No. 24-572

IN THE

Supreme Court of the United States

REGINALD PITTMAN, BY AND THROUGH HIS GUARDIAN AND NEXT FRIEND, ROBIN M. HAMILTON,

Petitioner,

v.

MADISON COUNTY, ILLINOIS, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioner (Plaintiff-Appellant below): Reginald Pittman, by and through his Guardian and Next Friend, Robin M. Hamilton.

Respondents (Defendants-Appellees below): County of Madison, Illinois; Sergeant Randy Eaton; and Deputy Matt Werner.

RULE 29.6 STATEMENT

Respondents consist of individuals and a governmental corporation. As such, none of the Respondents have a parent corporation or shares held by a publicly traded company. Therefore, a corporate disclosure statement is not necessary.

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STATEMENT OF THE CASE

Petitioner Reginald Pittman [1] seeks review from this Court following his fourth appeal of this case, which arises out of facts that originally occurred in 2007.

I. Pittman's suicide attempt and the contrary trial testimony

In August 2007, Reginald Pittman entered the jail in Madison County, Illinois as a pretrial detainee. While awaiting trial, in late October of that year, he told a jail officer, defendant Deputy Matthew Werner, of being suicidal. Deputy Werner referred Pittman to a social worker, also known as "crisis" counseling, and placed him on suicide watch for several days.

On December 19, 2007, Pittman attempted suicide by hanging. He survived but incurred a severe brain injury. He left a note stating that "the [g]uards were f***ing with [him]" and would not let him "speak to crisis."

Bradley Banovz was another detainee housed near Pittman's cell at the time, and Banovz's testimony was a central piece of Pittman's evidence at trial. Banovz testified that Pittman had asked the two individual defendants, Deputy Werner and Sergeant

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[1] Pittman himself is incapacitated as set forth *infra* and brings this matter through his next friend Robin H. Hamilton.

Randy Eaton, to refer Pittman to crisis counseling in the days leading up to his suicide attempt, but neither did. Specifically, Banovz testified Pittman asked Deputy Werner to put Pittman on the list for crisis counseling on December 14, 2007, but as Banovz claimed in his testimony, Deputy Werner purportedly did not take the request seriously and did not schedule Pittman for crisis counseling, despite a purported representation that Deputy Werner would do so.

Banovz also testified that a few days later, on December 18, 2007, Pittman asked Sergeant Eaton to make a referral to crisis. As Sergeant Eaton made his rounds, Banovz testified he overheard Pittman crying and asking to see crisis counseling. As with Deputy Werner, Banovz testified that Sergeant Eaton stated he would schedule Pittman for an appointment with crisis counseling but did not.

Deputy Werner and Sergeant Eaton each testified and offered an account directly contrary to Banovz's testimony. Each admitted knowing Pittman had been on suicide watch in October 2007. However, each rejected Banovz's account and denied ever hearing or seeing any indication of subsequent mental distress from Pittman, or ever hearing him ask to return to crisis counseling. Crucially, both Werner and Eaton each insisted that had Pittman asked for crisis counseling, they would have referred him for mental health treatment.

II. Procedural history.

After his suicide attempt, through his next friend, Pittman sued Madison County, Deputy Werner, Sergeant Eaton, and other defendants, asserting claims under 42 U.S.C. §1983, as well as state law claims. Relevant to his appeal, Pittman's §1983 claim alleged that defendants violated the Due Process Clause of the Fourteenth Amendment by failing to respond to his requests for mental health treatment.

Pittman's claims have a long procedural history, including four appeals before the Seventh Circuit. The first and second appeals concerned other issues and are not directly relevant to Pittman's instant petition. *See Pittman ex rel. Hamilton v. Cnty. of Madison*, 746 F.3d 766 (7th Cir. 2014) ("*Pittman I*") (reversing in part grant of summary judgment for defendants); *Pittman ex rel. Hamilton v. Cnty. of Madison*, 863 F.3d 734 (7th Cir. 2017) ("*Pittman II*") (reversing and remanding for new trial for excluding Banovz's recorded interview at trial).

The Seventh Circuit's decisions in *Pittman ex rel. Hamilton v. Cnty. of Madison*, 970 F.3d 823 (7th Cir. 2020) ("*Pittman III*") and *Pittman ex rel. Hamilton v. Cnty. of Madison*, 108 F.4th 561 (7th Cir. 2024) ("*Pittman IV*") are relevant to Pittman's current petition, and concern the mental state of the defendants, an element in the jury instruction for Pittman's §1983 claim.

In *Pittman III*, the Seventh Circuit found the jury instruction proffered to be erroneous, because the instruction as proffered required the jury to determine, among other things, whether the defendants "consciously" failed to take reasonable measures to prevent Pittman's self-harm. *Pittman III*, 970 F.3d at 828-29. However, the Seventh Circuit expressly approved other language in the instruction that required the jury to assess whether the defendants "were aware of … or strongly suspected facts showing" a "strong likelihood" of self-harm, finding that language to be consistent with *Miranda* in that it asked "whether the defendants acted purposely, knowingly, or perhaps even recklessly." *Id.* at 827 (citing *Miranda v. Cnty. of Lake*, 900 F.3d 335 (7th Cir. 2018)).

The cause was remanded for a new trial, and the jury was instructed on the mental state element in accordance with the Seventh Circuit's instructions in *Pittman III*, as follows:

> 2. Defendant Randy Eaton and/or Defendant Matt Werner were aware of this strong likelihood that Plaintiff would seriously harm himself or strongly suspected facts showing a strong likelihood that Plaintiff would be seriously harmed; but refused to confirm whether these facts were true.

The jury entered a defense verdict. However, in *Pittman IV*, the opinion from which Pittman seeks this Court's review, the Seventh Circuit reversed course with respect to that language. *Pittman IV*, 108 F.4th at 569-72. The Seventh Circuit held that in light of other caselaw regarding and interpreting this Court's opinion in *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the prior finding in *Pittman III* was erroneous. *Pittman IV*, 108 F.4th at 572. Specifically, by requiring proof that "the defendants were aware of … or strongly suspected facts showing" a strong likelihood of harm, the *Pittman III* opinion "introduced a subjective component into *Kingley's* otherwise objective inquiry." *Id*. The Seventh Circuit therefore found that the District Court, though following the instructions from *Pittman III*, "thus erred (through no fault of its own) by instructing the jury" to consider that language. *Id*.

Instead of the subjective standard, the Seventh Circuit determined the District Court should have instructed the jury that Pittman had to prove the defendants did not take reasonable available measures to abate the risk of serious harm to Pittman, even though "*reasonable officers under the circumstances would have understood the high degree of risk involved*[.]" *Id*. (emphasis in original).

In light of the above, the Seventh Circuit found the jury instruction as proffered to be erroneous. *Id*. In short, the jury instruction as proffered (consistent

with *Pittman III*) asked the jury to answer whether the defendants were aware of or strongly suspected the risk of self-harm. But the District Court (according to *Pittman IV*) should have asked the jury to answer whether reasonable officers would have understood the high degree of risk involved.

Despite the discrepancy, the Seventh Circuit did not reverse the jury verdict in favor of defendants, because the erroneous instruction did not impact the jury's verdict. Specifically, the Seventh Circuit determined that the erroneous portion of the jury instruction was not at issue, because the parties' theories of the case did not hinge on whether the defendants acted subjectively or objectively unreasonably. Rather, the case hinged on witness credibility: whether Banovz's version of events or Eaton's and Werner's version of events was more believable. *Id*. at 573-74.

Because Pittman could not show that the jury instruction resulted in prejudice to him, the Seventh Circuit affirmed the judgment and did not order a new trial. *Id*. at 574.

REASONS FOR DENYING THE PETITION

I. Pittman's petition for certiorari does not state or demonstrate any basis for further review.

Pittman does not ask this Court to weigh in on any outstanding question of law. He does not contest the Seventh Circuit's substantive decision on the appropriate jury instruction for his §1983 claims, conceding that the decision on that issue was correct. Rather, the only basis of Pittman's petition for certiorari is the Seventh Circuit's finding that the jury instruction as proffered did not result in prejudice to him. This narrow claim for relief does not warrant this Court's exercise of its review powers.

This Court's Rule 10 sets forth the standard for certiorari. It provides, in relevant part, that review before this Court "is not a matter of right, but of judicial discretion[,]" and that a petition for writ of certiorari will only be granted "for compelling reasons." USCS Supreme Ct. R. 10. The Rule further provides a list of bases for such review. Although that list is not exhaustive, it demonstrates that Pittman's assertions do not meet the standard.

Specifically, this matter does not concern any of the bases for review under Rule 10(a), in that it does not involve circumstances in which the Seventh Circuit has entered a decision in conflict with the decision of any other Circuit on the same important

matter, "or decided an important federal question in a way that conflicts with the decision of any state court of last resort." USCS Supreme Ct. R. 10(a). The only matter at issue here is the lack of prejudice to Pittman as a result of the instruction at issue. As a matter of law, this issue necessarily affects him alone, and therefore could not be in conflict with the decision of any other court, federal or state. Certiorari is granted only "in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951) (internal quotations omitted).

Furthermore, the issue of individual prejudice to Pittman does not meet the remainder of the requirements in Rule 10(a), because there is no claim, nor can there be, that the decision has departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Pittman's claim, in effect, asks this Court to review the Seventh Circuit's decision on the question of prejudice, but Pittman does not claim, nor can he, that the decision departed from the "accepted and usual course" of judicial proceedings. The question of prejudice as a result of jury instructions, erroneous or otherwise, is a well-established aspect of federal practice, as discussed below. Granting of a writ of certiorari is not warranted "merely to review the

evidence or inferences drawn from it." *Gen. Talking Pictures Corp. v. W. Elec. Co.*, 304 U.S. 175, 178 (1938).

And Rule 10(b) is not at issue, because that rule only applies to decisions by state courts of last resort.

Further, Pittman's petition does not implicate Rule 10(c), as that part concerns decisions of state or federal courts on undecided questions of federal law, or decisions on "an important federal question" in a way that conflicts with relevant decisions of this Court. Again, Pittman's claims relate to the individual prejudice he claims resulted to him alone as a result of the Seventh Circuit's decision. He does not ask this Court to address the substantive decision on the appropriate jury instruction to give. There is no claim that the Seventh Circuit's decision impacts an undecided question of law or an "important federal question" within the meaning of the Rule.

Rule 10 finally provides that a "petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." USCS Supreme Ct. R. 10.

That is precisely what is at issue here. Pittman does not dispute that the Seventh Circuit reached the correct result as to the applicable jury instruction for his claim. He further does not dispute that he retains the burden to show that prejudice resulted to him. Rather, Pittman claims that the Seventh Circuit

misapplied a correctly stated rule of law to him personally, at his third jury trial in this case. This conclusion has no application outside of the result to Pittman himself and the limited circumstances of this case. No basis exists for this Court to exercise its supervisory authority, or to otherwise grant review.

II. Review by the Court is not warranted because the Seventh Circuit correctly determined that prejudice did not result to Pittman.

In addition to the fact that Pittman has failed to articulate or demonstrate any basis for review (because the narrow issue of prejudice concerns him alone), review by this Court is further not warranted because the Seventh Circuit's conclusions and opinion were correct.

A. Legal standard governing incarcerated persons under Kingsley.

Again, Pittman does not contest the most substantial holdings of the Seventh Circuit's opinion, which concern the appropriate jury instruction for a §1983 claim under these circumstances. Incarcerated persons have a constitutional "right to receive adequate medical treatment," including mental health treatment and protection from self-harm. *Miranda*, 900 F.3d at 350 (citing *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976)). But the source and scope of that right turns "on the relationship between the

state and the person in the state's custody." *Collins v. Al-Shami*, 851 F.3d 727, 731 (7th Cir. 2017)(quoting *Currie v. Chhabra*, 728 F.3d 626, 630 (7th Cir. 2013)).

Convicted prisoners are subject to a subjective standard under which a prison official must be aware of a substantial risk of harm. *Jones v. Mathews*, 2 F.4th 607, 613 (7th Cir. 2021). Pretrial detainees, however, "stand in a different position[.]" *Kingsley*, 576 U.S. at 400. Because they are "entitled to the constitutional presumption of innocence" (*id.*), they are "protected from certain abusive conditions" by the Fourteenth Amendment's Due Process Clause. *Miranda*, 900 F.3d at 350.

In *Kingsley*, this Court determined that an objective reasonableness standard applies to a pretrial detainee's claim of excessive force. 576 U.S. at 392. Under this standard, the Court must apply and answer "two separate state-of-mind" questions: (1) "the defendant's state of mind with respect to the bringing about of certain physical consequences in the world," and (2) "the defendant's state of mind with respect to whether his use of force was 'excessive'." *Id.* at 395. The first element requires "a purposeful, a knowing, or possibly a reckless state of mind," which does not include "*negligently* inflicted harm," as that is "categorically beneath the threshold of constitutional due process." *Id.* (citation and internal quotation marks omitted; emphasis original in *Kingsley*).

The latter question, which addresses the defendant's state of mind regarding the proper use of force, requires proof "only that the force purposefully or knowingly used against [the pretrial detainee] was objectively reasonable." *Id*. at 396-97.

After *Kingsley*, the Seventh Circuit extended this objective reasonableness standard to pretrial detainees' medical care claims in *Miranda*, see 900 F.3d at 352. Conceptualizing the *Kingsley* standard, the Seventh Circuit concluded that a jury must decide two questions: (1) "whether the medical defendants acted purposefully, knowingly, or perhaps even recklessly when they considered the consequences of their handling of the [plaintiff's] case" and (2) whether the defendants' actions were "objectively reasonable." *Id*. at 353-54. The Seventh Circuit's decision in *Pittman IV* conformed the jury instructions for Pittman's medical claims to this "objectively reasonable" standard.

B. The Seventh Circuit correctly determined that no prejudice resulted to Pittman.

Pittman does not and cannot dispute that in any instance of instructional error, the reviewing court must still assess whether the error resulted in prejudice to the appealing party. *Cotts v. Osafo*, 692 F.3d 564, 567 (7th Cir. 2012). "When evaluating prejudice, we view the evidence as a whole to determine whether the jury could have reached a different outcome had the instructions been correct."

Kuberski v. Rev Recreation Grp., 5 F.4th 775, 780 (7th Cir. 2021).

This "harmless-error analysis" applies to instructional errors so long as the error at issue does not categorically "vitiat[e] *all* the jury's findings." *Hedgpeth v. Pulido*, 555 U.S. 57, 61 (2008) (quoting *Neder v. United States*, 527 U.S. 1, 11 (1999); also quoting *Sullivan* v. *Louisiana*, 508 U.S. 275, 281 (1993)).

Applying this prejudice standard to the relief requested by Pittman, even in the face of legal error, "a new trial is appropriate only if the [jury] instruction prejudiced the complaining party." *Lewis v. City of Chicago Police Dept.*, 590 F.3d 427, 433 (7th Cir. 2009). This is true even for "patently incorrect" instructions. *Kuberski*, 5 F.4th at 780 (internal quotations omitted).

This prejudice analysis also serves to prevent the requirement of a new trial, even when the instructional error may cause the plaintiff to carry a heavier burden than required, "provided that the evidence as presented would have demanded the same result were the jury instructed on the correct standard." *Id.*

To evaluate prejudice, the reviewing court views the evidence as a whole to determine whether the jury could have reached a different outcome had the instructions been correct. *Id.* The case of *Boyd v. Illinois State Police*, 384 F.3d 888 (7th Cir. 2004)

provides a helpful example of an incorrect but harmless jury instruction.

In that case, the district court erroneously instructed the jury that under Title VII, the employee-plaintiffs had to prove that race was "the catalyst" for the alleged employment discrimination. *Id.* at 895. The Seventh Circuit held that the correct instruction would have instead required the plaintiffs to show that race was "a motivating factor." *Id.* Though this error caused the plaintiffs to carry "a heavier burden" than required, the Seventh Circuit concluded that even if the jury were instructed on the correct standard, the "evidence of discrimination [was] simply too thin on this record to warrant a new trial." *Id.* In fact, the facts adduced at trial failed to show that race was ever "a factor at all," and so a new trial was not justified, despite the fact that the instruction was erroneous and increased the burden for plaintiff's case in chief. *Id.* at 896. See also *Crabtree v. National Steel Corp.*, 261 F.3d 715, 722-23 (7th Cir. 2001).

In light of the above standard, the Seventh Circuit correctly noted here (in *Pittman IV*) that if the instruction contains a legal error, the reviewing court reverses only if the error prejudiced Pittman. *Cotts*, 692 F.3d at 567. The Seventh Circuit correctly determined that no prejudice resulted to Pittman as a result of the instruction proffered, because under the facts and theories of the case as presented by the parties, liability at trial did not hinge on proof of the

defendants' state of mind, but rather on the credibility of the witnesses.

Both parties presented the case as a credibility contest between two versions of the facts.

First, Pittman presented Banovz's testimony that (1) Pittman told both Eaton and Werner of distress; (2) Pittman requested a referral to crisis counseling; and (3) both defendants promised to make the referral but failed to do so.

Eaton and Werner presented the opposite version of the facts: they never heard Pittman make any request for crisis counseling.

As the Seventh Circuit correctly determined, Pittman's counsel told the jury that Banovz was the "lynchpin" of the case, and defense counsel agreed.

With the case presented this way, the distinction between an objective standard versus a subjective standard for the required mental state for Pittman's claims was not at issue. As the Seventh Circuit noted:

> [N]either Pittman nor the defendants focused on Deputy Werner's or Sergeant Eaton's *subjective* mental states about the risk of harm Pittman posed to himself. To the contrary, the parties pinpointed their focus on whether, in the weeks before his suicide attempt,

> Pittman ever asked Deputy Werner or Sergeant Eaton to return to crisis counseling.

Pittman IV, 108 F.4th at 573 (emphasis in original). The Seventh Circuit found the subjective risk/objective risk distinction was not at issue, because both Eaton and Werner admitted that had they received a request for a referral to crisis counseling (which they both denied receiving), then the appropriate response would have been to provide the referral. *Id*.

Pittman's arguments in his petition do not change this analysis, and only serve to confirm the lack of prejudice. He expends many pages reciting the evidence adduced at trial from various expert and lay witnesses regarding the appropriate standard of care for jail employees when a detainee makes a request for crisis counseling, and the appropriate response. But, as the Seventh Circuit correctly determined, these issues were not and are not in dispute. Both Eaton and Werner admitted the standard. They each testified that had they heard Pittman make a request for crisis counseling, they would have made the referral.

On that basis, Pittman's assertions regarding the arguments of defense counsel, and the supposed prejudice that resulted, are wrong. Pittman claims the defense "made the lack of subjective knowledge the centerpiece of his argument." Petition at 13. This

misconstrues the facts and the arguments of counsel. As the Seventh Circuit correctly determined, the arguments focused on what defendants knew at the time of Pittman's suicide attempt: whether they knew of his request for crisis counseling *at all*. In other words, the arguments did not focus on the defendants' subjective or objective response to a request, or their knowledge that harm would result absent such a response.

Instead, the arguments and evidence at trial focused on whether the defendants had knowledge of the request for crisis counseling *at all*. The application of a subjective or objective test measures the *response* to such knowledge, not a question regarding that knowledge in the first place. As the Seventh Circuit correctly determined, the case as presented hinged on witness credibility and whether the jury believed Pittman requested crisis counseling at all, not the standard by which to evaluate the defendants' response.

Because the erroneous instruction did not result in any prejudice to Pittman, the Seventh Circuit correctly determined he was not entitled to a new trial.

CONCLUSION

Pittman has not identified any basis for this Court to exercise its supervisory review powers, or any other basis for review.

His petition does not impact or implicate any novel or important question of federal law.

Instead, Pittman complains about the Seventh Circuit's application of a correctly stated rule of law to the facts and arguments adduced at trial, which does not serve as a basis for this Court's review.

Additionally, Pittman's claims fail because the Seventh Circuit correctly determined that under the facts adduced and the parties' respective theories of the case, no prejudice resulted to Pittman as a result of the erroneous jury instruction.

Based on the above considerations, Pittman's petition for a writ of certiorari should be denied.

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