

No. 24-5161

IN THE
Supreme Court of the United States

Genuine Truth Banner,
Petitioner,

v.

Mr. Tisdale, et al,
Respondents

On Petition for Writ of Certiorari To The
United States Court of Appeals For The Fourth Circuit

Petitioner's Reply Brief

Genuine Truth Banner
Pro Se Petitioner
BRSF
Saluda #218-B
4460 Broad River Rd
Columbia, SC 29210

TABLE OF CONTENTS

Table of Authorities	ii
Reply to Respondent's Statement of the Case	1
Reasons for Granting the Petition	2
I. Petitioner was prevented from properly exhausting his administrative remedies	2
II. The lower courts erroneously made credibility determinations and weighed the Respondent's evidence on the issue of exhaustion of administrative remedies over Petitioner's	2,3
III. The Respondents failed to comply with the discovery order	3
Conclusion	4

TABLE OF AUTHORITIES

CASES

Moore V. Bennette

517 F.3d 717 (4th Cir. 2008) 2

Foulk V. Charrier

262 F.3d 689 (8th Cir. 2001) 2

Anderson V. Liberty Lobby, Inc

106 S.Ct 2505 3

Alexander V. Connor

105 F.4th 174 (4th Cir. 2024) 3

Reply To Respondents Statement of the Case

Petitioner will directly address the issue at hand, specifically that he did not fail to exhaust his administrative remedies as the district court ruled. However, Petitioner is compelled to first address a few of the Respondents blatant lies and half truths in their so-called "statement of the case".

I. It is true that Petitioner was questioned after a correctional employee was injured. It is also true that Petitioner was escorted to an Rtd and was asked to remove his clothing (underwear). It is true that (to avoid being physically assaulted after being threatened) Petitioner did remove his underwear and flush them down the toilet in a fit of rebellion. However, it is FALSE that the "clothing" (underwear) was blood stained and was "evidence" of a crime.

In fact, when defendant Branden Davis was directly asked about this in interrogatories, he did NOT respond and the defendants failed to present ANY evidence or documentation showing a legitimate penological purpose for the order for Petitioner to remove his underwear and remain naked in the cell other than bald allegations.

Petitioner submits that this and other blatant lies have been presented by the Respondents solely for prejudicial value in attempts to sway the courts on mere feelings and not facts or law.

II. The Respondents claim that the investigator "testified (Petitioner) refused to discuss Lt. Bethea's stabbing.". However, this is FALSE. The investigator (Agent Horne) didn't testify to anything because the alleged testimony (Agent Horne's Affidavit) was never signed, not dated, not notarized or otherwise verified [ECF 168-11, pgs 1-3] and was therefore inadmissible along with the affidavits of Branden Davis [ECF 168-1, pgs 1-2], Vernon Adams [ECF 168-3, pgs 1-2] and MD Stacey Smith [ECF 168-9, pgs 1-3]. Further, the district court erred in considering unverified affidavits that were clearly inadmissible.

REASONS FOR GRANTING THE PETITION

I. According to SCDC policy, exhaustion requires a Request to Staff Member (RTSM) reporting the incident within (8) eight days, a grievance with a copy of the ANSWERED RTSM attached, and a grievance appeal. Petitioner asserts he was prevented from exhausting administrative remedies where he filed an RTSM to Jana Hollis (the deputy warden) reporting the incident on the same day it occurred (4.2.20) while she failed to respond or return that RTSM. See *Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir 2008) holding:

"An administrative remedy is not considered to have been available if a prisoner, through no fault of his own, was prevented from availing himself of it."

See also, *Fouk v. Chatter*, 262 F.3d 687 (8th Cir 2001) holding:

"A prison's failure to respond to a prisoner's informal resolution request was sufficient basis on which to deny dismissal of his claims based on the prisoner's failure to exhaust his administrative remedies."

While Petitioner could not present the original 4.2.20 dated RTSM as proof because it was never returned to him, his deposition testimony [ECF 167-2, pg 65, lines 14-25, pg 66, lines 1-15] and interrogatory response [ECF 168, pgs 6-11] was evidence itself and should have sufficed.

Further, on July 3rd, 2024, after the lower courts had already ruled, Jana Hollis finally provided documented proof that she received petitioner's 4.2.20 dated RTSM reporting the physical assault. Where she previously told Petitioner that she forwarded that RTSM to police services, she now claims that she "never received a response back" which would explain why she never answered or returned the 4.2.20 dated original RTSM. See (Appendix C).

II. While it is true that lower courts ruled that Petitioner failed to include any evidence of any RTSM reporting the incident prior to November 3rd, 2020, the rulings were clearly erroneous. Petitioner's evidence included an interrogatory response [ECF 168, pgs 6-11], deposition testimony [ECF 167-2, pg 65, lines 14-25, pg 66, lines 1-15], an affidavit in support of summary judgment and other documents that explicitly testify to Petitioner's reporting the incident to Jana Hollis on the same day the assault occurred (4.2.20) via RTSM. Indeed, even the 2nd, November 3rd, 2020 dated RTSM reporting the assault starts by saying:

"Hi, I had previously sent a staff request and have yet to hear back on the following issue:"

before again reporting the assault, [ECF 168-2, pg 11] which was again reiterated by other documented evidence [ECF 168-2, pg 12] (Petitioner's grievance without an RTSM).

REASONS FOR GRANTING THE PETITION

II. Therefore, the lower courts erroneously made credibility determinations and weighed the Respondents' evidence on the issue of exhaustion of administrative remedies over Petitioners, in contravention of applicable law. See *Anderson V. Liberty Lobby, Inc.*, 106 S.Ct. 2505. See also *Alexander V. Connor*, 105 F.4th 174 (4th Cir. 2024).

III. The Respondents did NOT fully comply with the discovery order [ECF 50] and therefore, the district court erroneously granted summary judgment to a party that not only subverted a court order, but actively refused to comply.

Specifically, the Respondents subverted the discovery order in misleading the court to believe that a FORCED CELL MOVEMENT IS NOT a PLANNED USE OF FORCE (which is a bold and blatant (ie) while then refusing to produce that relevant policy.

Further, the Respondents failed to comply with the discovery order where as noted by the magistrate judge in the RBR [ECF 197, pg 29 (footnote #16)]:

"The court has reviewed the video exhibit submitted by the defendants as exhibit 'A' to defendant Tisdale's affidavit. However, it appears that that exhibit does not contain the correct camera footage as the description of events as articulated by associate warden Tisdale in his affidavit, does not correspond with the video provided to the court (doc. 168 Tisdale's aff. lines 7-11)".

These facts noted by the magistrate court, in conjunction with both Tisdale's testimony that a video existed encompassing the events described in his affidavit (specifically Petitioner's being escorted to lock-up) [ECF 168, pgs 1-4, statements 7-14] and Petitioner's returned acknowledgment form noting:

"All videos attached are irrelevant and not what was requested. No videos from lock-up/no videos from having been escorted to lock-up."

While never ruled as a discovery order violation, is clearly a discovery order violation.

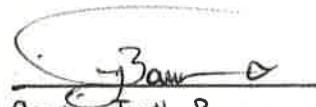
CONCLUSION

For the foregoing reasons, Petitioner submits that the Petition for a Writ of Certiorari should be granted and that the order of the district court [ECF 213] granting summary judgment be reversed as well as the 4th Circuit Court of Appeals dismissal of his appeal No. 23-6709 affirming the ruling of the district court.

A copy of this Reply Brief has been served on the following by depositing the same into the institutional mail for delivery into the U.S. mail, postage prepaid on this 3rd day of September 2024:

David C. Holler
Smith, Robinson, Holler, Dubose, & Morgan LLC
126 N. Main St.
P.O. Box 580
Sumter, SC 29151

Honorable Scott S. Harris
Clerk of Court
U.S. Supreme Court
1 First St. NE
Washington, D.C. 20543


Genuine Truth Banner

Pro Se Petitioner

BRSF

Saluda #218-B

4460 Broad River Rd

Columbia, SC 29210