suspended sentence in Oklahoma Case No. CF-2010-7267 (a conviction for which Mr. Hooks had served 7 of 20 years).

Perhaps Mr. Hooks's status as a parolee eventually altered his status as a pretrial detainee, but not at the time of the events in question. The relevant events took place months before the assistant district attorney filed an application to revoke Mr. Hooks's suspended sentence in Oklahoma Case No. CF-2010-7267, R. Vol. I at 112-13 (application to revoke; filed on January 26, 2017), and nearly a year before the judge ruled on the application, *see id.* at 119 (order revoking suspended sentence; filed on August 11, 2017). And in all events, both the magistrate and the district judge unequivocally treated Mr. Hooks as a pretrial detainee. *See, e.g.*, *id.* at 1505.

that "[t]here is no relationship between the § 1983 claim and [the state court] conviction[,] other than it happened with the same two officers named in [Case No.] CF-16-8233." *Id.* He explained his theory of the claim was that the officers' use of force in tasing and choking him *after* he was subdued was excessive. *Id.* Over Mr. Hooks's objections, the district judge adopted the report and recommendation in full. *See id.* at 1529-30.

Next, the magistrate addressed defendant Atoki's motion to dismiss. The magistrate again analyzed Mr. Hooks's deliberate indifference claim under the Eighth Amendment. *See* R. Vol. II at 15. More specifically, the magistrate explained that Mr. Hooks needed to establish that "(1) the alleged violation is 'sufficiently serious' under an objective standard, and (2) the prison/jail official had subjective knowledge of the risk of harm." *Id.* at 14-15. The magistrate concluded Mr. Hooks's allegations satisfied both requirements. They satisfied the objective requirement because Mr. Hooks "faced a substantial risk of serious harm once the assault began." *Id.* at 15. Similarly, they satisfied the subjective element because, "according to Plaintiff's allegations, the assault occurred within Defendant Atoki's line of sight, continued for a prolonged period, and Defendant Atoki took no action to intervene, including failing to call for back up or assistance in order to stop

the assault." *Id.* at 16. And "[c]ourts have repeatedly held similar allegations are sufficient . . . ." *Id.*[7]

Accordingly, the individual capacity claim against defendant Atoki proceeded to discovery. Discovery, however, was quite limited. The relevant discovered evidence can be recounted in a single sentence: video footage of the assault on Mr. Hooks, an affidavit and deposition of Mr. Hooks, and an affidavit of defendant Atoki. Although Mr. Hooks repeatedly asked for an attorney, for additional discovery, and for additional time, *see, e.g.*, R. Vol. I at 6-18 (docket entries 25, 27, 61, 62, 67, 71, 112, 120, 177, 179); R. Vol. II at 37; R. Vol. III at 102, his requests were almost uniformly denied. *See, e.g.*, R. Vol. II at 40; R. Vol. III at 107. Instead of recognizing that Mr. Hooks was having difficulty obtaining records from defendant Atoki, the court struck his motions on the basis of technicalities. *See, e.g.*, R. Vol. II at 40 (striking discovery request because Mr. Hooks sent it to the court rather than to defendant Atoki directly). And, in the rare instances where they were granted, the relief was limited. *See* R. Vol. III at 126 (granting Mr. Hooks's request for an extension of time to both complete discovery and respond to defendant's summary judgment motion by moving the response deadline from

[7] The magistrate did, however, recommend dismissing the official capacity claim against defendant Atoki because Mr. Hooks "ha[d] not identified any policy or custom motivating Defendant Atoki's . . . actions." R. Vol. II at 20.

November 5, 2018 to November 19, 2018); *id.* at 40-41 (acknowledging that defendant Atoki had sent the video footage to Mr. Hooks in an unacceptable format, but putting the onus back on Mr. Hooks by requiring him to first inform defendant Atoki of his preferred video format).

Ultimately, the magistrate recommended granting summary judgment in defendant Atoki's favor. *See id.* at 150-66. The magistrate narrowly construed Mr. Hooks's briefing and interpreted his sole position to be that defendant Atoki should have been paying better attention while he was in the pod-monitoring booth. *See id.* at 162-63. Although the district judge agreed with the magistrate's ultimate conclusion that the motion should be granted, he liberally construed Mr. Hooks's pro se briefing as advancing two arguments: (1) that Mr. Atoki should have been paying better attention, and (2) that defendant Atoki knew of the attack but did nothing. *See id.* at 180-81. Like the magistrate, the district judge rejected the first argument on the basis that a claim of negligence is not a cognizable constitutional claim. *See id.* at 180.

As for the second argument, the district court determined that Mr. Hooks had failed to show how a quicker response by defendant Atoki would have "helped [Mr. Hooks] or prevented any of his injuries." *Id.* at 181. Applying the Eighth Amendment's subjective intent standard, the court also concluded that defendant Atoki's knowledge of the attack was not genuinely

disputed. *Id.* For the reasons explained below, both of those conclusions were incorrect.

SUMMARY OF ARGUMENT

The district court prematurely resolved Mr. Hooks's claims for the following reasons.[8] *First*, *Heck* requires dismissal of a § 1983 claim only when the plaintiff's allegations *necessarily* undermine the basis of his state court conviction. Mr. Hooks never contested the assault charges. To the contrary, his excessive force claim does not implicate the prior assault charges at all. Mr. Hooks's excessive-force claims result only from the officers' continued force *after* he was subdued. Success on this theory would not undermine the basis of his state court convictions. Moreover, because Mr. Hooks was proceeding pro se, the district court was obligated to liberally construe his allegations.

Second, the district court erred as a matter of law by evaluating Mr. Hooks's claim of deliberate indifference under the Eighth Amendment's "subjective intent" standard. As a pretrial detainee, Mr. Hooks's deliberate indifference claims should have been evaluated under the Fourteenth Amendment. Following the Supreme Court's decision in *Kingsley v.*

[8] On appeal, Mr. Hooks does not challenge the district court's dismissal of the official capacity claims or the claims against Sherriff Whetsel. Likewise, Mr. Hooks does not challenge the district court's denials of his motions for preliminary injunctive relief.

Hendrickson, 135 S. Ct. 2466 (2015), the Fourteenth Amendment no longer requires proof of subjective intent. Rather, plaintiffs need only establish "objective unreasonableness." As explained below, these claims each pass muster under an objective reasonableness standard. It was therefore error for the district court to apply a subjective standard to Mr. Hooks's claims of deliberate indifference against Armor/Dr. Childs, Armor/the booking nurses, the booking guard, the classification guard, and defendant Atoki.

Third, even if *Kingsley* somehow does not apply, genuine disputes exist as to defendant Atoki's subjective knowledge and whether a faster response by defendant Atoki would have mitigated the injuries suffered by Mr. Hooks. The affidavits of Mr. Hooks and defendant Atoki conflicted with each other and the video footage did not resolve the conflict. Instead of viewing this contradictory evidence in the light most favorable to Mr. Hooks, the district court erroneously drew inferences in the movant's favor when it held that defendant Atoki could not have seen the fight. Further, there was evidence in the record that defendant Atoki could have heard the fight and that a faster response would have prevented the second attack on Mr. Hooks. Accordingly, the district court's summary judgment decision should be reversed.

STANDARD OF REVIEW

All of the claims at issue in this appeal are reviewed de novo. *See Navair, Inc. v. IFR Ams., Inc.*, 519 F.3d 1131, 1137 (10th Cir. 2008) ("We review a grant of summary judgment de novo . . . ."); *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007) ("We review de novo the district court's decision to dismiss an IFP complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim.").

ARGUMENT

I. The District Court Erroneously Held *Heck v. Humphrey* Required Dismissal of Mr. Hooks's Excessive Force Claim.

The district court's *Heck v. Humphrey* analysis was wrong because Mr. Hooks's allegations do not necessarily undermine his state court convictions, which is the core requirement for dismissal under *Heck*. Even the defendants seem to have realized this when they briefed their arguments below. Not once did they advance a *Heck* argument. Rather, the district court raised *Heck sua sponte*. This court should reverse the district court's dismissal of Mr. Hooks's excessive force claims.

a. *Heck v. Humphrey* Requires Dismissal Only Where a Favorable Judgment Would Necessarily Undermine the State Court Conviction.

In *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court held that "when a state prisoner seeks damages in a § 1983 suit, the district court

must consider whether a judgment in favor of the plaintiff would *necessarily* imply the invalidity of his conviction or sentence." *Id.* at 487 (emphasis added). "[I]f it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Id.* The majority offered two principle reasons for this holding. First, the Court thought it was significant that the federal habeas corpus statute, 28 U.S.C. § 2254, is "the exclusive remedy for a state prisoner . . . challeng[ing] the fact or duration of . . . confinement and seek[ing] immediate or speedier release." 512 U.S. at 481. Second, the Court noted that § 1983 is a tort statute. *Id.* at 486. As such, the "principle that civil tort actions are not appropriate vehicles for challenging the validity of outstanding criminal judgments applies to § 1983 damages actions that *necessarily* require the plaintiff to prove the unlawfulness of his conviction or confinement." *Id.* at 486 (emphasis added).

In the 26 years since *Heck*, this court has had multiple occasions to evaluate *Heck*'s application in cases involving excessive force claims arising out of encounters with police officers. Over that time, three categories of cases have emerged. In each, the court has faithfully adhered to *Heck*'s

instruction that the § 1983-door is *only* closed when success would *necessarily* undermine the state court conviction.[9]

First, there are cases where neither the theory of the complaint nor the specific factual allegations conflict with the state court conviction. *See, e.g.*, *French v. Adams Cty. Det. Ctr.*, 379 F.3d 1158, 1160 (10th Cir. 2004); *Fresquez v. Minks*, 567 F. App'x 662, 666 (10th Cir. 2014) ("A favorable finding for Plaintiff on his excessive force claim would not necessarily call into question his conviction for obstruction . . . ."). *Second*, there are cases where the theory of the complaint does not necessarily undermine the state court conviction, but some of the factual allegations do. *See, e.g.*, *Martinez v. City of Alburquerque*, 184 F.3d 1123, 1127 (10th Cir. 1999). In such cases, the court has allowed the claims to proceed, but has instructed the district court to strike the problematic allegations. *See, e.g.*, *id.* (directing the district court to strike two factual allegations). *Third*, there are some cases where the theory of the claim itself would necessarily undermine the state court conviction. *See, e.g.*, *Havens v. Johnson*, 783 F.3d 776, 783 (10th Cir. 2015) ("Sometimes the excessive-force claim must be barred in its entirety because the theory of the claim is inconsistent with the prior conviction.").

[9] The other circuits are in accord that "logical necessity . . . is at the heart of the *Heck* opinion." *Dyer v. Lee*, 488 F.3d 876, 879 (11th Cir. 2007); *id.* at 881 (emphasizing the "limited scope of the *Heck* holding" and collecting cases).

Havens warrants additional discussion because it formed the crux of the magistrate's analysis. Mr. Havens alleged that defendant-officer Johnson used excessive force in arresting him. *See id.* at 781. Before bringing his § 1983 claim, Mr. Havens had pleaded guilty to attempted first-degree assault of Officer Johnson during the course of the same arrest. *See id.* at 778-81. The facts underlying the plea established that Mr. Havens attempted to run over Officer Johnson with a car as Officer Johnson approached the car on foot. *See id.* Before any arrest took place, Officer Johnson defended himself and shot Mr. Havens multiple times, injuring him severely. *See id.*

In his complaint, Mr. Havens did not pursue a theory that would have avoided conflict with the attempted assault conviction, such as alleging that Officer Johnson's use of the firearm was excessive in response to the attempted assault. *See id.* at 783-84. Instead, he "denied any wrongdoing by [himself]." *Id.* at 781. The complaint "said that he at no time attempted to resist arrest, claiming that the officers, by crashing their cars into the Audi, caused Havens 'to lose control of the vehicle which resulted in the vehicle lurching forward under its own volition.'" *Id.* Further, "it asserted that the criminal prosecution was bogus[.]" *Id.* In other words, Mr. Havens's theory was that defendant Johnson used excessive force because Mr. Havens did not commit attempted first-degree assault. *See id.* This innocence-based theory,

of course, does not pass muster under *Heck* because it necessarily conflicts with the state court adjudication of guilt and falls into the third category referenced above. Accordingly, the Tenth Circuit held the claim to be "barred by *Heck*." *Id.* at 783-84.[10]

b. A Favorable Judgment on Mr. Hooks's Excessive Force Claim Would Not Necessarily Undermine the Basis of His State Court Convictions.

Mr. Hooks's excessive force claim does not implicate the validity of his state court conviction. In the operative complaint, Mr. Hooks alleged as follows:

> Chris Harding approached Asheena Yarbough[']s car with his gun drawn[,] ordering me to place my hands on the dash, which I did. Chris Harding opened my door, and began removing me from [the] car. Once out of the car Chris Harding begun trying to take me to the police car without telling me why he was containing me. Chris Harding didn't try to place hand cuffs on me, so I pulled away from him like what are you doing[?] Chris Harding and James Irby begun wrestling with me[.] Chris Harding then pushed me between both cars and yelled for James Irby to taser me[,] causing me to drop to the ground and hit my head on [the] ground repeat[edly] and left me laying on my stomach not moving at all. Chris Harding ordered James [Irby] to taser me again. After the second round of tasering[,] Chris Harding dropped to his knees [and] then place[d] me in a choke hold until Asheena started screaming.

[10] *DeLeon*, another case the magistrate relied on, is nearly identical to *Havens*. Like in *Havens*, the plaintiff in *DeLeon* premised his excessive force claim on his innocence. *See DeLeon v. City of Corpus Christi*, 488 F.3d 649, 656 (5th Cir. 2007) ("[T]he complaint maintains that [Mr. DeLeon] did nothing wrong . . . ."). As a result, the Fifth Circuit dismissed his complaint under *Heck*. *See id.*

R. Vol. I. at 1445.

Nowhere in the complaint does Mr. Hooks allege that he was innocent of the assault charges. His claim is that the first taser round subdued him, *see id.* (alleging that the taser "caus[ed] [him] to drop to the ground and hit [his] head on [the] ground repeat[edly] and left [him] laying on [his] stomach not moving at all"), but that defendants Harding and Irby nonetheless continued using force by tasing him a second time and placing him in a choke hold, *see id.* That theory does not implicate the assault convictions because Mr. Hooks assaulted the officers *before* he was subdued. This should have been the end of the district court's analysis.

The district court erred in failing to recognize the crucial difference between excessive force rendered pre- and post-subduing. The Tenth Circuit's jurisprudence *abounds* with cases holdings that tasing or choking a subdued individual is a Fourth Amendment violation. *See, e.g.*, *Estate of Booker v. Gomez*, 745 F.3d 405, 424 (10th Cir. 2014) (holding use of taser after individual was subdued was excessive because "a reasonable jury could conclude that a lesser degree of force would have exacted compliance"); *Lynch v. Bd. of Cty. Comm'rs*, 786 F. App'x 774, 782-83 (10th Cir. 2019) (preventing airflow by placing knees on subdued individual's back and neck was excessive).

If more was needed, Mr. Hooks was entitled to a liberal construction of his complaint. Because Mr. Hooks was proceeding pro se in the district court, his pleadings were "to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir.1991). Liberal construction "means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements." *Id.* Thus, the question is whether Mr. Hooks's allegations could reasonably be read to not necessarily undermine his state court convictions. The answer is a resounding yes.

Mr. Hooks's complaint can reasonably be read to allege that the excessive force occurred after he was subdued. That theory does not necessarily conflict with the state court conviction of assault. By pleading guilty to Okla. Stat. tit. 21, §§ 646, 649-649.2, 650, Mr. Hooks admitted to having "inflicted" "great bodily injury," Okla. Stat. tit. 21, § 646, on defendants Harding and Irby "without justifiable or excusable cause," Okla. Stat tit. 21, § 650. Additionally, his plea acknowledged that "[t]he State would prove [he] . . . repeatedly struck Off. Harding and Off. Irby." Aple. Appx. at 48 (filed on Sept. 18, 2019). A jury could both conclude that Mr.

Hooks assaulted the officers before he was subdued and that the officers used unnecessary force after he was subdued. Those findings are neither factually nor legally incompatible.

Factually, there is nothing in the plea to indicate that Mr. Hooks necessarily "struck the officers" *after* he was tased the first time. To the contrary, it is more likely that Mr. Hooks inflicted "great bodily injury" *before* he was tased, not after. Legally, Mr. Hooks's assault on the officers "would not [have then] authorize[d] the officers to employ excessive or unreasonable force in violation of [Mr. Hooks's] Fourth Amendment rights." *Martinez*, 184 F.3d at 1127. Accordingly, a jury could safely find in Mr. Hooks's favor without upsetting the state court convictions of assault.

The district court, however, gave short shrift to Mr. Hooks's complaint. The magistrate recognized Mr. Hooks's assertion "that Officer Irby tasered him when [he] was already laying on the ground and Officer Harding subsequently held him in a choke-hold, choking him until a third party present at the scene started screaming." R. Vol. I at 1514. But the magistrate construed Mr. Hooks's complaint as claiming that "his only action [in relation to the assault convictions] was to pull away from [defendant] Harding." *Id.* Relying on that narrow reading, the magistrate reasoned that "merely pulling away from [defendant] Harding would not sustain the

elements of assault under Oklahoma law and the factual basis for Plaintiff's plea of nolo contendere." *Id.*

There are multiple problems with this analysis. The most obvious is that Mr. Hooks did not say his *only* action was to pull away from defendant Harding. He stated that he pulled away and then said nothing further about the assault on the officers. The magistrate reads Mr. Hooks's omission of other facts related to the assault (e.g., striking the officers) *as an express denial of them*. Not only is that wrong—the complaint does not deny the assault—it is an exceedingly narrow construction of the complaint and a violation of *Hall*'s command to construe Mr. Hooks's pleadings liberally.

But even if Mr. Hooks had alleged that his only action was to pull away from defendant Harding, that would not be enough to set up the logical necessity required under *Heck*. As explained above, Mr. Hooks did not premise his excessive force claim on his innocence of the assault charges. Rather, his theory was that the officers used excessive force after he was subdued. Accordingly, the jury could reject an allegation that Mr. Hooks's only action was to pull away from defendant Harding (i.e., find Mr. Hooks was guilty of the assault charges), but still find that defendants Harding and Irby used excessive force after Mr. Hooks was subdued. At most, then, the

magistrate could have struck this allegation from the complaint.[11] *See* *Martinez*, 184 F.3d at 1127.

The magistrate also misread *Havens*. According to the magistrate, "[t]he court [in *Havens*] found the plaintiff's plea incompatible with his § 1983 claim *because* his complaint did not allege that the defendant used excessive force in response to an attempted assault by the plaintiff." *See* R. Vol. I at 1512 (emphasis added). That was not the holding of *Havens*. The logic of *Havens* was clear: the "version of events" alleged in *Havens*—not having control of the car, not trying to escape, not driving towards Officer Johnson, etc.—was necessarily incompatible with the attempted first-degree assault conviction. *See* 783 F.3d at 783. The court's observation that Mr. Havens did not argue Officer Johnson's "excessive force [was] in response to an attempted assault by Havens" was merely an example of a way in which Mr. Havens could have avoided *Heck*. *Id.* It was therefore error for the magistrate to fault Mr. Hooks for failing to allege that the defendants "used excessive force in response to an assault by" Mr. Hooks. R. Vol. I at 1514.

[11] This could also be handled at trial through a jury instruction regarding Mr. Hooks's assault convictions—e.g., "Mr. Hooks was convicted of assaulting Officers Harding and Irby during the course of his arrest. You are therefore instructed to ignore any evidence that would necessarily contradict or undermine those convictions." *See, e.g.*, *Martinez*, 184 F.3d at 1127 (directing the district court to instruct the jury of Mr. Martinez's convictions).

Not only do these errors warrant reversal under the law of this circuit, they are at odds with every other federal circuit, which have all been very receptive to excessive force claims under *Heck*. *See, e.g.*, *Thore v. Howe*, 466 F.3d 173, 180 (1st Cir. 2006) ("A § 1983 excessive force claim brought against a police officer that arises out of the officer's use of force during an arrest does not necessarily call into question the validity of an underlying state conviction and so is not barred by *Heck*."); *VanGilder v. Baker*, 435 F.3d 689, 692 (7th Cir. 2006) (similar); *Dyer*, 488 F.3d at 881 (collecting cases).

II. Under *Kingsley* the District Court Should Have Applied an Objective Standard Only When Evaluating Mr. Hooks's Deliberate Indifference Claims.

It is settled law that deliberate indifference claims brought by pretrial detainees are evaluated under the Fourteenth Amendment, not the Eighth. Despite this clear law, the magistrate and the district judge evaluated Mr. Hooks's deliberate indifference claims under the Eighth Amendment standard. This court should remand and direct the district court to perform the proper analysis.[12]

[12] To the extent defendants contend this argument is waived, it is a pure question of law with certain resolution. *See Daigle v. Shell Oil Co.*, 972 F.2d 1527, 1539 (10th Cir. 1992). Additionally, the Tenth Circuit often excuses waiver where not doing so would work an injustice. *See id.* Mr. Hooks was beaten within an inch of his life, and meritorious claims arising out of those brutal facts should not be dismissed on a technicality—especially not when he was proceeding pro se below and repeatedly asked for the assistance of an

a. The Fourteenth Amendment Does Not Require Proof of Subjective Intent.

The Fourteenth Amendment, not the Eighth Amendment, controls deliberate indifference claims brought by pretrial detainees. *See Burke v. Regalado*, 935 F.3d 960, 991 (10th Cir. 2019) ("The constitutional protection against deliberate indifference to a pretrial detainee[] . . . springs from the Fourteenth Amendment's Due Process Clause."). Historically, this distinction did not carry meaningful consequences—deliberate indifference claims were evaluated under the same standard regardless of which amendment they were brought under. *See Lopez v. LeMaster*, 172 F.3d 756, 759 n.2 (10th Cir. 1999). That changed in *Kingsley v. Hendrickson*, 135 S. Ct. 2466 (2015).

In *Kingsley*, the Supreme Court considered "whether, to prove an excessive force claim, a pretrial detainee must show that the officers were *subjectively* aware that their use of force was unreasonable, or only that the officers' use of that force was *objectively* unreasonable." 135 S. Ct. at 2470 (emphases in original). The Court ruled that pretrial detainees need only show the use of force was objectively unreasonable. *See id.* In doing so, it acknowledged that the Eighth Amendment requires a subjective inquiry, but

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attorney but was denied one. *See* R. Vol. I at 6-18 (docket entries 25, 27, 61, 62, 67, 71, 112, 120, 177, 179).

reiterated that claims brought by pretrial detainees are governed by the Fourteenth Amendment, not the Eighth, because pretrial detainees have not yet been adjudicated guilty. *See id.* at 2475. The Court then explained that "[t]he language of the two Clauses differs, and the nature of the claims often differs." *Id.* "And, most importantly, pretrial detainees (unlike convicted prisoners) cannot be punished at all, much less 'maliciously and sadistically,'" under the subjective intent standard. *Id.*

Although *Kingsley* involved an excessive force claim, it applies with full force to claims of deliberate indifference brought by pretrial detainees. *Kingsley* protects pretrial detainees from punishment in any form, not just punishment that is meted out with "malicious and sadistic" intent. It would be nonsensical to require a pretrial detainee to prove "malicious and sadistic" intent simply because his suffering comes at the hands of an officer's deliberate indifference rather than at the officer's hands directly, as in an excessive force claim. *See Castro v. Cty. of L.A.*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc) ("Excessive force applied directly by an individual jailer and force applied by a fellow inmate can cause the same injuries, both physical and constitutional. Jailers have a duty to protect pretrial detainees from violence at the hands of other inmates, just as they have a duty to use only appropriate force themselves."). Accordingly, pretrial detainees pursuing

claims of deliberate indifference should no longer be required to show subjective intent.

Indeed, three circuits have now held as much. *See Miranda v. Cty. of Lake*, 900 F.3d 335, 352 (7th Cir. 2018) ("We see nothing in the logic the Supreme Court used in *Kingsley* that would support this kind of dissection of the different types of claims that arise under the Fourteenth Amendment's Due Process Clause."); *Darnell v. Pineiro*, 849 F.3d 17, 34-35 (2d Cir. 2017) ("Following the Supreme Court's analysis in *Kingsley*, there is no basis for the reasoning . . . that the subjective intent requirement for deliberate indifference claims under the Eighth Amendment . . . must apply to deliberate indifference claims under the Fourteenth Amendment."); *Castro*, 833 F.3d at 1070 ("On balance, we are persuaded that *Kingsley* applies, as well, to failure-to-protect claims brought by pretrial detainees against individual defendants under the Fourteenth Amendment.").[13] The Tenth Circuit should draw on this growing body of well-reasoned case law from the Second, Seventh, and Ninth Circuits and hold that pretrial detainees need not establish subjective intent when raising claims of deliberate indifference.

[13] Although three different circuits appear to have limited *Kingsley* to its facts, none of them offered any basis to distinguish the reasoning of *Kingsley*. *See Whitney v. City of St. Louis*, 887 F.3d 857, 860 n.4 (8th Cir. 2018); *Dang ex rel. Dang v. Sheriff, Seminole Cty.*, 871 F.3d 1272, 1279 n.2 (11th Cir. 2017); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 420 n.4 (5th Cir. 2017) (per curiam).

Cf. Burke, 935 F.3d at 991 n.9 (observing this is currently an open question in the Tenth Circuit).

Concurring in this approach would be faithful to the Supreme Court's directive that while a lower standard applies to pre-trial detainees, that standard nonetheless does *not* encompass mere negligence. The Second, Seventh, and Ninth circuits have recognized correctly that although the objective reasonableness standard of *Kingsley* is lower than subjective intent, it does not fall to the level of negligence. *See Daniels v. Williams*, 474 U.S. 327, 330–31 (1986) (holding that a "mere lack of due care by a state official" is insufficient to "'deprive' an individual of life, liberty, or property under the Fourteenth Amendment"). Consequently, "objective unreasonableness" under the Fourteenth Amendment is a showing akin to "reckless disregard." *See, e.g.*, *Darnell*, 849 F.3d at 36 ("A detainee must prove that an official acted intentionally or recklessly, and not merely negligently."); *Castro*, 833 F.3d at 1071 (same); *Miranda*, 900 F.3d at 352 (same).

Applying this standard, the District Court should have posed two objective questions: (1) whether the individual was "incarcerated under conditions posing a substantial risk of serious harm," and (2) whether "the prison official [recklessly disregarded the individual's] safety." *Verdecia v. Adams*, 327 F.3d 1171, 1175 (10th Cir. 2003).

b. The Magistrate Erred in Applying the Eighth Amendment's Subjective Intent Requirement to Mr. Hooks's Deliberate Indifference Claims.

Despite the fact that the Fourteenth Amendment, not the Eighth, applies to claims brought by pretrial detainees, the magistrate and the district court analyzed Mr. Hooks's claims under the Eighth Amendment standard. *See, e.g.*, R. Vol. I at 1506-07; R. Vol. III at 179. This oversight was consequential. The magistrate recommended dismissing two of Mr. Hooks's deliberate indifference claims on the basis of the subjective intent element. *See id.* (claim against Armor/Dr. Childs); *id.* at 1510-11 (claim against Armor/the booking nurses).

Under the *Kingsley* standard, Mr. Hooks stated a claim in both instances. In the case of Dr. Childs, it was objectively unreasonable for Dr. Childs to provide highly specialized treatment for which he was objectively unqualified. *See* R. Vol. I at 1444-45. Likewise, the booking nurses acted unreasonably when they observed the severe injuries on Mr. Hooks's face but did not send him to a medical housing unit. *See id.* at 1451-52.

The subjective intent standard was crucial at summary judgment too. *See* R. Vol. III at 180-81. The district court granted summary judgment in defendant Atoki's favor for two reasons. First, Mr. Hooks failed to genuinely dispute defendant Atoki's subjective knowledge. Second, Mr. Hooks failed to show that a faster response time would have made a difference. *See id.* As

explained in the next section, a quicker response would have prevented the second attack. *See infra* § III.b. Accordingly, the causation analysis was plainly incorrect. Similarly, the district court's analysis of defendant Atoki's subjective knowledge was flawed because the court improperly drew inferences in the movant's favor and failed to consider all of the relevant evidence. *See id.*; *see also* R. Vol. III at 180-81. On appeal, the court should (1) reverse the district court's analysis on that basis, (2) reverse on the basis that *Kingsley* applies and a subjective standard is therefore inappropriate, or (3) reverse on both rationales.

The subjective/objective distinction also affects the claims against the booking guard and classification guard. As discussed above, Mr. Hooks asserted that the booking guard acted with deliberate indifference when he failed to inquire about Mr. Hooks's gang affiliation. He also alleged that the classification guard was deliberately indifferent in housing Mr. Hooks with a rival gang despite knowing Mr. Hooks's gang affiliation. The district court did not liberally construe Mr. Hooks's complaint when it read these allegations as raising claims against Sherriff Whetsel only. *See* R. Vol. I at 1500-04. Although Mr. Hooks listed Sherriff Whetsel as the defendant for these claims, it is clear that Mr. Hooks intended to sue the booking guard and the classification guard—not Sherriff Whetsel only. *See id.* at 1448 (identifying the booking guard specifically and calling out particular failures

of the booking guard); *id.* at 1450 (unambiguously isolating the classification guard and pinpointing specific failures of the classification guard). In fact, Mr. Hooks made the same mistake in his claim against defendant Atoki: he listed Sherriff Whetsel as the defendant, but it was apparent that he intended to sue defendant Atoki. *Id.* at 1446. There, the district court liberally construed the claim, appropriately recognizing that Mr. Hooks intended to sue defendant Atoki. *See* R. Vol. II at 9-21.

The district court's failure to do the same for the claims against the classification guard and the booking guard should be corrected. Under *Kingsley*, Mr. Hooks stated claims against both defendants.[14] Given the preexisting gang segregation in the detention facility and the policies governing gang management, it was objectively unreasonable for the booking guard to fail to inquire into Mr. Hooks's gang affiliation. *See* R. Vol. I at 1448-49. Similarly, it was objectively unreasonable for the classification guard to place Mr. Hooks with a rival gang when the classification guard knew of Mr. Hooks's gang affiliation from his tattoos and file. *See id.* at 1450-51; *supra* n. 14 (arguing that, construed liberally, Mr. Hooks's claim is that

[14] Mr. Hooks stated a claim against the classification officer *regardless* of whether this court determines *Kingsley* applies. Construed liberally, Mr. Hooks's allegation is that the classification officer *knew* of his gang affiliation but *still* chose to house him with a rival gang. That is sufficient to state a claim under even the Eighth Amendment's subjective standard. *See Verdecia*, 327 F.3d at 1175 (explaining subjective intent standard).

the classification officer knew of Mr. Hooks's gang affiliation yet housed him with a rival gang).

For these reasons, the court should (1) hold that *Kingsley* applies to claims of deliberate indifference brought by pretrial detainees, and (2) remand for the district court to consider, in the first instance, Mr. Hooks's deliberate indifference claims under the *Kingsley* standard.

III. Regardless of Whether *Kingsley* Applies, Genuine Disputes of Material Fact Precluded Summary Judgment.

In granting summary judgment, the district court improperly drew inferences in defendant Atoki's favor. The district court inferred that defendant Atoki could not have known of the attack and that a faster response would not have mitigated Mr. Hooks's injuries. These inferences were improper. At summary judgment, Mr. Hooks was both pro se and the non-movant. As such, the district court was required to liberally construe his briefing, draw all reasonable inferences in his favor, and view the facts in the light most favorable to him. Had the district court adhered to these binding standards, it would have concluded that both causation and knowledge were genuinely disputed. This Court should recognize those failures and reverse.

a. Summary Judgment May Only Be Awarded When The Evidence Is So One Sided That a Reasonable Jury Could Not Rule in Favor of the Non-Movant.

"The court shall grant summary judgment if the movant shows that 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). "There is a genuine dispute of material fact 'if a rational jury could find in favor of the nonmoving party on the evidence presented.'" *Fassbender v. Correct Care Sols., LLC*, 890 F.3d 875, 892 (10th Cir. 2018). This means that summary judgment is warranted when "the evidence is so one-sided that submission to a jury is not required." *Brown v. ScriptPro, LLC*, 700 F.3d 1222, 1227 (10th Cir. 2012).

"The movant bears the initial burden of making a prima facie demonstration of the absence of a genuine issue of material fact . . . ." *In re Rumsey Land Co.*, 944 F.3d 1259, 1270 (10th Cir. 2019). "The movant may carry this burden 'by "showing"—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case.'" *Id.* at 1271. "The burden then shifts to the nonmoving party to 'set forth specific facts showing that there is a genuine issue for trial.'" *Id.*

"When applying this standard, courts 'view the evidence and draw all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.'" *Id.* "[A]n inference is unreasonable if it requires 'a degree of speculation and conjecture that renders [the factfinder's]

findings a guess or mere possibility.'" *Pioneer Centres Holding Co. Emp. Stock Ownership Plan & Tr. v. Alerus Fin., N.A.*, 858 F.3d 1324, 1334 (10th Cir. 2017) (second alteration in original).

b. Defendant Atoki's Presence in the Monitoring Booth, His Subjective Knowledge, and Causation Were All Genuinely Disputed.

The district court erred in granting summary judgment because defendant Atoki's presence in the pod-monitoring booth, his subjective knowledge of the incident, and causation were all genuinely disputed. Beginning with defendant Atoki's presence in the pod-monitoring booth, defendant Atoki submitted an affidavit, in which he stated he was not in the booth on October 5, 2016. *See* R. Vol. III at 94-95. That self-serving statement, however, conflicts with the evidence provided by Mr. Hooks. In both his affidavit and deposition, Mr. Hooks repeatedly explained that he saw defendant Atoki in the booth as he walked up to the terminal to order items from the commissary. *See id.* at 68-69, 71, 123.

This contradictory evidence indicates a genuine dispute as to whether defendant Atoki was in the booth at the time of the assault. In his motion for summary judgment, defendant Atoki attempted to overcome this dispute by relying on the video footage of the assault to argue that Mr. Covarrubias was

in the pod for the duration of the assault.[15, 16] *See id.* at 57. But, as even the magistrate observed, the video does not show the entire booth. *See id.* at 163. Moreover, up until Mr. Covarrubias is seen in camera angle 2 at 9:42:28 (25 seconds after the assault started), *nobody* is seen in the half of the booth displayed by the camera footage. As such, if the footage is viewed impartially, it arguably supports both defendant Atoki's and Mr. Hooks's versions of the events. *See id.*

But the footage should not be viewed impartially. As the non-movant, the court was obligated to view the video in the light most favorable to Mr. Hooks and draw all reasonable inferences in Mr. Hooks's favor. Mr. Hooks testified that defendant Atoki was in the booth immediately before the assault began. The video footage covers *both* the time period in which Mr. Hooks saw defendant Atoki *and* the assault. Yet, until 9:42:28 nobody can be

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[15] Defendant Atoki appears to assume that Mr. Atoki and Mr. Covarrubias could not have both been in the booth at the same time. There is no basis for this assumption and the Court should not endorse it. Mr. Covarrubias's report does not say he was alone in the pod, *cf.* R. Vol. I at 666, and his report and appearance in the booth 9:42:28 establish only his presence in the booth, not Mr. Atoki's absence.

[16] Despite the fact that Mr. Hooks had not viewed the video at the time of his deposition, counsel for defendant Atoki questioned Mr. Hooks about it by showing him screenshots of the footage. *See* R. Vol. III at 79 (deposition transcript). Nonetheless, Mr. Hooks recognized that the footage did not depict the entire booth and argued that it was, accordingly, an inaccurate representative of what he witnessed. *See id.* ("[M]y view of the pod officer is going to be different from the camera view . . . .").

seen in the half of the booth that is displayed in the footage. In other words, *nothing changes* on the video footage from the time that Mr. Hooks viewed defendant Atoki in the pod until Mr. Covarrubias is seen—25 seconds after the assault began. A reasonable inference is that for *at least* the first 25 seconds of the assault, defendant Atoki was in the half of the pod that was not visible—just as he was at the time Mr. Hooks saw him as he walked up to the base of the pod.

In any event, both the magistrate and the district judge appear to have implicitly recognized that this issue was genuinely disputed, as neither rested their decision on defendant Atoki's absence from the pod. Rather, the district judge awarded summary judgment on the basis that Mr. Hooks had failed to dispute defendant Atoki's subjective knowledge at the time of the fight and that a faster response time would have been meaningful. *See* R. Vol. III at 181-82. As noted above, both of these conclusions were in error.

Beginning with defendant Atoki's knowledge, the district court stated as follows:

> [T]he video recordings establish that the monitoring windows in the A pod office were located above the pod floor and the attack occurred directly below the front window in a spot where the pod officer had to approach the window to be in a position to look down and see the attack. Regardless whether Defendant Atoki was in the pod office, it is clear he never approached the window closely enough to see the attack of Plaintiff because he does not appear in any video recording of the office window.

Id. at 181. There are two problems with this analysis. First, it draws all possible inferences in *defendant Atoki's favor*, not Mr. Hooks's. The video footage plainly does not show the entire booth, so the district court improperly inferred that defendant Atoki "never approached the window closely enough to see the attack." This inference lacked any basis in the record and was improperly drawn in the movant's favor.

Second, the district court failed to consider all of the relevant evidence. The evidence in the record established that the pod-monitoring booth was not soundproof. Officers in the booth could hear noises from the pod. In his report of the incident, Mr. Covarrubias states that he "suddenly heard a commotion coming from the pod." R. Vol. I at 666. In fact, he heard the noises so clearly that he could tell where they came from. *Id.* (the sounds "originated at the base of the pod office"). It was at that point that he "moved to the window" to get a better view. *See id.*; *see also* 4th Floor Adam Pod 2 at 9:42:28. A reasonable inference is that in the time defendant Atoki was in the pod during the assault, he could hear the assault unfolding at the base of the pod, just as Mr. Covarrubias could.[17] Another reasonable inference is

[17] On remand, the district court should instruct the parties to depose Mr. Covarrubias, as his testimony is obviously crucial to this claim. The district court's willingness to enter summary judgment without *any testimony* from him simply underscores, yet again, that summary judgment was premature.

Moreover, to the extent Mr. Hooks is ultimately incorrect about who was in the booth during the assault, the jail bears that responsibility. The

that, to the extent defendant Atoki was in the booth at the same time Mr. Covarrubias was, *see supra* n. 15, he could see and hear Mr. Covarrubias's reactions. In light of this evidence, it was error for the district court to say that defendant Atoki's subjective knowledge was not genuinely disputed.

As for causation, the entirety of the district court's analysis is reproduced below:

> Plaintiff does not articulate, however, how a quicker response by Defendant Atoki would have helped Plaintiff or prevented any of his injuries. Defendant Atoki entered the A pod approximately 50 seconds after the attack began—less than 30 seconds after an officer monitoring the pod from the office window first came to the window and saw the attack. The attack had ended before Defendant Atoki entered the pod.

R. Vol. III at 181. This analysis should be rejected out of hand. It is undisputed that the assault began at 9:42:03, paused at 9:42:17—while Mr. Smith switched shoes with another inmate—and resumed again from 9:42:42 to 9:42:45 when Mr. Smith returned to stomp on Mr. Hooks's face again. *See* 4th Floor Adam Pod 4 at 9:42:03-45. It is also undisputed that Defendant Atoki and the two other officers arrived in the pod at 9:42:55.

---

jail repeatedly stonewalled Mr. Hooks's requests for the name of the pod officer. *See, e.g.*, R. Vol. I at 1018, 1021.

In any event, what matters for purposes of this appeal is not whether defendant Atoki was ultimately the person in the pod at the time in question, but whether that issue is genuinely disputed on the basis of this record.

Mr. Covarrubias most likely called for help at around 9:42:36—the time at which he moves away from the window and disappears out of view. *See* 4th Floor Adam Pod 2 at 9:42:35-36; R. Vol. III at 54 (listing this as an undisputed fact). This means that the response time—the time from the placement of the call to officers arriving on the scene (9:42:36 to 9:42:55)—was 19 seconds. Thus, a reasonable inference is that a similar call from defendant Atoki at *any time before* 9:42:23 (20 seconds after the fight began and 19 seconds before Mr. Smith returned to stomp on Mr. Hooks's face again) would have prevented the second attack. In light of these errors, the court should reverse grant of summary judgment to defendant Atoki.

CONCLUSION

For the foregoing reasons, Mr. Hooks respectfully asks the Court to (1) reverse the district court's dismissal of his excessive force claims against defendants Harding and Irby; (2) remand the district court's dismissal of Mr. Hooks's deliberate indifference claims against Armor/Dr. Childs, Armor/the Booking Nurses, the booking guard, and the classification guard; and (3) reverse the district court's award of summary judgment in defendant Atoki's favor.

Date: June 1, 2020

Respectfully submitted,

/s/ Daniel S. Brookins

Gordon D. Todd
Daniel S. Brookins
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street, NW
(202) 736-8000
Counsel for Plaintiff-Appellant
Antonio Dewayne Hooks

STATEMENT OF COUNSEL AS TO ORAL ARGUMENT

Resolution of this appeal requires analysis of multiple complicated legal questions, consideration of nuanced factual issues, and evaluation of an open question of law in this circuit. Accordingly, it is the professional opinion of counsel that oral argument would be beneficial.

/s/ Daniel S. Brookins
Daniel S. Brookins

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify the following: This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because this brief contains 10,119 words, excluding the parts of the brief exempted by Rule 32(f) of the Federal Rules of Appellate Procedure and Circuit Rule 32(b).

This brief complies with the typeface requirements of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the type style requirements of Rule 32(a)(6) of the Federal Rules of Appellate Procedure because this brief has been prepared in a proportionately spaced typeface using the 2007 version of Microsoft Word in 13-point Century Schoolbook font.

/s/ Daniel S. Brookins
Daniel S. Brookins

CERTIFICATE OF DIGITAL SUBMISSION

1. All required privacy redactions have been made per Tenth Circuit Rule 25.5;

2. Hard copies of this pleading that may be required to be submitted to the Court are exact copies of the ECF filing; and

3. The ECF submission has been scanned for viruses with the most recent version of a commercial virus scanning program, Carbon Black Defense (version 3.4.0.1097), last updated May 31, 2020, and, according to the program, is free of viruses.

/s/ Daniel S. Brookins
Daniel S. Brookins

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2020, I electronically filed the foregoing using the Court's CM/ECF system, which will send notifications to all counsel registered to receive electronic notices.

/s/ Daniel S. Brookins
Daniel S. Brookins

Appendix G

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ANTONIO DEWAYNE HOOKS,	)	
	)	
Plaintiff,	)	
	)	CIV-17-658-M
	)	
KAYODE ATOKI,	)	
	)	
Defendant.	)	

THIRD SUPPLEMENTAL REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing *pro se* and *in forma pauperis*, brings this civil rights action under 42 U.S.C. § 1983. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Before the Court is the Motion to Dismiss Second Amended Complaint by Defendant Atoki In His Individual Capacity filed on May 5th, 2018. Doc. No. 89.

I. Background

Plaintiff initially asserted multiple claims in this lawsuit against various Defendants. Doc. No. 86, Second Amended Complaint ("Am. Comp."). However, on May 15, 2018, the undersigned issued a Supplemental Report and Recommendation in which he recommended each of Plaintiff's claims be dismissed, with the exception of his claim against Defendant Kayode Atoki. Doc.

No. 91. United States District Judge Vickie Miles-LaGrange adopted the undersigned's recommendation on June 7, 2018. Doc. No. 100. Thus, the only claim remaining is Plaintiff's Eighth Amendment deliberate indifference claim against Defendant Atoki based on a theory of failure to intervene. Am. Comp. at 14-15.

Relevant to that claim, Plaintiff was booked into the Oklahoma County Jail on October 1, 2016, as a pre-trial detainee. Am. Comp. at 16. During his incarceration, Plaintiff was severely assaulted by fellow pre-trial detainees. Am. Comp. at 14-15. As referenced in Plaintiff's pleading and verified by state court records, three individuals were charged with Assault & Battery by Means or Force as is Likely to Cause Death and Conspiracy to Commit a Felony, to Wit: Assault & Battery by Means or Force Likely to Cause Death. *See* Oklahoma Supreme Court Network, Okla. Cnty. Dist. Ct. Case No. CF-16-8322[1]; *see also* Doc. No. 89 at 5-6 (wherein Defendant Atoki describes the assault perpetrated on Plaintiff by three other pre-trial detainees, each of whom are named as defendants in CF-16-8322).

According to Plaintiff, Defendant Atoki was working in the pod office and

[1] http://www.oscn.net/dockets/GetCaseInformation.aspx?db=oklahoma&number=CF-2016-8322.

the assault occurred in front of the pod office within his line of sight. Am. Comp. at 14-15; Doc. No. 97 at 1. During the attack, the three pre-trial detainees punched, kicked, and stomped on Plaintiff's face over thirteen times. Am. Comp. at 14-15; Doc. No. 89 at 5-6. It is undisputed the assault occurred over a prolonged time period, allowing one inmate to walk away and return to stomp on Plaintiff's face several more times. Am. Comp. at 14-15; Doc. No. 89 at 5-6; Doc. No. 97 at 1. Plaintiff alleges Defendant Atoki did not take any action to intervene and/or call for back up or assistance. Am. Comp. at 14-15; Doc. No. 97 at 1. The assault resulted in severe injuries to Plaintiff's face requiring facial reconstruction and the wiring of Plaintiff's jaw. Am. Comp. at 12, 15, 18. By this action, Plaintiff asserts an Eighth Amendment deliberate indifference claim against Defendant Atoki. Am. Comp. at 14-15.

II. Standard of Review

A. Failure to State a Claim Upon Which Relief can be Granted

A motion to dismiss may be granted when the plaintiff has "failed to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). In applying this standard the court must assume the truth of all well-pleaded factual allegations in the complaint and construe them in the light most favorable to the plaintiff. *See Leverington v. City of Colo. Springs*, 643 F.3d 719, 723 (10th Cir.

2011); *Beedle v. Wilson*, 422 F.3d 1059, 1063 (10th Cir. 2005). To survive a motion to dismiss, a complaint must present factual allegations that "raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). This review contemplates the assertion of "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. Thus, "when the allegations in a complaint, however true, could not raise a [plausible] claim of entitlement to relief," the cause of action should be dismissed. *Id.* at 558.

A *pro se* plaintiff's complaint must be broadly construed under this standard. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the generous construction to be given the pro se litigant's allegations "does not relieve the plaintiff of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). *See Whitney v. New Mexico*, 113 F.3d 1170, 1173-1174 (10th Cir. 1997) (courts "will not supply additional factual allegations to round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf").

A court evaluating a Rule 12(b)(6) motion to dismiss may consider the complaint as well as any documents attached to it as exhibits. *Bellmon*, 935 F.2d at 1112. Additionally, "[a] district court may consider documents (1) referenced

in a complaint that are (2) central to a plaintiff's claims, and (3) indisputably authentic when resolving a motion to dismiss without converting the motion to one for summary judgment." *Thomas v. Kaven*, 765 F.3d 1183, 1197 (10th Cir. 2014).

B. Screening of Prisoner Complaints

A federal district court must review complaints filed by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The same screening of a civil complaint filed *in forma pauperis* is required by 28 U.S.C. § 1915(e)(2). After conducting an initial review, a court must dismiss a complaint or any portion of it presenting claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b), 1915(e)(2)(B).

In conducting this review, the reviewing court must accept the plaintiff's allegations as true and construe them, and any reasonable inferences to be drawn from the allegations, in the light most favorable to the plaintiff. *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). Although a pro se litigant's pleadings are liberally construed, *Haines*, 404 U.S. at 520 (1972), "[t]he burden is on the plaintiff to frame a 'complaint with enough factual matter (taken as true) to

suggest' that he or she is entitled to relief." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247–1248 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 556). The allegations in a complaint must present "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Further, a claim is frivolous "where it lacks an arguable basis either in law or in fact" or is "based on an indisputably meritless legal theory." *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

III. Analysis

A prison official's (or here, a county jailer's) "deliberate indifference" to a substantial risk of serious harm to an inmate violates the Eighth Amendment. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Prison or jail officials have a duty to protect prisoners from violence at the hands of other prisoners. *Id.* at 833; *see also Wilson v. Seiter*, 501 U.S. 294, 303 (1991) (describing "the protection [an inmate] is afforded against other inmates" as a "conditio[n] of confinement" subject to the strictures of the Eighth Amendment). As the United States Supreme Court has explained, "[p]rison conditions may be restrictive and even harsh, but gratuitously allowing the beating [] of one prisoner by another serves no legitimate penological objectiv[e], any more than it squares with evolving standards of decency." *Farmer*, 511 U.S. at 833 (quotations and citations omitted).

A failure to meet this duty constitutes a constitutional violation where (1)

the alleged violation is "sufficiently serious" under an objective standard, and (2) the prison/jail official had subjective knowledge of the risk of harm. *Howard v. Waide*, 534 F.3d 1227, 1236 (10th Cir. 2008). As to the first (objective) element, a prisoner must prove the conditions of his incarceration presented an objective "substantial risk of serious harm." *Id.* As to the second (subjective) element, the prisoner must establish that jail officials had subjective knowledge of the risk of harm, meaning they were both aware of the facts from which the necessary inference might be drawn and must have actually drawn the inference. *Id.* In this matter, Plaintiff's allegations are sufficient, at this stage of the proceeding, to state an Eighth Amendment claim based on a failure to intervene.

First, Plaintiff faced a substantial risk of serious harm once the assault began, thus satisfying the objective element. *See Grieverson v. Anderson*, 538 F.3d 763, 778 (7th Cir. 2008) ("Grieveson allegedly was assaulted by other inmates-an objectively serious danger that posed a substantial risk of serious harm to him-in the presence of [the defendant]," satisfying the objective element of an Eighth Amendment claim).

Second, as to the subjective element, Plaintiff alleges Defendant Atoki inevitably saw the assault once it began and took no action. Am. Comp. at 14-15; Doc. No. 97 at 1. Specifically, Plaintiff states the assault occurred right in front

of the pod office and that he saw Defendant Atoki in the pod office right before the assault began. Am. Comp. at 14. Further, it is undisputed the assault went on for an extended time-period. *See* Doc. No. 89 at 5 (wherein Defendant Atoki describes the assault as beginning by one inmate punching Plaintiff in the face, followed by three inmates in total "kicking and stomping Plaintiff in the head . . . approximately twelve times . . . [and] the three inmates [walking] away, only for inmate Smith to return and stomp Plaintiff several more times."). Thus, according to Plaintiff's allegations, the assault occurred within Defendant Atoki's line of sight, continued for a prolonged period, and Defendant Atoki took no action to intervene, including failing to call for back up or assistance in order to stop the assault. Am. Comp. at 14-15; Doc. No. 97 at 1.

Courts have repeatedly held similar allegations are sufficient to support the subjective element of an Eighth Amendment claim based on failure to intervene. *See Evans v. Cameron*, 442 F. App'x 704, 707 (3rd Cir. 2011) (noting a factual dispute regarding how long the assault occurred before the defendant acted, the court stated, "This Court has held that a corrections officer's failure to intervene in a beating can be the basis of liability for an Eighth Amendment violation under §1983 if the corrections officer had a reasonable opportunity to intervene and simply refused to do so." (quotations omitted)); *Grieverson*, 538 F.3d at 778

("[Prison official] allegedly watched the assault but did not intervene to protect [the inmate plaintiff]-exhibiting quintessential deliberate indifference," satisfying the subjective standard of an Eighth Amendment claim); *Murphy v. Tobin*, 159 F. App'x 945, 948 (11th Cir. 2005) ("[Defendant's] alleged failure to intervene, standing by in the face of an inmate disturbance that he observed, particularly one which [the plaintiff] alleges resulted in his loss of oxygen and necessitated CPR treatment, may constitute deliberate indifference to a substantial risk of serious harm."); *Odom v. S.C. Dep't of Corr.*, 349 F.3d 765, 773 (4th Cir. 2003) ("[A] correctional officer who stands by as a passive observer and *takes no action whatsoever* to intervene during an assault violates the [Eighth Amendment] rights of the victim inmate." (emphasis in original)); *Dutton v. City of Midwest City*, No. CIV–13–0911–HE, 2015 WL 1809302, at *2-3 (W.D. Okla. Aug. 21, 2015) ("Plaintiff indicates that jailer White [] arrived before the assault was over but did nothing to stop it. It is unclear from plaintiff's statement how long jailer White stood by while the assault continued but, viewing the evidence in the light most favorable to plaintiff, it supports an inference that jailer White had some opportunity to stop the assault but did not do so. Those facts, if ultimately proven, would support an inference that White subjectively knew of the risk to plaintiff and was deliberately indifferent to it.").

In his Motion to Dismiss, Defendant's substantive argument is primarily limited to relying on the Tenth Circuit's recognition "that a guard's actions in calling for additional staff or medical personnel before attempting to intervene does not evince deliberate indifference." Doc. No. 89 at 9 (citing *MacKay v. Farnsworth*, 48 F.3d 491, 493 (10th Cir. 1995)). He notes the Eighth Amendment requires only that a jail official respond reasonably to the risk presented without putting himself in danger. Doc. No. 89 at 9 (citing *Prosser v. Ross*, 70 F.3d 1005, 1008 (10th Cir. 1995)). While Defendant is correct as to the current state of the law in this regard, there is no evidence and/or allegations before the Court that Defendant Atoki responded at all to the assault and/or that there was some danger posed by his calling for back up or assistance. Liberally construing Plaintiff's *pro se* Complaint, taking all factual allegations as true and resolving all inferences in his favor, the undersigned finds Plaintiff has asserted a facially satisfactory claim for deliberate indifference.[2]

IV. Qualified Immunity

Defendant includes an additional section in his Motion to Dismiss arguing he is entitled to qualified immunity. Doc. No. 89 at 10-11. "Once an individual

[2] The scope of the holding at this early stage in the proceeding is extremely narrow. The undersigned is not finding Plaintiff has a valid claim, but rather only that he has alleged enough to survive a request for dismissal under Fed. R. Civ. P. 12(b)(6).

defendant asserts qualified immunity, the plaintiff carries a two-part burden to show: (1) that the defendant's actions violated a federal constitutional or statutory right, and, if so, (2) that the right was clearly established at the time of the defendant's unlawful conduct." *Margheim v. Buljko*, 855 F.3d 1077, 1087 (10th Cir. 2017) (quotations omitted). In addressing the same, however, Defendant's argument is limited to asserting that Plaintiff did not sufficiently allege a constitutional violation. Doc. No. 89 at 10-11. Thus, for the reasons set forth above, Defendant's request for dismissal based on qualified immunity should be denied. Additionally, the law is clearly established that jail officials have a duty to protect prisoners from violence at the hands of other prisoners. See *Farmer,* 511 U.S. at 833.

V. Official Capacity Claim

Plaintiff indicates in his Amended Complaint that he asserts his claim against Defendant Atoki in his official and individual capacity. Am. Comp. at 8. Claims against an official in his official capacity are essentially claims against the entity that the official represents. *Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010). Here, Defendant Atoki in his official capacity represents Oklahoma County. A county cannot be held responsible for the unconstitutional acts of its officers absent some wrongful action by the county. To state a claim under § 1983

against a county, a plaintiff must show "(1) a municipal [or county] employee committed a constitutional violation, and (2) a municipal [or county] policy or custom was the moving force behind the constitutional deprivation." *Cordova v. Aragon*, 569 F.3d 1183, 1193 (10th Cir. 2009) (quotations omitted).

Plaintiff has not identified any policy or custom motivating Defendant Atoki's allegedly unlawful actions. Therefore, Plaintiffs' official capacity claim against Defendant Atoki should be dismissed.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the Motion to Dismiss Second Amended Complaint (Doc. No. 89) by Defendant Kayode Atoki in His Individual Capacity be DENIED. Additionally, the undersigned recommends Plaintiff's claim against Defendant Atoki in his official capacity be dismissed WITHOUT PREJUDICE, pursuant to 28 U.S.C. §§1915A(b), 1915(e)(2)(B).

The parties are advised of their right to file an objection to this Third Supplemental Report and Recommendation with the Clerk of this Court by July 12th, 2018, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Third Supplemental Report and Recommendation would waive appellate review of the recommended ruling. *Moore v. United States*, 950

F.2d 656 (10th Cir. 1991); *cf. Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

This Third Supplemental Report and Recommendation does not dispose of all issues referred to the undersigned Magistrate Judge in the captioned matter.

Dated this 22nd day of June, 2018.

GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE

Appendix H

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Antonio Dewayne Hooks,

(Enter the full name of the plaintiff.)

v.

Case No. CIV-17-658-M
(Court Clerk will insert case number)
amended complaint.

(1) Chris Harding,

(2) James Irby,

(3) ok county Armor correctional health booking nurses 10.1.16 2:30AM ?

(Enter the full name of each defendant. Attach additional sheets as necessary.)

PRO SE PRISONER CIVIL RIGHTS COMPLAINT

Initial Instructions

1. You must type or legibly handwrite the Complaint, and you must answer all questions concisely and in the proper space. Where more space is needed to answer any question, you may attach a separate sheet.

2. You must provide a full name for each defendant and describe where that defendant resides or can be located.

3. You must send the original complaint and one copy to the Clerk of the District Court.

4. You must pay an initial fee of $400 (including a $350 filing fee and a $50 administrative fee). The complaint will not be considered filed until the Clerk receives the $400 fee or you are granted permission to proceed *in forma pauperis*.

5. If you cannot prepay the $400 fee, you may request permission to proceed *in forma pauperis* in accordance with the procedures set forth in the Court's form application to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915; Local Civil Rule 3.3.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Antonio Dewayne Hooks ,

(Enter the full name of the plaintiff.)

v.

Case No. CIV-17-658-M
(Court Clerk will insert case number)

4(●) OK county booking guard 10.1.16 2:30AM ?

5(●) OK county classification guard ?

6(●) Kayode Alokhi .

(Enter the full name of each defendant. Attach additional sheets as necessary.)

PRO SE PRISONER CIVIL RIGHTS COMPLAINT

Initial Instructions

1. You must type or legibly handwrite the Complaint, and you must answer all questions concisely and in the proper space. Where more space is needed to answer any question, you may attach a separate sheet.

2. You must provide a full name for each defendant and describe where that defendant resides or can be located.

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5. If you cannot prepay the $400 fee, you may request permission to proceed *in forma pauperis* in accordance with the procedures set forth in the Court's form application to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915; Local Civil Rule 3.3.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

Antonio Dewayne Hooks,

(Enter the full name of the plaintiff.)

v.

Case No. CIV-17-658-M
(Court Clerk will insert case number)

7(●) Sheriff John Whetsel,

8(●) OR Jerry Childs,

9(●) Armor correctional Health inc

(Enter the full name of each defendant. Attach additional sheets as necessary.)

PRO SE PRISONER CIVIL RIGHTS COMPLAINT

Initial Instructions

1. You must type or legibly handwrite the Complaint, and you must answer all questions concisely and in the proper space. Where more space is needed to answer any question, you may attach a separate sheet.

2. You must provide a full name for each defendant and describe where that defendant resides or can be located.

3. You must send the original complaint and one copy to the Clerk of the District Court.

4. You must pay an initial fee of $400 (including a $350 filing fee and a $50 administrative fee). The complaint will not be considered filed until the Clerk receives the $400 fee or you are granted permission to proceed *in forma pauperis*.

5. If you cannot prepay the $400 fee, you may request permission to proceed *in forma pauperis* in accordance with the procedures set forth in the Court's form application to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915; Local Civil Rule 3.3.

- If the court grants your request, the $50 administrative fee will not be assessed and your total filing fee will be $350.

- You will be required to make an initial partial payment, which the court will calculate, and then prison officials will deduct the remaining balance from your prison accounts over time.

- These deductions will be made until the entire $350 filing fee is paid, **regardless of how the court decides your case.**

7. The Court will review your complaint before deciding whether to authorize service of process on the defendants. *See* 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c)(1). If the Court grants such permission, the Clerk will send you the necessary instructions and forms.

8. If you have been granted permission to proceed *in forma pauperis*, the United States Marshals Service will be authorized to serve the defendants based on information you provide. If you have not been granted permission to proceed *in forma pauperis*, you will be responsible for service of a separate summons and copy of the complaint on each defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT

I. Jurisdiction is asserted pursuant to:

_X_ 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(3) (NOTE: these provisions generally apply to state prisoners), or

___ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and 28 U.S.C. § 1331 (NOTE: these provisions generally apply to federal prisoners)

If you want to assert jurisdiction under different or additional statutes, list these below:

_____

_____

_____

II. State whether you are a:

___ Convicted and sentenced state prisoner

___ Convicted and sentenced federal prisoner

_X_ Pretrial detainee

___ Immigration detainee

___ Civilly committed detainee

___ Other (please explain) _____

III. Previous Federal Civil Actions or Appeals

List each civil action or appeal you have brought in a federal court while you were incarcerated or detained in any facility.

1. Prior Civil Action/Appeal No. 1

   a. Parties to previous lawsuit:

      Plaintiff(s):_____

      Defendant(s):_____

      _____

   b. Court and docket number:_____

   c. Approximate date of filing:_____

   d. Issues raised: _____

      _____

      _____

   e. Disposition (for example: Did you win? Was the case dismissed? Was summary judgment entered against you? Is the case still pending? Did you appeal?): _____

      _____

   f. Approximate date of disposition: _____

If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a separate sheet(s).

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Antonio Dewayne Hooks

Address: 6888 E. 133rd RD Holdenville, Ok 74848

Inmate No.: 472399

2. Defendant No. 1

Name and official position: Chris Harding

Bethany police officer

Place of employment and/or residence: Bethany police department

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

3. Defendant No. 2

Name and official position: James Irby

Bethany police officer

Place of employment and/or residence: Bethany police department

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Antonio Dewayne Hooks

Address: 6888 E. 133rd RD Holdenville, OK 74848

Inmate No.: 472399

2. Defendant No. 3

Name and official position: OK. County booking guard? 10-1-16 2:30 AM

Place of employment and/or residence: ok. county jail booking guard ?

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

3. Defendant No. 4

Name and official position: Ok. County classification guard ? I believe my classification was done 10-5-16 sometime that AM in middle of night

Place of employment and/or residence: Ok. County Jail

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Antonio Dewayne Hooks

Address: 6888 E. 133rd RD Holdenville, Ok 74848

Inmate No.: 472399

2. Defendant No. 5

Name and official position: Booking nurses 10-1-16 2:30 AM ?

Place of employment and/or residence: OK county jail, Armor correctional health inc. booking nurses

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

3. Defendant No. 6

Name and official position: Kayode Atoki

at the time of my incident CF-16-8322 Ms Atoki was 4th floor unit manager.

Place of employment and/or residence: OK. County Jail

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Antonio Dewayne Hooks

Address: 6888 E. 133rd RD Holdenville, OK 74848

Inmate No.: 472399

2. Defendant No. 1

Name and official position: John Whetsel

Place of employment and/or residence: X Sheriff OK. County Jail

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

3. Defendant No. 2

Name and official position: DR. Jerry Childs

Place of employment and/or residence: OK-County Jail, Armor correctional health inc

How is this person sued? ( ) official capacity, ( ) individual capacity, (X) both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

IV. Parties to Current Lawsuit

State information about yourself and each person or company listed as a defendant in the caption (the heading) of this complaint.

1. Plaintiff

Name and any aliases: Antonio Dewayne Hooks

Address: [redacted] 6888 E. 133rd RD Hoddenville, OK 74848

Inmate No.: 472399

2. Defendant No. 1

Name and official position: Armor Correctional inc.

Place of employment and/or residence: OK county jail.

How is this person sued? (X) official capacity, ( ) individual capacity, ( ) both

3. Defendant No. 2

Name and official position: _____

Place of employment and/or residence: _____

How is this person sued? ( ) official capacity, ( ) individual capacity, ( ) both

If there are more than two defendants, describe the additional defendants using this same format on a separate sheet(s).

V. Cause of Action

Instructions

1. *Provide a short and plain statement of each claim.*

   - Describe the facts that are the basis for your claim.
   - You can generally only sue defendants who were directly involved in harming you. Describe how each defendant violated your rights, giving dates and places.
   - Explain how you were hurt and the extent of your injuries.

2. *You are not required to cite case law.*

   - Describe the constitutional or statutory rights you believe the defendant(s) violated.
   - At this stage in the proceedings, you do not need to cite or discuss any case law.

3. *You are not required to attach exhibits.*

   - If you do attach exhibits, you should refer to the exhibits in the statement of your claim and explain why you included them.

4. *Be aware of the requirement that you exhaust prison grievance procedures* ***before*** *filing your lawsuit.*

   - If the evidence shows that you did not fully comply with an available prison grievance process prior to filing this lawsuit, the court may dismiss the unexhausted claim(s) or grant judgment against you. *See* 42 U.S.C. § 1997e(a).
   - Every claim you raise must be exhausted in the appropriate manner.

5. *Be aware of any statute of limitations.*

   - If you are suing about events that happened in the past, your case may be subject to dismissal under the statute of limitations. For example, for many civil rights claims, an action must be brought within two years from the date when the plaintiff knew or had reason to know of the injury that is the basis for the claim.

6. *Do not include claims relating to your criminal conviction or to prison disciplinary proceedings that resulted in loss of good time credits.*

- If a ruling in your favor "would necessarily imply the invalidity" of a criminal conviction or prison disciplinary punishment affecting the time served, then you cannot make these claims in a civil rights complaint unless you have already had the conviction or prison disciplinary proceeding invalidated, for example through a habeas proceeding.

Claims

List the federal right(s) that you believe have been violated, and describe what happened. Each alleged violation of a federal right should be listed separately as its own claim.

1. Claim 1:

Deliberate Indifference

(1) List the right that you believe was violated:

Early nov 2016 I reported to OK county jail medical staff on 13 floor B pod The metal wires in my mouth broke. My jaw was wired shut by the OU medical plastic surgery team CF-16-8322 incident. DR Childs had me pulled from my cell to the clinic. DR Childs had some type of metal tool, which he started twisting the wires back together, causing everything in my mouth to seem very much tighter than before. DR Childs should have sent me back to OU medical so plastic surgery team could evaluate their own work and damages to the broken wires! DR Childs twisting these wires didn't place them back in the original form plastic surgery intend them to be in. A day or so later I yawned and the top left screw exited my gums causing much pain. This was reported to 13 floor medical staff, nurse took pictures sent them to DR Childs where he sent me back to OU medical.

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

Armor Correctional health inc

(3) List the supporting facts:

Once back at OU medical ER Doctors said "they couldn't touch me", and they page ou plastic surgery team, because it was too much damage done. This make me question did OR childs even have Authority to be touching the metal wiring work done by ou medical Plastic surgery teams. [redacted] OR Childs should have originally sent me back to ou medical without trying to play a Doctor that does surgery, when hes only a jail physician Armor are responsible for OR Child action working outside of policy and procedure.

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

for the courts to make OR Jerry Childs and Armor correctional health inc pay me $200 Thousand for pain & suffering. OR Jerry childs shold lose the ability to pratice medicine.

2. **Claim II:**

excessive force

(1) List the right that you believe was violated:

Chris Harding approached Asheena Yarbough car with his gun drawn ordering me to place my hands on the dash, which I did. Chris Harding opened my door, and begun removing me from car. Once out of the car Chris Harding begun trying to take me to the police car without telling me why he was containning me. Chris Harding didnt try to place hand cuffs on me, so I pulled away from him like what are you doing! Chris Harding and James Irby begun wrestling with me, Chris harding then pushed me between both cars and velled for James Irby to taser me causing me to drop to the ground and hit my head on ground repeatly and left me laying on my stomach, not moving at all. Chris Harding ordered James to taser me again. After the second round of tasering Chris Harding dropped to his knees then place me in a choke hold Until Asheena started Screaming!

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

Chris Harding, James Irby

(3) List the supporting facts:

This need to be reviewed on Chris Harding dash cam. OK county should be held accountable for Chris Harding action, because he was already fired from being OK county sheriffs deputy still allowed to be a bethany police [redacted] (405)503-3662 officer. Asheena Yarbough testimony need to be [redacted] heard by the United states court so these two police officers actions can be known to the court and my plea want be the determining factor! The court need to obtain my medical records from baptist hospital

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

for the courts to make Chris Harding, Jame Irby, OK county pay me $50 Thousand for my pain suffering from this incident. Asheena Yarbough should compensated as well for having to witness these actions by police officers.

2. **Claim [redacted]:3**

[redacted] failure to protect

(1) List the right that you believe was violated:

10-5-16 Kayode Atoki was working outside of his job detail! At the time of my incident CF-168322 mr Atoki was 4 floor unit manager, but he was working as pod officer none contact guard this day. Before my attack started I noticed MR Atoki was paying attention to the computer, and not over seeing the pod like the pod officer is suppose to be doing! when this Attack started I was knocked out. I dont how aware Mr Atoki when this attack started. This happen right in front of the pod office right in mr Atoki line of sight if he would have been doing the duties of a pod officer. They say the individual involved in my attack left and took his shoes off came back with sanddals on and continued stomping my face.

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

Sheriff John Whetsel

(3) List the supporting facts:

This incident CF-167332 happened right in front of pod office in mr Atohi line of sight. To much damage was done, multiple broken bones in my face (life support) massive reconstructive surgery. Mr Atohi ranked up to SGT after this incident Mr Atohi was move to 8th floor was I was located after this Complaints was filed.

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

I want the courts to make mr Atohi, Sheriff Whetsel, Ok county to pay me $5 million dollar for pain and suffering

If there are more than two claims that you wish to assert, describe the additional claims using this same format on a separate sheet(s).

VI. Declarations

I declare under penalty of perjury that the foregoing is true and correct.

Antonio Hooks
Plaintiff's signature

5/2/18
Date

I further declare under penalty of perjury that I placed this complaint in the prison's legal mail system, with the correct postage attached, on the 2 day of May, 2018.

Antonio Hooks
Plaintiff's signature

5/2/18
Date

2. Claim 4:

(1) List the right that you believe was violated:

Deliberate indifference The booking guard? that [redacted] finger printed me 10-1-16 about 2:30 AM didn't follow policy and [redacted] procedure, and ask me my gang affiliation, or [redacted] did I need to be housed with my gang everytime I have been housed with my gang from the booking guard ashing these questions. This time they didn't ask or take notice to their own records of my gang affiliation.

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

Sheriff John Whetsel

(3) List the supporting facts:

The gangs where segregated from each other in the jail due to high level of violence, and [redacted] retaliation from incidents that happened on the streets. Sheriff John Whetsel was very much aware of the gang problems he had in okla. county jail that the reason the jail was segregated. mr whetsel job to insure staff is following policy and precedure!

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

for this guard to be fired for not following policy and precedure and 5 million dollar for my complaint against the guards involved in booking and classifing me, and mr Alchi and Sheriff Whetsel as well as Ok county.

If there are more than two claims that you wish to assert, describe the additional claims using this same format on a separate sheet(s).

VI. Declarations

I declare under penalty of perjury that the foregoing is true and correct.

Plaintiff's signature

5/2/18
[redacted]
Date

I further declare under penalty of perjury that I placed this complaint in the prison's legal mail system, with the correct postage attached, on the 2[redacted] day of may, 2018.

Plaintiff's signature

5/2/18
[redacted]
Date

6. *Do not include claims relating to your criminal conviction or to prison disciplinary proceedings that resulted in loss of good time credits.*

- If a ruling in your favor "would necessarily imply the invalidity" of a criminal conviction or prison disciplinary punishment affecting the time served, then you cannot make these claims in a civil rights complaint unless you have already had the conviction or prison disciplinary proceeding invalidated, for example through a habeas proceeding.

Claims

List the federal right(s) that you believe have been violated, and describe what happened. Each alleged violation of a federal right should be listed separately as its own claim.

1. Claim 5:

(1) List the right that you believe was violated:

(Deliberate indifference) classification guard that classified me I believe was 10-5-16 1 or 2 AM that morning I moved from 4d classification to 4A pod a segregated pod for blood gang members [redacted] This classification guard didn't classify me correctly because if he or she did they would have sent me to 8th floor with crips This guard didn't follow policy & procedures caused me to get housed incorrectly and I nearly lost my life CF-16-8322

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

Sheriff John Whetsel

(3) List the supporting facts:

classification already had my gang affiliation on file as well as pictures of my gang related tattoos. This was the last chance for me to get housed correctly, this guard failed and it nearly cost me my life from this person not doing their job correctly, and they still are working at the county jail!

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

This unknown [redacted] guard to be fired, [redacted] $, the courts to make these individuals to pay me $5 million dollars for pain & suffering.

2. **Claim 6:**

10-1-16 2:30 AM (1) List the right that you believe was violated:

deliberate indifference Armor booking nurses in Okla. county jail over looked my injuries. I had just left baptist hospital for when I was being booked into Okla. County jail I passed by two nurses stations. I had a swollen face, stitches in my eye brow, it was obvious I needed to be placed on medical status on 13B or 130. This caused me to get housed on a segregated rival gang pod with obvious injuries to my face.

(2) List the defendant(s) to this claim: (If you have sued more than one defendant, specify each person or entity that is a defendant for this particular claim.)

Armor Correctional health inc. Or Jerry Child

(3) List the supporting facts:

After CF-16-8322 I was based on 13B medical I received a cell that was white that was on medical status for detox. A white inmate can be housed from a medical status for detox but a black inmate ← 10-1-16 that has obvious injuries to his face as well as just left the hospital can't go medical status this could have prevented CF-16-8322 from happening

(4) Relief requested: (State briefly exactly what you want the court to do for you.)

for these booking nurses to be fired for the courts to make Armor as well as these nurses to pay $50,000 as well as OR Jerry Childs

If there are more than two claims that you wish to assert, describe the additional claims using this same format on a separate sheet(s).

VI. Declarations

I declare under penalty of perjury that the foregoing is true and correct.

Plaintiff's signature — Date: May 2, 2018

I further declare under penalty of perjury that I placed this complaint in the prison's legal mail system, with the correct postage attached, on the 2 day of May, 2018.

Plaintiff's signature — Date: May 2, 2018

Appendix I

ANTONIO D. HOOKS

INMATE FILE

BOOKING: 10/01/16

Oklahoma County Sheriff Office Jail Facility Report Form

Nature of Report (Print) ↓	☒ Incident	☒ Pod 4A	Date:	Time:
Inmate/Inmate Altercation	☐ Criminal	☐ Receiving	Month 10	1140 Hrs.
Inmate Sent to Hospital	☐ Medical	☐ Clinic	Day 05	
		☐ Other ↓	Year 2016	

(#1) ☐ Victim ☐ Witness ☒ Suspect Inmate Name (Last Name First): ↓ Hooks, Antonio	☐ Federal ☐ State ☒ County ☐ Municipal IN#: IN 130685732 BR#: BR 1999868893	Floor: 4 Pod:A Cell: 33 Other:N/A
(#2) ☐ Victim ☐ Witness ☐ Suspect Inmate Name (Last Name First): ↓ N/A	☐ Federal ☐ State ☒ County ☐ Municipal IN#: IN N/A BR#: BR N/A	Floor: N/A Pod: Cell: N/A Other:____
(#3) ☐ Victim ☐ Witness ☐ Suspect Inmate Name (Last Name First): ↓ N/A	☐ Federal ☐ State ☐ County ☐ Municipal IN#: IN N/A BR#: BR N/A	Floor: N/A Pod: Cell: N/A Other:____
(#4) ☐ Victim ☐ Witness ☐ Suspect Inmate Name (Last Name First): ↓ N/A	☐ Federal ☐ State ☐ County ☐ Municipal IN#: IN N/A BR#: BR N/A	Floor: N/A Pod:__ Cell: N/A Other:____

Did Injury Occur? ☐ Yes ☒ No — If Yes, Who? N/A
Type of Injury: N/A — Were They Taken to? ☐ Clinic or ☐ Hospital
Print Name of Hospital: N/A — Name of Transport Officer: N/A
Departure Date: N/A Departure Time: N/A Hrs. — ☐ Cruiser # N/A
Return Date: N/A Return Time: N/A Hrs. — ☐ Ambulance # N/A

Were There any Witnesses? ☒ Yes ☐ No If Yes:
Who? SDO Baker, SDO Estrada

Was There any Evidence? ☐ Yes ☒ No If Yes Describe: N/A
Evidence was sealed and deposited by Officer: N/A
Location of Evidence is: N/A

(Print) Body of Report: On October 5, 2016 at approximately 0950 I responded to a radio call for all available officers to come to 4A following an inmate/inmate altercation and Nurse & Gurney call. I arrived to the pod at the same time the nurse and gurney arrived with Cpl Baker. I entered the pod to see inmate Antonio Hooks laying on his side, his face covered in blood, a pool of blood on the floor just under his head. Inmate Hooks was making noise as if he were struggling to breath and several officers were gathered around him, holding him on his side to assist him in maintaining an open airway. Nurse Amanda, who entered with the gurney, told me to get Susan George, APRN from the 4th floor clinic so I ran out of the pod to retrieve her. I returned with Susan who, after a brief examination, said he needed to be placed on the gurney and transported to the hospital immediately. I assisted in placing inmate Hooks on the gurney and stayed with the gurney as we transported him to the 1st floor to wait on EMSA. While in route, I assisted, at the direction of Susan George, APRN, in placing oxygen on inmate Hooks and continued to assist in holding medical supplies as needed for Susan George, APRN, as well as for Heather Waggoner, APRN, and Dr Jerry Childs who met us on the 1st floor. Once EMSA arrived and inmate Hooks was placed inside the ambulance, I returned to my assigned duties. END OF REPORT----------

Reporting Officer (Print Name)	Reporting Officer (Sign Name)	Badge #	Supervisor (Print Name)	Supervisor (Sign Name)	Badge #
Cpl Tara Hardin	Cpl Tara Hardin	334	Lt. Carter	Lt Carter	308

Oklahoma County Sheriff Office Jail Facility Report Form

Page 1 of 1

Nature of Report (Print) ↓	☒ Incident ☐ Criminal ☐ Medical	☒ Pod 4A ☐ Receiving ☐ Clinic ☐ Other ↓	Date: Month 10 Day 05 Year 2016	Time: 1100 Hrs.
Inmate on Inmate Altercation				

(#1) ☐ Victim ☐ Witness ☒ Suspect Inmate Name (Last Name First): ↓ Hooks, Antonio	☐ Federal ☐ State ☒ County ☐ Municipal IN#: IN 130685732 BR#: BR 199868893	Floor: 4 Pod: A Cell: 33 Other: N/A
(#2) ☐ Victim ☐ Witness ☒ Suspect Inmate Name (Last Name First): ↓ Smith, Dawayne	☐ Federal ☐ State ☒ County ☐ Municipal IN#: IN 130660116 BR#: BR 200356976	Floor: 4 Pod: A Cell: 44 Other: N/A
(#3) ☐ Victim ☐ Witness ☒ Suspect Inmate Name (Last Name First): ↓ Durham, Anthony	☐ Federal ☐ State ☒ County ☐ Municipal IN#: IN 130682368 BR#: BR 200245955	Floor: 4 Pod: A Cell: 39 Other: N/A
(#4) ☐ Victim ☐ Witness ☐ Suspect Inmate Name (Last Name First): ↓ Woodward, De'milio	☐ Federal ☐ State ☐ County ☐ Municipal IN#: IN 130680535 BR#: BR 200476754	Floor: 4 Pod: A Cell: 40 Other: N/A

Did Injury Occur? ☒ Yes ☐ No
Type of Injury: Head
Print Name of Hospital: OU
Departure Date: 10/5/2016 Departure Time: 1000 Hrs.
Return Date: N/A Return Time: N/A Hrs.

If Yes, Who? Inmate Hooks, A.
Were They Taken to? ☐ Clinic or ☒ Hospital
Name of Transport Officer: Dep Hoffman
☐ Cruiser # N/A
☒ Ambulance # 374

Were There any Witnesses? ☒ Yes ☐ No If Yes:
Who? Video Footage

Was There any Evidence? ☒ Yes ☐ No If Yes Describe: Articles of clothing.
Evidence was sealed and deposited by Officer: Investigator Reser
Location of Evidence is: Investigations.

(Print) Body of Report: On October 5, 2016 at about 0943 hours I responded to an Inmate on Inmate altercation in 4 Adam Pod. Upon entering the pod I observed Inmate Hooks lying on his back, on the floor in front of the pod office wall. I observed Inmate Hooks to be bleeding heavily from his nose and mouth. Inmate Hooks was unresponsive, and appeared to be having a seizure, as his body was rigid. I observed a large pool of blood underneath his head. Inmate Hooks was unable to breathe due to the amount of blood coming from his mouth and nose. I immediately called for a nurse and gurney. Additional Officers arrived to assist. I instructed Officer Olvera and Deputy Kane to stabilize his neck, to maintain his c-spine, as I rolled him onto his right side into the recovery position. Inmate Hooks was then able to breathe. Large amounts of blood continued to come out of his mouth and nose. His body remained rigid. A few minutes later, the Nurse and gurney arrived and Nurse Harless began to assess Inmate Hooks. Inmate Hooks was immediately placed on the gurney and rushed to the 1st floor to await EMSA and FIRE. Medical personnel attended to Inmate Hooks. EMSA arrived and took over care of Inmate Hooks. I was contacted by Captain Sedbrook and instructed to identify the involved Inmates. I returned to my office with Lt. Carter and Cpl. Jackson to review video footage of the incident. During the review of the video footage we were able to identify Inmates Dawayne Smith, Anthony Durham and De'Milio Woodward as the Inmates who attacked Inmate Hooks. I advised Captain Sedbrook of our findings.
(Continued page 2)

Reporting Officer (Print Name)	Reporting Officer (Sign Name)	Badge #	Supervisor (Print Name)	Supervisor (Sign Name)	Badge #
Deputy S. Lira	S. Lira	381	Sgt Michelena 149	Sgt Michelena 149	7118

ANTONIO HOOKS

GRIEVANCE/REQUEST TO STAFF

Form: Inmate Grievance

Request Info

Status: CLOSED **by** Elizabeth Walden
Summary of Request:
why was my gang affiliation over looked and i would like to know guard full name that was working classification 10/5/16 2am
Details of Request:
Nature of Complaint.:
Please provide details: date, time, place and personnel involved. And how you were affected.

this incident happened cf-2016-8322 10/5/16 due to me getting moved to a pod that was full of rival gang members.County jail already has record of my gang affiliation and pictures of my gang tattoos from previous booking

Pod and cell location :

8-c-18

Informal Action Taken To Resolve The Complaint.:
Document the names of employees from you sought an answer to your Grievance.

i want to know guards full name that was working classification the night i was moved to 4A who made this decision

Did you submit a "Request to Staff"?:
When (date)

Yes

Date/Time	User	Action	Details	Expand All
06/09/17 10:31	Elizabeth Walden	Staff Response	You failed to follow the rules and regulations outlined in the Inmate handbook for filing a formal/emergency grievance. Records show you have not filed/filed in a timely manner a request to staff on this issue. Resubmit as request to staff. Non...	Expand
06/09/17 10:31	Elizabeth Walden	Changed Status	From 'Open' to 'Closed'	
06/08/17 17:01	Antonio Hooks	Submitted New	why was my gang affiliation over looked and i would like to know guard full name that was working classification 10/5/16 2am	

* *This Request is closed. No edits are allowed.* Reopen Request
Forward by Email
Feature Name: Email Forwarding

ANTONIO HOOKS

121 REQUEST TO STAFFS

Form: Classifications

Request Info

Status: CLOSED **by** Nelly Jarjoura
Summary of Request:
classification on 1st floor didnt ask my gang affliation when i was booked in and finger printed
Details of Request:
What is your booking number?:

130685732

Pod and cell location?:
Enter help text...

13/d/08

Have you previously submitted a request on the same issue?:

no

If Yes, what was the request or grievance # and date?:

Problem/Issue:
What is your request or complaint?

If classifications on 1st floor would have ask me my gang affliation that could have kept me from being place in 4a pod bloods

Action Requested:
State how your request should be handled?

I want the guard name that booked me in finger printed me took my picture and should have ask my gang affliation.

Date/Time	User	Action	Details	Expand All
01/31/17 15:34	Nelly Jarjoura	Staff Response	Submit request to your floor rover.	
01/31/17 15:34	Nelly Jarjoura	Changed Status	From 'Open' to 'Closed'	
01/03/17 09:51	Antonio Hooks	Submitted New	classification on 1st floor didnt ask my gang affliation when i was booked in and finger printed	

* *This Request is closed. No edits are allowed.* Reopen Request
Forward by Email
Feature Name: Email Forwarding

Form: Receiving

Request Info

Status: CLOSED **by** Daniela Darrow
Summary of Request:
I want to know guards names that did my booking process as well as the nurses 10/1/16 2am
Details of Request:
What is your booking number?:

130685732

Pod and cell location?:
Enter help text...

8-c-18

Have you previously submitted a request on the same issue?:

No

If Yes, what was the request or grievance # and date?:
Provide information

Problem/Issue:
What is your request or complaint?

to know guards full names that did my booking process and why they over look my gang affiliation or didnt take notice records

Action Requested:
State how your request should be handled

to know guards full name that did my booking process as well as the nurses that did my intake

Date/Time	User	Action	Details	Expand All
06/12/17 10:13	Daniela Darrow	Staff Response	You can contact Classifications to update your gang affiliation.	
06/12/17 10:13	Daniela Darrow	Changed Status	From 'Open' to 'Closed'	
06/08/17 15:32	Antonio Hooks	Submitted New	I want to know guards names that did my booking process as well as the nurses 10/1/16 2am	

* *This Request is closed. No edits are allowed.* Reopen Request
Forward by Email
Feature Name: Email Forwarding