

## Fourth Circuit Case Summaries: May 3 and 10, 2019

### **Conditions of Virginia's death row violated Eighth Amendment**

[Porter v. Clark](#), 923 F.3d 348 (May 3, 2019; amended May 6, 2019). The plaintiffs were death row inmates and sued over their long-term placement into solitary-like conditions in the Eastern District of Virginia. The trial court held that Virginia's death row conditions violated the Eighth Amendment's prohibition on cruel and unusual punishment and issued an injunction prohibiting the state from reinstating those conditions. The Fourth Circuit affirmed.

Death row inmates at Sussex I State prison were confined to a 71 square foot cell with a 10.5 ft ceiling and a window 5 inches tall and 41.5 inches wide. The inmates were allowed one hour of outdoor recreation each day and ten-minute showers three times a week. No exercise equipment was available. The cells remain illuminated by artificial lighting twenty-four hours a day. Non-contact visitation was available during weekends and holidays. Contact visits with immediate family could be approved in "extreme circumstances" at the warden's discretion in theory, but such visits were actually only approved when the inmate was near death. Certain inmates were allowed to perform work within the institution, but other than that limited exception, inmates were not allowed to leave their cells. "In particular, they were denied access to any form of congregate recreation, either indoor or outdoor; they were not allowed to eat meals outside of their cells; and they could not participate in congregate religious services or prison programming." Slip op. at 5 (internal citation omitted). Inmates therefore spent 23 to 24 hours each day alone in their cells. The district court found that the conditions "created, at the very least, a significant risk of substantial psychological or emotional harm," and that the defendants were "deliberately indifferent to that risk of harm." *Id.* at 6.

The Eighth Amendment requires prisons to provide inmates with "humane conditions of confinement . . .". *Id.* at 7. An Eighth Amendment conditions of confinement claim must meet an objective and subjective standard. Under the objective standard, the alleged deprivation must be "serious"—it must pose "a serious or significant physical or emotional injury resulting from the challenged conditions or 'a substantial risk of serious harm resulting from . . . exposure to the challenged conditions.'" *Id.* at 7-8. Research of the effects of solitary confinement has shown that conditions like these create "psychological deterioration," and a leading study on the issue demonstrated that such deterioration occurred in all cases where an

inmate was held more than 10 days under similar conditions. This “unrefuted” evidence was presented to the trial court. The conditions here were sufficiently serious to meet the objective prong and the trial court did not err in finding that there was no genuine dispute about the risk of harm.

Under the subjective component of an Eighth Amendment claim, the inmate must show that the prison officials acted with “deliberate indifference”—that the prison officials knew of the serious risk to inmate health and ignored it. “Deliberate indifference is ‘more than mere negligence’, but ‘less than acts or omissions [done] for the very purpose of causing harm or with knowledge that harm will result.’” *Id.* at 19. Where the risk of harm is obvious, it may be inferred that a prison official deliberately disregarded it. One former defendant, a prior warden of the prison, testified in 2013 regarding the psychological impact of such isolation on humans. The Fourth Circuit previously called the conditions on Virginia’s death row “dehumanizing” in that same case. Further, the state’s own policies prohibit non-death-row inmates from being placed into solitary confinement for more than thirty consecutive days. This policy shows that Virginia was aware of the harmful impact of extended periods of isolation. Given these facts, as well as recent and “extensive scholarly literature” regarding the effects of solitary confinement, the risk here was obvious and established that the State was deliberately indifferent to it. “In sum, the undisputed evidence established both that the challenged conditions of confinement on Virginia’s death row created a substantial risk of serious psychological and emotional harm and that State Defendants were deliberately indifferent to that risk.” *Id.* at 25. The grant of summary judgment and injunctive relief was therefore affirmed. A dissenting judge would have reversed the district court and remanded for dismissal.

**(1) Excessive force claim for repeated taser use on inmate can proceed; summary judgment reversed; (2) Plaintiff was entitled to discovery on use of force policies of detention center**

[Brooks v. Johnson](#), 924 F.3d 104 (May 10, 2019). In this Eighth Amendment excessive force case from South Carolina, the plaintiff alleged that he was repeatedly tasered by guards as punishment. The trial court found that there was no genuine factual dispute about the circumstances of the use of force and granted summary judgment for the defendants. The Fourth Circuit reversed.

(1) The plaintiff was serving a prison sentence and was transported to another detention center for a court date. Officers reported that the plaintiff was “very disrespectful[] and uncooperative” immediately upon arriving, and repeatedly threatened to sue the officers. The policy of the detention center required that a photograph be taken of any inmate entering the building. Officers unsuccessfully tried to obtain his photo the first day of his arrival. The next day they tried again. When the plaintiff again refused to cooperate, he was handcuffed and escorted by at least two officers to the photo room, with other officers following closely. The plaintiff acknowledged he refused to submit to the photograph and verbally resisted the

officers. According to the officers, the plaintiff verbally threatened the officers. The officers spent several minutes trying to convince the plaintiff to submit to the photo, and eventually warned him that he would be tased if he did not comply. He continued resisting and an officer deployed the taser on his leg while two other officers restrained him. The plaintiff fell to the ground and no photo could be obtained while he was in that position. After 16 seconds, while the plaintiff was still on the ground, the same officer again tased the plaintiff, causing him to “thrash in pain . . .” Slip op. at 6. Officers then held the plaintiff up and again attempted to photograph him, but he continued moving his body and preventing the photo from being taken. The parties dispute whether this was voluntary resistance or an involuntary reaction to the use of the taser. Less than a minute after the second use of the taser, the officer tased the plaintiff a third time. Officers caught the plaintiff as he fell and were able to finally obtain his photo. These events were captured on video but no audio was available. The plaintiff alleged ongoing knee pain; an MRI two years later showed a “kneecap irregularity” and possible torn tendon.

He sued the officers pro se under 42 U.S.C. 1983, alleging excessive force in violation of the Eighth Amendment. To demonstrate an excessive force violation under the Eighth Amendment, the inmate must show that the use of force was objectively serious — a “nontrivial” use of force is required, something more than “de minimis” force. This is “not a high bar” and the objective prong was easily met here by the use of a taser. The inmate must also satisfy a subjective test regarding the officer’s intention in using force—that is, whether the use of force was “a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.” *Id.* at 14. Efforts to discipline an inmate or to restore order of the prison are permissible motivations, and officers are allotted “wide-ranging deference” in use of force determinations when acting to enforce institutional policies. On the other hand, force used to retaliate against an inmate or for punishment is constitutionally impermissible. Taking the evidence in the light most favorable to the plaintiff, there was a material dispute over the officer’s subjective motivations in using force here, and it was error to grant summary judgment to the defendants. Given the repeated use of the taser within a short time frame, the fact that the second use of the taser occurred while the plaintiff was still on the ground, and that the video did not clearly support the defendants’ version of the facts, a jury could conclude that the force here was used for an improper reason.

Turning to the question of qualified immunity, the court found it clearly established that an inmate had the right to be free from “‘malicious’ infliction of pain.” *Id.* at 26.

At the time of the events in question, it was clearly established that a corrections officer’s use of force in bad faith—not to preserve order or induce compliance, but to punish through the ‘wanton infliction of pain’—violates an inmate’s Eighth Amendment rights. *Id.* at 27.

The officers here were on notice that such acts could violate the inmate’s constitutional rights, and qualified immunity was therefore inappropriate. The court unanimously remanded for disposition on the merits.

(2) The court also addressed the plaintiff's complaint that the magistrate erred in denying discovery on the detention center's use of force policies. While the district court has wide discretion in discovery matters, "a district court . . . may abuse its discretion when it denies a motion to compel production of non-privileged materials whose relevance greatly exceeds the burden of expense of production." *Id.* at 32. Here, that standard was met: the claim turned on the officer's intent in using force. Use of force policies and compliance therewith are "highly relevant" in making such determinations, and production of these documents to the plaintiff should have been ordered.