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STATE OF MINNESOTA

IN SUPREME COURT

A20-1481

Court of Appeals — Thissen, J.
Dissenting, Gidea, C.J.

Christopher Welters,

Respondent,

vs.

Filed: December 14, 2022
Office of Appellate Courts

Minnesota Department of Corrections, et al.,

Appellants.

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SYLLABUS

1. When no specific, immediate threat to order or institutional security exists, the deliberate indifference standard applies to Eighth Amendment claims seeking relief under 42 U.S.C. § 1983 for injuries resulting from corrections officers overly tightening and unsafely applying mechanical restraints while transporting an inmate to a medical procedure, while the inmate is waiting in a medical holding cell, and while the inmate is undergoing a medical procedure.

2. The inmate's claim under 42 U.S.C. § 1983 cannot be dismissed on summary judgment based on the corrections officers' qualified immunity defense because a reasonable factfinder could conclude that the facts alleged show an objective and substantial risk of harm that the corrections officers subjectively recognized and nevertheless disregarded, and because the constitutional obligation to prevent the substantial risk of harm posed by the improper use of restraints in non-emergency situations was clearly established on the date the restraints were used.

Affirmed.

OPINION

THISSEN, Justice.

The Eighth Amendment to the United States Constitution prohibits inflicting "cruel and unusual punishments." U.S. Const. amend. VIII; *see also Wilson v. Seiter*, 501 U.S. 294, 296–97 (1991). Respondent Christopher Welters is incarcerated in the Stillwater correctional facility. On July 31, 2017, he was transported from the Stillwater correctional facility to the Oak Park Heights correctional facility for an endoscopy. Welters alleges that Appellants Cornelius Emily and Ernest Rhoney, Minnesota Department of Corrections officers, subjected him to cruel and unusual punishment when they improperly applied handcuffs in a manner that caused him injury and refused to loosen the handcuffs when he complained that the handcuffs were too tight and causing numbness. Welters remained in the overtightened handcuffs for 3½ hours, including while under general anesthesia for the endoscopy. Welters suffered serious injury in both wrists that required surgery and left him with permanent nerve damage that continues to cause pain and decreased function. He sued Officers Rhoney and Emily under 42 U.S.C. § 1983, seeking damages to compensate him for his injuries.

We are asked to answer two questions in this case. First, we must determine whether Welters's Eighth Amendment claim should be assessed under the deliberate indifference standard (applicable to conditions of confinement and medical care) or under the malicious

and sadistic standard (applicable in Eighth Amendment excessive use of force cases). Eighth Amendment claims arising from conditions of confinement and medical care are subject to the deliberate indifference standard, which asks whether officers knowingly disregarded an objective risk of serious harm. *Wilson*, 501 U.S. at 303. In contrast, when officers take security measures to "resolve a disturbance" that "indisputably poses significant risks to the safety of inmates and prison staff," the applicable Eighth Amendment standard is "whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (citation omitted) (internal quotation marks omitted). We conclude that the deliberate indifference standard applies in this case.

Second, we must determine whether qualified immunity bars Welters's deliberate indifference claim. This analysis has two parts. As an initial matter, because this case comes to us from a district court decision granting summary judgment in favor of Officers Rhoney and Emily, we must assess whether a jury, viewing the facts and inferences drawn from those facts in the light most favorable to Welters, reasonably could find that the corrections officers acted with deliberate indifference. We conclude that a jury could do so.

Next, we must decide whether, on July 31, 2017, a reasonable corrections officer would have known that improperly applying handcuffs for routine medical

transportation in a manner that caused serious injury and refusing to loosen the overtightened handcuffs when Welters complained that they were too tight and causing him numbness, violated Welters's Eighth Amendment rights. We conclude that a reasonable corrections officer would have understood that such conduct violated the Eighth Amendment's prohibition on cruel and unusual punishment. Accordingly, the right was clearly established such that Officers Rhoney and Emily are not entitled to qualified immunity.

Accordingly, we hold that Welters's section 1983 claim survives summary judgment. We affirm the decision of the court of appeals, which reversed the district court's decision to grant summary judgment in favor of Officers Rhoney and Emily, and we remand for further proceedings in accordance with this opinion.

FACTS

We are reviewing the district court's decision to grant summary judgment in favor of Officers Rhoney and Emily. Accordingly, we recite the facts in the light most favorable to Welters as the nonmoving party. *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006). These facts are, of course, subject to proof at trial.

On July 31, 2017, Officers Rhoney and Emily were tasked with transporting inmates from the Minnesota Correctional Facility-Stillwater to their appointments scheduled at the outpatient medical clinic housed at the Minnesota Correctional Facility-Oak Park Heights. Welters was an inmate at Stillwater

and was scheduled for a routine endoscopy under general anesthesia that day at Oak Park Heights. He had been incarcerated for nearly 30 years and testified that, during that time, he had no altercations with officers, no assaults on other inmates, and no escape attempts. Officers Rhoney and Emily both testified that they did not have any specific safety or security concerns about Welters, and Officer Rhoney testified that this was just a "routine" transportation for medical treatment.

Minnesota Department of Corrections (DOC) policy requires that all offenders be transported in full restraints, regardless of the individual offender's security classification. Minn. Dep't of Corr., Policy Manual 301.096(C)(1) (Nov. 5, 2019).[1] Full restraints include handcuffs, a waist chain, a black box (applied over the chain and lock area of handcuffs to form a rigid link between the two wristlets), and leg irons. *Id.* at 301.096. DOC Policy also requires handcuffs and leg irons to be "double locked"—a safety measure that prevents the cuffs from continuing to tighten. *Id.*

When Officer Rhoney applied Welters's restraints in preparation for transport, Welters testified that he noticed right away that the handcuffs were "tighter than usual," but he did not mention it to Officer Rhoney at that time because he "didn't think it was important." About 15 to 20 minutes later, however,

[1] This opinion cites the most recent Minnesota Department of Corrections Policy Manual, which is available at https://policy.doc.mn.gov/DOCPolicy/. There have been no substantive changes in the cited policies since the time of the incident.

Welters began feeling symptoms. He testified that prior to getting into the transport vehicle, he told Officer Rhoney that the cuffs were "pretty tight." Welters testified that Officer Rhoney responded, "Oh, it's only a 15-minute drive, it'll be all right."

When they were getting into the van, Welters felt his handcuffs click tighten, indicating that they were not double locked in violation of DOC policy. When Welters mentioned this to Officer Rhoney and asked him to "fix this before we leave," Officer Rhoney pushed on the cuff, clicked it even tighter, told Welters he "was right," but then did nothing to correct the situation, repeating that they would be there in only 15 minutes.

During the drive to Oak Park Heights, Officer Rhoney sat in the back of the vehicle with Welters and one other inmate, and Officer Emily rode in the front with a third officer. Upon arrival at Oak Park Heights, neither Officer Rhoney nor Officer Emily did anything to tend to Welters's overtightened handcuffs. Rather, Welters and the other Stillwater inmate were placed in medical holding cells and left alone, still in full restraints. Welters noticed that none of the other eight inmates in the other medical holding cells had any restraints on. The third officer and Officer Rhoney then left to go back to Stillwater, leaving Officer Emily at Oak Park Heights. Welters estimates that he and the other Stillwater inmate were left alone for at least half an hour, during which time his hands were becoming increasingly cold and numb. Welters testified that, in his decades of incarceration, he had been transported "many, many, many times" and that this was the first

time handcuffs had been put on too tight. Welters asked an Oak Park Heights officer about getting his restraints removed and that officer responded that a Stillwater officer would need to attend to that.

Welters testified that when Officer Emily came back about 45 minutes later and opened the door to the cell, Welters told him that his hands were numb and asked Officer Emily to "loosen them, please loosen them." Officer Emily did nothing to fix Welters's handcuffs. Stating that he needed to go find the other Stillwater officers, Officer Emily closed the door of the holding cell and left. According to Welters, that was the last time he saw Officer Emily until after he was recovering from anesthesia and the procedure.

When an Oak Park Heights officer came to take him back for his procedure, Welters asked that officer to loosen his restraints and the officer responded that he would have to get a Stillwater officer to do that. Welters testified that the nurse then asked that officer "Why is he still in his restraints?" and the Oak Park Heights officer replied that he was looking for Stillwater officers. According to Welters, the nurse then asked Welters why he was still in restraints, expressed that it was not normal for inmates to remain in restraints during the procedure, and stated to another officer, "Why are these offender's restraints still on? I said I wanted them removed." Welters testified that he could "barely sign" the pre-procedure paperwork because his hands were "so numb," although they were not yet blue. When he told the nurse how numb his hands

were, she reportedly stated that "the officers should take them off soon."

Once in the operating room and prior to the administration of anesthesia, Welters testified that the medical staff again asked the Oak Park Heights officer who was present why Welters was still in restraints and that officer replied that they were still "looking for the Stillwater staff." Welters was then placed on the gurney on his back, still in full restraints. After medical personnel told him to roll to his side so they could administer the anesthesia, Welters again asked if they were going to put him under and do the procedure with his restraints still on and they told him that "they should be removing [the restraints] soon." Welters was then placed under anesthesia and the endoscopy was performed.

Welters was still in full restraints when he awoke from the procedure and reportedly could not feel his hands "at all." He testified that when he asked the nurse if they had been on the whole time, she replied affirmatively and stated that she had "never seen a dangerous procedure done on an offender in full restraints" in her 10 years of working at Oak Park Heights. When Officer Emily came to get him, Welters contends that he again told Officer Emily that he could not feel his hands and that he needed to go to the bathroom, but Officer Emily again did not adjust his handcuffs. Welters tried to urinate but was unable to maneuver to do so because he could not feel his hands, so he recalled that he "just didn't use the bathroom." He was then returned to the medical holding cell, still

in the overtightened handcuffs and full restraints, to wait for transport back to Stillwater. Welters observed that another Stillwater inmate already in the same holding cell awaiting transport did not have any restraints on.

By the time Welters arrived back at Stillwater, his wrists had been in overtightened handcuffs for 3½ hours, and he observed that his hands were "light bluish." When the cuffs were removed, he showed an officer the gouges left in his wrists and that officer told him to "[b]ring it to medical." The nurse at Stillwater noted that his blood pressure was high and kept him there awhile to observe him because he was not feeling well. Welters testified that the nurse explained that his elevated blood pressure was an indication that he was in pain and advised him to "call a lawyer."[2]

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[2] In deposition testimony, Officers Rhoney and Emily told a very different story from Welters. Most notably, they both contended that Welters never asked them to loosen or remove his restraints at any point on July 31, 2017. Officer Rhoney testified that he checked Welters's cuffs for tightness and that he would have double locked them, "[a]s per policy." He testified that he did not know anything about Welters's wrist complaints until "weeks later." Officer Emily testified that Welters "never" complained of pain or discomfort either before or after his procedure and that no medical personnel requested that the restraints be removed. Contrary to Welters's account, Officer Emily testified that he brought Welters back for his medical procedure, and he asked the nurse if restraints were needed. Officer Emily contended that Welters "piped up" and volunteered to stay in restraints, stating that when he was incarcerated in California, they did procedures with restraints on "all the time." Officer Emily also testified that he asked Welters, "Are you good?" to which Welter's replied, "Yes, I'm good." Based on the procedural posture of the case, we are

Welters testified that his hands remained "very numb" until the next morning, when they "became alive with pain." He saw a doctor that day who diagnosed "probabl[e] nerve decompression" and prescribed steroids. When the steroids did not help, Welters was put into wrist braces. He described the pain as "intense" in the palms of his hands, with bruising on his wrists that lasted "at least a week."

On August 1, 2017, the day after Officers Rhoney and Emily transported him for his procedure at Oak Park Heights, Welters submitted an Offender Kite Form (kite),[3] reporting the overtightened handcuff incident. Welters reported: "It was horrific, painful and humiliating. It is a clear violation of policy and procedure. It violated my rights as a human being. It was cruel and unusual punishment for no reason at all. Deliberate indifference and a true violation of my constitutional rights." In response, Captain Byron Matthews interviewed the staff about the incident and issued a kite response memorandum on August 24, 2017. The memorandum stated that the corrections officers denied that Welters or the nurse requested that his restraints be removed during the procedure. The

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required to assume Welters's testimony is true and to disregard any contradictory testimony by Officers Rhoney and Emily. We note that a jury would be under no such obligation and would be free to credit the testimony of Officers Rhoney and Emily if it found that testimony more persuasive.

[3] The "kite" is a printed form issued by the DOC and operates as the mechanism for offenders to communicate with staff "in an effort to promptly resolve concerns/issues." Minn. Dep't of Corr., Policy Manual 303.101 (June 16, 2020).

memorandum further said that the nurse "knew it wasn't normal protocol for offenders to be restrained during medical procedures." The kite response memorandum concluded: "The staff . . . should have removed your restraints upon placement into the OPH holding cell. All involved officers have been reminded to always remove offender restraints upon admittance unless there is a safety concern which would prevent the restraint removal."

Following the handcuffing incident, Welters continued to lose function in his hands to the point that he struggled to hold his toothbrush. Welters suffered from worsening pain, was placed on medical leave from prison work, and eventually required carpal tunnel surgery in both wrists. According to Welters, the surgeries relieved his "intense pain," but his wrists persistently "ache" and "don't work the same as they once did."[4]

Welters filed a section 1983 complaint in Washington County district court, alleging that Officers Rhoney and Emily acted with deliberate indifference towards his health, safety, and substantial risk of serious harm in violation of the Eighth Amendment. Officers Rhoney

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[4] On March 29, 2019, Dr. Meletiou (an orthopedic specialist and expert) authored an expert report opining that "continuous compression resulting from being handcuffed during anesthesia" was "the primary mechanism of injury" and the "substantial contributing factor" to Welters's bilateral carpal tunnel syndrome. Dr. Meletiou noted that Welters had no previous risk factors and that nerve compression injuries from overtightened handcuffs is "well documented in the literature."

and Emily moved for summary judgment. They argued that to prove that they violated his Eighth Amendment rights, Welters had to establish that they acted with malicious or sadistic intent for the purpose of causing harm when they refused to double-lock and to loosen Welters's handcuffs after they knew the handcuffs were not double locked and were overtightened so much that they were restricting Welters's circulation and causing numbness in his hands. They asserted that Welters failed to prove the requisite intent under the malicious and sadistic standard. Instead, the officers argued that use of restraints during medical procedures falls within officer discretion.

In the alternative, the corrections officers argued that they are shielded from suit by qualified immunity. Framing Welters's claim as whether "the use of handcuffs for a medical transport and medical procedure at another correctional facility" violates the Eighth Amendment, the officers argued that no such right was clearly established on July 31, 2017.

The district court granted summary judgment on the ground that the facts did not show that the officers acted maliciously and sadistically and, accordingly, Welters did not prove a violation of the Eighth Amendment. The district court did not reach the issue of qualified immunity.

The court of appeals reversed. It held that the district court applied the wrong standard when assessing Welters's Eighth Amendment claim. *Welters v. Minn. Dep't of Corr.*, 968 N.W.2d 569, 583–84 (Minn. App.

2021). The court of appeals concluded that the deliberate indifference standard applied and not the malicious and sadistic standard. *Id.* And the court determined that Welters had sufficiently alleged his deliberate indifference claim, stating:

> [A] reasonable factfinder could determine from the record in this case that Officers Rhoney and Emily, like the officials in *Hope, were not facing an emergency situation* but nevertheless 'subjected [Welters] to a substantial risk of physical harm, to unnecessary pain caused by the [shackles] and the restricted position of confinement . . . [and] created a risk of particular discomfort and humiliation.'"

Id. (alteration in original) (emphasis added) (quoting *Hope v. Pelzer*, 536 U.S. 730, 738 (2002)). The court of appeals also concluded that clearly established law barred qualified immunity, stating: "The Supreme Court and the lower federal courts have concluded that the Eighth Amendment bar on cruel and unusual punishments forbids the inhumane use of restraints that cause injury to prisoners." *Id.* at 582. We granted review.

ANALYSIS

Officers Rhoney and Emily ask us to reverse the court of appeals and reinstate the district court's grant of summary judgment in their favor. We review summary judgment rulings de novo. *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 503 (Minn. 2006). When reviewing an appeal from a summary judgment decision, we

must determine whether the district court erred in applying the law and whether genuine issues of material fact exist. *Mumm*, 708 N.W.2d at 481. "A genuine issue of material fact arises when there is sufficient evidence regarding 'an essential element . . . to permit reasonable persons to draw different conclusions.'" *Kelly for Washburn v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017) (alteration in original) (quoting *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997)). In such cases, summary judgment "should not be granted." *Staub v. Myrtle Lake Resort, LLC.*, 964 N.W.2d 613, 620 (Minn. 2021). We view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving party. *Id.* In doing so, we do not "weigh facts or determine the credibility of affidavits and other evidence." *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)).

I.

We turn first to the threshold issue in this case: Does the "malicious and sadistic" standard or the "deliberate indifference" standard apply?

The Eighth Amendment prohibits state officials from inflicting cruel and unusual punishment on persons convicted of crimes. U.S. Const. amend. VIII. This prohibition extends to "the treatment a prisoner receives in prison and the conditions under which he is confined. . . ." *Helling v. McKinney*, 509 U.S. 25, 31

(1993). As the United States Supreme Court has explained:

> [W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being. . . . The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment.

Id. at 32 (quoting *DeShaney v. Winnebago Cnty. Dep't Soc. Servs.*, 489 U.S. 189, 199–200 (1989)).

In the prison context, the Eighth Amendment does not prohibit routine discomfort. *Hudson v. McMillan*, 503 U.S. 1, 9 (1992). But for nearly half a century, the Supreme Court of the United States has recognized that the unnecessary and wanton infliction of pain on prisoners is unconstitutional because it serves no penological purpose and is inconsistent with contemporary standards of decency. *Estelle v. Gamble*, 429 U.S. 97, 102–04 (1976); *see also Hope*, 536 U.S. at 737; *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

To prove that an official acted wantonly when inflicting pain or injury, the offender must show "more than ordinary lack of due care for the prisoner's

interests or safety." *Whitley*, 475 U.S. at 319. But what that something more is depends on the type of violation alleged. *See*, *e.g.*, *Stark v. Lee Cnty., IA*, 993 F.3d 622, 625 (8th Cir. 2021) (quoting *Howard v. Barnett*, 21 F.3d 868, 871 (8th Cir. 1994)). Courts have stated that close attention should be paid to the factual context when assessing the appropriate substantive standard to apply in passive restraint cases. *See*, *e.g.*, *Jackson v. Gutzmer*, 866 F.3d 969, 976 n.3 (8th Cir. 2017). The focus on context in which the official's decision is being made, as opposed to a focus on the particular type of act in which an officer engages (for instance, applying force), is important and is the primary distinction between our analysis on the question of which standard applies and that of the dissent.[5]

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[5] Courts sometimes refer to the malicious and sadistic standard as the "excessive force" standard. Like many shorthand catchphrases, "excessive force" does not capture the essential distinction between the context when the malicious and sadistic culpability is required and circumstances when a deliberate indifference level of culpability is required to establish Eighth Amendment liability. *See*, *e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 840 (1994) (stating that "Eighth Amendment liability . . . is thus based on the Constitution and our cases, not merely on a parsing of the phrase 'deliberate indifference' ").

As discussed below, the "malicious and sadistic" standard applies in circumstances when the question is whether officers used excessive force to restore order and discipline when faced with a threat of unrest, especially when the officials are making decisions in haste and under pressure. The deliberate indifference standard applies in cases when those conditions do not exist. Accordingly, the mere fact that the mechanism by which an officer inflicted pain or injury involved the use of force (overtightening handcuffs, for example) is not dispositive or necessarily relevant to which standard of culpability applies. For that reason, we refer

The question of whether an official's act "can be characterized as 'wanton' depends upon the constraints facing the *official*." *Wilson*, 501 U.S. at 303. Specifically, the United States Supreme Court has recognized that, in addition to the "'duty to assume some responsibility for [the] safety and general well-being'" of offenders in their custody, *Helling*, 509 U.S. at 32 (quoting *DeShaney*, 489 U.S. at 200), prison officials also must maintain order and institutional security in the facility, *Hudson*, 503 U.S. at 6. When corrections officers are reacting to urgent circumstances that force them to balance their obligations to maintain order and institutional security and to protect the well-being of inmates, courts will be more deferential to the decisions of those officers. *Wilson*, 501 U.S. at 302. In other words, when corrections officers face a threat of unrest that requires the use of force to restore order and discipline, that clash of obligations is most clearly present and greater deference is afforded because the officers' actions are taken with haste and under pressure. *Hudson*, 503 U.S. at 6; *Whitley*, 475 U.S. at 320–22 (defining the malicious and sadistic standard, clarifying that it applies when a disturbance "indisputably poses significant risks to the safety of inmates and prison staff," and determining that officers did not violate the Eighth Amendment when they shot a prisoner in the leg in response to a prison riot).

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to the "malicious and sadistic" and "deliberate indifference" standards henceforth since those formulations refer to the level of officer culpability, which is the focus of the Eighth Amendment test.

Accordingly, depending on the circumstances facing prison officials, courts apply one of two different tests to determine whether the official who inflicted pain acted wantonly. When corrections officers are acting in the face of a threat that may reasonably require the use of force to restore order and discipline, they violate the Eighth Amendment only when they act "maliciously and sadistically to cause harm." *Hudson*, 503 U.S. at 7–9 (noting that the "context" determines whether the excessive force standard applies and determining that when officers, *in response to a disturbance*, beat an inmate on the way to lockdown, the context required an excessive force analysis). When officers act "in a good faith effort to maintain or restore discipline," their conduct does not violate the Eighth Amendment. *Id.* at 6. On the other hand, when corrections officers face a situation that does not implicate their duty to maintain order and institutional security in the face of a threat (for example, when implementing routine security measures), then they act wantonly if they are subjectively aware that a prisoner faced a substantial risk of serious harm and yet disregarded the risk by failing to take reasonable efforts to abate it. *Farmer v. Brennan*, 511 U.S. 825, 835–47 (1994). In 2002, the Supreme Court applied the deliberate indifference standard in determining that a prisoner, who was handcuffed to a hitching post without food or water or bathroom breaks for 7 hours, stated a claim under the Eighth Amendment. *Hope*, 536 U.S. at 737–38. Although Hope's punishment was in response to a "wrestling match with a guard," in applying the deliberate indifference standard, the Supreme Court

observed that "[a]ny safety concerns had long since abated by the time the petitioner was handcuffed to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to the prison." *Id.* at 734, 737.[6]

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[6] The dissent places heavy but misplaced reliance on *Hudson*. *Hudson* was a case where the corrections officers were responding to a specific threat of unrest that required the temporary use of force to restore order and discipline. 503 U.S. at 4. The prisoner alleged that the corrections officers beat him on the way to lockdown. *Id.* The incident arose when the prisoner and a corrections officer argued. *Id. In response to the disturbance*, two corrections officers placed the prisoner in handcuffs and shackles, took the prisoner out of his cell, and walked him toward the penitentiary's "administrative lockdown" area. *Id.* On the way there, the corrections officer punched Hudson in the mouth, eyes, chest, and stomach. *Id.* A supervisor on duty watched the beating but merely told the officers "not to have too much fun." *Id. Hudson* fits squarely within our distinction between prison contexts where corrections officers face a threat of unrest that requires the use of force to restore order and discipline, and contexts where corrections officers are implementing routine security measures and not responding to a specific threat or disturbance. And *Hudson* cannot be currently understood without reference to the *Hope* Court's subsequent decision.

In this case, there is not a whiff of any disturbance. The corrections officers point to none, and one of them testified that he had no specific safety concerns during any of his interactions with Welters or at any point during the transport, waiting, or medical procedure that day. Moreover, there is no indication that the corrections officers incorrectly applied the handcuffs and applied them too tightly because they needed to do so to respond to some kind of threat or disturbance. Finally, Welters does not accuse the corrections officers of using excessive force; he accuses them of deliberately ignoring the risk of severe injury from dangerously tight handcuffs.

We agree with the court of appeals that Officers Rhoney and Emily's conduct in this case should be assessed under the deliberate indifference standard. Indeed, that is how Welters framed his section 1983 claim alleging that Officers Rhoney and Emily violated the Eighth Amendment with their cumulative conduct: overtightening of his handcuffs for transport; failing to double-lock them to prevent further tightening in violation of Department of Corrections policy; ignoring his reports of numbness; refusing his requests to loosen them, knowing that he was going into a medical procedure; and unnecessarily subjecting him to overtightened handcuffs for 3½ hours.

There is no suggestion in the record that Officers Rhoney and Emily's conduct was taken in response to a threat that required the use of force to restore or maintain discipline. Welters did not disobey the officers at any point on July 31, 2017, and he caused no disturbance. Indeed, Officer Rhoney testified that this was a "routine" transport for a "routine" medical procedure,[7] and Officer Emily testified that he had no specific safety concerns during any of his interactions with Welters or at any point during the transport, waiting, or medical procedure that day. Further, Welters was held in a secure cell while waiting for his medical procedure at Oak Park Heights—a maximum security facility with other corrections officers around, and every

[7] The dissent objects to our characterization of the activities here as "routine." Based on the record, the characterization is appropriate—including the fact that the *corrections officers* characterized the activities as routine.

offender in the other holding cells had their restraints removed.

For safety and security reasons, Department of Corrections policy requires that restraints, including handcuffs, are used during transportation to medical procedures. *See* Minn. Dep't of Corr., Policy Manual 301.096(C)(1). But Welters is not attacking that general policy. He does not claim that the use of handcuffs during transport in compliance with Department of Corrections policy is itself unconstitutional.

Rather, Welters contends that the handcuffs were unnecessarily and improperly applied too tightly, subjecting him to a substantial risk of serious injury, and that Officers Rhoney and Emily knew that. The Department of Corrections policy mandates transportation in "full restraints," which specifically requires that handcuffs be "double locked." *See* Minn. Dep't of Corr., Policy Manual 301.096. But Welters's handcuffs were not double locked, and there is no argument that either officer had to *overtighten* the handcuffs or *refuse to double-lock* them in an effort to respond to a threat or to restore or maintain order and discipline. And there is nothing in the record to support a conclusion that either officer lacked the time or opportunity to loosen Welters's handcuffs because they were faced with such a threat to order and discipline.

We reject Officers Rhoney and Emily's argument that, under *Whitley* and *Hudson*, deference must be afforded "anytime an officer inflicts pain in the course of any prison security measure, whether or not faced with

an emergency." Supreme Court precedent is clear that the malicious and sadistic standard applies when corrections officers are faced with a threat—whether it be from an individual inmate refusing to obey orders or a fullblown riot—and use force to maintain order and discipline. Officers Rhoney and Emily's position that the malicious and sadistic standard applies to any act taken to maintain general security would swallow even the day-to-day security measures taken as part of the conditions of confinement of prison life.

We find persuasive that, in accordance with Supreme Court case law, and consistent with our conclusion here, the Eighth Circuit has consistently applied the deliberate indifference standard to the use of restraints during inmate transportation. *See*, *e.g.*, *Reynolds v. Dormire*, 636 F.3d 976, 979 (8th Cir. 2011) (citing *Davis v. Oregan Cnty., Mo.*, 607 F.3d 543, 548 (8th Cir. 2010) (quoting *Nelson v. Corr. Med. Serv.*, 583 F.3d 522, 528 (8th Cir. 2009) (en banc))) (applying the deliberate indifference standard to analyze whether the refusal by officers to remove restraints during an all-day transport to another correctional facility violated the Eighth Amendment); *Brown v. Fortner*, 518 F.3d 552, 558–59 (8th Cir. 2008) (citing *Farmer*, 511 U.S. at 836) (applying the deliberate indifference standard to a claim arising from the officer's failure to apply seatbelts to inmates in full restraints during transport). Even more specifically, the Eighth Circuit has distinguished cases arising from restraints during medical procedures from "cases involving prison riots, for example" and thus determined conclusively that the

Whitley malicious and sadistic standard does not apply to medical transport restraint injury cases. *Nelson*, 583 F.3d at 528.[8]

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[8] The dissent offers three Eighth Circuit cases and several from other federal circuit courts that it suggests are contrary to this conclusion. We disagree.

For instance, in *Aldalpe v. Lambert*, the jury found that a corrections officer violated an inmate's Eighth Amendment rights when he handcuffed the inmate from behind, contrary to medical orders that precluded such handcuffing because of the inmate's pre-existing shoulder injury. 34 F.3d 619, 623 (8th Cir. 1994). Critical to our consideration here, *Aldalpe* simply does not address whether the malicious and sadistic standard or the deliberate indifference standard applies. That was not a question before the *Aldalpe* court. Rather, in appealing his conviction, the officer argued among other things that the prisoner's injury was not significant enough to constitute an Eighth Amendment violation. The court rejected that argument as contrary to *Hudson*. *Id.* at 624 (citing *Hudson* for the proposition that an injury need not be significant to violate the Eighth Amendment). The officer also argued that the instructions to the jury suggested that it should presume the officer knew about the medical order precluding behind-the-back cuffing. The court determined that the jury instructions required the jury to find as a fact that the officer knew about the medical order. *Id.*

The same is true about *Davidson v. Flynn*, 32 F.3d 27 (2d Cir. 1994). There was no dispute about *what* standard governed. The only question was whether the standard the district court used was properly applied. And, indeed, the Second Circuit ruled in favor of the prisoner, finding his allegation that the corrections officers applied his handcuffs too tightly stated a claim even under the more rigorous standard. *Id.* at 30. Similarly, in *Pelfry v. Chambers*, 43 F.3d 1034 (6th Cir. 1995), the court did not address the question of *what* standard applied. Instead, the court was asked whether an assault on an inmate constituted punishment. *Pelfry*, 43 F.3d at 1037. And, as in *Aldalpe* and *Davidson*, the *Pelfry* Court found in favor of the inmate and held that he stated a claim even under the more rigorous standard. *Id.* The same is

true of *Wilkins v. Moore*, 40 F.3d 954 (8th Cir. 1994), in which a prisoner alleged Eighth Amendment violations when he was assaulted, denied clothing, and denied medical care. Once again, there was not discussion in the case about *what* standard applied. Further, the case is quite different from the one before us, arising when a corrections officer confronted the plaintiff prisoner for wearing gang colors. *Id.* at 955. Other inmates got involved and an altercation among officers and prisoners broke out. *Id.* After the altercation, the prisoner was taken to a room where he was told to sign a statement exonerating the officers. *Id.* When the prisoner refused, he was beaten, abused, and placed in detention without clothes. *Id.* And, like all the other cases, the Eighth Circuit ruled in favor of the prisoner, concluding that he sufficiently alleged an Eighth Amendment violation. *Id.* at 958. Finally, in *McReynolds v. Alabama Department of Youth Services*, an unpublished case, the Eleventh Circuit applied the sadistic and malicious standard in a case where, after the juvenile detainee *refused to cooperate with the corrections officers*, the officers beat him. 204 F. App'x. 819, 820–21 (2006). Once again, there was no discussion of *what* standard applied. And like the other cases, the court held for the juvenile detainee. *Id.* at 821–22.

Notably, all these cases aside from *McReynolds* were decided in the mid-1990s before the decision in *Hope v. Peltzer*, 536 U.S. 730 (2002). As earlier noted, in *Hope* the Supreme Court concluded that a prisoner who was handcuffed to a hitching post without food, water, or bathroom breaks for 7 hours as punishment for an earlier disturbance stated an Eighth Amendment claim. *Id.* at 737–38. In reaching its conclusion, the Court applied a *deliberate indifference* standard, citing *Hudson* for support. *Id.* The fact that the *Hope* court cited *Hudson* (a sadistic and malicious case) suggests that the distinction between the standards was on the court's mind.

In *Walker v. Bowersox*, unlike here, the officers were using non-routine restraints in response to a disturbance: the inmate had slipped out of his handcuffs and refused to submit to handcuffs while also refusing to cooperate with the addition of a cellmate. 526 F.3d 1186, 1188 (8th Cir. 2008). Likewise, the cases cited by the dissent from other circuits apply the malicious and sadistic standard in non-routine contexts where officers were

Further, we are not convinced by Officer Emily's contention that the malicious and sadistic standard should apply because he was generally concerned for his own safety.[9] First, the facts in the record do not support his concerns. Welters and the other inmate were transported from Stillwater directly to a secure holding cell at Oak Park Heights—a Level 5 maximum-security prison. Welters remained in that cell when he told Officer Emily that his hands were numbing because the handcuffs were too tight and requested relief. And further, Officers Rhoney and Emily do not dispute that there were Oak Park Heights corrections officers present and assisting with the management of offenders attending medical appointments. Moreover, hundreds of prisoners at Stillwater leave their cells and move through the facility every day without handcuffs and other restraints. Finally, Officers Rhoney and Emily do not identify any safety concern that would have been implicated by simply loosening Welters's handcuffs while he was confined to a holding cell to

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responding to a specific disturbance or acute safety concern. *See*, *e.g.*, *Lunsford v. Bennet*, 17 F.3d 1574 (7th Cir. 1994) (flood response); *Campbell v. Sikes*, 169 F.3d 1353 (11th Cir. 1999) (self-injurious inmate); *Jackson v. Gutzmer*, 866 F.3d 969 (8th Cir. 2017) (same); *Stevenson v. Cordova*, 733 F. App'x. 939 (10th Cir. 2018) (inmate's refusal to submit to handcuffs and physical altercation with officers).

[9] These generalized concerns flow from the contention that Officer Emily was not accompanied by another Stillwater corrections officer when Welters requested that his handcuffs be loosened while Welters was in the medical holding cell. Officer Emily stated that he "[doesn't] trust these guys if I'm by myself," and he stated that he perceived Welters without any handcuffs as a safety issue.

restore feeling to his hands and ensuring that the handcuffs were double locked.

We therefore conclude that the district court erred when it applied the malicious and sadistic standard to Welters's restraint injury claim.

II.

We turn now to the question of whether qualified immunity bars Welters's deliberate indifference claim against Officers Rhoney and Emily. Welters brought his Eighth Amendment claim under 42 U.S.C. § 1983, which provides an enforcement remedy for violations of constitutional rights by public officials. Qualified immunity is a judicially created affirmative defense that allows public officials to avoid liability to citizens harmed by public officials' unconstitutional actions, leaving the individuals to bear the costs and burdens of their injuries themselves. *Elwood v. Rice Cnty.*, 423 N.W.2d 671, 674 (Minn. 1988); *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). Qualified immunity is designed to balance two important interests. On the one hand, when a citizen claims that a public official violated his constitutional rights, "an action for damages may offer the only realistic avenue for vindication of constitutional guarantees." *Harlow*, 457 U.S. at 814. Constitutional guarantees do not mean as much if they cannot be enforced. On the other hand:

> [I]t cannot be disputed seriously that claims frequently run against the innocent as well as the guilty—at a cost not only to the defendant

> officials, but [also] to society as a whole. These social costs include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will "dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties."

Id. (footnote omitted) (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). In assessing the application of qualified immunity, we must remain cognizant of both of these interests. *See Harlow*, 457 U.S. at 814. Importantly, the public officials seeking to invoke a qualified immunity defense have the burden to prove it. *Crawford-El v. Britton*, 523 U.S. 574, 586–87 (1998).

This case arises from a grant of summary judgment to Officers Rhoney and Emily. When considering whether qualified immunity bars a section 1983 suit from proceeding, we consider two questions. First, we determine whether the plaintiff alleges facts showing the violation of a federal constitutional right. Second, we ask whether the constitutional right was clearly established at the time of the alleged violations, such that reasonable officials would have known that their actions were unlawful. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity is appropriate only if no reasonable factfinder could answer yes to both of these questions." *Nelson*, 583 F.3d at 528. When there are contradictory facts relevant to the issue of

qualified immunity, "summary judgment is prohibited." *Id.* at 531.

A.

In the preceding section, we concluded that Welters's Eighth Amendment claim should be assessed under a deliberate indifference standard. Applying that standard here means that a constitutional violation is shown with evidence that (1) an objective and substantial risk to his health or safety existed; and (2) Officers Rhoney and Emily had subjective knowledge of the risk and nevertheless disregarded it. *See Farmer*, 511 U.S. at 842; *Nelson*, 583 F.3d at 528–29. The second prong of this analysis requires proof of "a state of mind more blameworthy than negligence," but it is "satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer*, 511 U.S. at 835. Under the deliberate indifference standard, the evidence need not show that the public official had knowledge that harm *would* actually occur; the evidence must show that the public official had knowledge of a substantial risk that serious harm would occur. *Id.* at 842. Further, when a risk of harm was "obvious" such that a "reasonable prison official would have noticed it," the prisoner has no burden to prove knowledge; the requisite knowledge is imputed to prison officials. *Id.*

We conclude that at this stage of the proceedings, Welters has shown that the overtightened and improperly applied handcuffs posed a substantial risk to his

health or safety. Welters alleges several undisputed facts that demonstrate that the manner in which Officers Rhoney and Emily handcuffed him posed an objective risk of serious harm: (1) his handcuffs were overly tight; (2) his handcuffs were not double locked as required by Department of Corrections policy to avoid overtightening, and thus were subject to increased tightening; (3) as a result, his handcuffs continued to tighten; (4) he complained about the tightness; and (5) his hands became numb. Welters's resulting serious wrist injury also demonstrates that an objective risk of harm from overly tight handcuffs existed.[10] Indeed, Officers Rhoney and Emily do not dispute that an objective substantial risk of harm from overly tight handcuffs existed for purposes of this appeal.

Officers Rhoney and Emily do contend, however, that the evidence in the summary judgment record is insufficient to prove that the two officers had subjective knowledge that the unsafely applied and overtightened handcuffs posed a substantial risk of harm to Welters. We disagree.

Whether officers had subjective knowledge of a substantial risk that an inmate will suffer harm is a "question of fact subject to demonstration in the usual

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[10] Dr. Meletiou's expert report opined that the overtightened handcuffs caused Welters's wrist injury and pointed to the "well documented" risk of handcuffs during anesthesia, further demonstrating the existence of an objective and serious risk. *See Nelson*, 583 F.3d at 529 (determining that expert testimony that shackling during labor is "inherently dangerous" satisfied the objective prong of the deliberate indifference inquiry).

ways, including inference from circumstantial evidence." *Id.* Among other things, a "factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.*[11] When a risk is obvious, a reasonable jury may find that an officer had knowledge of the risk even if the officer did not have medical training, the inmate did not expressly state their level of pain or discomfort, and medical personnel did not expressly forbid the use of restraints. *Nelson*, 583 F.3d at 529; *see also Lenz v. Wade*, 490 F.3d 991, 995 (8th Cir. 2007) ("An obvious risk of a harm justifies an inference [that] a prison official subjectively disregarded a substantial risk of serious harm to the inmates."). Department of Corrections policies regarding mechanical restraints recognize the obvious risks of overtightened and improperly applied handcuffs.[12] Moreover, it is common knowledge

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[11] Of course, the corrections officers may prove at trial that they were unaware of even an obvious risk to inmate health and safety. *Farmer*, 511 U.S. at 844 ("That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so."). But on the record before us at the summary judgment stage, we can conclude that a reasonable trier of fact may infer that Officers Rhoney and Emily knew that the overtightened handcuffs posed a substantial risk of harm to Welters.

[12] Department of Corrections policies require safety measures that are specifically aimed at protecting against the obvious risk of harm from overtightened handcuffs. The mechanical restraint policies mandate the following:

> (d) Mechanical restraints must not be used:
>
> (1) Longer than necessary;
>
> (2) As punishment; . . .
>
> (4) To cause undue discomfort;

that constriction that causes numbness is dangerous and should not be ignored. *See Fourte v. Faulkner Cnty., Ark.*, 746 F.3d 384, 388 (8th Cir. 2014) (recognizing the principle that some inmate needs are "so obvious that even a layperson would easily recognize" them (citation omitted) (internal quotation marks omitted)).

Moreover, evidence that officers ignored a request from an inmate to address a risk of harm is evidence that suggests knowledge and supports a finding of deliberate indifference. *See*, *e.g.*, *Brown*, 518 F.3d at 559–60 (determining that officers had knowledge of risk of harm to an inmate when they ignored the inmate's request for a seatbelt and to slow down during transport while the inmate was shackled in a way that prevented him from applying his own seatbelt). Further, an officer's "self-serving contention that they did not have the requisite knowledge does not provide an automatic bar to liability in light of the objective evidence to the

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(5) To inflict physical pain; or

(6) To restrict blood circulation or breathing.

(e) If the mechanism contains a safety lock [double lock], mechanical restraints must be safely locked once it is possible for the officer to do so.

(f) It is the responsibility of all officers to ensure that, once an incarcerated person is placed in restraints, visual and physical control of the incarcerated person is maintained at all times.

(g) First aid must be provided whenever restraints are used. . . .

Minn. Dep't of Corr., Policy Manual 301.081(B)(2)(d)-(g) (Nov. 22, 2021); *see also id.* at 301.096 (requiring handcuffs and leg irons to be "double locked"). DOC policy also requires that mechanical restraints be "used on a selective basis." *Id.* at 301.081(B)(2)(b).

contrary." *Vaughn v. Gray*, 557 F.3d 904, 909 (8th Cir. 2009); *see also Reynolds*, 636 F.3d at 980 (determining that the officers had knowledge when they had been previously warned of the type of accident at issue by another officer and when other inmates had fallen the same way).

Accordingly, on summary judgment, Officers Rhoney and Emily can prevail in showing no constitutional right was violated only if no reasonable fact-finder could infer from the evidence that Officers Rhoney and Emily: (1) knew that Welters's handcuffs were unsafely applied such that the required protections against overtightening were not in place, or knew that the handcuffs were too tight; (2) that, as a result, Officers Rhoney and Emily knew there was a substantial risk that Welters could suffer harm; and (3) that Officers Rhoney and Emily nonetheless took no steps to loosen the handcuffs and engage the safety mechanism.

We start our analysis with Department of Corrections policy, which supports an inference of the obvious risk of harm from improperly applied and overtightened handcuffs. The policy directs that handcuffs and other restraints be double locked. Minn. Dep't of Corr., Policy Manual 301.081(B)(2)(e); *see also id.* at 301.096 (requiring that handcuffs and leg irons be "double locked" during medical transportation). The purpose of double locking is to prevent the handcuffs from further

tightening after putting them on an offender.[13] In other words, these safety requirements are specifically aimed at protecting against the obvious risk of harm from overtightened handcuffs. This conclusion is further reinforced by the fact that the mechanical restraint policies mandate that handcuffs are not to be used longer than necessary; to cause undue discomfort or inflict physical pain; or to restrict blood circulation or breathing. *Id.* at 301.081(B)(2)(d). The policy also directs that first aid be provided as necessary when restraints are used. *Id.* at 301.081(B)(2)(g). A reasonable juror could readily infer from the Department of Corrections policy provisions that trained corrections officers would understand that the reason handcuffs are to be double locked and not overtightened is that a substantial risk of harm exists when those precautions and policies are not followed.

Further, Welters's testimony supports an inference that Officers Rhoney and Emily knew that his handcuffs were dangerously tight. In the transport van, Welters told Officer Rhoney that his handcuffs were tight and not double locked. Officer Rhoney checked the handcuffs by pressing on them and in the process clicked them even tighter (something that would not happen had they been properly double locked). Officer Rhoney acknowledged that the handcuffs were not double locked, but he did not loosen

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[13] *See Titus v. Unger*, No. 8:12CV261, 2013 WL 5937328, at *3 (D. Neb. Nov. 4, 2013) ("The function of double locking is to prevent the handcuffs from tightening on the wrists if a suspect rotates or maneuvers in the cuff.").

them or double lock them. Instead, he told Welters that "it's only a 15-minute drive, it'll be all right." Officer Rhoney's statement seemed to suggest to Welters that he would adjust the handcuffs when they arrived at Stillwater, which is relevant because it demonstrates Officer Rhoney's knowledge that he had an obligation to do so. A reasonable juror could certainly infer from his statement that Officer Rhoney knew that the handcuffs should be double locked to avoid the substantial risk of harm that flows from overtightened handcuffs and that Welters's handcuffs should have been loosened and safely locked. Yet, once they arrived at Oak Park Heights after the 15-minute drive, Officer Rhoney neither adjusted nor double locked Welters's handcuffs before he left him there and returned to Stillwater, running the risk of injury. We conclude that these facts are sufficient to allow a reasonable jury to conclude an Eighth Amendment violation occurred.

After the van arrived at Oak Park Heights, Welters was taken to a medical holding cell in the prison. At that point, Welters specifically told Officer Emily that the handcuffs were too tight, causing numbness in his hands.[14] Officer Emily did not adjust or loosen

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[14] Officers Rhoney and Emily acknowledge that Welters "complained of numbness." They argue that Welters's complaint is insufficient because he did not expressly say that he was in "pain." They imply without citation that the Eighth Amendment requires knowledge of a risk that the offender will suffer "substantial pain." The corrections officers are wrong. The Eighth Amendment standard requires knowledge of a substantial risk of *harm*; not a substantial risk of *pain*. Further, a reasonable jury

Welters's handcuffs and subsequently disappeared. Moreover, Captain Matthews stated in the kite response memorandum that, after the incident, he "reminded" the officers that restraints should be removed upon admittance to Oak Park Heights. This statement supports the conclusion that Officers Rhoney and Emily had been previously informed of this policy and thus knew at that time that by keeping the improperly applied and overtight handcuffs on Welters, they were acting in knowing violation of safety policy and practice intended to prevent harm.

The reason for Welters's visit to Oak Park Heights also bears on our analysis. It is undisputed that Officer Emily knew that Welters was at Oak Park Heights for a medical procedure. Department of Corrections policy makes it clear that the use of restraints, including overtight handcuffs, may carry additional risks of harm during medical procedures. For instance, DOC policy states:

> If medical staff request the offender's restraints be either partially or fully removed for a medical procedure or treatment, officers must remove only those restraints that would interfere with the examination or treatment. . . . Officers are authorized to leave the offender in full restraints if, in their best judgment, control of the offender would be jeopardized even with additional security staff.

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could conclude that overtight handcuffs causing numbness due to lack of circulation could result in injury and harm to the offender.

Minn. Dep't of Corr., Policy Manual 301.096(H)(5); *see also Nelson*, 583 F.3d at 534 (finding an Eighth Amendment violation when a corrections officer kept an inmate in restraints during a serious medical procedure). And Department of Corrections policy has additional requirements when an offender is going under anesthesia: "If the offender needs surgery requiring complete anesthesia [as Welters's surgery did], at least one officer must be present and maintain visual contact of the offender." Minn. Dep't of Corr., Policy Manual 301.096(H)(5). Accordingly, in order to comply with Department of Corrections policy, the corrections officer must have some knowledge of the nature of the medical procedure—at the very least, whether the medical procedure requires complete anesthesia—and should be in communication with medical personnel.

Finally, viewing the facts in the light most favorable to Welters, Stillwater officers (and not Oak Park Heights officers) had exclusive responsibility for ensuring that Welters was secure. Accordingly, on these facts, a reasonable juror could infer that Officer Emily had notice that Welters was having a serious medical procedure under anesthesia. The fact that Officer Emily disappeared and was unreachable immediately before and during Welters's endoscopy meant that no one could authorize the removal of Welters's restraints,

including the overtightened and improperly applied handcuffs, during the medical procedure.[15]

In short, these facts would allow a reasonable jury to infer that Officer Rhoney knew that the handcuffs on Welters were too tight and not properly double locked. A reasonable jury could further conclude that Officer Rhoney knew that overtightened and unsafely locked handcuffs posed a substantial risk of precisely the harm that Welters suffered in this case, and yet he took no steps to adjust the handcuffs.

These facts would also allow a reasonable jury to infer that Officer Emily was aware that Welters's handcuffs were too tight and causing numbness in his hands. The facts would further allow a reasonable jury to conclude that Officer Emily understood that a substantial risk existed that Welters would suffer harm and injury as a result of the overtightened handcuffs, especially since Welters was scheduled to undergo a serious medical procedure. Finally, the facts support the conclusion that Officer Emily disregarded that risk and failed to loosen the handcuffs. Accordingly, a reasonable jury presented with these facts and the reasonable inferences to be drawn from these facts could readily conclude that Officers Rhoney and Emily subjectively knew of a substantial risk of harm to Welters

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[15] On several occasions, medical personnel expressed surprise that Welters remained in restraints as he was going into surgery and requested that Oak Park Heights officers remove the restraints. The Oak Park Heights officers told the medical personnel that only a Stillwater corrections officer could authorize removal of the restraints.

and did nothing. We therefore conclude that Welters has adduced sufficient facts to support his claim that Officers Rhoney and Emily violated the Eighth Amendment.

We acknowledge in reaching this conclusion that Officers Rhoney and Emily may still put Welters to his proof at trial. *See Farmer*, 511 U.S. at 844 (explaining that officers have an opportunity *at trial* to "prove" that they were "unaware even of an obvious risk to inmate health or safety"). A reasonable jury may not believe Welters's allegations. A reasonable jury could also conclude that the corrections officers' conduct does not rise to the level of deliberate indifference but was merely negligent. At this stage of the proceedings, however, where all facts and inferences from those facts must be construed in Welters's favor, we cannot agree that the *only* conclusion a reasonable jury could reach is that Welters is lying or that Officers Rhoney and Emily's conduct was merely negligent.

B.

The second prong of the federal qualified immunity standard asks whether Welters's Eighth Amendment rights were clearly established at the time the conduct occurred. Whether the constitutional right was "clearly established" is a question of law reviewed de novo. *Elder v. Holloway*, 510 U.S. 510, 516 (1994).

A constitutional right is clearly established when its contours are "sufficiently clear that a reasonable official would understand that what he is doing violates

that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful; but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Hope*, 536 U.S. at 741 (quoting *Anderson*, 483 U.S. at 640 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 535 n.12 (1985))); *see also Morris v. Zefferi*, 601 F.3d 805, 812 (8th Cir. 2010) ("The lack of a factually identical case is not dispositive.").

In other words, the "salient question" that must be asked is whether the "state of the law" at the time of the alleged offenses gave officials "fair warning" that their alleged actions were unconstitutional. *Hope*, 536 U.S. at 741. Reasoning in a binding case can provide notice to officials within that court's jurisdiction, even when the holding does not. *Id.* at 743 (pointing to reasoning in another case that cautioned against conduct similar to the presently alleged conduct, even though the facts were different).

To determine whether the Eighth Amendment right that Welters claims Officers Rhoney and Emily violated was clearly established, we must precisely define the right. Welters claims that Officers Rhoney and Emily violated the Eighth Amendment conditions of confinement prohibition against deliberate indifference to a substantial risk of serious harm to an inmate.

In this case, the general conditions of confinement at issue were the routine transportation for medical treatment from one correctional facility to another

with restraints, the continued use of restraints in a medical holding cell, and the continued use of restraints during the procedure. The question, however, is not whether it was clearly established that those general conditions violated the Eighth Amendment. Rather, the question is whether it was clearly established that the use of *unsafely applied* and unnecessarily *overtightened* restraints during those conditions of confinement—when Officers Rhoney and Emily were informed that the handcuffs were unsafely applied and overtightened such that the inmate's hands went numb and resulted in serious injuries—violated the Eighth Amendment.

We conclude that a reasonable corrections officer would have understood and had fair warning on July 31, 2017, that Welters had an Eighth Amendment right to routine conditions of confinement when the officers were not facing a specific, immediate threat to order and institutional security. And reasonable corrections officers on July 31, 2017, would have understood that this right required that the corrections officers adjust handcuffs once they knew that the handcuffs were unsafely applied, such that a substantial risk of harm from overtightening existed or that the handcuffs were dangerously tight and causing numbness so as to pose a substantial risk of injury to a prisoner, or both.

Eighth Amendment conditions of confinement law had been clear for many years before July 31, 2017: the Constitution prohibits conduct by prison officials that carries a substantial risk of causing a prisoner harm or injury when that conduct is not necessary to fulfill a

penological purpose. *See Hope*, 536 U.S. at 737–38; *see Farmer*, 511 U.S. at 833. That basic directive was sufficient to put Officers Rhoney and Emily on notice that their refusal to adjust unnecessarily overtightened and unsafely applied handcuffs, when they knew that the unsafely applied handcuffs were too tight and ran a substantial risk of harm as a result and/or that the handcuffs were limiting circulation and therefore subjecting Welters to substantial risk of injury, was unconstitutional. The obligation to adjust the handcuffs to prevent injury follows immediately from the constitutional prohibition against the cruel and unusual punishment of routine conduct that causes penologically unnecessary harm under circumstances where the officer is aware of a substantial risk that such harm will result. *See Mullenix v. Luna*, 577 U.S. 7, 16 (2015). The constitutional obligation to loosen and adjust the handcuffs under the circumstances of this case to prevent a substantial risk of harm to Welters would be obvious to a reasonable corrections officer. *See Farmer*, 511 U.S. at 842. Critically, Officers Rhoney and Emily offer no justification for refusing to adjust handcuffs that were dangerously tight and unsafely applied.

When an officer's decision to take an unconstitutional action (imposing a condition of confinement that unnecessarily harms a prisoner) is not justified by a competing government interest (the need to respond to a security threat), less particularity is required to provide fair warning of the unconstitutionality of the

officer's actions.[16] Consequently, concern about holding an officer to a constitutional standard at too high a level of generality is reduced. *Cf. Mullenix*, 577 U.S. at 12–19 (concluding that fact-specific case law was

[16] Most of the qualified immunity cases decided by the Supreme Court involve alleged violations of the Fourth Amendment. The Court has repeatedly noted the distinct challenges presented to public officials in the Fourth Amendment context because "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Mullenix*, 136 S. Ct. at 308 (citation omitted) (internal quotation marks omitted).

The same may hold true for corrections officers responding to a threat that may reasonably require the use of force to restore order and discipline in the prison. *See*, *e.g.*, *Hudson*, 503 U.S. at 6 ("[O]fficials confronted with a prison disturbance must balance the threat unrest poses to inmates, prison workers, administrators, and visitors against the harm inmates may suffer if guards use force. . . ."). In those types of intense, rapidly-changing situations, more fact-specific case law is required to provide fair warning to officers of the contours of what actions the Constitution allows. *See Anderson*, 483 U.S. at 640.

But when a corrections officer is engaging in routine conduct that does not require quick decision-making to evaluate and protect a competing government interest, there is less nuance involved and thus less particularity is required to clearly establish what the constitution requires. *See Hope*, 536 U.S. at 742 (cautioning against "the danger of a rigid, overreliance on factual similarity" when determining whether the unnecessary infliction of pain outside of an emergent situation clearly violates the Eighth Amendment).

There is little difficulty for a corrections officer to understand that a prohibition against acting with deliberate indifference to the risk of injury means that corrections officers should adjust handcuffs once they are on notice that the handcuffs are unsafely applied such that a real risk of harmful overtightening exists or that the handcuffs are so tight that they are causing numbness and thus pose a substantial risk of serious injury.

required to clearly establish that an officer violated the Fourth Amendment when the officer shot at a fleeing suspect during a high speed chase in response to reports that he was armed and threatening to shoot officers); *Brosseau v. Haugen*, 543 U.S. 194, 198–99 (2004) (concluding that general constitutional tests were insufficient to clearly establish that shooting a fleeing suspect to protect other officers violated the Constitution, requiring instead law "particularized" to the specific context that the officer faced).

This conclusion is consistent with the basic premise of section 1983 and the qualified immunity doctrine: the need to *balance* the important interest in vindicating the fundamental constitutional rights of American citizens (which often may be vindicated only through an action for damages), with the important competing interests of ensuring that public officials are not unduly deterred from discharging their duties or burdened by frivolous lawsuits. *See Harlow*, 457 U.S. at 814. How to properly strike that balance will vary depending on the constitutional right at stake. Requiring corrections officers to avoid knowingly inflicting unnecessary pain or subjecting prisoners to risk of serious injury when engaging in routine conduct related to restraints will minimally impinge on the officers' ability to discharge their duties.

Even though the nature of the constitutional violation at issue here means that less particularity in governing law is required before the right is deemed "clearly established," there is no need for us in this case to parse precisely where that line is to be drawn. That

is because here, factually analogous case law clearly establishes that officers violate the Eighth Amendment when they act with deliberate indifference to the risk of injury from mechanical restraints, including handcuffs. First, the *Hope* Court held that corrections officers acted unconstitutionally and with deliberate indifference in violation of the Eighth Amendment because "[d]espite the clear lack of an emergency situation," they restrained an inmate in a manner "that created a risk of particular discomfort and humiliation." 536 U.S. at 737–38. The inmate in *Hope* was handcuffed to a hitching post for several hours in the sun with no bathroom breaks after an altercation with a guard at a chain gang worksite. *Id.* at 733–35. Certainly, the facts in *Hope* are more egregious than those in this case. But the egregiousness of the officer's acts goes to the question of whether a constitutional violation occurred, and we have already determined that the evidence in the record on summary judgment here sufficiently alleges a constitutional violation. *Hope* clearly established the legal and constitutional principal that deliberate indifference to the risk of harm from the use of restraints used outside of an emergency situation violates the Eighth Amendment. *Id.* at 743.[17]

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[17] The *Hope* Court recognized that its reasoning was clearly establishing Eighth Amendment rights in other contexts, stating: "Our opinion in *Lanier* thus makes clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances." 536 U.S. at 741 (affirming and applying the "clearly established" standard from *United States v. Lanier*, 520 U.S. 259, 269 (1997)).

Indeed, *Hope* has been cited repeatedly across circuits for the rule that the use of passive restraints in a way that causes unnecessary harm in the absence of a penological purpose is unconstitutional. *See*, *e.g.*, *Young v. Martin*, 801 F.3d 172, 177 (3rd Cir. 2015); *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1248 (9th Cir. 2016). Cases further cite *Hope* as clearly establishing such a right. *See*, *e.g.*, *Barker v. Goodrich*, 649 F.3d 428, 434–37 (6th Cir. 2011). *see generally Stainback v. Dixon*, 569 F.3d 767, 772 (7th Cir. 2009) (recognizing that by 2002 it was well established that "an officer may not knowingly use handcuffs in a way that will inflict unnecessary pain or injury on an individual who presents little or no risk of flight").

Notably, the Seventh Circuit in *Ajala v. Tom* invoked the *Hope* standard as giving rise to a clearly established right under the Eighth Amendment on nearly identical facts to those Welters alleges. 658 F. App'x. 805 (7th Cir. 2016). The officers in *Ajala* refused to loosen painfully tight handcuffs for 4½ hours during a transport, resulting in chronic injury and pain. *Id.* at 806. Citing *Hope*, the Seventh Circuit reversed the district court's grant of qualified immunity because it

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Addressing arguments attempting to distinguish case law based on specific details, such as the differences between hitching posts, shackling bars, fences, or bars of cells, the Court warned against "the danger of a rigid, overreliance on factual similarity." *Id.* at 742. Accordingly, the Court specifically concluded that the Eleventh Circuit erred in its "position that a violation is not clearly established unless it is the subject of a prior case of liability on facts materially similar to those charged." *Id.* at 746 (citation omitted) (internal quotation marks omitted).

determined that, like Officers Rhoney and Emily here, the officers "never even *alleged* a penological justification for refusing to loosen Ajala's handcuffs" and that "reasonable officers in their positions would have known that it was unlawful for them to disregard Ajala's pleas for help." *Id.* at 806–07. *Hope* is thus binding case law from the Supreme Court that is sufficiently specific to have given fair warning to Officers Rhoney and Emily that their actions violated Welters's Eighth Amendment rights, as other courts have similarly held.

Moreover, even if the qualified immunity doctrine requires the existence of judicial decisions that direct corrections officers to comply with Department of Corrections policy (requiring constitutionally mandated and common-sense conduct) before a court may even entertain a lawsuit seeking damages for harm caused by the constitutional violation, that case law also exists here. The Supreme Court in *Hope* determined that corrections officers' noncompliance with prison regulations specifically aimed at avoiding cruel and unusual punishment supported the conclusion that "they were fully aware of the wrongful character of their conduct" and thus "violated clearly established law." *Hope*, 536 U.S. at 743–45. The Eighth Circuit—which Officers Rhoney and Emily concede is a source for clearly established law—has held similarly. "Prison regulations governing the conduct of correctional officers are [] relevant in determining whether an inmate's right was clearly established." *Treats v. Morgan*, 308 F.3d 868, 875 (8th Cir. 2002) (concluding that an inmate's Eighth

Amendment right was clearly established based on general principles of law and on prison regulations that did not authorize the use of pepper spray in the way it was used by the officers); *see also Nelson*, 583 F.3d at 531, 533 (stating that a "review of these sources" can lead to the conclusion that a constitutional right was clearly established and finding that the regulations in effect "reflected the constitutional protections recognized in these judicial decisions").

Officers Rhoney and Emily argue that Welters was restrained "pursuant to policy" because DOC policy affords them "discretion in the use of mechanical restraints during medical appointments." This argument relies on the general medical transportation provisions, Minn. Dep't of Corr., Policy Manual 301.096, and it ignores the specific requirements mandating safe mechanical restraint use, Minn. Dep't of Corr., Policy Manual 301.081.

When prison regulations "authorize" an action generally, but officials do not comply with specific requirements guiding their implementation of that action, officials likely have "fair warning" that their actions violate "clearly established law." *See Hope*, 536 U.S. at 743–44 (concluding that although DOC regulations generally authorized using a hitching post in certain circumstances, officials violated clearly established law when they did not keep an activity log or offer bathroom breaks as those regulations required). As alleged, Officers Rhoney and Emily did not comply with DOC policy forbidding the use of handcuffs for longer than necessary, in ways that cause "undue

discomfort" or pain, or in ways that restrict circulation. *See* Minn. Dep't of Corr., Policy Manual 301.081(B)(2)(d). Officers Rhoney and Emily did not follow the policy directive that handcuffs be double locked to prevent precisely the injury that Welters suffered here. *Id.* at 301.096. And they did not attend to Welters or provide first aid during their use of mechanical restraints. *See id.* at 301.081(B)(2)(f), (g).

Finally, it is relevant that Welters was handcuffed and placed in other restraints precisely because he was going to a medical treatment involving surgery under anesthesia. Welters asserts that the Eighth Circuit's decision in *Nelson* squarely controls this case because it clearly established that corrections officers violate the Eighth Amendment when they act with deliberate indifference to the substantial risk of severe injury from restraints during medical procedures. *See* 583 F.3d at 524–34.[18] The *Nelson* court concluded that a corrections officer acted with deliberate indifference in violation of the Eighth Amendment when he kept an inmate restrained during labor in the absence of any acute security concerns, when the officer was

[18] Welters also points to *Key v. McKinney* as clearly establishing what officers must do to avoid Eighth Amendment violations in conditions of confinement restraint cases. 176 F.3d 1083, 1085 (8th Cir. 1999). In *Key*, officers placed an inmate in restraints for 24 hours for throwing water on a corrections officer, pursuant to policy. *Id.* at 1084–85. The court determined that officers were *not* deliberately indifferent because they modified restraints in response to the inmate's need to take care of bodily functions, they regularly checked on his conditions, they *loosened his handcuffs*, and they considered his medical conditions. *Id.* at 1086.

instructed not to shackle her, and because the restraints caused "unnecessary suffering at a time when . . . [she] would have likely been physically unable to flee. . . ." *Id.* at 530. Like Welters, the inmate in *Nelson* suffered severe injuries from the restraints, *see id.*, and Welters was also physically unable to flee while he was locked in a secure holding cell and while he was under general anesthesia. Officers Rhoney and Emily flatly disregard *Nelson*, however, contending that it is "distinguishable on its face," presumably because it involved an inmate receiving medical care in labor and not an inmate receiving medical care under general anesthesia. The officers in *Morris* similarly attempted to distinguish *Nelson* on its facts. 601 F.3d at 809–10. The *Morris* Court rejected those arguments, *id.* at 12, and we likewise reject them here.[19]

The Eighth Circuit has cited *Nelson* several times when determining whether officers acted with deliberate indifference to serious medical needs or risk of harm in various contexts. Accordingly, the reasoning and holding in *Nelson* is not limited only to factual contexts that include labor and childbirth. *See*, *e.g.*, *McCaster v. Clausen*, 684 F.3d 740, 746 (8th Cir. 2012) (citing *Nelson* in determining that "it is well established" that deliberate indifference to an inmate's serious medical needs violates the Eighth Amendment);

[19] Although Officers Rhoney and Emily argued that *Nelson* was distinguishable on its facts, they conceded on the record in this case that "case law from the U.S. Supreme Court, the Eighth Circuit, or this Court finding an Eighth Amendments violation under facts similar to those alleged here" could give rise to clearly established law.

Morris, 601 F.3d at 808–12 (affirming the denial of qualified immunity against Eighth Amendment claims arising from transporting a detainee in full restraints in a dog kennel in a K-9 transportation vehicle, and stating, "We believe our decision in this case is controlled by the reasoning of *Nelson*").

Because we conclude that Welters has sufficiently alleged violations of his clearly established Eighth Amendment rights, Officers Rhoney and Emily are not entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, we affirm the court of appeals.

Affirmed.

DISSENT

GILDEA, Chief Justice (dissenting).

Christopher Welters is serving two life sentences in connection with a double homicide. He is an inmate at Minnesota Correctional Facility-Stillwater, a high-level security prison that houses violent offenders. Welters needed to be transported to the prison at Oak Parks Heights, Minnesota's only maximum-security prison and a prison that houses high-risk offenders, for a medical procedure. He alleges that two Minnesota Department of Corrections officers, Ernest Rhoney and

Cornelius Emily, violated his Eighth Amendment right to be free from cruel and unusual punishment during the transport and his time at Oak Park Heights. Welters specifically asserts that Officer Rhoney overtightened his handcuffs and that Officer Rhoney and Officer Emily failed to loosen the handcuffs when he eventually told them that they were causing him discomfort. The district court dismissed Welters's section 1983 claim on summary judgment, concluding that "[n]othing in the record indicates that either Officer Rhoney or Officer Emily acted with the intent to cause Plaintiff harm, let alone acted maliciously or sadistically." The court of appeals reversed, applying the deliberate indifference standard rather than the malicious and sadistic standard. *Welters v. Minn. Dep't of Corr.*, 968 N.W.2d 569, 582–87 (Minn. App. 2021).

The principal question raised by the parties is what legal standard should govern the Eighth Amendment claim of an inmate who alleges that corrections officers overtightened his handcuffs during a transfer to a maximum-security prison and failed to loosen those handcuffs when he informed them of his discomfort. This question turns on whether the inmate's injury stems from the officer's excessive use of force or whether the cause of injury is better classified as a failure to attend to serious medical needs or arising from the conditions of confinement. The majority concludes that, because the corrections officers' handcuffing of the inmate was for "'routine' transport for a 'routine' medical procedure," the lower deliberate indifference standard should be applied. I disagree. I agree with the

district court and conclude that Welters's injuries stem from the officers' application of allegedly excessive force via the overtightened handcuffs. I would therefore apply the heightened malicious and sadistic standard and affirm the district court's grant of summary judgment to Officer Rhoney and Officer Emily. Accordingly, I dissent.

A.

The Eighth Amendment bars the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. But not all injuries suffered while incarcerated are punishment. Instead, only "a deliberate act intended to chastise or deter" can be considered punishment. *Wilson v. Seiter*, 501 U.S. 294, 300 (1991) (quoting *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985) (Posner, J.)). As a result, once a criminal sentence has been "formally meted out . . . by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer" to qualify as punishment. *Id.* An "ordinary lack of due care for the prisoner's interests or safety" is not sufficient. *Whitley v. Albers*, 475 U.S. 312, 319 (1986); *see also Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (explaining that "[a]n accident, although it may produce added anguish, is not on that basis alone to be characterized as" cruel and unusual punishment). Instead, once an individual is incarcerated, there must be the "unnecessary and *wanton* infliction of pain" to violate the prohibition against cruel and unusual punishment in the Eighth Amendment. *Whitley*,

475 U.S. at 319 (emphasis added) (quoting *Ingraham v. Wright*, 430 U.S. 651, 670 (1977)).

"Wanton" is not a static concept. Whether a given act rises to the level of "wanton infliction of pain" requires us to appreciate the "differences in the kind of conduct against which an Eighth Amendment objection is lodged." *Id.* at 320. As a result, there are two standards by which we judge whether an officer's conduct was wanton.

The first category of conduct involves excessive use of physical force. In *Hudson v. McMillian*, the United States Supreme Court "h[e]ld that *whenever* prison officials stand accused of using excessive physical force . . . the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." 503 U.S. 1, 6–7 (1992) (emphasis added); *see also Porter v. Nussle*, 534 U.S. 516, 528–29 (2002) (reaffirming *Hudson*). *Hudson* was clear that it was "[e]xtending *Whitley*'s application of the 'unnecessary and wanton infliction of pain' standard to *all* allegations of excessive force," 503 U.S. at 7 (emphasis added), and that this standard is no longer limited to "decisions involving the use of force to restore order in the face of a prison disturbance," *see Whitley*, 475 U.S. at 320. The highly deferential malicious and sadistic standard "extends to . . . prophylactic or preventive measures intended to reduce the incidence of [actual confrontations] or any other breaches of prison discipline." *Id.* at 322. Although "[m]ost excessive force cases involve beatings, physical altercations, or use of

force such as Tasers," the use of passive restraints may involve excessive force requiring the application of the malicious and sadistic standard. *Jackson v. Gutzmer*, 866 F.3d 969, 976 n.3 (8th Cir. 2017) (applying the malicious and sadistic standard to a prisoner's claim that he was subjected to excessive force when he was placed on a restraint board for 3½ hours).[1]

The deferential malicious and sadistic standard is appropriate when examining claims of excessive use of force because prison officials "must balance the need 'to maintain or restore discipline' through force against the risk of injury to inmates." *Hudson*, 503 U.S. at 6. And this standard serves to effectuate the principle that prison officials "should be accorded wide-ranging deference in the adoption *and execution* of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.* (emphasis added) (quoting *Whitley*, 475 U.S. at 321–22).

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[1] The majority argues that the Supreme Court's decision in *Hope v. Peltzer*, 536 U.S. 730 (2002), implicitly narrowed the explicit holding in *Hudson* that the malicious and sadistic standard should be applied "*whenever* prison officials stand accused of using excessive physical force," 503 U.S. at 6–7 (emphasis added). But there was no dispute in *Hope* about what standard should apply; the parties agreed that the deliberate indifference standard should govern their claims. *Hope*, 536 U.S. at 738. As a result, there is no analysis in *Hope* about when the malicious and sadistic standard should apply and when the deliberate indifference standard should be used. *See id.* Instead, the Supreme Court only addressed whether prison officials were deliberately indifferent to the prisoner's health or safety when they handcuffed him to a hitching post and left him in the Alabama sun. *Id.*

The second category of conduct involves claims of inadequate medical care and conditions of confinement. When a prisoner challenges a condition of confinement or their medical care, a finding of deliberate indifference will suffice to establish wantonness.[2] *Wilson*, 501 U.S. at 303 (extending the deliberate indifference standard to all condition-of-confinement claims); *Estelle*, 429 U.S. at 104 (holding "that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment" (citation omitted) (internal quotation marks omitted)). This more lenient standard is appropriate because providing medical care and humane conditions of confinement "ordinarily does not conflict with competing administrative concerns." *Hudson*, 503 U.S. at 6.

When, like here, "the use of passive restraints is challenged, careful analysis of the factual context may be needed to determine the appropriate substantive standard." *Jackson*, 866 F.3d at 976 n.3. After undertaking this careful analysis, I conclude that the malicious and sadistic standard is the appropriate standard to judge Welters's claims against Officer Rhoney and Officer Emily. I reach this conclusion because Welters's alleged injury ultimately stems from a use of force—

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[2] Deliberate indifference is a higher standard than mere negligence and equates to "subjective recklessness as used in the criminal law." *Farmer v. Brennen*, 511 U.S. 825, 839 (1994). Nevertheless, it is more lenient to the plaintiff than the highly deferential malicious and sadistic standard that applies to excessive use of force claims. *See Wilson*, 501 U.S. at 305.

the overtightening of his handcuffs—and we must apply the malicious and sadistic standard "*whenever* prison officials stand accused of using excessive physical force." *Hudson*, 503 U.S. at 6–7 (emphasis added).[3]

The majority acknowledges that "Welters contends that the handcuffs were unnecessarily and improperly applied too tightly." One would expect that this would be the end of the majority's analysis given the clear binding instruction in *Hudson* that we are to apply the malicious and sadistic standard "*whenever* prison officials stand accused of using excessive physical force." *Hudson*, 503 U.S. at 6–7 (emphasis added). But it is not. Instead, the majority attempts to reason around *Hudson* by noting that this application of force occurred during "a 'routine' transport for a 'routine' medical procedure." In the majority's analysis, because the application of excessive force occurred during transport and persisted through a medical procedure, it is somehow transformed into a condition of confinement and medical care claim. I disagree.

Central to the majority's analysis is the assumption that an active disturbance or individualized safety concern is required for us to employ the malicious and sadistic standard. This assumption is wrong. Instead,

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[3] The Second Circuit reached a similar conclusion in *Davidson v. Flynn*, 32 F.3d 27 (2d Cir. 1994). In *Davidson*, a prisoner alleged that his handcuffs were purposefully overtightened during transport to a different correctional facility, cutting off his circulation. *Id.* at 29. The Second Circuit applied the malicious and sadistic standard to his overtightened handcuff claim. *Id.* at 29–30.

the Supreme Court is clear that the malicious and sadistic standard should also be applied to "prophylactic or preventive measures intended to reduce the incidence of [actual confrontations] or any other breaches of prison discipline." *Whitley*, 475 U.S. at 322. Although it is true that the need for quick and decisive decision-making has been used as one justification for the malicious and sadistic standard, it is not a prerequisite. Instead, *Hudson* noted that the situations in which the malicious and sadistic standard should appropriately be applied "*may* require prison officials to act quickly and decisively," not that they must. 503 U.S. at 6 (emphasis added). Accordingly, the majority's reliance on the absence of an emergency to justify its use of the deliberate indifference standard is misplaced.[4]

Further, the use of handcuffs during the transport of Welters (a convicted violent offender) to and from a high-security facility, and while he underwent a medical

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[4] This conclusion is supported by decisions from other jurisdictions that regularly apply the malicious and sadistic standard to excessive force claims even when the force is not alleged to have been used in response to an active disturbance or individualized security concern. *See*, *e.g.*, *Pelfrey v. Chambers*, 43 F.3d 1034, 1035–37 (6th Cir. 1995) (concluding that a spontaneous assault of a prisoner amounted to "malicious and sadistic use of force to cause harm"); *Wilkins v. Moore*, 40 F.3d 954 (8th Cir. 1994) (applying the malicious and sadistic standard to a prisoner's claims that he was physically and sexually assaulted by prison officials when he refused to sign a statement exonerating those officials of wrongdoing); *McReynolds v. Ala. Dep't of Youth Servs.*, 204 F. App'x 819, 820–22 (11th Cir. 2006) (per curiam) (applying the malicious and sadistic standard to a minor prisoner's claims that guards assaulted him with a nightstick after he requested a complaint form).

procedure at Minnesota's only maximum-security prison, is plainly the kind of preventive measure intended to ensure the safety of the public, staff, medical personnel, and other prisoners. If there could be any doubt on this score, the Minnesota Department of Corrections Policy 301.095 governing the transportation of inmates in full restraints explicitly provides that its purpose is "[t]o ensure the safety of the public . . . while also providing for the safe, secure, and humane treatment of offenders during transport." Minn. Dep't of Corr., Policy Manual 301.095(C)(1) (Nov. 5, 2019). This balance between the use of force and others' safety is precisely why the malicious and sadistic standard is necessary. *Compare Hudson*, 503 U.S. at 6 (explaining that one of the primary concerns undergirding the malicious and sadistic standard is that "corrections officers must balance the need 'to maintain or restore discipline' through force against the risk of injury to inmates" (quoting *Whitley*, 758 U.S. at 320–21)), *with Wilson*, 501 U.S. at 302 (explaining that the deliberate indifference standard is appropriate in medical care and condition of confinement cases because the State's responsibility "does not ordinarily clash with other equally important governmental responsibilities," such as the safety of other inmates) (quoting *Whitley*, 475 U.S. at 320). This is not a situation where there are no "competing administrative concerns" that could justify the use of the deliberate indifference standard. *Hudson*, 503 U.S. at 6.[5]

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[5] For this reason, the combined transport and medical procedure case that the majority cites—*Nelson v. Correctional Medical*

Nor is it sufficient for the majority to justify its conclusion that the deliberate indifference standard should apply because Welters "does not claim that the use of handcuffs during transport . . . is itself unconstitutional" but rather "contends that the handcuffs were unnecessarily and improperly applied too tightly" in his specific case. An explicit purpose of the malicious and sadistic standard is to give appropriate deference to prison officials in the "*execution* of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Hudson*, 503 U.S. at 6 (emphasis added) (quoting *Whitley*, 475 U.S. at 321–22). Officer Rhoney and Officer Emily were executing just such a policy here—the DOC's restraint policy—when they applied Welters's handcuffs and declined to remove or adjust them once Welters complained. It is only proper that they receive the deferential review that the Supreme Court has mandated for those in their circumstance.[6]

Services, 583 F.3d 522 (8th Cir. 2009) (en banc)—is inapposite. *Nelson* involved a female "non-violent offender" in the late stages of labor whose injuries arose from being shackled to a delivery bed and unable to move while in a civilian hospital. *Id.* at 525–26. The Eighth Circuit specifically noted that "from the record evidence in Nelson's case there does not even appear to have been a competing penological interest in shackling her." *Id.* at 530. By contrast, there are competing penological interests when handcuffing a violent offender like Welters for transport to and from a high-security facility that houses only violent offenders.

[6] Welters's allegations about how the officers executed the policy are troubling to be sure. But how the officers executed the

The Eighth Circuit cases that the majority cites to support its conclusion that Welters's claims should be treated as a condition of confinement because he was transported are also easily distinguished. None of the transport cases cited by the majority involve physical injury from the restraints and, as a result, do not involve the application of excessive force. *See Reynolds v. Dormire*, 636 F.3d 976, 979–80 (8th Cir. 2011) (addressing a prisoner's complaints that he was handcuffed during a day-long transport and would have had difficulty relieving himself had he chosen to do so); *Brown v. Fortner*, 518 F.3d 552, 558–59 (8th Cir. 2008) (addressing a prisoner's complaints that officers refused to fasten his seatbelt when he was in full restraints, resulting in his subsequent injury when the vehicle was involved in an accident).[7]

Finally, it is important to note that the majority overlooks cases from the Eighth Circuit that do not support its conclusion. For instance, in *Aldape v. Lambert*, the Eighth Circuit applied the malicious and

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policy, whether rightly or wrongly, goes to whether the standard is met. It does not go to which standard to apply.

[7] It is also worth noting that the federal circuits do not agree about what standard to apply to Eighth Amendment claims arising from transport. For instance, in *Thompson v. Commonwealth of Virginia*, the Fourth Circuit held that, under similar facts as *Brown*, a prisoner's claims that he was injured in a transport van due to erratic driving while in full restraints should be judged by the malicious and sadistic standard (rather than the deliberate indifference standard) because the claim is "essentially . . . that [the officer] applied force against him without any legitimate purpose . . . using the transport van's momentum." 878 F.3d 89, 99 (4th Cir. 2017).

sadistic standard to a prisoner's claim that officers handcuffed him behind his back to perform a strip search, that he had a medical order that should have precluded handcuffing behind his back, and that the officers were aware of his condition. 34 F.3d 619, 623–24 (8th Cir. 1994). And in *Walker v. Bowersox*, the Eighth Circuit applied the malicious and sadistic standard to a prisoner's claim that he was restrained on a bench for 24 hours after initially expressing displeasure over a proposed cell mate, even though his claim also involved conditions of confinement such as no access to water, food, or bathroom facilities. 526 F.3d 1186, 1188 (8th Cir. 2008) (per curiam). Recently, the Eighth Circuit applied the malicious and sadistic standard in *Jackson v. Gutzmer* when analyzing a prisoner's claim that he was placed on a restraint board for 3½ hours. 866 F.3d at 976. Admittedly, the parties in *Jackson* agreed that the proper standard was the malicious and sadistic standard, but the panel went out of its way to note that the malicious and sadistic standard may be warranted in passive restraint cases depending on the "factual context" in which they arrive. *Id.* at 976 n.3.[8]

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[8] Other federal circuit courts have also applied the malicious and sadistic standard to passive restraint cases. For example, in *Lunsford v. Bennet*, the Seventh Circuit applied the malicious and sadistic standard to three prisoners' complaints that they were subjected to cruel and unusual punishment when prison officials shackled them to their cells for 3 hours in order to remove flood water. 17 F.3d 1574, 1581–82 (7th Cir. 1994). And in *Campbell v. Sikes*, the Eleventh Circuit applied the malicious and sadistic standard to an inmate's claims that she was subjected to cruel and unusual punishment when prison officers placed her in full

I do not suggest that these Eighth Circuit cases definitively resolve the issue before us today. Rather, the varied decisions from the Eighth Circuit (and elsewhere) reinforce the need to look to the Supreme Court's rulings on when to apply the malicious and sadistic standard and when to apply the deliberate indifference standard. Because I believe that binding Supreme Court precedent requires us to apply the malicious and sadistic standard "*whenever* prison officials stand accused of using excessive physical force," *Hudson*, 503 U.S. at 6–7 (emphasis added), I would apply that standard to Welters's claims.

B.

Having concluded that the appropriate standard to apply to Welters's claim is the malicious and sadistic standard, I turn to the application of that standard to the facts of the case. As previously stated, the district court determined that "[n]othing in the record indicates that either Officer Rhoney or Officer Emily acted with the intent to cause [Welters] harm, let alone acted maliciously or sadistically." Welters does not challenge the district court's conclusion or argue that he should prevail if we apply the malicious and sadistic standard. Accordingly, I would reverse the court of appeals and

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restraints for extended periods of time when she posed a threat to her own safety. 169 F.3d 1353, 1359–60, 1376–78 (11th Cir. 1999). Recently, the Tenth Circuit applied the malicious and sadistic standard to a prisoner's allegations that officers overtightened his handcuffs, resulting in the loss of circulation. *See Stevenson v. Cordova*, 733 F. App'x 939, 945 (10th Cir. 2018).

reinstate the grant of summary judgment for Officer Rhoney and Officer Emily.

I respectfully dissent.

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1481

Christopher Welters,
Appellant,

vs.

Minnesota Department of Corrections, et al.,
Respondents.

Filed October 25, 2021
Affirmed in part, reversed in part and remanded.
Hooten, Judge

Washington County District Court
File No. 82-CV-19-2268

Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

Keith Ellison, Attorney General, Kathryn L. Landrum, Michael Goodwin, Assistant Attorney Generals, St. Paul, Minnesota (for respondents)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Smith, John, Judge.*

SYLLABUS

In cases analyzing an Eighth Amendment claim, corrections officers' actions pertaining to the use of mechanical restraints on an inmate for purposes of a

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* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

routine medical transport or procedure are evaluated under the deliberate indifference standard.

OPINION

HOOTEN, Judge

Appellant Christopher Welters challenges the summary judgment dismissal of his claims against respondents, the Minnesota Department and Commissioner of Corrections (DOC) and two corrections officers, for personal injuries suffered during his incarceration. Welters asserts that the district court erred by (1) dismissing his Eighth Amendment claims; (2) dismissing his negligence claims as barred by official immunity and for lack of causation evidence; and (3) dismissing his First Amendment retaliation claim for lack of causation evidence. We affirm in part, reverse in part, and remand.

FACTS

The mechanical restraint during Welters' medical transport and procedure

On July 31, 2017, Welters, who is incarcerated at Minnesota Correctional Facility-Stillwater (MCF-Stillwater), was scheduled for a medical procedure at Minnesota Correctional Facility-Oak Park Heights (MCF-OPH). Around 12:15 p.m. that day, Welters was escorted to the security center inside MCF-Stillwater to prepare for his medical transport. Respondent Officer Ernest Rhoney then placed Welters in full

restraints, which included handcuffs with a handcuff cover—known as a black box, a waist chain, and leg irons. Welters, in his deposition, testified that Officer Rhoney "did not know what he was doing" because he "had to mess with the transport chains three or four different times" and "put them on backwards." According to Welters, Officer Rhoney told him, "[I haven't] done this for a while, so forgive [me]." Welters testified that Officer Rhoney did not test the handcuffs for tightness. Welters also testified that he noticed that his handcuffs were "snug" and "tighter than usual," but he did not tell Officer Rhoney that at that time.

A short time later, Officer Rhoney and Sergeant Michael Wildung escorted Welters and another inmate (Inmate 1) from the security center to a transport vehicle, where respondent Officer Cornelius Emily, of MCF-Stillwater, was already waiting. According to Welters, as he was walking to the transport vehicle from the security center, he told Officer Rhoney that his handcuffs were "pretty tight," but Officer Rhoney responded, "Oh, it's only a 15-minute drive, it'll be all right."

According to Welters, he heard his handcuffs click as he was getting into the vehicle and realized that they were not double-locked, meaning that they could continue to tighten. Welters testified that he told Officer Rhoney that his handcuffs were not locked, so Officer Rhoney "grabbed one of the handcuffs and pushed down on it and it clicked." Welters testified that Officer Rhoney then told him that he was correct. Welters stated that Officer Rhoney's actions made the right

handcuff even tighter, and he asked Officer Rhoney if they should fix the handcuffs before they left, but Officer Rhoney responded, "It's only a 15-minute drive." However, during his deposition, Officer Rhoney disputed Welters' allegations and testified that he checked the tightness of the handcuffs when he double-locked them.

Once they arrived at MCF-OPH, Welters and Inmate 1 were placed in a large medical holding cell. According to Welters, his handcuffs were not removed, his wrists were not feeling very good, and his hands became cold. Welters also testified that after he noticed that inmates in other holding cells were not handcuffed or restrained, he and Inmate 1 asked an MCF-OPH officer (Officer 1) who was walking by why their restraints had not been removed. Officer 1 responded that he was not from MCF-Stillwater and could not help them. Later, while still in the holding cell, Welters and Inmate 1 asked Officer Emily why their restraints had not been removed. Welters testified that he told Officer Emily that his "hands were numb" and he "wanted to get [the] restraints off," but Officer Emily stated that he needed "to go find his partners" and left.

Welters testified that less than an hour later, another MCF-OPH officer (Officer 2) escorted him to medical intake. Welters stated that he asked Officer 2 to remove or loosen his handcuffs, but Officer 2 said that he would have to get an MCF-Stillwater officer to do that. Welters testified that he was then taken to a nurse who asked Officer 2 why Welters was still in restraints and Officer 2 responded that he was currently

looking for the MCF-Stillwater officers. Welters testified that he told the nurse that he could not feel his hands, and the nurse responded that the MCF-Stillwater officers should be removing his handcuffs soon. Welters stated that when he was subsequently wheeled into the operating room, one of the medical staff asked why he was still in restraints, and Officer 1, who was also in the operating room at that time, responded that they were still looking for the MCF-Stillwater officers to remove them.

According to Welters, while lying on the gurney, he was asked to turn on his left side with his full restraints still on. Welters testified that he asked the anesthesiologist if they were going to do the procedure with his restraints on, and the anesthesiologist responded, "[t]hey should be removing them soon." Welters was then placed under anesthesia for the medical procedure with his restraints still in place.

When Welters awoke, he was still in full restraints, and he testified that he could not feel his hands and that they were "light bluish" in color. Officer Emily, accompanied by another MCF-Stillwater officer (Officer 3), entered the medical room to help Welters prepare for his transport back to MCF-Stillwater. Welters testified that he told these officers that he could not feel his hands. Welters also told Officer 3 that his restraints had been on since he had left MCF-Stillwater earlier that day and asked him to remove them, but Officer 3 said they were leaving. Welters testified that he was then placed into a holding cell with another prisoner from MCF-Stillwater who was not in restraints.

According to Welters, approximately 3.5 hours after departing MCF-Stillwater, he returned, and his restraints were removed. He was then escorted to the medical area, where he was examined and released to his living unit. Welters testified that, at that point, his hands were numb and had started to tingle, and his wrists were red to the point where "you could see where the cuffs were on them."

Welters claimed he woke up the next morning with intense and sharp pain in his palms. That day, he submitted a complaint to MCF-Stillwater alleging that his hands and wrists were injured by the conduct of Officer Rhoney, Officer Emily, and Sergeant Wildung. Welters testified that by August 2, 2017, two days after his procedure, his wrists were visibly bruised.

MCF-Stillwater Captain Bryon Matthews investigated Welters' allegations and responded on August 24, 2017, as follows:

> After carefully reviewing your complaint, I interviewed the staff you indicated regarding this issue/concern and received the following information. Your OPH medical appointment was from 1230 to 1500 2 and ½ hours not 4 as you indicated. The staff however should have removed your restraints upon placement into the OPH holding cell. All involved officers have been reminded to always remove offender restraints upon admittance unless there is a safety concern which would prevent the restraint removal.

> The staff also indicated neither yourself or the nurse requested to have the restraints removed during the procedure, the nurse indicated she never requested to have the restraints removed however she knew it wasn't normal protocol for offenders to be restrained during medical procedures.
>
> . . . .
>
> The officers indicated you made no complaint to them regarding injuries sustained from the restraints nor did they observe any injuries while removing the restraints. You did not indicate a request to see health services staff for assessment or treatment of any alleged injuries during your return intake process.

Welters testified that the intense pain in his palms lasted approximately one year, and he developed carpal tunnel syndrome in both of his wrists due to being handcuffed. He testified that, because of his injuries, he experienced dysfunction in his hands and was unable to continue hobbies. He also testified that he was prescribed steroid injections, but they did not provide any relief. He subsequently had carpal tunnel release surgery on both wrists. A neurologist confirmed nerve damage in both of his wrists, and an orthopedic surgeon opined that the injury was likely a result from being handcuffed.

DOC restraint policy

The transportation and use of restraints on inmates, for purposes of medical transports and procedures at other locations, are governed by DOC policy. As part of discovery in this case, the DOC produced policies that were in effect on July 31, 2017. DOC policy 301.096 directs DOC officers to transport offenders "to the medical provider facility in full restraints." This policy also contains a separate section dealing with medical transports to MCF-OPH. That section provides that transporting MCF staff must make sure that "all offenders [are] in full restraints at all times during movement." This section defines "full restraints" as the use of a "waist chain, black box (with padlock), handcuffs (double-locked), and leg irons (double-locked)." This policy states that upon arrival at the provider facility, "restraint levels may be modified at the discretion of the [corrections officer]."

This policy also provides that, during the actual medical appointment, offenders "must be in full restraints," but "[i]f medical staff request the offender's restraints be either partially or fully removed for a medical procedure or treatment, officers must remove only those restraints that would interfere with the examination and/or treatment." According to DOC policy, "[o]fficers are authorized to leave the offender in full restraints if, in their best judgment, control of the offender would be jeopardized even with additional security staff."

DOC policy 301.081 pertains to the use of force on and restraint of adults and states that "DOC does not tolerate the use of force without justification, or the use of force with proper justification but in excessive amounts." This policy, which defines "mechanical restraint" as "handcuffs, leg restraints, and waist chains," provides that "[m]echanical restraints [should be] used on a selective basis to ensure control . . . to transport offenders outside the facility." It also provides that "[m]echanical restraints must not be used: (1) Longer than necessary; . . . (4) To cause undue discomfort; (5) To inflict physical pain; or (6) To restrict blood circulation or breathing." Just like policy 301.096, policy 301.081 also requires the double-locking of handcuffs, stating that "[i]f the [restraint] mechanism contains a safety lock, mechanical restraints must be safely locked once it is possible for the officer to do so." Policy 301.081 also states that "[i]t is the responsibility of all officers to ensure that, once placed in restraints, visual and physical control of the offender is maintained at all times" and that "[f]irst aid must be offered, provided, and monitored, if needed."

During their depositions, Officers Rhoney and Emily both testified that they were aware of policies 301.096 and 301.081. Officer Rhoney testified that he believed he complied with the policies during his transport of Welters on July 31, 2017. When asked if he was required to comply with these policies during his transport of Welters, Officer Emily testified, "I [would] say it was officer discretion."

The inmate attack

On May 9, 2018, Welters was assaulted by another inmate (Inmate 2), who had a history of prior assaults. The MCF-Stillwater Office of Special Investigations (OSI) reviewed the assault, which was captured on surveillance video. Welters signed a "prosecution declination" and waived criminal prosecution against Inmate 2. The investigation into the incident was closed because OSI has a policy that, without a cooperating victim, it does not continue to investigate assaults or seek criminal prosecutions.

During his deposition, Welters testified that after the attack, he first considered whether it was motivated by his refusal to join a prison gang, but he ultimately decided that he was attacked because of a rumor that he was a "rat"—meaning a prison informant. Welters testified that on the day before he was assaulted, he heard that "a rat was going to get hit in the unit." Welters further testified that after his assault by Inmate 2, numerous people reported to him that he was "sliced in the face because [he] was a rat," due to false rumors spread at MCH-Stillwater by prison staff and because "staff wanted [Inmate 2] to do it." Welters testified that he believed this is in part because he overheard Sergeant Wildung saying something about him as he was passing by and he was attacked on Sergeant Wildung's unit.

In an affidavit, an inmate at MCF-Stillwater (Inmate 3) testified that about one week after Welters filed his initial grievance regarding the mechanical

restraint during Welters' medical transport and procedure, Officer Rhoney "came up to [him] out of the blue and told [him] that Mr. Welters was accusing Officer Rhoney of injuring Mr. Welters and that he thought that Mr. Welters was in some '[W]hite' gang." Inmate 3 testified that Officer Rhoney appeared upset when he relayed the information to him.

Another inmate (Inmate 4) testified in an affidavit that shortly before the date of the inmate attack, "Officer Emily told [him] that Mr. Welters was a racist rat/informant and that Mr. Welters raped a black girl." Inmate 4 stated that "Officer Emily also told [Inmate 4] that [Officer Emily] wanted other inmates to assault Mr. Welters" and that "Officer Emily provided the same information to other inmates at [MCF-Stillwater] as well." In his affidavit, Inmate 4 also indicated that as a result of Officer Emily spreading the rumor that Welters was an informant, Welters became labeled as a snitch at MCF-Stillwater. According to the affidavit, inmates associated with a prison gang on Welters' unit wanted Welters off their unit because he was a snitch, and so they orchestrated the assault by Inmate 2.

Procedural history

On November 11, 2019, Welters filed a second amended complaint, which is the operative pleading in this matter, alleging three counts of violations of his federal civil rights as well as five counts of tort violations under Minnesota state law. Respondents filed a motion for summary judgment on all of Welters' claims.

Subsequently, Welters filed a motion to amend the complaint to add a claim for punitive damages against Officers Rhoney and Emily. During a district court hearing on respondents' motion for summary judgment, Welters voluntarily dismissed the majority of his claims, including those against Sergeant Wildung. He proceeded only on his claims against Officers Rhoney and Emily, alleging that (1) they were liable, in their individual capacities, under 42 U.S.C. § 1983 (2018) for violations of Welters' Eighth Amendment and First Amendment rights; and (2) that they, in their individual capacities, were negligent under Minnesota law. Welters also alleged that the DOC was vicariously liable to him for the negligence of its employees under Minnesota law. Following the summary judgment hearing, the district court issued an order granting respondents' motion for summary judgment and dismissing Welters' complaint with prejudice. The district court's order did not refer to Welters' motion to amend his complaint to add a claim for punitive damages. Welters appeals.

ISSUES

I. Whether the district court erred by dismissing Welters' Eighth Amendment claims against Officers Rhoney and Emily.

II. Whether the district court erred by dismissing Welters' negligence claims against Officers Rhoney and Emily as barred by official immunity and against the DOC as barred by vicarious immunity.

III. Whether the district court erred by dismissing Welters' First Amendment retaliation claim.

ANALYSIS

Appellate courts "review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). A material fact is one that will affect the outcome of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). We view "the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted). We review the applicability of immunity de novo. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016). The party asserting immunity has the burden of demonstrating entitlement to that defense. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

I. The district court did not err by dismissing Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the inmate attack, but the district court erred by dismissing Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the mechanical restraint during Welters' medical transport and procedure.

A government official may raise qualified immunity in a civil rights claim under 42 U.S.C. § 1983. *Elwood v. County of Rice*, 423 N.W.2d 671, 674 (Minn. 1988). In addition to protection from liability, "[q]ualified immunity is an entitlement not to stand trial or face the other burdens of litigation." *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (quotation omitted). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

"The test for qualified immunity at the summary judgment stage is an objective one." *Electric Fetus Co. v. City of Duluth*, 547 N.W.2d 448, 452 (Minn. App. 1996) (quotation omitted). To determine the applicability of qualified immunity, courts consider (1) whether the plaintiff alleged facts showing the violation of a statutory or constitutional right and (2) whether the plaintiff had a right "clearly established" at the time of the alleged violation. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts may "exercise their sound discretion in deciding" the order to address these elements. *Id.* at 236.

Conduct violates clearly established law when "the contours of a right are sufficiently clear [such] that every reasonable official would have understood that what [they are] doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quotations omitted). In determining whether a right is clearly established, the Supreme Court has stated that it does not "require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* The Eighth Amendment "prohibits the infliction of cruel and unusual punishments on those convicted of crimes." *Wilson v. Seiter*, 501 U.S. 294, 296–97 (1991) (quotation omitted). To violate the Eighth Amendment "offending conduct must be wanton." *Id.* at 302. The meaning of the term "wanton" in an Eighth Amendment context is not fixed and depends upon the circumstances and type of case in which the alleged violation occurs. *Id.*

In cases dealing with allegations of excessive force, the inquiry focuses on "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). If the use of force was applied maliciously and sadistically, then it was wanton. *Id.* at 8.

In cases involving conditions of confinement or the deprivation of medical care, courts apply a deliberate indifference standard in which wanton means that the official "acted or failed to act despite his knowledge of a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994).

In his complaint, Welters alleges that his Eighth Amendment rights were violated by Officers Rhoney and Emily as a result of both the inmate attack and the mechanical restraint during Welters' medical transport and medical procedure. We therefore address Welters' Eighth Amendment claims regarding each incident in turn.

The inmate attack

1. *Constitutional rights clearly established*

"Prison officials have a duty to protect prisoners from violence at the hands of other prisoners." *Farmer*, 511 U.S. at 833 (quotation omitted). The Eighth Amendment requires prison officials to "take reasonable measures to guarantee the safety of the inmates." *Id.* at 832, 114 S.Ct. 1970 (quotation omitted). Therefore, Welter's Eight Amendment rights were clearly established at the time of the attack.

2. *Violation of Constitutional rights*

A constitutional violation based on a failure to prevent harm requires proof of: (1) conditions posing a substantial risk of serious harm, and (2) deliberate indifference to health or safety. *Id.* at 834. Deliberate indifference requires more than mere negligence but less than purpose or knowledge. *Id.* at 835. Instead, deliberate indifference is analogous to recklessness, as "the official[s] must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] must also draw the

inference." *Id.* at 837. An official's knowledge of the risk may be demonstrated through circumstantial evidence and inference, and "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* at 842. Nevertheless, there is no constitutional violation when the officials knew of a substantial risk to health or safety and they "responded reasonably to the risk, even if the harm ultimately was not averted." *Id.* at 844.

Welters relies on affidavits submitted by Inmates 3 and 4 to support his assertion that Officers Rhoney and Emily knew that Inmate 2 posed a substantial risk to Welters' safety. However, the district court determined that Welters could not rely on these affidavits to avoid summary judgment because they contained inadmissible hearsay based on rumors. *See In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004) ("When deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial."). After excluding the affidavits from its analysis, the district court concluded that Welters' Eighth Amendment claim based on the inmate attack failed because "[t]he record is devoid of any evidence shedding any light on why the inmate assaulted [Welters]."

Even if we were to rely on the affidavits and view them in the light most favorable to Welters, we would still be left without any evidence connecting Inmate 2's assault of Welters to any purported rumors spread by Officers Rhoney and Emily. In his affidavit, Inmate 3 alleges that Officer Rhoney spread a rumor that

Welters was in a "White gang" nine months before the inmate attack, but Inmate 3 does not mention the inmate attack or what motivated the attacker. In his affidavit, Inmate 4 attempts to connect the inmate attack with purported rumors spread by Officer Emily, but he provides no evidence that Inmate 2 had knowledge of any rumors or attacked Welters because of any rumors. Without any evidence that Inmate 2 knew about any alleged rumors or attacked Welters because of those alleged rumors, it is impossible to conclude that Officers Rhoney and Emily had any reason to know that there was a substantial risk to Welters' safety. Additionally, Welters testified that he had never met or spoken to Inmate 2.

Therefore, this record, viewed in the light most favorable to Welters, contains insufficient evidence to support a conclusion that Officers Rhoney and Emily were "aware of facts from which the inference could be drawn that a substantial risk of serious harm" to Welters existed. *See Farmer*, 511 U.S. at 837. Because Welters failed to submit any evidence of a violation of his constitutional rights on this issue, the district court did not err in dismissing his claim that his Eighth Amendment rights were violated by the inmate attack. *Pearson*, 555 U.S. at 232.

Mechanical restraint during Welters' medical transport and procedure

1. *Constitutional rights clearly established*

In determining whether a right is clearly established, the Constitution, decisions of the United States Supreme Court, and decisions of lower federal courts may provide notice of established constitutional rights. *See Hope v. Pelzer*, 536 U.S. 730, 741–42 (2002).

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. amend. VIII. The Supreme Court and the lower federal courts have concluded that the Eighth Amendment bar on cruel and unusual punishments forbids the inhumane use of restraints that cause injury to prisoners. *See Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 668–69 (D.D.C. 1994), *vacated in part, modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995). In *Women Prisoners*, the court held the prison official defendants liable for violating a pregnant woman's Eight Amendment rights, explaining that a prison official who shackles a woman while she is in labor during childbirth acts with "deliberate indifference . . . since the risk of injury to women prisoners is obvious." *Id.* at 669.

Likewise, in 2002, the Supreme Court provided guidance to officials on the constitutional limits of restraining prisoners in a Section 1983 action brought by an inmate alleging that his Eighth Amendment rights had been violated by officials responsible for handcuffing him to a prison hitching post. *Hope*, 536 U.S. at

733–35. The Court determined that the defendant prison officials had acted with deliberate indifference to the inmate's health and safety in violation of the Eighth Amendment by restraining him "[d]espite the clear lack of an emergency situation" in a manner "that created a risk of particular discomfort and humiliation." *Id.* at 738.

Based on this caselaw, we believe that a reasonable factfinder could determine from the record in this case that Officers Rhoney and Emily, like the officials in *Hope*, were not facing an emergency situation but nevertheless "subjected [Welters] to a substantial risk of physical harm, to unnecessary pain caused by the [shackles] and the restricted position of confinement . . . [and] created a risk of particular discomfort and humiliation." *See id.*

Further, there is no evidence presented by the officers in their motion to the district court indicating that restraining Welters was justified by any legitimate penological concern, and there is no evidence that Welters was dangerous to himself or others. Officer Emily testified that he did not believe Welters presented any particular or unique safety concern, yet he nonetheless kept Welters in restraints because he did not trust inmates while he was alone with them. However, there was evidence in the record that Officer 1 was in the vicinity of the holding cell and that Officer Emily was not alone. Additionally, there is no evidence in the record that Welters posed a flight risk. Once he arrived at MCF-OPH, Welters was locked in a large medical holding cell, and during his surgery, he was

placed under anesthesia and so would have been unconscious.

Therefore, Welters' Eighth Amendment rights were clearly established at the time of his restraint.

2. *Violation of Constitutional rights*

The parties disagree on whether the use-of-force standard or the deliberate indifference standard applies to the determination of whether Welters' constitutional rights were violated. The district court applied the use-of-force standard and concluded that Welters' claim regarding his mechanical restraint during the medical transport and procedure failed because "[n]othing in the record indicate[d] that either Officer Rhoney or Officer Emily acted with the intent to cause [Welters] harm, let alone acted maliciously or sadistically."

Agreeing with the district court, Officers Rhoney and Emily argue that this is a case involving the use of excessive force that therefore requires us to determine whether the force used was applied "maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (quotation omitted). Welters, however, argues that this is a case involving a condition of confinement and therefore the deliberate indifference standard is appropriate.

The resolution of the appropriate legal standard to apply when an inmate is fully restrained throughout a medical transport and medical procedure is an issue of

first impression before a Minnesota appellate court. Although their reasoning is not controlling,[1] several federal courts have analyzed factually similar claims and applied the deliberate indifference standard. *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009); *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563 (6th Cir. 2013).

Nelson involved an Eighth Amendment claim arising out of the use of restraints while a pregnant prisoner was in labor. The Eighth Circuit in *Nelson* determined that the test to analyze whether a prison official was deliberately indifferent is: "(1) whether [the plaintiff] had a serious medical need or whether a substantial risk to [the plaintiff's] health or safety existed, and (2) whether [the official] had knowledge of such serious medical need or substantial risk to [the plaintiff's] health or safety but nevertheless disregarded it." 583 F.3d at 529.

Adopting the reasoning of the Eighth Circuit in *Nelson*, the Sixth Circuit in *Villegas* reasoned that a use-of-force analysis was "not well adapted" for petitioner's claim arising out of being shackled during labor and postpartum recovery, which more closely resembled a crossover between a conditions of confinement case and a medical needs case. 709 F.3d at 570–71. In conditions of confinement cases, courts specifically consider whether the detainee or prisoner was

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[1] We are not bound by the lower federal courts, even on issues of federal law. *See Jendro v. Honeywell, Inc.*, 392 N.W.2d 688, 691 n.1 (Minn. App. 1986).

denied "the minimal civilized measure of life's necessities." *Farmer*, 511 U.S. at 834. This includes ensuring the safety of inmates and making sure they "receive adequate food, clothing, shelter, and medical care." *Id.* at 832. And, in medical needs cases, "deliberate indifference to *serious medical needs* of prisoners constitutes the unnecessary and wanton infliction of pain." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (emphasis added) (quotation omitted).

We agree with their reasoning and adopt the test utilized by the *Nelson* court. We do so because this approach persuasively combines both medical needs language from *Estelle*, 429 U.S. at 104, and conditions of confinement language from *Farmer*, 511 U.S. at 842. We therefore consider whether a substantial risk to Welters' health or safety existed. *Nelson*, 583 F.3d at 529.

There is sufficient evidence in the record from which a factfinder could conclude that a substantial risk to Welters' health and safety existed when he was handcuffed in an allegedly inappropriate manner as he was transported to and from MCF-OPH and throughout the duration of his medical procedure on July 31, 2017. The DOC's own policy 301.081 states that an inmate should not be restrained "[l]onger than necessary" and that while an inmate is restrained, "[f]irst aid must be offered, provided, and monitored, if needed." The record, viewed in the light most favorable to Welters, could support a conclusion that the handcuffs were inappropriately put on, that they were so tight that they caused injury, and that he was

restrained longer than necessary. Welters was allegedly restrained for approximately 3.5 hours, including while he was placed in an MCF-OPH holding cell and throughout the duration of his medical procedure. In his response to Welters' grievance, Captain Matthews agreed that while restraints were necessary during a medical transport, they were to be removed upon "placement into the OPH holding cell." He explained: "All involved officers have been reminded to *always* remove offender restraints upon admittance unless there is a safety concern which would prevent the restraint removal." (Emphasis added.)

The record, viewed in the light most favorable to Welters, could also support a conclusion that there was a substantial risk to his health and safety as a result of being inappropriately handcuffed with restraints tighter than necessary and being restrained longer than necessary. Welters testified that the intense pain in his palms from being restrained lasted approximately one year, and that, as a result, he experienced motor and grip dysfunction, stopped exercising, was unable to hold items in his hands, and was unable to continue with his art hobby. Welters also stated that he developed carpal tunnel syndrome in both of his wrists as a result of being handcuffed. A neurologist at Noran Neurological Clinic examined Welters and confirmed nerve damage in both of his wrists. Additionally, Welters submitted an expert report by an orthopedic surgeon, who opined that it was "more likely than not that the continuous compression resulting from being handcuffed during anesthesia played a substantial

contributing factor to the development of Mr. Welters' bilateral carpal tunnel syndrome." Welters testified that he had carpal tunnel release surgery on both wrists and that the surgeries helped with his intense pain in his hands. But Welters complained that his wrists still ache and he still cannot paint because his "hands don't work the same as they once did."

This evidence in the record, when viewed in the light most favorable to Welters, therefore presents a genuine issue of material fact so as to preclude summary judgment.

We next consider whether Officers Rhoney and Emily had knowledge of a substantial risk to Welters' health or safety but nevertheless disregarded it. *See Nelson*, 583 F.3d at 529. Welters testified that he told Officer Rhoney that his handcuffs were not locked, and that he asked Officer Rhoney if they should fix the handcuffs before they left for MCF-OPH, but Officer Rhoney responded, "It's only a 15-minute drive." Welters testified that, while he was in the holding cell, he told Officer Emily that his "hands were numb" and that he "wanted to get [the] restraints off," but Officer Emily stated that he needed "to find his partners" and left. Welters also testified that when he awoke from his surgery, he was still in full restraints, he could not feel his hands, and his hands were "light bluish" in color. Officer Emily entered the medical room to help Welters prepare for his transport back to MCF-Stillwater and therefore would have been able to observe Welters' hands at that time. Welters testified that he also told Officer Emily that he could not feel his hands, but

notwithstanding his complaints, the handcuffs were not removed. When viewed in a light most favorable to Welters, there is sufficient evidence in the record from which a factfinder could conclude that Officers Rhoney and Emily did have knowledge of the substantial risk to Welters' health and safety but nevertheless disregarded it.

Our obligation at this stage of the case is not to resolve the ultimate issue of whether Welters can prevail on his Eighth Amendment claim against Officers Rhoney and Emily; it is only to examine the record before the district court to determine whether it erred in granting the officers qualified immunity under the relevant summary judgment standard. Because Welters produced sufficient evidence to demonstrate that inappropriately restraining him during a medical transport and procedure could violate a clearly established right, the district court erred by dismissing Welters' Eighth Amendment claim on this issue.

II. The district court erred by dismissing Welters' negligence claims against Officers Rhoney and Emily as barred by official immunity and against the DOC as barred by vicarious immunity.

Official Immunity

"Common law official immunity generally applies to prevent a public official charged by law with duties which call for the exercise of his judgment or discretion from being held personally liable to an individual for

damages." *Schroeder v. St. Louis County*, 708 N.W.2d 497, 505 (Minn. 2006) (quotation omitted). "The purpose of official immunity is to protect public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties." *Ireland v. Crow's Nest Yachts, Inc.*, 552 N.W.2d 269, 272 (Minn. App. 1996) (quotation omitted). "Whether official immunity applies turns on: (1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014).

"The discretionary-ministerial distinction is a nebulous and difficult one." *Shariss v. City of Bloomington*, 852 N.W.2d 278, 281 (Minn. App. 2014) (quotation omitted). However, it is important to make this distinction because "common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions." *Anderson v. Anoka Hennepin Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). We "focus our inquiry on the nature of the act itself and acknowledge that in doing so almost any act involves some measure of freedom of choice." *Schroeder*, 708 N.W.2d at 507. "Some degree of judgment or discretion will not necessarily confer discretionary immunity on an official." *Elwood*, 423 N.W.2d at 677.

A duty is discretionary if it involves "individual professional judgment that necessarily reflects the

professional goal and factors of a situation." *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006) (quotation omitted). We typically consider duties discretionary when they involve "responding to uncertain circumstances that require the weighing of competing values on the grounds that these circumstances offer little time for reflection and often involve incomplete and confusing information such that the situation requires the exercise of significant, independent judgment and discretion." *Shariss*, 852 N.W.2d at 282 (emphasis omitted) (quotation omitted). Examples of discretionary duties include a police officer choosing the speed at which to drive through a red light while responding to an emergency under a statute imposing a duty on the officer to "slow down as necessary for safety," *Vassallo*, 842 N.W.2d at 463; and a bus driver choosing to keep a bus moving on a highway while passengers attacked each other, under the driver's duty to ensure the safety of all passengers. *Watson by Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 415 (Minn. 1996).

These duties required the employees to use their professional judgment to choose between a variety of options under uncertain circumstances and without the benefit of time for reflection. But even with time for reflection, a duty may still be discretionary. *See Schroeder*, 708 N.W.2d at 506 (holding that decision of a road-grader operator to grade against traffic on highway, under county's policy allowing him that judgment, was discretionary).

By contrast, a "ministerial duty is one that is absolute, certain, and imperative, involving merely the

execution of a specific duty arising from fixed and designated facts." *Anderson*, 678 N.W.2d at 656 (quotation omitted). A ministerial duty need not be imposed by law and may arise from an unwritten policy or protocol that dictates a particular course of conduct. *See id.* at 657–59. And the "mere existence of some degree of judgment or discretion will not necessarily confer common law official immunity; rather, the focus is on the nature of the act at issue." *Id.* at 656.

Welters alleges that he was harmed when Officers Rhoney and Emily "failed to double-lock his handcuffs and when they failed to adjust or remove his restraints upon placement inside a holding cell" at MCF-OPH. The district court determined that the conduct at issue on appeal—failing to adjust or remove Welters' restraints—was discretionary, reasoning that "DOC policy provides that upon arrival at the medical facility, the prison official's duty regarding the handcuffs becomes discretionary, and removing the handcuffs is left to the judgment of the supervising officer."

We disagree. We find that the alleged conduct at issue here was ministerial, not discretionary. Policy 301.096 directs DOC officers to transport offenders "to the medical provider facility in full restraints." According to the policy, full restraints include double-locked handcuffs. Policy 301.081 also requires that handcuffs be double-locked: "If the [restraint] mechanism contains a safety lock, mechanical restraints *must* be safely locked once it is possible for the officer to do so." (Emphasis added.) During his deposition, Officer

Rhoney admitted that double-locking the handcuffs is required per policy:

> WELTERS' COUNSEL: And the cuffs were double-locked?
>
> OFFICER RHONEY: As per policy, yes.

We therefore conclude that policies 301.096 and 301.081 imposed a ministerial duty, and not a discretionary one, upon Officers Rhoney and Emily to double-lock Welters' handcuffs.

However, the parties disagree as to whether Welters' handcuffs were double-locked. According to Welters, he heard his handcuffs click as he was getting into the vehicle and realized that they were not double-locked, meaning that they could continue to tighten. During his deposition, Officer Rhoney testified that he double-locked Welters' handcuffs and checked them for tightness. "[W]hen predicate facts are in dispute, we cannot determine whether official immunity applies until the factual disputes are resolved." *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 675 (Minn. 2006). "[A]dditional analysis as to what in fact occurred would be wholly speculative and call for fact-finding, a task beyond the scope of our review." *Id.* Because the predicate fact of whether Welters' handcuffs were double-locked is in dispute, Officer Rhoney is not entitled to summary judgment on grounds of official immunity on this portion of Welters' negligence claim, and we therefore remand this issue to the district court. *See id.* (reversing and remanding negligence claim for trial to determine if officers were entitled to official

immunity when genuine issue of material fact existed as to whether officers initiated a "vehicular pursuit" of motorist as defined by vehicle operation policy).

This same analysis applies to Welters' claim against Officers Rhoney and Emily for failing to remove or at least loosen his handcuffs after he was placed inside a holding cell at MCF-OPH. Policy 301.081 explicitly states that "Mechanical restraints *must not be used*: (1) Longer than necessary; . . . (4) To cause undue discomfort; (5) To inflict physical pain; or (6) To restrict blood circulation or breathing." (Emphasis added.) Policy 301.081 also states that "[f]irst aid must be offered, provided, and monitored, if needed." Based on the use of the mandatory term "must" in these portions of policy 301.081, the policy imposed a ministerial duty upon Officers Rhoney and Emily to leave the restraints on Welters only if necessary and to offer and provide first aid to him when he needed it. However, the parties disagree as to how long it was necessary to keep Welters restrained and as to whether he was properly monitored for any necessary first aid.

As we indicated previously, the predicate facts are in dispute. Therefore, Officers Rhoney and Emily are not entitled to summary judgment on grounds of official immunity on this portion of Welters' negligence claim, and we remand the case to the district court for trial to determine whether (1) the officers kept Welters in restraints "longer than necessary"; (2) the handcuffs were appropriately fastened; and (3) the officers

"offered, provided, and monitored" first aid according to the meaning of these provisions in policy 301.081.

Vicarious immunity

"In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee's conduct." *Schroeder*, 708 N.W.2d at 508. Conversely, "if a public official is not entitled to official immunity, the public official's employer is not entitled to vicarious official immunity." *Raymond v. Pine Cnty. Sheriff's Off.*, 915 N.W.2d 518, 527 (Minn. App. 2018). Because we remand this case to the district court without determining whether Officers Rhoney and Emily are entitled to official immunity on Welters' negligence claims, we are unable to determine whether the DOC is entitled to vicarious official immunity at this stage. If the district court determines that Officers Rhoney and Emily are not entitled to official immunity because they violated their ministerial duty, then the district court shall address whether the DOC is entitled to vicarious official immunity.

III. The district court did not err by dismissing Welters' First Amendment retaliation claim against Officers Rhoney and Emily in their individual capacities.

Welters argues that the district court erred in dismissing his retaliation claim against Officers Rhoney

and Emily in their individual capacities under Section 1983. "The filing of a prison grievance, like the filing of an inmate lawsuit, is protected First Amendment activity." *Lewis v. Jacks*, 486 F.3d 1025, 1029 (8th Cir. 2007). To successfully establish a prima facie case of retaliation under the First Amendment, plaintiffs must demonstrate that (1) they engaged in protected conduct; (2) the defendant committed an adverse action; and (3) a causal connection exists between the two. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).

The parties do not dispute that Welters engaged in protected conduct by filing a prison grievance. As to the remaining prongs, Welters argues that genuine issues of material fact preclude summary judgment against him. To support this argument, Welters relies on affidavits submitted by Inmates 3 and 4 to support his claim against Officers Emily and Rhoney.

The district court concluded that Welters' First Amendment claim fails as a matter of law because Welters "failed, altogether, to establish a causal connection between the assault and the purported rumors." As previously discussed, even if we were to rely on the affidavits of Inmates 3 and 4 and view them in the light most favorable to Welters, we would still be left without a genuine issue of material fact regarding a link between any purported rumors spread by Officers Rhoney and Emily and Inmate 2's assault of Welters.

Welters therefore failed to create a genuine issue of material fact regarding the alleged causal connection between his grievance and the inmate attack, without which he is unable to successfully establish a prima facie case of retaliation under the First Amendment. Because no genuine issue of material fact exists regarding whether the inmate attack resulted from Welters' grievance, the district court did not err by dismissing Welters' First Amendment retaliation claim against Officers Rhoney and Emily in their individual capacities.[2]

DECISION

In conclusion, we affirm the district court's (1) dismissal of Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the inmate attack, and (2) dismissal of Welters' First Amendment retaliation claims against Officers Rhoney and Emily. We reverse the district court's (1) dismissal of Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the mechanical restraint utilized during Welters' medical transport and medical procedure, and (2) dismissal of Welters' negligence claims

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[2] Welters also alleges that the district court abused its discretion by implicitly denying his motion to amend his complaint to add a claim for punitive damages. Because the district court did not address this motion, we direct the district court to consider this motion on remand considering this opinion. *See Johnson v. Paynesville Farmers Union Co-op.*, 817 N.W.2d 693, 714 (Minn. 2012) (Holding that, in considering a motion to amend to add a punitive damage claim, the district court must consider whether such claim could survive summary judgment).

against Officer Rhoney, Officer Emily, and the DOC regarding the mechanical restraint utilized during Welters' medical transport and medical procedure. Finally, we remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF WASHINGTON	TENTH JUDICIAL DISTRICT

Christopher Welters, Plaintiff, vs. Minnesota Department of Corrections, *et. al.*, Defendants.	Court File No. 82-CV-19-2268 **ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came for a motion hearing on June 19, 2020, before the Honorable Ellen L. Maas, Washington County District Court, pursuant to Plaintiff's motion to amend his complaint and Defendants' motion for summary judgment. The proceedings were held in a virtual courtroom due to current COVID-19 restrictions on in-person proceedings. Zorislav R. Leyderman, Esq., Law Office of Zorislav Leyderman, 222 South 9th Street, Suite 1600, Minneapolis, MN 55402, appeared on behalf of Plaintiff. Kathryn Iverson Landrum, Esq., Assistant Attorney General, Office of the Minnesota Attorney General, 445 Minnesota Street, Suite 1100, Saint Paul, MN 55101, appeared on behalf of Defendants.

After the hearing, the record was left open to allow counsel to submit additional responsive pleadings. This matter was taken under advisement on June 26, 2020, upon filing of Defendants' Memorandum of Law.

Now, based upon the file, record, and proceedings herein, this Court makes the following:

ORDER

1. Defendants' motion for summary judgment is hereby **GRANTED.**

2. Plaintiff's Complaint against Defendants is hereby **DISMISSED WITH PREJUDICE.**

3. The attached Memorandum of Decision is incorporated and specifically made part of this Order.

4. The Washington County Court Administrator shall transmit notice of filing of this Order and a copy of this Order by the designated e-filing and e-service system, e-mail, or mail to every party affected thereby or upon such party's attorney of record, at the party or attorney's last known mail or e-mail address. Such transmittal shall constitute due and proper notice of this Order for all purposes.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Maas, Ellen
(Washington
Judge)
2020.09.24
12:19:09 -05'00'

Filed in District Court
State of Minnesota
Sep 24 2020 12:28 PM

/s/ Ellen L. Maas
Honorable Ellen L. Maas
Judge of District Court

I hereby certify that the foregoing order constitutes the Judgment of the Court

Sep 24 2020 12:28 PM
/s/ Beth [Illegible]

MEMORANDUM

BACKGROUND

I. The Handcuffs Incident

It is undisputed that on July 31, 2017, Plaintiff, an inmate at the Minnesota Correctional Facility–Stillwater ("MCF–Stillwater"), was transported to the Minnesota Correctional Facility–Oak Park Heights ("MCF–OPH"), for a medical procedure. At about 12:15 pm, Plaintiff was escorted to the Security Center at MCF–Stillwater to prepare for his medical transport, where he was placed in full restraints, which included handcuffs, a waist chain, a black box, and leg irons, before being transported to MCF–OPH. (Welters Dep. 12, 13, 15, and 19). According to Plaintiff, his handcuffs felt "snug . . . [and] tighter than usual," but Plaintiff did not inform Officer Rhoney of this until after they had left the Security Center to which Officer Rhoney responded, "Oh, it's only a 15-minute drive, it'll be all right." (*Id.* at 17, 19).

Upon arrival at MCF–OPH, Plaintiff was placed in a medical holding cell, but none of the restraints was

modified or removed, and Plaintiff continued to experience discomfort. (*Id.* at 28-29). Plaintiff asked Officer Emily, "Why are we still in restraints?" Plaintiff advised that his "hands were numb and [he] . . . wanted to get [the] restraints off." (*Id.* at 32, 113). Officer Emily did not remove or loosen the restraints. (Emily Dep. 47-48). Instead, Officer Emily explained that he needed to "go find his partners" and left. (Welters Dep. 32). Following the incident, Officer Emily explained that he did not believe Plaintiff presented a safety concern, but he kept Plaintiff in restraints for his own safety and because he did not trust inmates when alone with them. (Emily Dep. 43-45, 47-48).

After approximately thirty minutes, Plaintiff was called into his medical procedure by an unknown DOC employee. (Welters Dep. 29, 32-33). Plaintiff again asked to have his restraints removed. DOC staff declined Plaintiff's request because no Stillwater officers were present. (*Id.* at 33). Thereafter, Plaintiff was placed under anesthesia for the medical procedure with his restraints still in place. (*Id.* at 37). When Plaintiff awoke, he was still in full restraints and his hands were numb and "light bluish" in color. (*Id.* at 11, 38).

Following the procedure, Officer Emily, accompanied by another officer, came into the medical room to help Plaintiff get ready for his transport back to MCF–Stillwater. (Welters Dep. 39).Plaintiff explained that his restraints had been left on during his procedure and asked the accompanying officer to remove his restraints. *Id.* Again, Plaintiff's request was denied. (*Id.*

at 40). Officer Rhoney transported Plaintiff back to MCF–Stillwater. *Id.* The officer who had accompanied Officer Emily, earlier, stayed behind at MCF–OPH. Upon return to MCF–Stillwater, Plaintiff was escorted to the Security Center, where his restraints were removed sometime around 4:00 pm. (*Id.* at 46; Matthews Dep., Ex. 5).

On March 26, 2018, a neurologist examined Plaintiff and found nerve damage in both wrists. (Leyderman Aff., Ex. 2). Plaintiff also submitted an expert report by Orthopedic Surgeon/Specialist, Steven D. Meletiou, M.D., who opined that Plaintiff's carpal tunnel was caused by the continuous and excessively tight handcuffing during the medical transport and while under anesthesia. (*Id.* at Ex. 4, pp. 5-6).

A. DOC Restraint Policy

The transportation and use of restraints on inmates, for the purposes of undergoing medical procedures at other locations, are governed by DOC policies 301.096 and 301.095. (Matthews Dep., Ex. 17-18). These policies provide that full restraints must be used during the physical transportation of inmates. (*Id.* at Ex. 17, p. 2; Ex. 18, p. 2; Matthew Dep. 20-22). The term "full restraints" is specifically defined as "waist chain, black box (with padlock), handcuffs (double-locked), and leg irons (double-locked)." (Leyderman Aff., Ex. 7, p. 1). DOC policy provides that upon arrival at the provider facility "restraint levels may be modified at the discretion of the CMTU lieutenant/01C." (Matthews

Dep., Ex. 18, p. 3). As such, once at the medical facility, the use of restraints becomes a discretionary decision made by the corrections officer. (Matthews Dep. 20-22).

During the actual medical appointment or procedure, DOC policy provides that offenders "must be in full restraints." (Matthews Dep., Ex. 18, p. 4). "If medical staff request that the offender's restraints be either partially or fully removed for a medical procedure or treatment, officers must remove only those restraints that would interfere with the examination and/or medical treatment." (Matthews Dep., Ex 18, p. 4). "Officers are authorized to leave the offender in full restraints if, in their best judgment, control of the offender would be jeopardized even with additional security staff." *Id.*

On August 1, 2017, Plaintiff filed a kite with MCF–Stillwater Captain Bryon Mathews, in which he alleged that his hands and wrists had been injured due to misconduct by the officers involved in the July 31, 2017 Handcuffs Incident. Captain Mathews completed an investigation of Plaintiff's allegations and responded on August 24, 2017, with the following:

> . . . The staff should have removed your restraints upon placement into the OPH holding cell. All involved officers have been reminded to always remove offender restraints upon admittance unless there is a safety concern which would prevent the restrain removal.
>
> The staff also indicated neither yourself nor the nurse requested to have the restraints removed during the procedure, the nurse indicated she never requested to have the restraints

> removed however she knew it wasn't normal protocol for offenders to be restrained during medical procedures. . . .

(Matthews Dep., Ex. 1-2)

II. The Inmate Attack

On May 9, 2018, Plaintiff was assaulted by another inmate in his living unit. (Welters Dep. 76; Sass Dep., Ex. 8-9). At the time of the attack, the assailant was new to the unit, and Plaintiff had no prior contact with this inmate. (Welters Dep. 78-79, 107, 119-20). There is no evidence in the record that any Defendant was physically present when Plaintiff was attacked.

The MCF–Stillwater Office of Special Investigations (OSI) reviewed the incident and interviewed Plaintiff. (Sass. Dep. 15-16). Initially, Plaintiff reported that he was attacked by the other inmate because Plaintiff refused to join a prison gang, which resulted in a "statewide hit" being placed on him. (*Id.* at 191-92). Now, Plaintiff attributes the attack to rumors that were spread by officers out of retaliation for the investigation that followed the Handcuff Incident. (Sass Dep. 94, 97, 107). Despite Plaintiff's beliefs, he declined to prosecute the assault and the incident was closed without further investigation. (*Id.* at 15-16, 31-32; Dansky Dep. 28-29, 36).

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. In deciding whether to grant summary judgment, the court must view the facts in the light most favorable to the non-moving party. *E.g.*, *Hopkins by LaFontaine v. Empire Fire and Marine Ins. Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991). "However, summary judgment on a claim is mandatory against a party who fails to establish an essential element of that claim, if that party has the burden of proof, because this failure renders all other facts immaterial." *Lloyd v. In Home Health, Inc.*, 523 N.W.2d 2, 3 (Minn. Ct. App. 1994). "A defendant in a negligence action is entitled to summary judgment when the record reflects a complete lack of proof on any of the four elements necessary for recovery: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury; and (4) the breach of that duty being the proximate cause of the injury." *Louis v. Louis*, 636 N.W.2d 314, 318 (Minn. 2001).

On the other hand, "summary judgment is inappropriate if the non-moving party has the burden of proof on an issue and presents sufficient evidence to permit reasonable persons to draw different conclusions." *Schroeder v. St. Louis Cty.*, 708 N.W.2d 497, 507 (Minn. 2006). To survive summary judgment, the non-moving party "must do more than rest on mere averments" or present evidence "which merely creates a metaphysical doubt as to a factual issue." *DLH, Inc. v.*

Russ, 566 N.W.2d 60, 71 (Minn. 1997). The non-moving party must point to specific evidence sufficient to permit reasonable persons to draw different conclusions. *Schroeder*, 708 N.W.2d at 507. "Mere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

PROCEDURAL HISTORY

In his responsive pleadings, Plaintiff failed to address many of the arguments presented by Defendants in support of their motion for summary judgment. Furthermore, Plaintiff failed to acknowledge several of his own claims for which Defendants seek dismissal. When a request for the dismissal of a claim is unopposed, it results in a waiver. *Hunt v. IBM Mid. Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986) ("The rule in Minnesota is summary judgment is proper when the nonmoving party fails to provide the court with specific facts indicating that there is a genuine issue of fact."). As such, the claims of: battery (Count 2), intentional infliction of emotional distress (Count 3), negligent infliction of emotional distress (Count 4), negligent supervision (Count 6), conspiracy (Count 8), and all official-capacity claims are voluntarily waived. Additionally, all claims against Sergeant Wildung, Commissioner Roy, and Warden Miles are voluntarily waived.

During the motion hearing, Plaintiff's counsel advised that Plaintiff had decided to narrow his claims

and would only be proceeding on three claims: (I) The violation of Plaintiff's Eighth and First Amendment rights under 42 U.S.C. § 1983 against Officer Rhoney and Officer Emily in their individual capacities; (II) Common law negligence against Officer Rhoney and Officer Emily in their individual capacities, and the DOC under a theory of vicarious liability.

ANALYSIS

I. Plaintiff's Eighth Amendment Claims Under 42 U.S.C. § 1983 Claims.

Plaintiff brings two federal constitutional claims under 42 U.S.C. § 1983 on the grounds that his Eighth Amendment rights were violated in the July 31, 2017 Handcuffs Incident and the May 9, 2018 Inmate Attack.

The applicability of Section 1983 is expressly limited to "person[s]." 42 U.S.C. § 1983. Neither the state, nor a state agency is a "person" for suits filed in federal and state court. *Will v. Mich Dep't. of State Police*, 491 U.S. 58, 66, 71 (1989). "A suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office." *Will*, 491 U.S. at 71; *see also Brandon v. Holt*, 469 U.S. 464, 471 (1985).

A government official is protected by qualified immunity unless his conduct violates "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457

U.S. 800, 818 (1982). Qualified immunity provides "immunity from suit rather than a mere defense to liability." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Such defense is intended to give government officials "ample room for mistaken judgments by protecting all but the plainly incompetent of those who knowingly violate the law." *Id. at* 229. Qualified immunity acts to spare officials from the time and resources of trial in "situations where they have acted reasonably." *Greiner v. City of Champlin*, 27 F.3d 1346, 1351 (8th Cir. 1994). The analysis for qualified immunity has two parts: (1) whether there was a violation of a constitutional right; and (2) whether that right was clearly established at the time of the alleged violation. *Saicier v. Katz*, 533 U.S. 194, 201 (2001).

A. The Handcuffs Incident.

The Eighth Amendment does not apply to "every governmental action affecting the interests or well-being of a prisoner." *Whitley v. Albers*, 475 U.S. 312, 319 (1986). Rather, "only the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment." *Id.* To satisfy this heightened standard, a prisoner must show both that the alleged wrongdoing was "objectively harmful enough to establish a constitutional violation" and that the prison officers subjectively acted with a "sufficiently culpable state of mind." *Hudson v. McMillian*, 503 U.S. 1, 8 (1992). What a prisoner must establish with respect to those elements "varies according to the nature of the alleged constitutional violation. *Id.* at 5.

1. Standard of Review.

The parties agree that the essence of Plaintiff's claim that his Eighth Amendment rights were violated is limited to the manner in which the handcuffs were placed on Plaintiff's wrists and the length of time they remained on Plaintiff without being removed or loosened. Although the parties agree on the subject conduct, they do not agree on the appropriate standard of review that this Court should apply in this case. Plaintiff contends that the appropriate standard of review is the "deliberate indifference" standard of review followed in *Estelle v. Gamble.* 429 U.S. 97 (1976). Defendants counter that the appropriate standard of review is the "use of force" standard of review followed in *Whitley v. Albers.* 475 U.S. 312 (1986).

In determining the appropriate standard of review, courts must analyze the specific facts of the case at hand. The "deliberate indifference" standard only applies in a narrow set of cases where an inmate alleges that a prison official failed to attend to their serious medical need. *Hudson*, 503 U.S. 1, 5-6, 140 (1992); *Estelle*, 429 U.S. 97, 104 (1976). In contrast, the use of force standard is applied more broadly, in circumstances where an inmate questions a prison official's use of force to maintain security. *Whitley*, 475 U.S. 312, 321-22 (1986).

This Court concludes that the use of force standard of review is appropriate here. Plaintiff's handcuffs were not double-locked when he was initially put in his restraints before the medical transport. Plaintiff's restraints were not removed

or loosened upon arrival at MCF–OPH, nor during his medical procedure. At no time did any medical professional request that Plaintiff's restraints be removed or loosened before or during his medical procedure. Plaintiff's restraints were not removed until he returned to MCFStillwater. The use of restraints, for medical transport and while at MCF–OPH, is consistent with DOC policy. DOC policy allows for continued use of restraints, even after arrival at the medical facility and while undergoing the medical procedure, if there is a safety concern and/or medical professionals do not request that the restraints be removed or loosened. The continued use of restraints, without loosening the handcuffs, is a clear safety protocol. As such, the use of force standard is the appropriate standard of review.

When a prison official stands accused of using excessive force, the core judicial inquiry is whether the force was applied in good faith to maintain or restore discipline, or maliciously and sadistically to cause harm. *Whitley*, 475 U.S. 312, 321-22 (1986). To prevail on an Eighth Amendment claim, a plaintiff must establish that the officers acted both "maliciously,"—that they acted "without just cause or reason, a course of action intended to injure another"—and "sadistically"—that they "engag[ed] in extreme or excessive cruelty" or "delight[ed] in cruelty." *Howard v. Burnett*, 21. F.3d 868, 872 (8th Cir. 1994). Together, "maliciously" and "sadistically" establish a higher level of intent than either would alone. *Id.*

Here, Plaintiff was restrained, and continued to be restrained, in accordance with DOC policy, in order to maintain safety. Officer Rhoney applied Plaintiff's restraints, at the time presumably in accordance with DOC policy, before the transport. Officer Rhoney was not aware that Plaintiff's handcuffs had not been double-locked until after the medical transport had begun, during which time, restraints were required. Once at MCF–OPH, Plaintiff remained in restraints, at the discretion of Officer Emily, who testified that he preferred not to be alone with inmates when they were not in restraints, because he, generally, did not trust intimates when alone with them.

Nothing in the record indicates that either Officer Rhoney or Officer Emily acted with the intent to cause Plaintiff harm, let alone acted maliciously or sadistically. Even Plaintiff believes that neither officer acted with the purpose or intent to cause him harm. In fact, neither officer was made aware that Plaintiff was experiencing harm as opposed to mere discomfort. Thus, Plaintiff's Eighth Amendment claim fails.

B. The Inmate Attack.

The parties agree, that the essence of Plaintiff's claim that his Eighth Amendment rights were violated arises from Defendants' alleged failure to protect Plaintiff while he was in custody. Plaintiff claims that Defendants not only failed to protect him, but placed him in grave danger by spreading rumors likely to arouse other inmates.

Prison officials have a duty to take "reasonable measures to guarantee the safety of inmates." *Reeves v. King*, 774 F.3d 430, 432 (8th Cir. 3014) (quoting *Irving v. Dormire*, 519 F.3d 441, 448-50 (8th Cir. Ct. App. 2008)). Despite such duty, not "every injury suffered by one prisoner at the hands of another translates into constitutional liability for prison officials responsible for victim's safety." *Farmer v. Brennan*, 511 U.S. 825, 833-34 (1994). Rather, the Eighth Amendment prohibits the foreseeable and unnecessary risk of the gratuitous and wanton infliction of pain. *Irving*, 519 F.3d at 446-47.

Failure to prevent a surprise inmate-on-inmate attack does not violate the Eighth Amendment. *See*, *e.g. Patterson v. Kelley*, 902 F.3d 845-52 (8th Cir. 2018). However, an Eighth Amendment violation may occur when an officer labels an inmate a snitch and is on "fair notice that to falsely label an inmate a snitch is to unreasonably subject that inmate to the threat of a substantial risk of serious harm at the hands of his fellow inmates." *Irving v. Dormire.* 519 F.3d 441, 451 (8th Cir. Ct. App. 2008).

This Court questions whether the assault, perpetrated by a new inmate, with whom Plaintiff had no prior contact, was foreseeable. Plaintiff admits that the assault was a total surprise, and that he had never even spoken to or met the assailant before the assault. Not only did Plaintiff not know his assailant, but he had no idea why he was attacked. This was further corroborated by Plaintiff's initial theory that the attack was related to his refusal to join a prison gang.

Plaintiff has since abandoned this original belief and, now, contends that the attack occurred as a result of rumors spread by Officers Rhoney and Emily. After declining a proper investigation by OSI, Plaintiff conducted his own investigation and concluded that he was attacked because prison staff, including one officer whose conduct was questioned in the Handcuffs Incident, spread rumors labeling Plaintiff as a "rat" (informant).

Nothing in the record, regarding these purported rumors, is admissible evidence that this Court can consider on summary judgment. The record is devoid of any evidence shedding any light on why the inmate assaulted Plaintiff. The only evidence Plaintiff relies upon is an Affidavit from fellow inmate, Honora Patterson, who averred that shortly before the assault "Officer Emily told [him] that [Plaintiff] was a racist rat/informant . . . Officer Emily provided the same information to other inmates at Stillwater as well." (Leyderman Aff., Ex. 10)

Evidence about rumors is inadmissible hearsay and cannot be considered on summary judgment. *State v. Larson*, 788 N.W.2d 25, 34 (Minn. 2010); *see also State v. Vance*, 714 N.W.2d 428, 438 (Minn. 2006) (holding testimony pertaining to rumors to be inadmissible hearsay); *State v. Robinson*, 539 N.W.2d 231, 241 (Minn. 1995) (affirming trial court ruling pertaining to "inadmissible hearsay based on rumor and speculation). Furthermore, mere verbal harassment and threats do not violate the Eighth Amendment. *Nicks v. Captain Scott*, No. 853268-0, 1989 WL 60407, at *3 (D. Kan. May 19, 1989) *(citing Ivey v. Wilson*, 832 F.2d 950,

954-55 (6th Cir. 1987); *Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979). For this reason, Plaintiff's second Eighth Amendment claim fails.

II. Plaintiff's Common Law Negligence Claims.

Plaintiff brings two common law negligence claims based on the Handcuffs Incident and the Inmate Attack. Under Minnesota state law, the essential elements of a negligence claim are: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury was sustained; and (4) breach of the duty was the proximate cause of the injury. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

A. Plaintiff's Claims Arising from the Handcuffs Incident Fail Because the Officers are Entitled to Official Immunity and the Failure to Double-Lock Plaintiff's Handcuffs, Alone, Does Not Suffice a Negligence Claim.

"Official immunity prevents a public officer charged by law with duties which call for the exercise of his judgment or discretion from being held personally liable for damages, unless the official has committed a willful or malicious act." *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006) (internal quotation marks omitted). Like qualified immunity, official immunity serves to protect public officials from the fear of a civil lawsuit, which might negatively impact the performance of their discretionary duties. Official immunity only applies, however, to the discretionary, as opposed to

ministerial duties. *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004).

The official immunity analysis requires consideration of: "(1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo ex. Rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2004). "When determining whether conduct is discretionary or ministerial, [the court] "focus[es] . . . on the nature of the act." *Id.* A discretionary function is one that involves "more individual professional judgment that necessarily reflects the professional goal and factors of a situation." *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998). In contrast, a ministerial duty is "absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Anderson*, 678 N.W.2d at 656. Whether a given action is discretionary or ministerial is a question which turns on the facts of each case. *Reuter v. City of New Hope*, 449 N.W.2d 745, 751 (Minn. App. 1990).

1. Officer Rhoney is Entitled to Official Immunity for His Conduct Arising from Transporting Plaintiff to and from the Medical Facility. Officer Rhoney is Not Entitled to Official Immunity for His Failure to Double-Lock Plaintiff's Handcuffs.

Officer Rhoney is entitled to official immunity, for keeping Plaintiff in restraints and not loosening the restraints, because he followed his ministerial duty. Here, the conduct of keeping Plaintiff in restraints while being transported to and from his medical appointment, is a ministerial because DOC policy specifically requires that an inmate be in restraints during his or her medical transport. Officer Rhoney complied with this DOC policy, and was merely executing a specific duty. *See Anderson*, 678 N.W.2d at 656. As such, Officer Rhoney is entitled to official immunity for this specific conduct.

Officer Rhoney is not entitled to official immunity, for his failure to double-lock Plaintiff's handcuffs, because that conduct was a violation of his ministerial duty. In this case, the conduct of double-locking Plaintiff's restraints was ministerial because DOC policy specifically requires that the handcuffs be double-locked when an inmate is placed in full restraints. When applying full restraints, in accordance with DOC policy, an officer is merely executing a specific duty. *See Anderson*, 678 N.W.2d at 656. As such, Officer Rhoney is not entitled to official immunity for this specific conduct.

2. Officer Emily is Entitled to Official Immunity for Continuing to Keep Plaintiff in Restraints While at the Medical Facility.

Officer Emily is entitled to official immunity for his decision to keep Plaintiff in restraints and not loosening the restraints, because his acts were discretionary and not done willfully or maliciously. DOC policy provides that upon arrival at the medical facility, the prison official's duty regarding the handcuffs becomes discretionary, and removing the handcuffs is left to the judgment of the supervising officer. As such, a prison official who decides to keep an inmate in restraints, while at a medical facility, is entitled to official immunity unless they engaged in a willful or malicious *act. Anderson*, 678 N.W.2d at 662.

"Malice is not negligence." *Vassallo*, 842 N.W.2d at 465. In order to find malice, the court must determine "whether in doing the wrongful act, the public employee so unreasonably put at risk the safety and welfare [of the individual] as a matter of law it could not be excused of justified." *Id. (quoting Kari v. City of Maplewood*, 582 N.W.2d 921, 925 (Minn. 1998). This high standard requires the official to "have reason to know that the challenged conduct is prohibited . . . [and] anticipates liability only when an official intentionally commits an act that he or she than has reason to believe is prohibited." *Anderson*, 678 N.W.2d at 662.

Prison officials exercise discretion in determining whether an inmate's request is consistent with policy, necessary, and safe. As result, officials

are not required to honor each inmate's request, and the failure to do so is not malicious. Captain Matthews testified, in his deposition, that "all officers have been reminded to always remove offender restraints upon admittance **unless** there is a safety concern which would prevent restraint removal." (Matthews Dep., Ex. 2). Whether a safety concern exists is subjectively determined by the supervising officer. Officer Emily testified that he prefers not to be alone with inmates when they are not in restraints, because he does not trust intimates when alone with them. Here, the continued use of restraints and decision not to loosen restraints was not done maliciously. Declining Plaintiff's request was not an act that unreasonably put the safety and welfare of Plaintiff at risk such that it could not be excused or justified. Therefore, Officer Emily is entitled to official immunity against Plaintiff's negligence claim.

Plaintiff argues that Defendants had, at a minimum, a ministerial duty to check Plaintiff's handcuffs for tightness and to loosen them once he was placed inside the holding cell at MCF-OPH. Plaintiff relies on DOC policy 301.081 which prohibits the use of mechanical restraints for: (1) Longer than necessary; . . . (4) To cause undue discomfort; (5) To inflict physical pain; or (6) To restrict blood circulation or breathing. The same policy holds the officer responsible for monitoring and providing first aid to a restrained inmate, if needed.

Plaintiff fails to acknowledge that nothing in this policy explicitly requires an officer to check handcuffs for tightness and loosen them before

being placed in a holding cell. Rather, this too is determined at the discretion or judgment of the supervising officer, and, as previously addressed, would have had to have been done maliciously, which is not the case here. The record is devoid of any evidence that Defendants were ever aware that Plaintiff was experiencing physical pain, as opposed to mere discomfort.

3. DOC is Vicariously Immune from the Lawsuit on All Conduct Arising from the Transport and Continued Use of Restraints on Plaintiff While at the Medical Facility.

"Generally, if a public official is found to be immune from a suit on a particular issue, his or her government employer will be vicariously immune from a suit arising from the employee's conduct and claims against the employer are dismissed without explanation." *Anderson*, 678 N.W.2d at 663-64. The extension of vicarious official immunity to a government employer is a policy question for the court. *Id.* Courts "[apply] vicarious official immunity when failure to grant it would focus stifling attention on an official's performance to the serious detriment of the performance. *Id.* Vicarious official immunity is appropriate when "officials' performance would be hindered as a result of the officials second-guessing themselves when making decisions, in anticipation that their government employer would also sustain liability as a result of their action. *Id.* In the instant case, DOC, arguably, could be vicariously liable given Officer Rhoney was not entitled to official

immunity, but, only if, Plaintiff has a valid claim for negligence.

a. Plaintiff's Negligence Claim Fails Because There is No Evidence to Establish That Officer Rhoney's Failure to Double-Lock the Plaintiffs Handcuffs was the Proximate Cause of Plaintiff's Injuries.

Plaintiff's negligence claim, as it relates to the remainder of the conduct involved in the Handcuffs Incident, fails because there is insufficient evidence to establish proximate cause. The proximate cause of an injury is the act or omission which causes the injury "directly or immediately, or through a natural sequence of events, without intervention of another independent and efficient cause. *Lennon v. Pieper*, 411 N.W.2d 225, 228 (Minn. Ct. App. 1987) (internal quotation marks and citation omitted).

Officer Rhoney had a duty of care to apply Plaintiff's restraints in accordance with controlling DOC policy, which requires an inmate's handcuffs be double-locked. Officer Rhoney breached that duty when he failed to double-lock Plaintiff's handcuffs. Plaintiff sustained an injury to both his wrists. However, there is insufficient evidence to establish that Officer Rhoney's failure to double-lock Plaintiff's handcuffs was the proximate cause of Plaintiff's injuries. "Generally, proximate cause is a question of fact for the jury; however, where reasonable minds can arrive at only one conclusion, proximate cause is a question of law."

Lubbers v. Anderson, 539 N.W.2d 398, 402 (Minn. 1995). Plaintiff must show that Defendant's conduct was a "substantial factor in bringing about the injury." *Id.* at 401.

If Plaintiff is to prevail on this negligence claim, he must establish with credible evidence that Officer Rhoney's failure to double-lock Plaintiff's handcuffs, uncoupled with any of the subsequent conduct, was a substantial factor in bringing about his injury. Plaintiff failed to do this. To establish proximate cause, Plaintiff relies on the expert report by Orthopedic Surgeon/Specialist, Steven D. Meletiou, M.D., who concluded in his March 29, 2019 Report, that the continuous and excessively tight handcuffing of Plaintiff during the medical transport and while under anesthesia caused Plaintiff's nerve damage. Plaintiff has failed to demonstrate that Officer Rhoney's conduct, alone, was in and of itself, the proximate cause of his injuries. As such, Plaintiff's negligence claim fails.

B. Plaintiff's Claims Arising from the Inmate Attack Fail Because There is No Evidence Connecting the Assault to the Purported Rumors.

Similarly, Plaintiff's negligence claim arising from the Inmate Attack fails for lack of evidence to establish proximate cause. The proximate cause of an injury is the act or omission which causes the injury "directly or immediately, or through a natural sequence of events, without intervention of another independent and efficient cause. *Lennon*

v. Pieper, 411 N.W.2d 225, 228 (Minn. Ct. App. 1987) (internal quotation marks and citation omitted). "Generally, proximate cause is a question of fact for the jury; however, where reasonable minds can arrive at only one conclusion, proximate cause is a question of law." *Anderson*, 539 N.W.2d 398, 402 (Minn. 1995). Plaintiff must show that Defendant's conduct was a "substantial factor in bringing about the injury." *Id.* at 401.

To establish proximate cause, Plaintiff relies on the Affidavit of fellow inmate, Honora Patterson, in which he swears that shortly before the assault, "Officer Emily told [him] that [Plaintiff] was a racist rat/informant . . . Officer Emily provided the same information to other inmates at Stillwater as well." As previously addressed, such evidence about rumors is inadmissible hearsay and cannot be considered on summary judgment. *Supra*, 11-12. There is no evidence in the record that would allow any reasonable person to draw a conclusion that Plaintiff's injuries were caused by rumors purportedly spread by prison staff. Mere speculation, unaccompanied by anything else, is insufficient to establish proximate cause. As such, Plaintiff's negligence claim related to the Inmate Attack fails.

III. Plaintiff's First Amendment Retaliation, 42 U.S.S. § 1983 (Count 7) Claim Arising from the Inmate Attack Fail Because there is No Evidence Connecting the Assault to the Purported Rumors.

Inmates have a right to be free from retaliation for using the prison grievance process. *Santiage v. Blair*, 707 F.3d 984, 991 (8th Cir. 2013). To establish a claim of First Amendment retaliation, Plaintiff must establish: (1) a protected activity; (2) an adverse action by a government official sufficient to chill a person of ordinary firmness from engaging in protected activity; and (3) that the adverse action was motivated by the protected activity. *Revels v. Vincenz*, 382 F.3d 870, 876 (8th Cir. 2004).

To succeed on a retaliation claim, an inmate must come forward with "evidence that the prison officials were motivated solely by intent to retaliate." *Johnson v. Hamilton*, 452 F.3d 967, 973 (8th Cir. 2006). "Merely alleging that an act was retaliatory is insufficient." *Meuir v. Greene Cty. Jail Emps.*, 487 F.3d 1115, 1119 (8th Cir. 2007). Thus, Plaintiff must show a causal connection between the retaliatory animus and his subsequent injuries. *See Crawford-El v. Britton*, 523 U.S. 574, 593 (1998). As previously addressed, such evidence about rumors purportedly spread by prison staff is inadmissible hearsay and cannot be considered on summary judgment. *Supra*, 11-12. Plaintiff has failed, altogether, to establish a causal connection between the assault and the purported rumors. Thus, Plaintiff's First Amendment retaliation claim fails.

CONCLUSION

Plaintiff's claims arising from to the July 31, 2017 Handcuffs Incident are dismissed. Plaintiff's claims that his Eighth Amendment rights were violated under 42 U.S.C. § 1983 fail because neither Officer Rhoney nor Emily acted maliciously or sadistically in keeping Plaintiff in restraints and/or not loosening the restraints, because they were simply following DOC policy. Plaintiff's negligence claim against Officer Rhoney, for his conduct related to transporting Plaintiff to and from the medical facility, fails because Officer Rhoney was simply carrying out a ministerial duty and is entitled to official immunity.

Officer Rhoney, however, is not entitled to official immunity for his failure to double-lock Plaintiff's handcuffs, because he failed to properly carry out his ministerial duty. Regardless, Plaintiff's negligence claim arising from Officer Rhoney's failure to double-lock Plaintiff's handcuffs fails on the merits because Plaintiff could not establish that the failure to double-lock the handcuffs was the proximate cause of Plaintiff's injuries. Officer Emily is entitled to official immunity for his decision to keep Plaintiff in restraints while at the medical facility because he did not do so maliciously. The DOC is not liable because the officers are entitled to official immunity and the remaining negligence claim fails on its merits. Plaintiff's claims arising from the May 9, 2018 Inmate Attack are dismissed because there is no admissible evidence linking the assault to the purported rumors.

Constitutional and Statutory Provisions

Eighth Amendment to the United States Constitution:

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

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42 U.S.C. 1983:

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