No. 22-7153

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Tamar Devell Harvey — PETITIONER
(Your Name)

Sandra Day Conner vs. T.H.
~~Frederick Russell~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tamar Devell Harvey, #1585239
(Your Name)

3521 Woods Way
(Address)

State Farm, VA 23160
(City, State, Zip Code)

(Phone Number)

ORIGINAL

NOTICE TO THE COURT - My petition is typed in part and hand-written in part because prison officials removed all the type writers from the law library - while I was executing this legal filing. *T.H. 11/25/23

QUESTION(S) PRESENTED

Question #1:

How can the district court say that I failed to state a claim against Conner, when she never said that **she** personally handed my grievance to anyone? Conner said that she "forwarded a copy of my grievance to 'security + the investigators offices", not that there were prison officials inside of those offices.

Question #2:

"The question under the Eighth Amendment is whether Conner, as a prison official, acted with deliberate indifference, and exposed Harvey to a sufficiently substantial 'risk of serious damage to his future health or safety?"

Question #3:

On July 21, 2017 did Conner ignore a major risk to Harvey?

Question #4:

Why didn't Conner personally hand Harvey's notice to another Prison official, if she knew that she wasn't going to take additional actions, after leaving his notices in empty offices?

Question #5:

On July 21, 2017 following Conner's actions, was Harvey exposure to those unreasonable risk of serious bodily harm unconstitutional?

Question #6:

By placing Harvey's advance notice of serious threats to his life on the desk of a empty office and under the door of a empty office, Could Conner as a Prison official really guarantee his safety on July 21, 2017?

Question #7:

As new evidence - Conner now states that she doesn't handle investigations, because she is not an investigator for the VDOC, so on July 21, 2017 did the U.S. Constitution require Conner to investigate Harvey's advance notice of threats?

Question #8:

Did Conner further run a foul of the Eighth Amendment by citing in response "this is not the proper procedure to file a grievance"? When its sole purpose was to give Conner an advance notice of serious bodily harm.

Question #9:

Why did the district court judge consider the defendant's counsel defense argument - when ruling on Conner's motion to dismiss and not solely on the claim in its entirety?

Question #10:

Why did the district court judge fail to test Conner's subjective knowledge prior to granting her motion to dismiss?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

1.) Farmer v. Brennan, 511 U.S. 825, 832 (1994).

2.) Hudson v. Palmer, 468 U.S. 517, 526-27 (1984).

3.) Odom v. South Carolina Dep't of Corr., 349 F.3d 765 (4th Cir. 2003).

4.) Pressly v. Hutto, 816 F.2d 977, 979 (4th Cir. 1987).

5.) Davis v. Zahradnick, 600 F.2d 458, 460 (4th Cir. 1979)).

6.) Rhodes v. Chapman, 452 U.S. at 347.

7.) Wilson v. Seiter, 501 U.S. at 308.

8.) Helling v. McKinney, 509 U.S. 25, 32; 113 S. Ct. 2475 (1993).

9.) DeShaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 199-200, 109 S. Ct. 998 (1989)).

10.) Turner v. Safley, 482 U.S. 78, 84, 107 S. Ct. 2254 (1987).

11.) Shorter v. United States, 12 F.4th 366, 373 (3d Cir. 2021).

12.) Bistrian v. Levi, 912 F.3d 79, 90 (3rd Cir. 2018).

13.) United States v. Aramony, 166 F.3d 655, 662 (4th Cir. 1999).

14.) Randolph v. Maryland, 74 F. Supp. 2d 537, 542 (D. Md. 1999).

15.) Walsh v. Mellas, 837 F.2d 789, 797-98 (7th Cir. 1988).

16.) Ginest v. Board of County Comm'rs of Carbon County, 333 F. Supp. 2d 1190, 1198 (D. Wyo. 2004).

17.) LaMarca v. Turner, 995 F.2d 1526, 1535 (11th Cir. 1993).

18.) Fischl v. Armitage, 128 F.3d 50, 56-59 (2d Cir. 1997).

19.) Flint v. Kentucky Department of Corrections, 270 F.3d 340, 340-54 (6th Cir. 2001).

20.) Goka v. Bobbitt, 862 F.2d 646, 651 (7th Cir. 1988).

21.) Berry v. City of Muskogee, 900 F.2d 1489, 1496 (10 Cir. 1990).

22.) Brown v. Hughes, 894 F.2d 1533, 1537 (11th Cir. 1990).

23.) Frett v. Government of Virgin Islands, 839 F.2d 968, 978 (3rd Cir. 1988).

24.) Morgan v. District of Columbia, 824 F.2d 1049, 1058 (D.C. Cir. 1987).

25.) Riley v. Olk-Long, 282 F.3d 592, 597 (8th Cir. 2002).

26.) Coker v. Georgia, 433 U.S. 584, 592, 97 S. Ct. 2861, 2866, 53 L. Ed. 2d 982, 989 (1977).

27.) Wilson v. Lynaugh, 878 F.2d 846, 849 (5th Cir. 1989).

28.) Springfield v. Kibbe, 480 U.S. 257, 269, 94 L. Ed. 2d 293, 107 S. Ct. 1114 (1987).

29.) Brown v. N.C. Dept. of Corr., 612 F.3d 720, 722 (4th Cir. 2010).

30.) Estelle v. Gamble, 429 U.S. 97, 102, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)).

31.) Vance v. Peters, 97 F.3d 987, 993 (7th Cir. 1996).

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APPENDIX N - District court Mem. Op. excerpt

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APPENDIX i - United States Appeal Court Docket Sheet for this case

TABLE OF AUTHORITIES CITED

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OTHER

In the farmer case he had failed to [give] the prison officials an advance notice of serious harm [before] he was assaulted, and his certiorari was granted by the U.S. Supreme Court. I did however, give advance notice to Conner and I ask that my petition for Writ of Certiorari be granted as well.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[✓] reported at (07/07/20 Mem. Op. at 14, Dkt. No. 313); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished. Harvey v. Landauer, 2020 U.S. Dist. LEXIS 118848
Reporter 2020 U.S. Dist LEXIS 118848* | 2020 WL 3799197

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was September 22, 2022.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: ~~November 4, 2022~~ October 31, 2022 T.H., and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

NOTICE **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

(Plaintiff-Appellant Harvey addresses Conner's motion to dismiss, as well as, her motion for summary Judgment improperly granted by the district court... as Conner was never entitled to either as a matter of law.)
At Appendix B - Judge Dillon re-affirmed her grant of Conner's Motion to dismiss for failure to state a claim [within] Conner's Second Motion for Summary Judgment.

(a.) 501 U.S. 294, 111 S. Ct. 2321, 115 L. Ed. 2d. 271, [WL] at *5 (quoting Estelle v. Gamble, 429 U.S. 97, 102, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)). "In order to comply with the Eighth Amendment, prison conditions must comport with 'the evolving standards of decency that mark the progress of a maturing society.'"

(b.) "Prison officials are liable for transgressing bright lines." (citing Maciariello v. Sumner, 973 F.2d 295, 298 (4th Cir. 1992)).

(c.) Under Prisoner Rights, Confinement conditions: Allegedly onerous prison conditions may constitute cruel punishment if they appear cruel and unusual under the contemporary standard of decency, or if the conditions are so poor as to be repugnant to the conscience of mankind. The United States Supreme Court has held that prison conditions may constitute cruel and unusual punishment if they
(1) result in the wanton and unnecessary infliction of pain,
(2) are grossly disproportionate to the severity of the crime warranting imprisonment; or
(3) result in unquestioned and serious deprivation of basic human needs.

All three are at issue here in my case. 17

(d.) The Fourth Circuit, while recognizing that not every tort becomes a "constitutional tort" under Section 1983 simply because the actor was a state official, held that the Fourteenth Amendment protected certain substantive due process rights, namely, the right to be free of state intrusions into realms of personal privacy and bodily security through means so brutal, demeaning, and harmful as literally to shock the conscience of a court.

(e.) Section 1983 provides a "broad remedy for violations of federally protected civil rights." Monell v. Dep't of Social Services, 436 U.S. 658, 685, 98 S. Ct. 2018, 56 L.Ed.2d. 611 (1978).

(f.) Former VDOC Defendant Conner owed Harvey a duty of care pursuant to the Eighth and Fourteenth Amendments. See, e.g., Whitley v. Albers, 475 U.S. 312, 320, 106 S. Ct. 1078, 89 L.Ed. 2d 251 (1986). ("Prison administrators are charged with the responsibility of ensuring the safety of the prison staff, administrative personnel, and visitors, as well as the "obligation to take reasonable measures to guarantee the safety of the inmates themselves.")

(g.) ("[T]o make out a prima facie case that prison conditions at the Augusta Correctional Center on July 21, 2017 violated the Eighth Amendment, Harvey has shown both (1) a serious deprivation of a basic human need being 'reasonable safety'; and (2) the deliberate indifference to that prison condition to Harvey on the part of Conner.'") Iko v. Shreve, 535 F.3d 225, 239 (4th Cir. 2008).

(h.) "... gratuitously allowing the beating or rape of one Prisoner by another neither serves a legitimate penological objective any more than it squares with evolving standards of decency, and being violently assaulted (as I was on July 21, 2017) in Prison is not part of the penalty that criminal offenders pay for their offenses against society." (Thomas, J., dissented in part from this holding in Farmer.)

(i.) Plaintiff-Appellant Harvey's federal claim is Predicated on 42 U.S.C. Section 1983, which provides that a plaintiff may file suit against any person who, acting under color of state law, "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" of the United States, 42 U.S.C. Section 1983; see also, e.g., Filarsky v. Delia, 566 U.S. 377, 132 S. Ct. 1657, 1660, 182 L. Ed. 2d 662 (2012).

(j.) Under Prisoner Rights, Safety: When 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,' (reasonable safety) it transgresses the substantive limits on state action set by the Eighth Amendment.

of course, a "basic human need" that must be provided is the need for "reasonable safety".

(k.) The U.S. Constitutional and federal law confer numerous individual rights that Mr. Harvey can use to protect himself from unfair government actions, such as (Harvey's failure-to-protect Claim against Conner at Claim Fourteen) The Supreme Court has ruled that most of its guarantees also protect citizens against state governments. The United States Constitution and state laws protect prisoners like Harvey from certain acts of violence including attacks by other prisoners.

(l.) Under the Farmer standard: ("prison official notified of risk could be held liable, to hold otherwise would essentially reward prison officials who put their heads in the sand by making them immune from suit - the less a prison official knows the better. That view is inconsistent with Farmer."

(m.) Farmer v. Brennan, 511 U.S. 825, 828-29, 114 S. Ct. 1970, 1975, 128 L. Ed. 2d 811, 820 (1994) (recognizing as actionable an 8th Amendment claim for a Prison's "deliberate indifference" to a prominent risk of assault.) see also: Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995)) (Conner "knew of a constitutional deprivation and both failed to remedy it and personally participated in some way - as reasonable measures were not taken."

(n.) Measures that are not reasonably calculated to ensure my safety from violence on July 21, 2017 do not satisfy Conner's obligation to me under the United States Constitution.

(o.) In this case, the former defendant is a state government employee while the plaintiff is a private citizen and is currently incarcerated. All parties are equal before the law and [should] have been dealt with as equals in a court of justice. All parties are entitled to the same fair consideration.

(p.) The Eighth Amendment of the Constitution prohibits "the unnecessary and wanton infliction of pain" and punishment that is "grossly out of proportion to the severity of the crime". Rhodes v. Chapman, 452 U.S. 337, 346, 101 S. Ct. 2392, 2399, 69 L. Ed. 2d 59, 68 (1981) (quoting Coker v. Georgia, 433 U.S. 584, 592, 97 S. Ct. 2861, 2866, 53 L. Ed. 2d 982, 989 (1977).

(q.) O'CONNER, J., dissenting). It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk. Springfield v. Kibbe, 480 U.S. 257, 269, 94 L. Ed. 2d 293, 107 S. Ct. 1114 (1987).

(r.) An appeals court must uphold a district court's factual findings unless they are "clearly erroneous", which means that "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. U.S. v. U.S. Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525 (1948) (quoted in Anderson v. City of Bessemer City, North Carolina, 470 U.S. 564, 573, 105 S. Ct. 1504 (1985)). The district court treated my case in a careless and perfuctory way (Judge Dillon's actions of granting Conner's motion to dismiss my failure-to-protect claim against her at Dkt. No. 387) - because Conner stated during her motion that she "forwarded a copy of my grievance to 'security + the investigators] office - is "plain error", as Conner never said that there were indeed prison officials in any of those two offices. see Appendix F Conner's January 13, 2022 Sworn trial testimony.

(s.) An inmate may establish a prison administrator's liability under Section 1983 for a grievance or letter, if he alleges facts that indicate "that the communications, in its content and manner of transmission, gave the prison official sufficient notice to alert him or her to 'an excessive risk to inmate health or safety.'" Vance v. Peters, 97 F.3d 987, 993 (7th Cir. 1996) (quoting again Farmer, 511 U.S. at 837).

STATEMENT OF THE CASE

District Court erred in granting defendant's motion to dismiss the Virginia Department of Corrections grievance coordinator and human rights advocate on inmate's Section 1983 claim because [1] Judge Dillon clearly has departed from the pleading standard [mandated] by the Federal Rules of Civil Procedure and [2] the inmate's safety could not be guaranteed under Farmer, 511 U.S. at 833. Officials must take "reasonable measures to guarantee the safety of the inmate." By former VDOC Defendant Conner simply placing a copy of the inmate's advance notice to prison officials of personal threats of serious bodily harm, by multiple inmates in empty offices, no action was taken to prevent Mr. Harvey's brutal and unconstitutional physical assault on July 21, 2017. Fundamental rights, cruel & unusual punishment HN5 the Eighth Amendment [requires] prison officials (here it is Sandra Day Conner) to protect prisoners like Tamar Devell Harvey from violence at the hands of other prisoners. Furthermore, her official title within the ("VDOC") plays a significant role here, and is also an issue of importance to the public. In other words, the government and its official (Ms. Conner) "are not free to let the state of nature take its course." Conner did not act as if she was a human rights advocate for Harvey on July 21, 2017. As with the Farmer holding: "prison officials are not free to ignore obvious dangers to inmates." Whether Conner had the requisite knowledge is a question of fact subject to demonstration in the usual ways, and a factfinder may have concluded that Conner knew of a substantial risk to Harvey, from the very fact that the risk was obvious. The Constitution "does not mandate comfortable prisons," Rhodes v. Chapman, 452 U.S. 337, 349, 69 L. Ed. 2d 59, 101 S. Ct. 2392 (1981)., but neither does it permit inhumane ones, and it is now settled that "the treatment a prisoner receives in prison and conditions under which he is confined are subject to scrutiny under the Eighth Amendment." The Supreme Court has outlined two requirements for an Eighth Amendment failure to protect claim. First, Conner's act or omission must result in the denial of the minimal measure of life's necessities. In other words, the denial of Harvey's constitutional rights must be sufficiently serious. With respect to his living conditions at ("ACC") in 2017, Harvey has indeed demonstrated "unquestioned and serious deprivations of his basic human needs" and of the ....."minimal civilized measure of life's.....

necessities" to establish an Eighth Amendment violation. Rhodes v. Chapman, 452 U.S. at 347; accord, Wilson v. Seiter, 501 U.S. at 308. Citing his Eighth Amendment constitutional right to reasonable safety while incarcerated. The United States Supreme Court has listed as basic human needs "food, clothing, shelter, medical care and REASONABLE SAFETY." Helling v. McKinney, 509 U.S. 25, 32, 113 S. Ct. 2475 (1993) (citing DeShaney v. Winnebago County Dep't of Social Services, 489 U.S. 189, 199-200, 109 S. Ct. 998 (1989)). Harvey's constitutional right to reasonable safety was indeed violated by Conner on July 21, 2017 as her actions of:

"I put a copy on Mr. Russell's desk, and I put a copy under the door of the investigators office" (Page 11 at line 21 of the trial transcripts) See Appendix F.

was not a reasonable measure to "guarantee Harvey's safety" as both of those offices were completely empty and no prison official at the Augusta Correctional Center seen Harvey's advance notice, other than Defendant Conner, until after he was brutally and unconstitutionally assaulted at 1:00p.m. The law is clear. Sandra Day Conner's duty under the Eighth Amendment is to ensure reasonable safety. Odom v. S. Carolina Dep't of Corr., 349 F.3d 765, 770 (4th Cir. 2003). Under Farmer this Court found that a prison official could not be found liable under the Eighth Amendment for denying the inmate humane conditions of confinement unless the official knew of and disregarded an excessive risk to inmate health or safety. Here, the summary judgment record did not so clearly establish Conner's entitlement to judgment as a matter of law on the issue of her subjective knowledge. Also found in the Farmer case. Furthermore, prison officials violates the Eighth Amendment only if such officials had actual knowledge of a potential danger. The district court did not determine whether or not defendant Conner had or lacked such knowledge before granting her dismissal from suit. Thus, the subjective prong was never considered nor tested. Second, Conner must have had a sufficiently culpable state of mind, id., which simply means that Conner either purposefully caused the harm to Harvey or acted with deliberate indifference. Here, there is new evidence never considered at the lower courts, that she took Harvey's complaint serious. THE COURT: Ms. Conner, his question was: Did you take the complaint serious? Please answer that question.

THE WITNESS: Yes. That's why I provided them with copies. (Page 14 lines 22-25 of the trial transcripts.)

Moreover, Conner also stated during the trial on January 13, 2022 "I just walked it back and stuck it on her [sic] desk. That's all I did." Page 14 line 14 of the trial transcripts. Harvey clearly has suffered a great deal, from his serious bodily injuries from his physical assault that Conner failed to prevent. Harvey had:

A subconjunctal hemorrhage.
Multiple facial lacerations requiring stitches.
A broken nose.
A deviated septum to the right (which indeed remained deviated for [20] entire months post assault.)
An injury to one of his front teeth.
His right eye was swollen shut.
His left eye was constricted.
He had a visible hematoma to his forehead.
He had numerous forehead fractures.
He had a right eye hematoma.
He had a nose hematoma.
He had facial trauma.
He had nasal trauma.

Major Depression Disorder followed shortly thereafter, severe humiliation for both of the assaults, as well as, being forced to serve [20] months of his incarceration with his deviated nose to the right without any sort of nose correction surgery.

In the Eighth Amendment context, Conner's deliberate indifference lies somewhere between negligence and purpose or knowledge: namely, recklessness of the subjective type used in criminal law. Here, Conner is liable, as she was both aware of facts from which the inference could be drawn that a substantial risk of serious harm exists to inmate Harvey, and she also drew that inference. In-fact, she admitted to those merits during her January 13, 2022 witness testimony. Even though I properly named her as a defendant and the district court refused to act, following her trial testimony. Yet district court failed to correct its plain error of dismissing Conner, wrongfully citing her response to my grievance, not my statement of claim in it's entirety. Counsel for Conner, ref. Ms. Maughan is also on the record

objecting during Conner's witness testimony (basicly she didn't want this information regarding Conner to come out during the trial for Russell) by stating:

"Ms. Conner's actions are not at issue in this case, whether she was---." (Trial Transcripts Page 15, Lines 9-11)

Additionally, Conner's deliberate indifference is also found when she declined to confirm inferences of risk to inmate Harvey, that she strongly suspected to exist. Conner may not simply bury her head in the sand and thereby skirk liability. Under the standard of care due to Harvey by the State, Conner need not have known that there was a certain risk of harm to Harvey, of course, only that there was a substantial risk of serious harm.

In his official notice to prison officials at the Augusta Correctional Center Harvey's complaint reads:

"On Tuesday, July 18th, 2017 at 8:22p.m., I received multiple threats from offender Hubert, formerly of M-3-25. Offender Hubert came to my cell door at 8:22p.m., and threaten me with serious personal injury and irreparable bodily harm, if 'he was moved from housing unit M-3...' I informed Unit Manager Back about the threats, as well as, Ms. Butler, Counselor. Moving forward UM Back has since moved offender Hubert and relocated him to another pod. Ms. Butler informed me to write it up as well. "Offender Hubert stated: 'Me and my boys are going to jump you and F*** you up!!!" See Appendix H.

In this case, the plaintiff/prisoner had proven by Ms. Conner's very own trial testimony on January 13, 2022 that she actually knew of a substantial risk that Mr. Harvey would be attacked by another inmate, (at the very least one inmate, as Harvey stated that he received the threat regarding multiple inmates). Mr. Harvey need not prove that Ms. Conner knew precisely which inmate would attack him, so long as Mr. Harvey shows that Ms. Conner's

knew there was a substantial risk to his safety. He has done so. [T]he Supreme Court has made clear that it is not necessary that the defendant know the plaintiff was especially likely to be assaulted by the specific prisoner who eventually committed the assault, so long as the defendant was aware of "an obvious, substantial risk to inmate safety." Farmer, 511 U.S. at 843.

"And, in some circumstances, the plaintiff's membership in a particular group that is frequently singled out for attack, may be sufficient." Id. at 843-44. (Judge Dillon continues at a footnote at 6) "Harvey states that he is a gay and effeminate prisoner who was at special risk of assault simply by virtue of that fact."
See Randolph v. Maryland, 74 F. Supp. 2d 537, 542 (D. Md. 1999).

The summary judgment filings further revealed that Mr. Harvey was a model prisoner the entire time he was incarcerated at the Augusta Correctional Center. Moreover, he did not know his attacker and did not provoke his assault in anyway. Per Ms. T. Lawhorn, the Chief of Housing and Programs at Augusta:

"The Virginia Department of Corrections records reflect that Harvey had been charge free for the past 12 months, he was a student, he had completed introduction to computers and was pending enrollment in the Matrix program. Harvey was in the highest good time earning level of GCA Class Level I and the ICA recommended that he remain in Class Level I. Based on his adjustment, Harvey's security level classification was reduced from Level 3 to Level 2." See Appendix I.

Significantly, the Eighth Amendment "does not mandate comfortable prisons... only those deprivations denying the 'minimal civilized measure of life's necessities' are sufficiently grave to form the basis of an Eighth Amendment violation." Wilson, 501 U.S. at 298 (quoting Rhodes, 452 U.S. at 347). Here, I have proven under the law regarding all the facts, that Conner is liable for transgressing bright lines. Id. (citing Maciariello v. Sumner, 973 F.2d 295, 298 (4th Cir. 1992)).

Because Conner failed and/or refused to personally hand Harvey's advance notice to any other prison official or voice her concerns to another prison official... the state of nature was allowed by her to take its course at the Augusta Correctional Center on July 21, 2017. On July 21, 2017, offender Douglas Poe, (a confirmed Dead Man Inc. gang member) violently assaulted offender Tamar Harvey in the M/N Building stairwell at ACC. Poe used aa bulkyymetal padlock and razor blades affixed to his gloves and/or hands in a crude fashion during his assault on Harvey. Rapid Eye footage was reviewed by Special Agent Shaun D. McDaniel for the Virginia Department of Corrections: "that captured the assailant offender DouglassPoe leave the dinning hall, following the victim offender Tamar Harvey down the boulevard and into M/M building. Poe was assigned to C/D building at the time of the incident; C/D building=is located on the opposite end of the compound. Therefore he had knowingly entered an unauthorized area." "Once the two reached the second step landing, leading to the M3&4 and N3&4 entrance, Poe is observed reaching toward his pocket then punching Harvey several times." Appendix J.

During Harvey's assault by Poe he was inflicted with serious bodily harm. [15] minutes after Harvey was savagely and viciously assaulted by violent gangmember- prisoner D. Poe; Nurse J. W Woodward states that she was called to 2nd floor stairway in regards to an offender altercation. See Appendix G. Offender Harvey found sitting on the lower step with his head in his hands holding a shirt. Multiple drops and puddles of blood were noted by Nurse Woodward during that time. In the hallway, on the steps, and also on Offender Harvey's state issued clothing. This is proven subjective recklessness on Conner's part- as used in the criminal law and is a familiar and workable standard that is consistent with the cruel and unusual punishments clause as interpreted in (U.S. Supreme Court cases) and is also adopted as the test for "deliberate indifference" under the Eighth Amendment.

Harvey was carefully moved to a wheel chair and transported to the medical department. Harvey was shaking, crying, and had complaints of serious pain! Reassurance was given to Harvey that he was now safe. During offender Harvey's medical examination, it was determined that he had a fractured nose, a fractured sinus, a subconjunctal hemorrhage, a deviated septum, several lacerations and additional serious bodily injuries. In addition to Harvey's advance notice to Conner, about the serious threats, there were also several confidential, unsigned notes that were received from other offenders advising that Poe had been "paid" $300 and two suboxone strips to assault Harvey by offender Sterling H Hubbard, the same offender who Harvey referenced in his notice to Conner [before] he was assaulted.

The district court has erred by granting Conner's motion to dismiss for failure to state a claim regarding her actions, before I was unconstitutionally assaulted.

See: Appendix N at page 14, footnote 11:

11 "Although Conner, too, had knowledge of the grievance prior to the July 21, 20177attack, Harvey's failure-to-protect claim against her (claim fourteen) was previously dismissed by thee court. (see 07/07/20 Mem. Op. at 14, Dkt. No. 313.) The Court now has additional information about Conner's actions, but that information does not call into question the court's prior ruling."

Moreover, there is now a clear showing of Conner's subjective awareness of the serious risks of harm to Harvey, as the notice clearly referenced threats by multiple inmates. Yet, given Conner's admissions at trial, Judge Dillon completely ignored the new evidence required to find Conner liable.

Turning now to the Fourth Circuit Court of Appeals:
The Plaintiff-Appellant first moved in the district court for a motion for trial transcripts at government expense. Judge Dillon denied my motion. I then additionally filed a second motion in the fourth circuit per the case law citing: "You should first move in the district court, and if the motion is denied, you can file a motion in the court of appeals. At least one court has construed the statue as providing for transcripts for the use of IFP litigants who have won their cases and are defending against appeals. Stanley v. Henderson, 509 F.2d 752, 753-54 (8th Cir. 1979).

The Fourth Circuit Court of Appeals previously issued an order were it deferred consideration of my motion for transcript at government expense. Further ordered me to file my informal opening brief without the transcript needed to conduct meaningful appellate review. See Appendix E.

Citing: "Appellant must file the informal opening brief before the court will consider the motion for preparation of transcript at the government expense."

For the Court--By Direction
/s/ Patricia S. Connor, Clerk

See: McCarthy v. Bronson, 906 F.2d 835, 841 (2d Cir. 1990) (free transcripts may only be provided to an appellant whose appeal is non-frivolous), aff'd, 500 U.S. 136, 111 S. Ct. 1737 (1991). Here, I now have those trial transcripts regarding Conner's January 13, 2022 sworn testimony and it must be considered as new evidence. In Farmer: The U.S. Supreme Court on certiorari vacated the judgment of the Court of Appeals and remanded the case for further proceedings. Because the trial transcripts

regarding Conner was never considered in its review of Harvey's appeal, her subjective knowledge was never addressed or tested, also his claim against her at (Claim Fourteen) was never addressed as a whole, during the motion to dismiss. Because of these merits, Harvey respectfully request that the Honorable United States Supreme Court do as it did previously in the Farmer case. Issue an order to reverse and remand this case for further proceedings. As substantial new evidence has since come to light, regarding former VDOC Defendant Sandra Day Conner's previous omissions in the lower ~~court~~ 4th court. See Apendix F. To state a claim of constitutional significance regarding Conner's failure to protect and/or prison conditions, I as the plaintiff must allege facts demonstrating that the challenged conditions resulted in a deprivation of a basic human need that was (1) objectively "sufficiently serious"; and (2) that, subjectively, Conner acted with a sufficiently "culpable state of mind" with regard to my (Claim Fourteen) against Conner the district court has omitted:

At 2. Ms. Conner was deliberately indifferent to her knowledge of my serious risk of a serious pending attack against me.

and At. 3. Ms. Conner failed to take the "APPROPRIATE" actions in response to the serious threats that I had received.

Conner's subjective knowledge is clear asunder the statement of facts at no. 1., I alleged S. Conner is the Head Grievance Coordinator of ("ACC"). She personally received and read my regular grievance stating that I had personally verbally received threats of harm by another prisoner. (Serious bodily harm.) As such, it must be held that (1) Conner as a prison official for the ("VDOC") may be held liable for denying me (the prisoner) humane conditions of confinement, under the rule that an official's "deliberate indifference" to a substantial risk of serious harm to the prisoner violates the Eighth Amendment; (2) Conner's very own statements (sworn and also under oath) during that January 13, 2022 trial, provides the court with her subjective knowledge, that she failed to take "reasonable measures to abate the risks"; and (3) it is also appropriate to reverse and remand the case, because the plaintiff-appellant was not afforded a fair opportunity to be heard regarding the trial transcripts, needed for a proper review of his appeal by the fourth circuit. The fourth circuit denied my motions for trial transcripts to be paid at the government expense multiple times. See Appendix i. Then electing to affirm the district court's prior grant of Conner's motion to dismiss. Because the lower court decided this case without my requested trial transcripts (which the U.S. Supreme Court now has) this case must be remanded in the interest of justice. See Appendix A.

REASONS FOR GRANTING THE PETITION

Society may wish to continue to keep in place, the constitutionally required safeguards on prison officials to take proper actions to prevent inmate on inmate assaults and deaths. There is indeed an issue of importance to the public regarding this case, and its prior mishandling. "Prison walls," --- the United States Supreme Court has written, "do not form a barrier separating prison inmates from the protections of the Constitution. Turner v. Safley, 482 U.S. 78, 84, 107 S. Ct. 2254 (1987). Every inmate (including Mr. Harvey) has the right under the Eighth Amendment to serve his term of imprisonment without enduring "cruel and unusual punishment" at the hands of prison officials. The Eighth Amendment's prohibition of cruel and unusual punishment imposes certain basic duties on correctional officers, and all other prison officials, including maintaining human conditions of confinement. As is relevant in this case, prison official Conner knew and understood that she had a duty to engage in reasonable measures to protect inmates from violence committed by other inmates. Yet, she refused and/or failed to do so for Mr. Harvey on July 21, 2017. Shorter v. United States, 12 F.4th 366, 373 (3d Cir. 2021) (explaining that "under [Third Circuit] case law and the Supreme Court's longstanding precedent in Farmer, a prisoner 'ha[s] a clearly established constitutional right to have prison officials ... protect him from inmate violence' and has a damages remedy when officials violate that right") (quoting Bistrian v. Levi, 912 F.3d 79, 90 (3rd Cir. 2018).) The right to personal security

constitutes an historic liberty interest protected substantively by the due process clause of the Fourteenth Amendment; that right is not extinguished by lawful confinement, even for penal purposes. The Supreme Court has emphasized that it is conscious disregard for intolerable risks that provides the touchstone of the deliberate indifference standard for Eighth Amendment claims. Because of Conner's January 13, 2022 sworn trial testimony, "significant new evidence/ acts and omissions has come to light," and when "a blatant error in the prior decisions will, if uncorrected, result in a serious injustice." United States v. Aramony, 166 F.3d 655, 662 (4th Cir. 1999) (internal quotation marks omitted). See Appendix G.

Here, [1]- a reasonable jury could decide that Conner knew that inmate Harvey faced a serious danger to his safety and that she could have averted the danger easily but failed to do so; [2]- A reasonable jury could also conclude that Conner's response to Harvey's notice and/or complaint was not only unreasonable, but so patently inadequate as to justify an inference that she actually recognized that her response to the risk was inappropriate under the circumstances; and [3]- Inmate Harvey personally informed Conner via his written notice, that he had just received personal threats of serious bodily harm, if the prisoner in question was moved out of the pod of M-3. By the time Conner received and read Harvey's notice, the prisoner had already been moved, and though Conner is now on record stating that she took Harvey's notce seriously "She just walked it back and stuck it on her [sic] desk."

In order to comply with the Eighth Amendment, prison conditions (at the Augusta Correctional Center) and everywhere for that matter, must comport with 'the evolving standards of decency that mark the progress of a maturing society.'" 501 U.S. 294, 111 S. Ct. 2321, 115 L. Ed. 2d 271, [WL] at *5 (quoting Estelle v. Gamble, 429 U.S. 97, 102, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)). Here, an act or omission by Conner accompanied by her knowledge of a significant risk of harm might well be something society wishes to discourage, and being that serious bodily harm has indeed resulted directly from her actions (or lack thereof) society might well wish to assure that she is held accountable for her actions, as a human life was clearly on the line that July 21, 2017 day. Full and just compensation for Harvey under the law is what the American people expect from the nation as a whole. The common law reflects such concerns when it imposes tort liability on a purely objective basis. See Federal Tort Claims Act, 28 U.S.C. Section 2671-2680; United States v. Muniz, 374 U.S. 150, 10 L. Ed. 2d 805, 83 S. Ct. 1850 (1963).

Citing: Justice O'Connor, J., dissenting:

"It is, indeed, fair to say that acting or failing to act with deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk." Springfield v. Kibbe, 480 257, 269, 94 L. Ed. 2d 293, 107 S. Ct. 1114 (1987).

This approach comports best with the text of the Amendment as our cases have interpreted it. The Eighth Amendment does not outlaw cruel and unusual "conditions"; it outlaws cruel and unusual "punishments." (Justice O'Connor.)

[T]he district court record does not establish Conner's entitlement to a dismissal judgment as a matter of law. Moreover, her January 13, 2022 omission on her subjective knowledge seals her fate in this case. Thus, the United States Supreme Court should properly vacate and remand the judgment of the U.S. Court of Appeals, which improperly affirmed the district court's granting of Conner's motion to dismiss. As the trial transcripts now prove that the actions of Conner (and Conner alone)- failed to protect model prisoner Tamar Devell Harvey on July 21, 2017. Conner now has no defense and has indeed violated Harvey's rights under the cruel and unusual punishments clause of the Federal Constitution Eighth Amendment, where Plaintiff-Petitioner had indeed given a proper advance notice to Conner (opposite Farmer) of a serious risk of harm by other prisoners and Conner failed to take proper action to prevent my assault by another prisoner, which also happen to be a known violent gang member to prison officials at the Augusta Correctional Center, even though she could have easily done so. The question that has yet to be answered in this case is: Whether Conner, acting with deliberate indifference on July 21, 2017, exposed inmate Harvey to a sufficiently substantial "risk of serious harm to his future health or safety"?

CONCLUSION

I did not fail to state a claim against Conner at (Claim Fourteen) The district court erred when it wrongfully went directly into the merits and defense arguements- when it ruled on the defendant's motion to dismiss. Conner issued a response statement which I referenced in the supporting facts of my claim. On the back of my grievance Conner wrote as her response: "a copy of your grievance has been forwarded to security + investigat[ors] - office. This is not the proper procedure for filing a grievance." Not that those offices had prison officials inside them during that time, that could have acted to prevent my assault. Because Conner never handed my complaint to anyone or voiced her concerns to anyone she must be held liable as a matter of law.

Respectfully submitted,

Tamar D. Harvey

Date: March 9th, 2023