21-6856 ORIGINAL

No. : 20-11097

3: 18-cv-293-TJC-32JRK

IN THE

SUPREME COURT OF THE UNITED STATES

Darrell Wayne Butler Sr.- Petitioner

v.

William B. Blitch - Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Darrell Wayne Butler Sr.

Martin C.I.

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Indiantown, Florida 34956

QUESTION (S) PRESENTED

This petition seeks review of an order affirming appeal from the U.S. court of appeals granting summary judgment in favor of prison official, in his 42 U.S.C. § 1983 action alleging that several correctional officers beat the plaintiff excessively in violation of the Eighth Amendment during an unnecessary extraction inside a prison shower. Question presented is :

1.Whether the court erred in granting summary judgment to the officials on the ground that there was a genuine dispute of material fact concerning whether the officials used excessive force to cause harm?

2.Whether the court erred in ruling in favor of the movants instead of the non movant when the evidence is to be believed and drawn in the non movant favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

3.Genuine dispute of facts are those in which the evidence is such that a reasonable jury could return a verdict for the non movant. The plaintiff advised the court that prison officials hit him in the scalp, forehead with handcuffs and naked fist during a shower extraction. The video evidence clearly shows the plaintiff was bleeding badly from his scalp and forehead when the prison officials brought the plaintiff out of the shower. Surely, any reasonable jury would believe that prison official did harm the plaintiff, and his right to be free of excessive force was clearly violated based on the video evidence in this case. Therefore, the order affirming the motion for summary judgment rendered September 21, 2021 should be quashed.

LIST OF PARTIES

1. William B. Blitch
2. Teddy Tomlin
3. Ronald Lee
4. Mathew Butler

RELATED CASES

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L. Ed. 2d 202 (1986).

Brasseau v. Haugen, 543 U.S. 194,195, N.2 125 S. Ct. 596, 160 L. Ed. 2d 585 (2004)

Scott v. Harris, 550 U.S. 372, 380 (2007).

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PETITION FOR WRIT OF CERTIORARI

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

OPINION BELOW

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

The opinion of the United States District Court appears at Appendix B to the petition and.

JURISDICTION

The date of which the United States court of Appeals decided my case was on September 21, 2021.

No petition for rehearing was timely filed in the case .

The jurisdiction of this court is invoked under 28 u.s.c. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

On October 6, 2017 Plaintiff Butler declared psychological emergency, he was removed from his assigned living quarters and placed in a prison shower, awaiting to speak with mental health doctor. After speaking with the doctor, he was ordered to submit to handcuffs to be relocated to the self harm observation status (SHOS). Immediately, Plaintiff advised prison officials he would cooperate with their order once his personal procedurally inventoried on record form DC 6-220 Impounded Personal Property List before he is moved.

Plaintiff Butler never refused prison official order, because he told prison officials he would cooperate and submit to restraints once they inventoried his property, and officials failed to do so. Defendant Blitch was given jurisdiction to use force by Worden Reddish, to restrain the plaintiff and when Defendant Blitch opened the shower door the Extraction Team members rushed inside and Plaintiff Butler immediately grabbed the shower bars for his own protection. Defendant Tomlin used his handcuffs to beat the Plaintiff left wrist to get the plaintiff to release the shower bars. Plaintiff Butler released the bars due to the malicious pain from the handcuffs then Defendant Butler pulled the Plaintiff to the back of the shower and Defendant Tomlin, Lee, and M. Butler, took turns beating Plaintiff excessively with handcuffs and naked fist.

When Plaintiff Butler seen so much blood pouring from his head he laid down on the shower floor and let the Defendant restrain him with hand cuffs waist chain and fetters. Thereafter, officials lifted the Plaintiff to his feet, escorted him out the shower and walked the Plaintiff to Emergency Room for treatment of his injuries. While inside the Emergency Room Plaintiff was afraid and traumatized to except any treatment, and he ask medical staff to take physical photos of his head injuries and the medical staff refused to provide the plaintiff with photos.

Plaintiff was then stripped, searched, provided garment to cover his nakedness, then placed inside a self harm bedding which was full of blood. Plaintiff was not allowed to write or submit any written information until he was discharged from self harm observation status on October 11, 2017.

October 16, 2017 the plaintiff was finally able to obtain a sick call request to be submitted to the prison Doctor for examination of his head injuries. October 31, 2017 he was finally seen by Dr. Espino. Plaintiff explained to Dr. Espino, he was severely beaten with hand cuff and naked fist by prison guards on October 6,

2017 during a shower extraction, and he suffered head injured which had mostly healed up within 25 days and he needed to be examined. Dr. Espino treated the Plaintiff request negligently and falsified the medical records DC 4-701 and DC 4-708. October 6, 2017 the day of the incident Dr. Espino was not available so he could treat the Plaintiff head injuries which needed stitches.

Plaintiff Butler argues that the court erred in making its ruling in favor of the movant, the law says the court is to view the facts in the light most favorable to the nonmoving party, and not the moving party which is what the court clearly did in this case. Scott v. Harris, 550 U.S. 372, 380 (2007). The court opinion stated that Plaintiff Butler did request for his property to be inventoried. See Pg(3). Clearly theirs a genuine dispute because the court admits that sergeant Tomlin, was holding a pair of handcuffs and using the handcuffs as a weapon upon Plaintiff Butler to get him to let go of the shower bars. See Pg. (4) of court opinion dated September 21, 2021. The court claims the entire incident was recorded. Plaintiff Butler states certain Portion of the incident could not be heard or seen due to being edited.

Moreover, the court's reliance on defense's video evidence in concluding summary judgment was inappropriate, erred because video fails to credit Plaintiff's version of events entirely, due to video lacking sound in some instances and do not convey spoken words o r tones completely, or fail to provide unobstructed view of events periodically.

The video evidence show when Plaintiff Butler was brought out of the shower he had blood pouring from his head. The officers took Plaintiff Butler to medical for treatment for his visible head injuries. This is enough evidence to view and show that the Plaintiff was harmed by officials. But the court did not view this evidence in favor of the Plaintiff. When prison officials maliciously and sadistically use force which cause harm, contemporary standards of decency are always violated, whether or not significant injury is evident. Plaintiff did not want to be treated because he was afraid, traumatized and upset for how he was abused inside that shower during the extraction, when it was not necessary for excessive force to be applied the way it was. Butler asked prison officials to take photos of his injuries, but they refused.

During the shower extraction, Plaintiff Butler received large gashes, lacerations, contusions, bruises, abrasion and black eyes. The video clearly show the lost of much blood from being hit in the head and face with handcuffs and fist. But the video evidence doe's not show the illegal activity inside the shower when the

officers was punching the plaintiff with handcuffs and fist because the video tape was edited of those episodes.

The court stated they look at the extent of the threat to the safety's of staff and inmates as reasonably perceived by the responsible officials on the basis of the facts known to them, and any efforts made to temper the severity of a forceful response. The evidence shows the safety of the inmate was not protected from the force used. How can the court give wide range of deference to prison officials acting to preserve discipline and security, when considering decisions made at the scene of a disturbance and utilize malicious and sadistic harm upon inmate ? A prisoner may avoid summary judgment only if the evidence viewed in the light most favorable to him goes beyond a mere dispute over the reasonableness of the force used and will support a reliable inference of wantonness in the infliction of pain.

The court did err in concluding that Plaintiff Butler failed to establish on the summary judgment record in this case a violation of his eighth Amendment right to be free from the malicious excessive use of force. The video evidence does reveal genuine issues of material facts concerning whether the officers force was applied in a good-faith effort to maintain or restore discipline. The officer used force to restrain and transport Plaintiff Butler to self harm observation status. But during the period of force being utilized the officers beat the Plaintiff bloody and the evidence doe's show blood pouring from the inmate head after force was applied. In articulating the factual context of the case the court failed to adhere to the axiom that in ruling on a motion for summary judgment, the evidence of the non movant is to be believed, and all justifiable inferences are to be drawn in his favor, not the movant favor. Anderson v. Liberty Lobby, Inc.,477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed 202 (1986).

The video does not show any resistance from Plaintiff Butler, but the audio of the video records the sound of the officers yelling stop resisting. The court then admitted that sergeant Tomlin was punching the Plaintiff . Nowhere in Rule 33-602. 210 F. A. C. does it allow correctional officers to punch or hit an inmate for any reason, such action is considered as excessive force against an inmate. The court said in the video recording , the punches appear small and targeted, in an effort to get Plaintiff to comply with the officer's order. See pg. 8.

Then the court went on to say once Plaintiff Butler and the extraction team shifted to the back of the shower, the video does not clearly show what happened, the reason why the video does not show what happen is because (1) officers Tomlin, Lee, and Butler was maliciously and sadistically beating the Plaintiff with handcuff s and fist; (2) that portion of the video recording was edited by prison officials; (3) The court said the entire

incident was recorded, but why the video does not clearly show what happen in the back of the shower? (4) Clearly , the video does show that Plaintiff Butler had blood on him which means he was harmed by prison officials and such evidence must be believed in favor of the non movant and the court erred by not doing that. Surely, there is an genuine dispute of fact concerning whether the officers were justified in using force or whether they used minimal force necessary to restrain Plaintiff Butler. The amount of force used was excessive and unnecessary and the video evidence show that the Plaintiff suffered serious head injuries which required medical treatment. The Plaintiff flesh was hanging out of his forehead and medical staff documented such an injury like that as an abrasion. The injury was more than de- minimus and it was not an scratch which is the definition of abrasion. The record evidence of the depiction of the Plaintiff does support an inference of wantonness in the infliction of the pain. Scott , 550 U.S. at 380.

The district court did err in finding that, Plaintiff Butler injury was minimal and consistent with the amount of force necessary to restrain him. The excessive force used was edited to protect the prison officials from being in violation of the Plaintiff right to be free of excessive force. The injury Plaintiff Butler suffered was large open gashes, and laceration to the scalp, forehead all head injuries are serious. The video show that Plaintiff Butler had much blood pouring down his face, arm, shirt , and head, and he was walking upright because he was held and escorted to medical by prison officials on each side of him. The court said the video show that Butler had spots of blood on his face, arm, shirt, and hands, but it also reveals that he was able to walk to medical exam room and later change his clothes without difficulty.

Additionally the Appellee's submitted the Declaration of Dr. Whalen, who added that during Butler's (SHO'S) stay the abrasion on Butler's forehead was noted to be midline and superficial, and no other injuries mentioned. It must be noted the day the use of force took place Plaintiff Butler had meat hanging from his forehead and the nurse noted the injury as an abrasion to appear that the injury was not serious, there was no doctor available at the time Butler was in the emergency room to determine the injury was midline and superficial. Dr. Whalen, is basing his assessment on the falsified documented medical records prepared by nurse A. Turbyfill and Dr. Espino.

Due to being on self harm observation status for (5) five days Butler was no t able to request for medical attention. Once Butler was released from such status on October 11, 2017 he was finally able to submit a sick call request for Dr's.

examination of his head injury on October 16, 2017. October 31, 2017 Butler was finally able to see Dr. Espino, and his head injuries had already healed, so when Dr. Espino, seen Plaintiff Butler he didn't bother to examine Butler's injuries, but conducted a visual assessment and falsified the medical records by noting abrasion to forehead.

Accordingly, the court did err in granting summary judgment to prison officials for two reasons ; (1) the court failed to properly review the video evidence in favor of the non movant, and (2) any reasonable jury could find that prison officials had to violate the Plaintiff rights based on blood depicted in the video evidence.

REASONS FOR GRANTING THE WRIT

In holding that Defendant's did violate clearly establish law, the Eleventh Circuit failed to view the video evidence at summary judgment in the light most favorable to Butler with respect to the central facts of the case. By failing to credit evidence that contradicted some of its key factual conclusion, the court improperly weighed the video evidence and resolved disputed issues in favor of the movants . Anderson , 477 U.S. at 249, 106 S. Ct. 2505, 91 L. Ed. 2d 202. The U.S. Supreme Court qualified immunity cases illustrate the importance of the drawing inference in favor of the non movants, even when a court decides only the clearly-established prong of the standard. Accordingly, courts must take care not to define a case's context in a manner that imports genuinely disputed factual propositions. In affirming the grant of summary judgment under Fed. R. Civ. P. 56 to an officer on Plaintiffs excessive force claim, United States Court of Appeals for the Eleventh Circuit failed to credit that contradicted some of its key factual conclusion. It improperly weighed the evidence and resolved disputed issues in favor of the moving party. Courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment. Brosseau v. Haugen, 543 U.S. 194, 195, n.2 125 S. Ct. 596, 160 L. Ed. 2d 585 (2004).

Genuine dispute of facts are those in which a reasonable jury could return a verdict for the non movant.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Darrell Butler Sr.

Date: Dec. 15, 2021

SERVICE OF DOCUMENTS NOTIFICATION

This document deposited in the institutions internal mail system, accompanied by notarized statement within compliance of 28 U.S. §1746. Declaring firs class prepay postage, is also being furnished to Respondent. Sec'y, Department of Correction at 501. South Calhoun Street. Tallahassee, Florida 32399-2500 via United States mail on this 15th day of December, 2021.

This filinc is timely. See Rule 29. 2

/S/ Darrell Butler Sr.

Darrell W. Butler Sr.

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