

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014- 002131

Mikal D. Mahdi, #5238

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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AT ROANOKE, VA
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

OCT 04 2001

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BY *[Signature]*
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**RICO HOLLIDAY,
Plaintiff,**

v.

**GEORGE DEEDS, *et al.*,
Defendants,**

Civil Action No. 7:00CV00721

MEMORANDUM OPINION

**By: PAMELA MEADE SARGENT
United States Magistrate Judge**

This case is before the court on the defendants' motion for summary judgment, (Docket Item No. 23). Based on my review of the evidence provided and the arguments and representations of the parties, and for the reasons set forth below, I will grant the defendants' motion for summary judgment in part, and I will deny the motion in part.

I. Facts

The plaintiff, Rico Holliday, a prisoner incarcerated in Red Onion State Prison, ("Red Onion"), in Wise County, Virginia, brings this action against the defendants, Virginia Department of Corrections Director Ronald Angelone, Regional Director R. A. Young, former Red Onion Warden George Deeds, correctional officers Major Rowlette, Captain L. Fleming, Lieutenant D. A.

Taylor, Sergeant Fowler and unknown correctional officers referred to as John and Jane Doe.¹ In his complaint, Holliday seeks damages under 42 U.S.C. § 1983, alleging that he was subjected to the excessive use of force and an invasion of his privacy rights, all in violation of the Fourth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution. Holliday also alleges state claims for assault, battery and negligence. (Complaint, (Docket Item No. 2), at 1-2.) Holliday alleges that the physical abuse by the defendants violated his rights under the Eighth Amendment, and that such actions violated the state assault and battery laws. (Complaint at 9-10.) He also alleges that the actions of the defendants in subjecting him to being displayed unclothed to female staff and unnecessarily parading him unclothed through the institution, violated the Fourth, Eighth and Ninth Amendments, and that defendant Angelone, in implementing and authorizing the policy that allows female staff to be present, observe and film nonemergency routine intake strip searches of male prisoners, violates the Fourth, Eighth and Ninth Amendments. (Complaint at 10-11.) Holliday is seeking monetary and injunctive relief. (Complaint at 11-13.) He is suing the defendants in both their official and individual capacities. (Complaint at 2-4.)

Through his complaint and affidavit, Holliday alleges that on September 10, 1998, he was ordered to undress and comply with the strip search procedure

¹Deeds was dismissed as a defendant in this case by order dated May 17, 2001.

during his intake at Red Onion. (Complaint at 4; Affidavit No. 2 of Holliday, ("Holliday Affidavit No. 2"), at 2.) During the search, Holliday noticed that a female correctional officer was present and was videotaping the search. (Complaint at 4; Holliday Affidavit No. 2 at 2.) Holliday admits that, upon noticing the female officer, he "hesitated" to fully comply with the officers' orders to bend and cough. (Complaint at 5; Holliday Affidavit No. 2 at 2.) He alleges that as a result of his hesitation he was shocked with an electronic stun device, "slammed" to the floor and then restrained. (Complaint at 5; Holliday Affidavit No. 2 at 2-3.) Holliday contends that at no time prior or subsequent to the incident did he pose any immediate threat to staff at Red Onion. (Complaint at 6; Holliday Affidavit No. 2 at 4.) He contends that he was subjected to verbal abuse, including various racial epithets, by the officers at Red Onion during the incident. (Complaint at 5, 6; Holliday Affidavit No. 2 at 3.) Holliday also alleges that he was dragged, restrained and unclothed, on a "short dog leash" through the prison grounds before finally being placed into a cell. (Complaint at 7; Holliday Affidavit No. 2 at 3.)

The defendants do not dispute that Holliday is an inmate at Red Onion. (Brief In Support Of Defendants' Motion For Summary Judgment, ("Defendants' Brief"), (Docket Item No. 23), at 1.) The defendants also do not dispute that Holliday was received at Red Onion on September 10, 1998, nor that he was ordered to strip off all his clothes, lift his genitals, squat and cough. (Defendants' Brief at 2-3; Affidavit of Capt. L. Fleming, ("Fleming Affidavit"), at 2.) Further,

the defendants do not dispute that Holliday was stunned by an electronic taser gun. (Defendants' Brief at 3; Fleming Affidavit at 2.) Likewise, the defendants do not dispute that Holliday was forced to the floor, where he was restrained with leg irons and handcuffs before being escorted unclothed to a segregation unit. (Defendants' Brief at 4; Fleming Affidavit at 2.) The defendants do dispute, however, that Holliday was verbally assaulted during the intake process. (Defendants' Brief at 2; Affidavit of Rowlette, ("Rowlette Affidavit"), at 1-2.)

II. Analysis

As stated above, this matter is before the court on the defendants' motion for summary judgment. The defendants argue that summary judgment should be entered in their favor on the following grounds:

- 1) Plaintiff is suing the defendants in their official capacities, and the defendants are immune from suit in their official capacities for damages;
- 2) Plaintiff's claim that racial epithets were used by correctional officers does not state a constitutional claim;
- 3) Plaintiff's claim of cross gender viewing is barred by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e);

- 4) Plaintiff's claim of excessive force does not show an infliction of unnecessary and wanton pain and suffering; and
- 5) Plaintiff's claim against defendants Angelone and Young does not show that either of these defendants had any direct participation in the incident of September 10, 1998.

(Defendant's Brief at 2-5.)

Pursuant to Federal Rule of Civil Procedure 56(c), the court should grant summary judgment only when the pleadings, responses to discovery and the record reveal that "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Miller v. Leathers*, 913 F.2d 1085, 1087 (4th Cir. 1990)(en banc), *cert denied*, 498 U.S. 1109 (1991); and *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985). A genuine issue of fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

In considering a motion for summary judgment, the court must view the facts and the reasonable inferences to be drawn from the facts in the light most favorable to the party opposing the motion. *See Anderson*, 477 U.S. at 255;

Matsushita Elec. Indus. Co., Inc. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); *Nguyen v. CNA Corp.*, 44 F.3d 234, 237 (4th Cir. 1995); *Miltier v. Beorn*, 896 F.2d 848, 852 (4th Cir. 1990); *Ross*, 759 F.2d at 364; *Cole v. Cole*, 633 F.2d 1083, 1092 (4th Cir. 1980). In other words, the nonmoving party is entitled "to have the credibility of his evidence as forecast assumed." *Miller*, 913 F.2d at 1087 (quoting *Charbonnages de France v. Smith*, 597 F.2d 406, 414 (4th Cir. 1979)). Therefore, in reviewing the defendants' motion, the court must view the facts and inferences in the light most favorable to the plaintiff.

With regard to the defendants' first argument, that the defendants are not subject to a suit in their official capacity for monetary damages, I agree. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 70-71 (1989). The plaintiff's complaint, however, clearly states that he is suing the defendants in both their official and individual capacities. (Complaint at 3-4.) Furthermore, the defendants' own brief admits that they are being sued in this case in both their official and individual capacities. (Defendants' Brief at 2.) Both the Supreme Court and the Fourth Circuit have held that state officials, sued in their individual capacities, are "persons" within the meaning of 42 U.S.C. § 1983, and are not absolutely immune from personal liability under § 1983 solely by virtue of the official nature of their acts. *See Hafer v. Melo*, 502 U.S. 21, 30 (1991); *White v. Gregory*, 1 F.3d 267, 269-70 (4th Cir. 1993).

With regard to the defendants' second argument, I agree that the plaintiff's

allegations that racial epithets were used by correctional officers does not state a constitutional claim. Holliday alleges in his affidavit that after being shocked with the taser gun, several riot gear clad officers entered the cell and placed leg irons and handcuffs on him. (Holliday Affidavit No. 2 at 2-3.) He further alleges that during that time he was subjected to various racial slurs from the John Doe defendants, including: "Boy, you are at Red Onion now; nigger you better hear that." (Complaint at 5.) Holliday specifically alleges in his complaint that defendant Rowlette bent down and stated, "I run this camp and you are going to do as you are told. You [came] to the wrong camp to be modest." (Complaint at 5-6.) He further alleges that defendant Rowlette then told the officers present, "Get this nigger out of here." (Complaint at 6.)

While such abusive language is certainly repugnant, it cannot sustain a § 1983 claim. In *Collins v. Cundy*, 603 F.2d 825, 827 (10th Cir. 1979), the court stated that "[v]erbal harassment or abuse ... is not sufficient to state a constitutional deprivation under 42 U.S.C. [§] 1983." Similarly, in *Lamar v. Steele*, 698 F.2d 1286, 1286 (5th Cir. 1983), the court held that a § 1983 claim could not be based on "mere words" or "idle threats." Likewise, in *Keyes v. City of Albany*, 594 F.Supp. 1147, 1155 (N.D.N.Y. 1984), the court held that "the use of vile and abusive language, no matter how abhorrent or reprehensible, cannot form the basis for a § 1983 claim." Therefore, I will grant the defendants' motion for summary judgment on this ground, and I will dismiss this claim against the defendants.

With regard to the defendants' third argument, I also agree that the plaintiff's claim of cross-gender viewing is barred by the Prison Litigation Reform Act, ("PLRA"). Plaintiff relies on *Lee v. Downs*, 641 F.2d 1117 (4th Cir. 1981), and *Strickler v. Waters*, 989 F.2d 1375 (4th Cir. 1993), for the proposition that an inmate has a right not to be viewed unclothed or performing personal bodily functions by members of the opposite sex. (Plaintiff's Brief In Response To Defendants' Motion For Summary Judgment, ("Plaintiff's Brief"), (Docket Item No. 28), at 3.) Holliday alleges that his right to privacy was violated because a female correctional officer videotaped his full strip search. (Complaint at 10.) The PLRA, however, was enacted in 1994, subsequent to both *Lee* and *Strickler*, thereby superceding them. According to the PLRA:

No federal civil action may be brought by a prisoner confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

42 U.S.C.A. § 1997e(e) (West 1994 & Supp. 2001).

Thus, the question in this case becomes whether Holliday is able to show a physical injury as a result of this cross-gender viewing. In *Peyton v. Deeds, et al.*, No. 7:99CV00442 (W.D. Va. Dec. 28, 2000), an unpublished opinion of this court, Judge Kiser considered an identical claim of inmate Peyton arising at Red Onion at approximately the same period of time as the plaintiff's incident. In

that case, Peyton was instructed during the intake procedure to expose his private parts while male officers visually observed his body orifices for contraband. *See Peyton*, No. 7:99CV00442 at 8. A female officer operated a video camera, which recorded the search procedure, while a second female officer from another prison observed the procedure. *See Peyton*, No. 7:99CV00442 at 8. The court noted that the PLRA barred federal civil rights actions for mental or emotional injuries suffered while in custody without a showing of physical injury. *See Peyton*, No. 7:99CV00442 at 8. The court found that Peyton had alleged suffering no more than emotional distress as a result of the alleged violation of his privacy and that his privacy claims must be dismissed for failure to state a claim upon which relief could be granted. *See Peyton*, No. 7:99CV00442 at 9.

In reaching its conclusion, the court considered Peyton's allegations that he felt "humiliated, degraded, and dehumanized" as a result of being forced to expose his private body parts to female officers. *See Peyton*, No. 7:99CV00442 at 9. Peyton also alleged a loss of self-respect and a feeling of being "stripped of his manhood." *See Peyton*, No. 7:99CV00442 at 9. The court concluded that these alleged harms or injuries represented nothing more than Peyton's personal, emotional reaction to the challenged prison living conditions. *See Peyton*, No. 7:99CV00442 at 9. The court found that Peyton's injuries qualified as a form of emotional distress and were, therefore, the type of harm that the PLRA was intended to bar absent physical injury. *See Peyton*, No. 7:99CV00442 at 9-10.

Similarly, in *Ashann-Ra v. Commonwealth of Virginia*, 112 F.Supp.2d 559 (W.D. Va. 2000), the court held that the PLRA barred a male prisoner's § 1983 claim for violation of his privacy rights based upon the fact that female correctional officers could, and did, regularly view his genitals and other private areas of his body while he showered. The court explained that the emotional distress, as well as the accompanying sexual dysfunction, which allegedly resulted from the prisoner's emotional reaction to the challenged prison conditions, did not qualify as a "physical injury" entitling an inmate to bring suit under the PLRA. *See Ashann-Ra*, 112 F.Supp.2d at 566. The court agreed that inmates retain certain rights of privacy under the Constitution, which include the right not to be viewed by members of the opposite sex when not reasonably necessary. *See Ashann-Ra*, 112 F.Supp.2d at 565. However, the court stated that the Consitution does not mandate prisons which house prisoners convicted of serious crimes to be completely free of discomfort and affronts to a person's dignity. *See Ashann-Ra*, 112 F.Supp.2d at 565.

Holliday alleges in his complaint that he "hesitated" to comply with the order to step back, bend and cough because he did not want to be exposed in such a "degrading" manner to a member of the opposite sex. (Complaint at 4.) He further stated that being taken unclothed across the prison yard, in full view of both male and female officers, was "reminiscent of the slave auctions of the 18th century." (Complaint at 7.) I do not doubt that this incident was humiliating and degrading to Holliay. I also do not have any evidence before me

demonstrating any need for the correctional officers to treat Holliday in such a manner. Nonetheless, Holliday has failed to allege any physical injury as a result of being viewed unclothed by female officers. Therefore, I agree with the defendants that Holliday's claim of cross-gender viewing is barred by the PLRA.

As to the defendants' fourth argument, the specific constitutional right at issue is the Eighth Amendment prohibition against the infliction of "cruel and unusual punishment." U.S. CONST. AMEND. VIII. This amendment not only prohibits excessive sentences, but it also protects inmates from inhumane treatment and conditions while imprisoned. *See Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996). The unnecessary and wanton infliction of pain by a prison official through the use of excessive force upon an inmate has been clearly established as a violation of the Eighth Amendment's prohibition on cruel and unusual punishment for a number of years. *See Hudson v. McMillian*, 503 U.S. 1, 5 (1992); *Whitley v. Albers*, 475 U.S. 312, 319 (1986). The determination of whether the use of force by a prison official violates the Eighth Amendment requires both a subjective and objective component. *See Williams*, 77 F.3d at 761 (citing *Wilson v. Seiter*, 501 U.S. 294, 302 (1991)).

Specifically, Eighth Amendment analysis necessitates inquiry as to whether the prison official acted with a sufficiently culpable state of mind (subjective component) and whether the deprivation suffered or injury inflicted on the inmate was sufficiently serious (objective component).

Williams, 77 F.3d at 761.

To meet the subjective component in an excessive force case, the inmate must show that the prison official applied force "maliciously and sadistically for the very purpose of causing harm." *Whitley*, 475 U.S. at 320-21. The inquiry under the subjective standard is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson*, 503 U.S. at 7. The Supreme Court in *Whitley* set out several factors which should be considered in determining whether prison officials acted maliciously and sadistically. In particular, the court should consider:

- 1) the need for application of force;
- 2) the relationship between that need and the amount of force used;
- 3) the threat reasonably perceived by the responsible officials; and
- 4) any efforts made to temper the severity of a forceful response.

Williams, 77 F.3d at 762 (citing *Whitley*, 475 U.S. at 321).

Not every malevolent touch by a prison guard amounts to a deprivation of constitutional rights, however. See *Hudson*, 503 U.S. at 9 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2nd Cir. 1973)). To meet the objective component in an excessive force case, an inmate must show that he suffered more than de minimis pain or injury. *Williams*, 77 F.3d at 761 (citing *Hudson*, 503 U.S. at 9). Since mankind has devised some tortures that leave no lasting physical evidence of injury, the courts have recognized that the objective component can be met

by "the pain itself" even if the inmate suffers no "enduring injury." See *Williams*, 77 F.3d at 762 (quoting *Norman v. Taylor*, 25 F.3d 1259, 1264 n. 4 (4th Cir. 1994) (en banc)). "A prisoner ... asserting malicious and sadistic use of force need not show that such force caused an 'extreme deprivation' or 'serious' or 'significant' pain or injury to establish a cause of action. ... All that is necessary is proof of more than de minimis pain or injury." *Williams*, 77 F.3d at 761 (citation omitted).

In *Hickey v. Reeder*, 12 F.3d 754 (8th Cir. 1993), the Eighth Circuit held that the use of a stun gun on an inmate without legitimate reason would be sufficient to meet the objective component of the excessive force inquiry. The Eighth Circuit stated:

... [A] stun gun inflicts a painful and frightening blow, which temporarily paralyzes the large muscles of the body, rendering the victim helpless. This is exactly the sort of torment without marks ... which, if inflicted without legitimate reason, supports the Eighth Amendment's objective component.

Hickey, 12 F.3d at 757. In this case, the defendants admit that Fleming applied a stun gun to Holliday. The defendants argue, however, that plaintiff suffered no or only de minimis injuries, which are not sufficient to state a claim. See *Norman v. Taylor*, 25 F.3d 1259 (4th Cir. 1994). Holliday claims that due to his hesitation to squat and cough in the presence of a female correctional officer, he was shot with the taser gun without being afforded an opportunity to present himself to be handcuffed. (Plaintiff's Brief at 6.) He states that the taser

delivered an extremely painful electrical shock which propelled him to the rear of the cell. (Plaintiff's Brief at 6.) Furthermore, Holliday alleges that he was violently pinned to the floor while other officers applied restraints. (Plaintiff's Brief at 6.) Holliday also denies ever making any verbal threats or exhibiting any violent behavior, (Holliday Affidavit No. 2 at 4), nor do the defendants present any evidence to the contrary. Holliday notes that he was never charged with a criminal offense regarding the events of September 10, 1998, nor did he receive an institutional disciplinary infraction for disobeying an order. (Holliday Affidavit No. 2 at 4.) Based on these facts, I find that a reasonable jury could find that the decision to use a taser gun under these circumstances evidences a sadistic or malicious intent to punish Holliday.

Furthermore, I find that such conduct would be "repugnant to the conscience of mankind," *Whitley v. Albers*, 475 U.S. at 327, and would not require proof of any permanent, serious physical effect. *See Velasco v. Head*, ____ F.Supp.2d ____, No. 7:00CV00153 at 6-7 (W.D. Va. 2000) (use of stun gun on prisoner may amount to cruel and unusual punishment without proof of permanent, serious injuries); *Hudson*, 503 U.S. at 9-10; *Norman*, 25 F.3d at 1264, n. 4; *see also Hickey*, 12 F.3d at 758-59 (use of stun gun to compel compliance with correction officer's order to sweep cell is violation of inmate's Eighth Amendment right to be free from cruel and unusual punishment); *Caldwell v. Moore*, 968 F.2d 595, 600-01 (6th Cir. 1992) (use of stun gun is not a per se violation of Eighth Amendment, liability must be determined on the

facts of each case); *Michenfelder v. Sumner*, 860 F.2d 328, 336 (9th Cir. 1988) (a finding that use of a stun gun is not per se unconstitutional does not validate its unrestricted use, the appropriateness of its use must be determined by the facts and circumstances of each case); *but see Rubins v. Roetker*, 737 F.Supp. 1140, 1142-44 (D. Colo. 1990) (use of stun gun to subdue disruptive inmate did not constitute cruel and unusual punishment). Thus, I find that the evidence presented in this case is sufficient to defeat the defendants' motion for summary judgment on this ground.

With regard to the defendants' fifth argument, I agree that the plaintiff's claims against defendants Angelone and Young do not show that either of these defendants had any direct participation in the incident of September 10, 1998. Seeking to impose liability based upon a respondeat superior theory is barred under 42 U.S.C. § 1983. *See Dillon v. Murray*, 853 F.Supp. 199, 204 (W.D. Va. 1994). However, if a plaintiff does not claim a direct involvement on the part of a defendant in the alleged violation, he may still show that the constitutional deprivation was caused by the exercise of a policy or custom for which the defendant was responsible. *See Dillon*, 853, F.Supp. at 204; *see also Fisher v. Washington Metro. Area Transit Auth.*, 690 F.2d 1133, 1143 (4th Cir. 1982).

Holliday states in his sworn complaint that defendant Angelone, the Director of the Virginia Department of Corrections, is the policymaker for the Department of Corrections, and, specifically, for Red Onion. (Complaint at 3.)

Holliday further states that defendant Angelone was directly responsible for the use of force policies used at Red Onion. (Complaint at 9.) He states that defendant Angelone has consistently and openly conveyed through the media that force will be used against any prisoner who hesitates to comply with an order given by staff. (Complaint at 9.) Finally, Holliday states that through defendant Angelone's public comments, all correctional staff were well aware of his position concerning the use of force at Red Onion. (Complaint at 9.) Based on these facts, I will deny summary judgment as to defendant Angelone based on the evidence of his policymaking authority and responsibility for the use of force policies at Red Onion.

Supervisory liability also may be imposed upon an individual for his "tacit authorization" of the misconduct of a subordinate, such action being a causative factor in the resulting injuries. *See Dillon*, 853 F.Supp. at 204. When a plaintiff claims it was a supervisor's inaction which caused the constitutional injury, that inaction must rise to the level of reckless disregard, gross negligence or deliberate indifference in order to be actionable at law. *See Dillon*, 853 F.Supp. at 204. The Fourth Circuit has established a three-part test by which a supervisor may be held liable for the actions of a subordinate: (1) the supervisor must have actual or constructive knowledge that the subordinate was engaged in conduct posing a pervasive and unreasonable risk of constitutional injury; (2) the supervisor's response to the conduct must be so inadequate so as to constitute deliberate indifference; and (3) the plaintiff must establish an

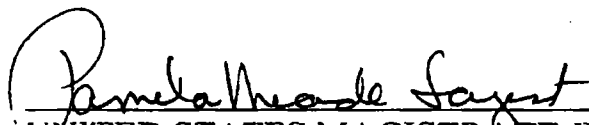
affirmative link between the supervisor's inaction and the resulting injury. See *Dillon*, 853 F.Supp. at 205. In order to show that a subordinate's conduct posed a pervasive and unreasonable risk of harm, the plaintiff must produce evidence "that the conduct is widespread, or at least has been used on several different occasions." See *Dillon*, 853 F.Supp. at 205 (citing *Slakan v. Porter*, 737 F.2d 368, 373-74 (4th Cir. 1984)). In order to show the supervisor's deliberate indifference, the plaintiff must not rely on a single, isolated incident but must show "continued inaction in the face of documented widespread abuses." *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994).

In this case, Holliday has failed to present evidence to present an issue of fact as to any of the three elements required by *Dillon*. In particular, Holliday has failed to present evidence that the defendants' alleged constitutional violations were widespread, or at least occurred on several different occasions. Thus, he has failed to prove that defendant Young had actual or constructive knowledge that his subordinates were engaged in conduct posing a pervasive and unreasonable risk of constitutional injury. Holliday also has failed to prove defendant Young's deliberate indifference by failing to show the requisite "continued inaction in the face of documented widespread abuses." Furthermore, Holliday has established no affirmative link between defendant Young's inaction and the alleged resulting constitutional injuries. In fact, Holliday has failed to even allege that there is a direct causal link between defendant Young's inaction and his alleged constitutional injuries. I note that

Holliday claims to have been unable to produce evidence on these issues because he has been unable to secure affidavits from other inmates who have experienced similar incidents because he has not been released into the general prison population and has been denied the appointment of counsel. (Holliday Affidavit No. 2 at 5.) Nonetheless, I also note that Holliday has not conducted, nor has he requested to conduct any discovery on these issues. Therefore, I will grant summary judgment in favor of defendant Young and dismiss Holliday's claims against him.

Based on the above-stated reasons, an appropriate order will be entered.

ENTER: October 4th, 2001.


UNITED STATES MAGISTRATE JUDGE

#10

ENTERED
5-10-02

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT ARLINGTON, VA
FILED

MAY 09 2002

RICO HOLLIDAY,
Plaintiff,

JOHN F. CORCORAN, CLERK
BY: *R. Bradley*
DEPUTY CLERK

v.

Civil Action No. 7:00CV00721

GEORGE DEEDS, *et al.*,
Defendants,

MEMORANDUM OPINION
By: PAMELA MEADE SARGENT
United States Magistrate Judge

This case is before the court on the defendants' motion for summary judgment, (Docket Item No. 67). Based on my review of the evidence provided and the arguments and representations of the parties, and for the reasons set forth below, I will deny the defendants' motion for summary judgment.

I. Facts

The plaintiff, Rico Holliday, a prisoner formerly incarcerated in Red

¹Defendants Ronald Angelone, Director of the Virginia Department of Corrections, R.A. Young, Regional Director, and Major Rowlette, Captain L. Fleming, Lieutenant D.A. Taylor and Sergeant Fowler, correctional officers at Red Onion, filed a previous motion for summary judgment based on several grounds. In a Memorandum Opinion dated October 4, 2001, this court granted partial summary judgment, allowing Holliday's claim of excessive use of force against defendants Rowlette, Fleming, Taylor and Fowler to proceed to trial. Holliday subsequently was granted leave to amend his complaint to specifically name the defendants who have filed this current motion for summary judgment and who were referred to as the "John Doe" defendants in the original complaint.

Onion State Prison, ("Red Onion"), in Wise County, Virginia, has amended his complaint to add the following defendants: William Bates, ("Bates")², C. Hawks, ("Hawks")³, and R.D. Hall, ("Hall"), correctional officers at Red Onion, W. Reynolds, ("Reynolds"), a former sergeant at Red Onion, and L. Cox, ("Cox"), a lieutenant at Red Onion. Holliday seeks damages under 42 U.S.C. § 1983, alleging that these defendants subjected him to the excessive use of force in violation of the Eighth Amendment to the United States Constitution. He is suing the defendants in both their official and individual capacities. (Complaint, (Docket Item No. 2), at 4; Plaintiff's Brief In Response To Defendant's Motion For Summary Judgment, (Docket Item No. 70), ("Plaintiff's Brief 2"), at 2.)

Through his complaint and affidavits, Holliday alleges that on September 10, 1998, he was ordered to undress and comply with the strip search procedure during his intake at Red Onion. (Complaint at 4; Affidavit No. 2 of Holliday, (Docket Item No. 29), ("Holliday Affidavit No. 2"), at 2; Affidavit No. 3 of Holliday, Exhibit A to Plaintiff's Brief 2, ("Holliday Affidavit No. 3"), at 3.) During the search, Holliday noticed that a female correctional officer was present and was videotaping the search. (Complaint at 4; Holliday Affidavit No. 2 at 2; Holliday Affidavit No. 3 at 3.) Holliday admits that, upon noticing the

²The record reveals that service of process upon this individual has been unsuccessful.

³The record reveals that service of process upon this individual has been unsuccessful.

female officer, he "hesitated" to fully comply with the officers' orders to bend and cough. (Complaint at 5; Holliday Affidavit No. 2 at 2; Holliday Affidavit No. 3 at 3.) He alleges that as a result of his hesitation he was shocked with an electronic stun device. (Complaint at 5; Holliday Affidavit No. 2 at 2-3; Holliday Affidavit No. 3 at 3.) Holliday contends that, although he was propelled to the rear of his cell, he remained standing unsteadily. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 3.) Holliday claims that he was ordered to sit and he immediately complied. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 3.) He claims that an extraction team consisting of several riot gear clad officers, armed with an electric stun shield, entered his cell. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 3.) Holliday contends that defendant Hall lead the extraction team and carried the electric stun shield, which he activated, resulting in another unnecessary and extremely painful shock. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 3.) Holliday claims that after being shocked with the shield, he was violently pinned to the floor and placed in restraints by defendant Cox, defendant Reynolds and other officers. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 4.) Holliday alleges that he was not afforded the opportunity to voluntarily present himself to be handcuffed. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 4.) He contends that he was subjected to verbal abuse, including various racial epithets, by the officers at Red Onion during the incident. (Complaint at 5, 6; Holliday Affidavit No. 2 at 3.) In particular, Holliday alleges that while the extraction team was "roughly and painfully" placing him in restraints, he was subjected to

racial slurs, shouting "Boy, you are at Red Onion now; nigger you better hear that." (Complaint at 5.) Holliday also alleges that he was dragged, restrained and unclothed, on a "short dog leash" through the prison grounds before finally being placed into a cell. (Complaint at 7; Holliday Affidavit No. 2 at 3.) Holliday contends that at no time prior or subsequent to the incident did he pose any immediate threat to staff at Red Onion. (Complaint at 6; Holliday Affidavit No. 2 at 4; Holliday Affidavit No. 3 at 4.)

The defendants incorporated by reference the Brief In Support Of Defendants' Motion For Summary Judgment, (Docket Item No. 23), ("Defendants' Brief 1"), previously filed by the other defendants, as well as the affidavits attached thereto. (Brief In Support Of Defendants' Motion For Summary Judgment, Docket Item No. 68, ("Defendants' Brief 2"), at 3.) The defendants do not dispute that Holliday was an inmate at Red Onion. (Defendants' Brief 1 at 1.) The defendants also do not dispute that Holliday was received at Red Onion on September 10, 1998, nor that he was ordered to strip off all his clothes, lift his genitals, squat and cough. (Defendants' Brief 1 at 2-3; Affidavit of Capt. L. Fleming, ("Fleming Affidavit"), at 2.) Further, the defendants do not dispute that Holliday was stunned by an electronic taser gun. (Defendants' Brief 1 at 3; Fleming Affidavit at 2.) Likewise, the defendants do not dispute that Holliday was forced to the floor, where he was restrained with leg irons and handcuffs before being escorted unclothed to a segregation unit. (Defendants' Brief 1 at 4; Fleming Affidavit at 2.) The defendants do dispute,

however, that Holliday was verbally assaulted during the intake process. (Defendants' Brief 1 at 2; Affidavit of Rowlette, ("Rowlette Affidavit"), at 1-2.)

Defendant Hall contends that neither he nor any other Red Onion staff member behaved unprofessionally during Holliday's intake. (Defendants' Brief 2 at 2; Affidavit of R.D. Hall, Exhibit I to Defendants' Brief 2, ("Hall Affidavit"), at 2.) Hall admits that he was part of the extraction team and that he carried the electric stun shield, forcing Holliday to the floor so that restraints could be applied. (Defendants' Brief 2 at 2; Hall Affidavit at 1-2.) Defendant Reynolds admits that he was part of the extraction team. (Defendants' Brief 2 at 2; Affidavit of W. Reynolds, Exhibit II to Defendants' Brief 2, ("Reynolds Affidavit"), at 2.) However, he disputes that he used excessive force against Holliday and claims that he witnessed no other officer use such force. (Defendants' Brief 2 at 2; Reynolds Affidavit at 1.) Reynolds alleges that he assisted in escorting Holliday from the transport bus to the intake cell. (Defendants' Brief 2 at 2; Reynolds Affidavit at 1.) Reynolds claims that he placed the right leg iron on Holliday and held the handcuff strap while escorting him to the housing unit. (Defendants' Brief 2 at 2; Reynolds Affidavit at 2.) Defendant Cox admits that he was part of the extraction team and that his role was to assist in placing Holliday in restraints. (Defendants' Brief 2 at 2; Affidavit of L. Cox, Exhibit III to Defendants' Brief 2, ("Cox Affidavit"), at 1.) Cox claims that Holliday offered no resistance and, as a result, very little force was used to place him in restraints. (Defendants' Brief 2 at 3; Cox Affidavit at

2.) Cox alleges that he does not recall any behavior that would constitute excessive force against Holliday. (Cox Affidavit at 1.) Cox contends that the extraction team's actions were in accord with standard procedure and training. (Defendants' Brief 2 at 2-3; Cox Affidavit at 1-2.)

The defendants also have filed a videotape recording of Holliday's intake at Red Onion and copies of certain department and prison operating procedures for the court's in camera review. (Docket Item No. 43.) The videotape recording supports Holliday's assertions that he posed no risk or danger to anyone, nor was he being disruptive or violent, when he was shot with the taser gun. Instead, the tape shows that Holliday was placed in a secure intake cell by himself and that he disrobed as instructed. Next, someone asked Holliday to step back. Holliday then appears to point out that if he steps back, he would be in view of a female officer videotaping his intake. Then, without warning, Holliday is shot with the taser gun and, although he remained standing, he was knocked to the back of the cell. At that point, someone orders Holliday to sit down, and Holliday complies. Holliday is given no further chance to voluntarily comply with the strip search procedure. Nor is he given a chance to present himself to be placed in restraints. Instead, an extraction team goes into the cell and forces Holliday to the floor of the cell with a shield and forcibly restrains him. The videotape further confirms that Holliday was then forced to walk naked through the intake area, across the prison yard and to a cell.

Among the policies and procedures filed with the court is the Department of Corrections Division of Field Operations Procedure No. 431, (DOP 431), which regulates the use of force on inmates. According to this procedure, which was in effect on September 10, 1998, the use of electronic immobilization devices, such as a taser gun or an electronic immobilization shield, should be used only "to compel an inmate to comply with direct orders when no alternative method of persuasion is effective and other types of force are deemed not appropriate. (DOP 431 at 7.)

The defendants also have filed a copy of materials used in their training to operate taser guns. This material, which apparently has been in use since December 1994, warned the officers that they may be held liable for the use of excessive force if the use of a taser gun was not reasonable or justified. In fact, these training materials list only six scenarios in which the use of a taser gun on an inmate is authorized:

- a. To subdue an inmate who refuses to exit or enter his cell.
- b. Inmate is in possession of a weapon and/or is threatening harm to himself or someone else.
- c. An inmate in Special Management refuses for his "tray slot" to be closed, and is physically holding it open.
- d. To control an inmate or inmates when lesser methods would prove ineffective.
- e. To prevent an escape when lesser methods prove ineffective.
- f. To quell a disturbance that is likely to develop into a serious disorder or riot, when lesser methods prove to be ineffective.

The defendants also have filed a copy of Red Onion State Prison Internal Operating Procedure No. 443, (IOP 443), governing strip searches of inmates. According to IOP 443:

If an inmate refuses to submit to any search, the inmate shall be detained at the site until the arrival of a Supervisor. The Supervisor should make every reasonable effort to gain compliance from the involved inmate. If the inmate continues to refuse then the inmate will be taken to a secure area and procedures as outlined in Section 443-7.5 shall be followed.

Section 443-7.5 states:

Inmate refusal to submit to a search is grounds for disciplinary action in accordance with DOP/IOP #861. Every effort shall be made to afford the minimum of embarrassment and maximum of privacy to the inmate. However, if an inmate refuses to submit and/or becomes violent:

1. Additional correctional staff of the same sex as the inmate shall be called on to restrain the inmate and assist in the search.

This policy also states: "No personnel of the opposite sex of the inmate shall be present or witness the strip search."

II. Analysis

As stated above, this matter is before the court on the defendants' motion for summary judgment. The defendants argue that summary judgment should be entered in their favor on the following grounds:

- 1) Plaintiff's claim of excessive force does not show an infliction of unnecessary and wanton pain and suffering;
- 2) Plaintiff suffered either no actual injuries or only de minimis injuries as a result of being placed in restraints; and
- 3) Plaintiff failed to allege that the defendants' conduct violated established statutory or constitutional rights of which a reasonable person would have known and, therefore, they are entitled to qualified immunity.

(Defendant's Brief 2 at 3-4.)

Pursuant to Federal Rule of Civil Procedure 56(c), the court should grant

summary judgment only when the pleadings, responses to discovery and the record reveal that "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *Miller v. Leathers*, 913 F.2d 1085, 1087 (4th Cir. 1990)(en banc), *cert denied*, 498 U.S. 1109 (1991); and *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1985). A genuine issue of fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248.

In considering a motion for summary judgment, the court must view the facts and the reasonable inferences to be drawn from the facts in the light most favorable to the party opposing the motion. See *Anderson*, 477 U.S. at 255; *Matsushita Elec. Indus. Co., Inc. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Nguyen v. CNA Corp.*, 44 F.3d 234, 237 (4th Cir. 1995); *Miltier v. Beorn*, 896 F.2d 848, 852 (4th Cir. 1990); *Ross*, 759 F.2d at 364; *Cole v. Cole*, 633 F.2d 1083, 1092 (4th Cir. 1980). In other words, the nonmoving party is entitled "to have the credibility of his evidence as forecast assumed." *Miller*, 913 F.2d at 1087 (quoting *Charbonnages de France v. Smith*, 597 F.2d 406, 414 (4th Cir. 1979)). Therefore, in reviewing the defendants' motion, the court must view the facts and inferences in the light most favorable to the plaintiff.

With regard to the defendants' first and second arguments, the specific

constitutional right at issue is the Eighth Amendment prohibition against the infliction of "cruel and unusual punishment." U.S. CONST. AMEND. VIII. This amendment not only prohibits excessive sentences, but it also protects inmates from inhumane treatment and conditions while imprisoned. *See Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996). The unnecessary and wanton infliction of pain by a prison official through the use of excessive force upon an inmate has been clearly established as a violation of the Eighth Amendment's prohibition on cruel and unusual punishment for a number of years. *See Hudson v. McMillian*, 503 U.S. 1, 5 (1992); *Whitley v. Albers*, 475 U.S. 312, 319 (1986). The determination of whether the use of force by a prison official violates the Eighth Amendment requires both a subjective and objective component. *See Williams*, 77 F.3d at 761 (citing *Wilson v. Seiter*, 501 U.S. 294, 302 (1991)).

Specifically, Eighth Amendment analysis necessitates inquiry as to whether the prison official acted with a sufficiently culpable state of mind (subjective component) and whether the deprivation suffered or injury inflicted on the inmate was sufficiently serious (objective component).

Williams, 77 F.3d at 761.

To meet the subjective component in an excessive force case, the inmate must show that the prison official applied force "maliciously and sadistically for the very purpose of causing harm." *Whitley*, 475 U.S. at 320-21. The inquiry under the subjective standard is "whether force was applied in a good-faith

effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson*, 503 U.S. at 7. The Supreme Court in *Whitley* set out several factors which should be considered in determining whether prison officials acted maliciously and sadistically. In particular, the court should consider:

- 1) the need for application of force;
- 2) the relationship between that need and the amount of force used;
- 3) the threat reasonably perceived by the responsible officials; and
- 4) any efforts made to temper the severity of a forceful response.

Williams, 77 F.3d at 762 (citing *Whitley*, 475 U.S. at 321).

Not every malevolent touch by a prison guard amounts to a deprivation of constitutional rights, however. See *Hudson*, 503 U.S. at 9 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2nd Cir. 1973)). To meet the objective component in an excessive force case, an inmate must show that he suffered more than de minimis pain or injury. See *Williams*, 77 F.3d at 761 (citing *Hudson*, 503 U.S. at 9). Since mankind has devised some tortures that leave no lasting physical evidence of injury, the courts have recognized that the objective component can be met by "the pain itself" even if the inmate suffers no "enduring injury." See *Williams*, 77 F.3d at 762 (quoting *Norman v. Taylor*, 25 F.3d 1259, 1264 n. 4 (4th Cir. 1994) (en banc)). "A prisoner ... asserting malicious and sadistic use of force need not show that such force caused an 'extreme deprivation' or 'serious' or 'significant' pain or injury to establish a cause of action. ... All that is necessary is proof of more than de minimis pain or injury." *Williams*, 77 F.3d

at 761 (citation omitted).

In *Hickey v. Reeder*, 12 F.3d 754 (8th Cir. 1993), the Eighth Circuit held that the use of a stun gun on an inmate without legitimate reason would be sufficient to meet the objective component of the excessive force inquiry. The Eighth Circuit stated:

... [A] stun gun inflicts a painful and frightening blow, which temporarily paralyzes the large muscles of the body, rendering the victim helpless. This is exactly the sort of torment without marks ... which, if inflicted without legitimate reason, supports the Eighth Amendment's objective component.

Hickey, 12 F.3d at 757. In this case, Holliday claims that an extraction team consisting of several riot gear clad officers, armed with an electric stun shield which was activated by defendant Hall, subjected him to an unnecessary and extremely painful shock. (Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 3.) Holliday alleges that after being shocked with the shield, he was violently pinned to the floor and placed in restraints by defendants Cox and Reynolds, as well as other officers. (Plaintiff's Brief 1 at 6; Plaintiff's Brief 2 at 4; Holliday Affidavit No. 3 at 4.) The defendants admit that an electric stun shield was used upon entering Holliday's cell to place him in restraints. The defendants argue, however, that plaintiff suffered no or only de minimis injuries while being restrained, which are not sufficient to state a claim. *See Norman v. Taylor*, 25 F.3d 1259 (4th Cir. 1994). Holliday also denies ever making any verbal threats or exhibiting any violent behavior, (Holliday Affidavit No. 2 at 4), nor do the

defendants present any evidence to the contrary. Holliday notes that he was never charged with a criminal offense regarding the events of September 10, 1998, nor did he receive an institutional disciplinary infraction for disobeying an order. (Holliday Affidavit No. 2 at 4.) Based on these facts, I find that a reasonable jury could find that the decision to forcibly restrain Holliday, including the use of an electric stun shield, under these circumstances evidences a sadistic or malicious intent to punish Holliday.

Furthermore, I find that such conduct, if it occurred, would be "repugnant to the conscience of mankind," *Whitley*, 475 U.S. at 327, and would not require proof of any permanent, serious physical effect. *See Velasco v. Head*, 166 F. Supp. 2d 1100, 1104 (W.D. Va. 2000) (use of stun gun on prisoner may amount to cruel and unusual punishment without proof of permanent, serious injuries); *Hudson*, 503 U.S. at 9-10; *Norman*, 25 F.3d at 1264, n. 4; *see also Hickey*, 12 F.3d at 758-59 (use of stun gun to compel compliance with correction officer's order to sweep cell is violation of inmate's Eighth Amendment right to be free from cruel and unusual punishment); *Caldwell v. Moore*, 968 F.2d 595, 600-01 (6th Cir. 1992) (use of stun gun is not a per se violation of Eighth Amendment, liability must be determined on the facts of each case); *Michenfelder v. Sumner*, 860 F.2d 328, 336 (9th Cir. 1988) (a finding that use of a stun gun is not per se unconstitutional does not validate its unrestricted use, the appropriateness of its use must be determined by the facts and circumstances of each case); *but see Rubins v. Roetker*, 737 F. Supp. 1140, 1142-44 (D. Colo. 1990) (use of stun gun to subdue disruptive inmate did not constitute cruel and unusual punishment).

Thus, I find that the evidence presented in this case is sufficient to defeat the defendants' motion for summary judgment on this ground.

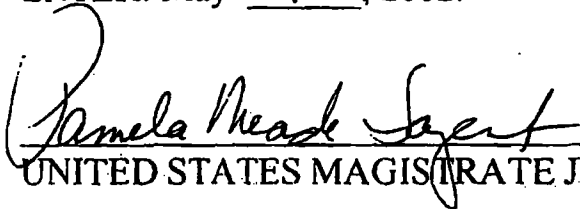
With regard to the defendants' third argument, government officials, including correctional officers, may have qualified immunity from civil liability for performing discretionary functions only insofar as their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). "Whether a prison guard is shielded from liability for his conduct under this doctrine depends upon whether a reasonable prison guard possessing the same information could have believed his conduct to be lawful." *Johnson v. Garraghty*, 57 F. Supp. 2d 321, 329 (E.D. Va. 1999) (citing *Rainey v. Conerly*, 973 F.2d 321, 323 (4th Cir. 1992)). The Fourth Circuit has set out a three-step inquiry for determining whether the defense of qualified immunity is applicable in a particular case. *See Pritchett v. Alford*, 973 F.2d 307, 312 (4th Cir. 1992). Under this inquiry a court must identify the specific constitutional right allegedly violated, inquire whether the right was clearly established at the time of the alleged violation and then determine whether a reasonable person in that official's position would have known that his conduct violated that right. *See Pritchett*, 973 F.2d at 312.

In this case, the only constitutional right at issue is the Eighth Amendment prohibition against the infliction of "cruel and unusual punishment." U.S.

CONST. AMEND. VIII. As stated above, this prohibition not only outlaws excessive sentences, but it also protects inmates from inhumane treatment and conditions while imprisoned. *See Williams*, 77 F.3d at 761. The unnecessary and wanton infliction of pain by a prison official through the use of excessive force upon an inmate has been clearly established as a violation of the Eighth Amendment's prohibition on cruel and unusual punishment for a number of years. *See Hudson*, 503 U.S. at 5; *Whitley*, 475 U.S. at 319. In this case, Holliday has presented evidence that defendants Hall, Reynolds and Cox participated in an incident in which Holliday was shocked with an electric stun shield when an extraction team entered his cell to place him in restraints, even though he never posed any threat or danger to any of the officers. Also, the evidence shows that Holliday was never given an opportunity to voluntarily be placed in restraints. Thus, if Holliday's version of the facts are true, a reasonable person in the defendants' position would have known that their actions violated Holliday's right to be free from cruel and unusual punishment. In fact, the defendants have presented evidence showing that their actions, in many respects, violated the Department's and the prison's policies. Furthermore, the Fourth Circuit has held that when the parties' versions of the underlying facts are in direct contradiction, resolution of the qualified immunity issue is inappropriate at the summary judgment stage. *See Rainey v. Conerly*, 973 F.2d 321, 323 (4th Cir. 1992). Therefore, I will deny the defendants' motion for summary judgment on this ground.

Based on the above-stated reasons, an appropriate order denying the defendants' motion for summary judgment will be entered.

ENTER: May 9th, 2002.


UNITED STATES MAGISTRATE JUDGE

R000836

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

RICO HOLLIDAY,
Plaintiff,

v.

GEORGE DEEDS, *et al.*,
Defendants,

Civil Action No. 7:00CV00721

VERDICT FORM

We, the jury, find for the plaintiff, Rico Holliday, against the following defendants:

____ Ronald Angelone;
✓ _____ R.W. Rowlette;
✓ _____ L. Fleming;
✓ _____ D. A. Taylor;
✓ _____ Sgt. Fowler;
✓ _____ R.D. Hall;
✓ _____ L. Cox; and
✓ _____ William D. Reynolds.

We affix compensatory damages at \$ 0.00 or

We affix nominal damages at \$ 1.00.

We also award punitive damages of \$ 0.00 against the

BE

following defendants: _____

Karen L. Thomas

Jury Foreperson

Date: 7-3-02

ENTERED
7/10/02

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
 VIRGINIA HARRISONBURG, VA
 FILED

JUL 10 2002

JOHN T. CORCORAN, CLERK
BY: *E. Surber*
DEPUTY CLERK

RICO HOLLIDAY,
Plaintiff,

V.

**GEORGE DEEDS, *et al.*,
Defendants,**

Civil Action No. 7:00CV00721

JUDGMENT IN A CIVIL CASE

By: PAMELA MEADE SARGENT
United States Magistrate Judge

This action came before the Court for a trial by jury on July 2-3, 2002. The issues have been tried and the jury has rendered its verdict. It is **ORDERED AND ADJUDGED** that in accordance with the jury verdict, judgment is granted to the plaintiff in the amount of \$1.00 against the following defendants, jointly and severally: R.W. Rowlette, L. Fleming, D. A. Taylor, Sgt. Fowler, R. D. Hall, L. Cox and William Reynolds. Also, in accordance with the jury verdict, judgment is granted to the defendant Ronald Angelone.

The parties were granted fourteen days to file post-trial motions.

The clerk is directed to send a copy of this judgment to all counsel of record and unrepresented parties.

ENTER: July 10, 2002.

ENTER: July 10, 2002.


UNITED STATES MAGISTRATE JUDGE

R000839

In the United States District Court
for the Western District of Virginia
Roanoke Division

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

SEP 12 2000

MORGAN F. SCOTT, JR., CLERK
BY: *[Signature]*
DEPUTY CLERK

Kico Halladay, **Redacted**

Plaintiff,

Complainant w/ jury
Demand

v.

Case No. 7:00cv721

George Deedo, (Warden),
— Rowlett, (Mayor),
L. Humming, Captain,
D.A. Jay Lee, Lt.,
— Fowler, Sgt.,
R.A. Young, Regional Administrator,
Ronald Angelone, Director; and,
John/Gene Deed,
Defendants.

Preliminary Statement:

This is a civil rights action filed by Kico Halladay, a state prisoner, for damages and declaratory relief under 42 U.S.C. § 1983, alleging excessive use of force and denial of privacy rights in violation of the Eighth, Ninth, Fourth, and Fourteenth Amendments to the

United States Constitution, and, their counterparts under the Constitution of Virginia. The plaintiff also alleges the torts of assault and battery and negligence.

Jurisdiction:

1. This Court has jurisdiction over the plaintiff's claims of violation of federal constitutional rights under 42 U.S.C. §§ 1981(a) and 1983.
2. This Court has supplemental jurisdiction over plaintiff's state law tort claims under 28 U.S.C. § 1367.

Parties:

3. The plaintiff, Rico Halliday, is and, was, incarcerated at R.D. Union State Prison ("ROSP") during the events described in this complaint.
4. Defendant George Decker, (w/alias), was the warden of R.D. Union State Prison, during the time the alleged events set forth in this complaint, and was responsible for ensuring that prisoners not be abused by his staff; and, was responsible for reviewing administrative grievances.

#11

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA

FEB 24 2005

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

JACOB DALE MONROE,
Petitioner,

v.

RONALD D. ANGELONE,
Respondent.

Civil Action No. 7:01 CV00394

MEMORANDUM OPINION

By: Jackson L. Kiser
Senior U.S. District Judge

Plaintiff Jacob Dale Monroe, a Virginia inmate proceeding *pro se*, brings this action pursuant to 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343. By order entered September 13, 2001 this court dismissed several of Monroe's claims for failure to state a claim on which relief may be granted. By order entered September 24, 2002, this court granted summary judgment for the defendants as to his claims of cruel and unusual living conditions, denial of adequate medical treatment while in five point restraints, denial of mental health treatment, and a defamation action. At that time the court inadvertently terminated the case. By order entered October 4, 2004 this court reinstated the case as to Monroe's claims of excessive force,¹ denial of due process,² and the denial of adequate medical treatment in relation to the excessive force claim.³

Monroe alleges that, while he was incarcerated at Red Onion State Prison, the defendants placed him in five-point restraints in violation of the Eighth Amendment right to be free from

¹ Defendants in this matter are: Ronald Angelone; J. Armentrout; J. Bleving (Blevins); C. Cox; S. Fleming; R.C. Greenfield; Michael Harrison; M. Hawks; Tammie Hayes; Gene Johnson; B. Messingill; J. Robinson; Page True; R. Turner; J.C. Woods; S.K. Young; and R.A. Young.

² Defendants in this matter are: Ronald Angelone; J. Armentrout; J. Bleving (Blevins); C. Cox; S. Fleming; G. Fowler; R.C. Greenfield; Michael Harrison; M. Hawks; Gene Johnson; B. Messingill; J. Robinson; Page True; R. Turner; J.C. Woods; S.K. Young; and R.A. Young.

³ Defendant in this matter is: Gloria Meade.

cruel and unusual punishment and the Fourteenth Amendment right to Due Process. Monroe further alleges that defendant Nurse Gloria Mcade failed to provide him with adequate medical care while he was confined by such restraints. As relief, Monroe seeks declaratory judgment and monetary relief.

Defendants Ronald Angelone, J. Armentrout, J. Bleving (Blevins), C. Cox, S. Fleming, G. Fowler, R.C. Greenfield, Michael Harrison, M. Hawks, Gene Johnson, B. Messingill, J. Robinson, Page True, R. Turner, J.C. Woods, S.K. Young, and R.A. Young have filed a motion for summary judgment as to the excessive force claim and assert the affirmative defense of qualified immunity.⁴ Defendants Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, and R.A. Young further claim that they are not liable for any constitutional violations which arose from Monroe's confinement in five-point restraints because they were not personally involved in the decision to restrain him or to keep him in restraints. Defendant Mcade has filed a motion for summary judgment as to the claim of denial of adequate medical treatment.

The court notified Monroe of the dispositive motions filed by the defendants as required by Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and warned Monroe that judgment may be entered against him or the case dismissed if he failed to submit adequate materials within the time permitted for response. Monroe has responded, thus making the underlying motion for summary judgment ripe for disposition.⁵ Upon review of the record, the court concludes that the Security Defendants J. Armentrout, J. Bleving (Blevins), C. Cox, S. Fleming, G. Fowler, R.C.

⁴ Hereinafter "Security Defendants."

⁵ On January 21, 2005 Monroe filed both his response to the defendants' motion for summary judgment and a motion for an extension of time to file a response to the defendants' motion for summary judgment. Although the court will grant this motion for an extension, the court will consider Monroe's response of the same date to be his final response.

Greenfield, Michael Harrison, M. Hawks, B. Messingill, J. Robinson, Page True, R. Turner, J.C. Woods, and S.K. Young's motion for summary judgment must be denied. I further find that Security Defendants Ronald Angelone, Gene Johnson, and R.A. Young's and Defendant Meade's motions for summary judgment must be granted.

I. Claims and Allegations

Monroe claims that on May 21, 2000 through May 23, 2000 the Security Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment right to Due Process by placing him in five point restraints for 37 hours without prior hearing or any concurrent procedural protections. On May 21, 2000, Defendant Nurse Hayes reported to prison officials that Monroe was masturbating and that she felt threatened by his conduct. Monroe claims that at the time of the incident he was not masturbating, but was instead urinating and at no time called to Defendant Hayes or made any gestures which could be perceived as threatening. In any event, prison officials did not charge Monroe with an infraction for the alleged conduct, but as a result of the report he was placed him in five point restraints. Additionally, it is uncontested that Monroe remained in restraints, with few breaks, for approximately 37 hours.

II. Analysis

Upon motion for summary judgment, the court must view the facts and the inferences to be drawn from those facts, in the light most favorable to the party opposing the motion. Ross v. Communications Satellite Corp., 759 F.2d 355 (4th Cir. 1985). Summary judgment is proper where

there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). However, "[t]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 47 U.S. 242 (1986).

When a motion for summary judgment is made and properly supported by affidavits, depositions, or answers to interrogatories, the adverse party may not rest on the mere allegations or denials of the adverse party's pleadings. Instead, the adverse party must respond by affidavits or otherwise and present specific facts showing that there is a genuine issue of disputed fact for trial. Fed. R. Civ. P. 56(e). If the adverse party fails to show a genuine issue of material fact, summary judgment, if appropriate, may be entered against the adverse party.

A. Excessive Force

Monroe claims that the security defendants violated his right to be free from cruel and unusual punishment by placing him in and forcing him to remain in five-point restraints for 37 hours. In their motion for summary judgment the security defendants argued that Monroe suffered nothing more than de minimis injuries, and even if such injury rose to the level of a constitutional violation, the security defendants are entitled to qualified immunity. Additionally, defendants have argued that all defendants who did not personally act to restrain Monroe, should be dismissed because the doctrine of respondat superior is not applicable to § 1983 actions.

1. De minimis Injury

The Eighth Amendment protects individuals against inhumane treatment and excessive force while imprisoned. See U.S. Const. amend. VIII. To establish an Eighth Amendment excessive force claim against a prison official, an inmate must satisfy a two-prong standard comprised of both a subjective inquiry (whether the defendant acted with a sufficiently culpable state of mind) and an objective inquiry (whether the harm plaintiff suffered was sufficiently serious enough to amount to a constitutional violation). Williams v. Benjamin, 77 F.3d 756, 761 (1996).

The subjective component of an excessive force claim requires an inmate to demonstrate that the force used by an institutional official, "inflicted unnecessary and wanton pain and suffering." Hudson v. McMillian, 503 U.S. 1, 7 (1992). In evaluating such a claim, "the question whether the measure taken inflicted unnecessary and wanton pain and suffering ultimately turns on '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.'" Id. (quoting Whitley v. Albers, 475 U.S. 312, 32-21 (1986)). The Supreme Court and the Fourth Circuit have set out the following factors to consider in determining whether a prison official acted maliciously and sadistically: "the need for application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of a forceful response." Hudson, 503 U.S. at 7 (1992) (quotations omitted); Williams, 77 F.3d at 762.

Also, the inmate must prove the corrections official's actions were "objectively harmful enough" to offend "contemporary standards of decency." Stanley v. Hejirika, 134 F.2d 629, 634 (4th Cir. 1998) (quoting Hudson, 503 U.S. at 8). Although there is no requirement that an inmate suffer "serious" or "significant" pain or injury to demonstrate that a malicious or sadistic use of force was employed, he must allege "more than a de minimis pain or injury." Norman v. Taylor, 25 F.3d 1259,

1263 n. 4 (4th Cir. 1994). "[A]bsent the most extraordinary circumstances, a plaintiff cannot prevail on an Eighth Amendment excessive force claim if his injury is de minimis." Taylor v. McDuffie, 155 F.3d 479, 483 (4th Cir. 1998). However, a de minimis physical injury may amount to an Eighth Amendment violation if the force used was of the sort "repugnant to the conscience of mankind." In Norman v. Taylor, the Fourth Circuit stated:

We recognize that there may be highly unusual circumstances in which a particular application of force will cause relatively little, or perhaps no, enduring injury, but nonetheless will result in an impermissible infliction of pain. In these circumstances, we believe that either the force used will be "of a sort 'repugnant to the conscience of mankind,'" and thus expressly outside the de minimis force exception, or the pain itself will be such that it can properly be said to constitute more than de minimis injury.

25 F.3d at 1263, n. 4 (citations omitted).

According to Monroe, the defendants placed him in five-point restraints as a result of Defendant Hayes's lie that she felt threatened after witnessing him masturbating on May 21, 2000. Monroe claims that what she really witnessed was him urinating. Monroe alleges that at the time the correctional officers entered his cell he was lying in bed and peacefully submitted to the placement of wrist and leg shackles. Monroe further alleges that after stripping to his undershorts, he was removed from his cell and placed in five-point restraints and remained in said restraints from May 21, 2000 to May 23, 2000. During that time he was given few opportunities to use the bathroom and was given only limited mobility during meal times, thereby forcing him to lie in his own wastes and to suffer severe cramping and pain. The defendants admit that Monroe was placed in restraints following Defendant Hayes's report, but assert that he was placed in the restraints only after checking with the medical department and the mental health department to ascertain that there were no medical or mental health reasons why he could not be so placed. The defendants further assert

that per proper procedure, Monroe was given the opportunity to relieve himself four times per twenty-four hours of restraint and was properly released to consume his meals.

Monroe alleges that his rights under the Eighth Amendment were violated by his being subjected to confinement in five-point restraints for an extended period. Although he does not allege severe lasting physical effects from the time he spent in restraints, when considering the facts in the light most favorable to Monroe, the court finds that being strapped to a bed for nearly two days, with limited opportunity to utilize the restroom, and being denied mobility during meal consumption periods may well amount to force "of a sort repugnant to the conscience of mankind." Norman, 25 F.3d at 1263, n. 4. Accordingly, Monroe has alleged sufficient facts to satisfy the objective component of an excessive force claim.

To meet the subjective component of an excessive force claim, Monroe must next demonstrate that the force used against him was not applied in a good faith effort to restore order, but rather with malice as a punitive measure in an effort to cause him harm. See Whitley, 475 U.S. at 320-21. According to Monroe, his placement in five-point restraints was a punitive measure exacted upon him based on the false allegation of Defendant Hayes that he masturbated towards her and thereby threatened her. The Security Defendants, on the other hand, allege that Monroe actually was threatening and disruptive. The Security Defendants further allege that a system-wide prison door malfunction during the same time as Monroe's alleged masturbation made his conduct even more threatening, and thus, presented an extraordinary challenge to correctional officers. Therefore, his placement in five-point restraints served to protect the safety of the staff and other inmates during this problematic time. However the Security Defendants have not alleged that Monroe remained assaultive or disruptive while held in restraints. If the court credits the Security Defendants' version

of events, then the officers applied force in a good faith effort to quell Monroe's threatening and disruptive behavior. However, if the court credits Monroe's depiction of events, then the officers acted maliciously and sadistically for the purpose of causing him harm. Given this, the court finds that Monroe has satisfied both the objective and subjective elements of an excessive force claim and that a genuine issue of material fact exists as to whether or not excessive force was applied by the defendants when they placed Monroe in five-point restraints for 37 hours.

2. Qualified Immunity

The Security Defendants argue that even if the court finds that there is more than de minimis injury, they are entitled to qualified immunity from liability as to Monroe's excessive force claim. The qualified immunity defense shields government officials performing discretionary functions from liability for monetary damages to the extent they can establish that their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. Harlow v. Fitzgerald, 457 U.S. 800, 815-816 (1982). To address a defense of qualified immunity, the court "must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all." Conn v. Gabbert, 256 U.S. 286, 290 (1999). If the plaintiff has alleged a constitutional violation, the court must then determine if such a constitutional right was clearly established at the time of the incident. Id.

As the defendants admit that, in the abstract, inmates have the right to be free from excessive force, the question becomes whether under these particular circumstances it was clear to the security defendants that placing Monroe in five-point restraints and leaving him in those restraints for 37 hours clearly violated Monroe's constitutional rights. In Williams v. Benjamin, the Fourth Circuit

questioned the extended use of restraints. 77 F.3d 756, 762-68 (4th Cir. 1996). The court noted that "[i]n our civilized society, we would like to believe that chaining a human being to a metal bed frame in a spread eagle position would never be necessary. Unfortunately it sometimes is. Courts have thus approved the limited use of four-point restraints, as a last resort, when other forms of prison discipline have failed." *Id.* at 763. Thus, on the date of the incident, it is apparent that reasonable prison officials would have understood that confining a peaceable inmate for nearly two days, for no reason as alleged by Monroe, is a constitutional violation. Accordingly, the security defendants are not entitled to qualified immunity at this stage of the litigation as to this claim.

Accordingly, the court will deny the Security Defendants' motion for summary judgment as to Monroe's Eighth Amendment claims regarding the use of five-point restraints. Additionally the court finds that at this time, security defendants are not entitled to qualified immunity.⁶

3. Supervisor Liability

The Security Defendants argue that Monroe has named multiple defendants in his action, but has made no allegations as to the personal involvement of those defendants in the denial of his constitutional rights. Accordingly, they claim that those defendants are not liable for any constitutional violations which arose as a result of Monroe's confinement in five-point restraints.

Although the doctrine of respondeat superior is inapplicable to § 1983 actions, supervisory officials may be held liable for the actions of their subordinates if the plaintiff can show: 1) that the supervisor had actual or constructive knowledge that subordinates were engaged in conduct that

⁶As to this finding, the court notes that the denial of qualified immunity during the summary judgment stage does not preclude the security defendants from arguing at trial that they reasonably perceived the facts relevant to Monroe's restraint in a manner that justified the force used.

posed 'a pervasive and high risk' of constitutional injury; 2) the supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices;' and 3) there was an 'affirmative causal link' between the supervisor's inaction and the actual constitutional injury suffered by the plaintiff. Sadler v. Young 325 F.Supp.2d 689, 707 (W.D. Va., 2004); Slakan v. Porter, 737 F.2d 368 (4th Cir. 1984).

Evidence that subordinates' conduct is widespread, or at least has been used on multiple occasions; and that such conduct poses a risk of constitutional injury supports a finding that there is a pervasive and high risk of constitutional injury. Shaw v. Stroud, 13 F.3d 791, 799 (4th Cir. 1994). Furthermore, deliberate indifference can be established by a showing of continued supervisory inaction when faced with documented abuses. Id. Finally, in that a person is held liable for the natural consequences of his actions, such actions may form a proximate link between the supervisory defendant and the harm suffered. Id.

In this instance, Monroe has alleged that Security Defendants Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, and R.A. Young, although not directly and personally responsible for his confinement in five-point restraints, are liable for the actions of the correctional officers who actually placed him in those restraints. However, Monroe has failed to allege specific facts which demonstrate that they were aware of the correctional officers misconduct prior to the alleged violation. In fact, Monroe has alleged no facts, other than their respective roles as former Director of the VDOC, Director of the VDOC, Regional Director of the VDOC, Assistant Warden of Security, and Wardens as a basis for liability. As noted previously, the courts have found that although severe, five-point restraints are at times necessary. Williams, 77 F.3d at 763. Accordingly, a general policy which allows the use of such restraints under certain conditions is not

unconstitutional. See id. Therefore, even if Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, and R.A. Young were aware that the Security Defendants were utilizing such a method of restraint, absent a showing of actual or constructive knowledge of widespread abuse of such a policy, those defendants are not liable for the actions of their subordinates. See Davis v. Lester, 156 F.Supp.2d 588, 597 (W.D. Va. 2001). Accordingly, I find that Defendants Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, and R.A. Young are entitled to judgment as a matter of law and will grant their motion for summary judgment as to this issue.

B. Due Process

Monroe claims that the Security Defendants denied him of due process under the Fourteenth Amendment by placing him in five-point restraints for 37 hours and failing to afford him the constitutionally required procedural protections. Although the defendants did not argue specifically as to this claim, the court will assume that the defendants intended their qualified immunity and respondeat superior arguments to encompass this claim as well.

1. Qualified Immunity

As noted previously, the first step in addressing a defense of qualified immunity is to determine that the plaintiff has actually alleged the deprivation of a constitutional right. Conn. 256 U.S. at 290. In this instance, the court must first determine if the Security Defendants deprived Monroe of a state created liberty interest within the protection of the Due Process Clause of the Fourteenth Amendment.

When a defendant is lawfully convicted and confined to jail, he loses a significant interest

in his liberty for the period of the sentence. Gaston v. Taylor, 946 F.2d 340, 343 (4th Cir., 1991). Such confinement is necessarily subject to the broad discretion of those parties managing the jail. Id. However, the confinement does not strip the inmate of all of his liberty interests. Id. "These interests will be generally limited to the freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995). In Davis v. Lester, the court found that the application of five-point restraints for forty-eight hours imposed an atypical and significant hardship. 156 F.Supp.2d 588, 596 (W.D. Va., 2001). Accordingly, as the total immobilization of an inmate for lengthy periods is a "major disruption in his environment," said inmate is afforded some procedural due process protection. Sandin, 515 U.S. at 486.

As described previously, Monroe claims that he was placed in the restraints based on Defendant Hayes's lie. But the Security Defendants contend that Monroe was placed in restraints for threatening and disruptive behavior. In any event, Monroe claims that he did not receive prior notice that he had violated prison regulations nor was he given an opportunity to be heard before the Security Defendants placed him in five-point restraints. Additionally, Monroe claims that at no time while restrained was he afforded any procedural protections as to his continued restraint. Assuming these allegations are true, Monroe has alleged sufficient facts to state a claim that the Security Defendants deprived him of a protected liberty interest without due process.

In that the court has determined that Monroe has alleged sufficient facts to state a constitutional claim, the court will now determine if such a constitutional right was clearly

established at the time of the incident. Conn. 256 U.S. at 290. As noted above, Williams clearly indicated that placing an inmate in four-point restraints for eight hours is most likely an atypical and significant hardship. 77 F.3d at 762-68. Furthermore, Sandin clearly established that prison officials may not impose such atypical and significant hardship without affording the inmate due process. 515 U.S. at 484. Accordingly, it is evident that this right was clearly established at the time of the incident. Therefore, the Security Defendants are not entitled to qualified immunity as to Monroe's due process claim.

2. Supervisory Liability

As noted previously, a supervisory defendant may only be liable if the plaintiff can establish that the supervisor had actual or constructive knowledge that subordinates were engaged in conduct that posed 'a pervasive and high risk' of constitutional injury, the supervisor's response to that knowledge was so inadequate as to show 'deliberate indifference to or tacit authorization of the alleged offensive practices, and there was an 'affirmative causal link' between the supervisor's inaction and the actual constitutional injury suffered by the plaintiff. Sadler, 325 F.Supp.at 707.

As described above, Monroe has alleged that Security Defendants Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, and R.A. Young, although not directly and personally responsible for his confinement in five-point restraints, are liable for the actions of the correctional officers who actually placed him in those restraints and thereafter denied him any procedural due process protections. However, Monroe has failed to allege specific facts which

demonstrate that they were aware of the correctional officers failure to afford inmates such due process protections during their confinement in five-point restraints. In that, Monroe has alleged no facts, other than their respective professional positions as a basis for liability, I find that these defendants are entitled to judgment as a matter of law and will grant their motion for summary judgment as to this issue.

C. Denial of Adequate Medical Treatment

Monroe claims that Defendant Meade failed to provide adequate medical treatment while he was confined by five-point restraints. He alleges that even though she knew that the restraints were too tight, she failed to instruct correctional officers to loosen Monroe's restraints.

In order to state a cognizable claim for denial of medical care under the Eighth Amendment, a plaintiff must allege facts sufficient to demonstrate a deliberate indifference to a serious medical need. Estate v. Gamble, 429 U.S. 97, 104 (1976). To establish deliberate indifference, a plaintiff must present facts to evince that the defendant had actual knowledge of and disregard for an objectively serious medical need. Farmer v. Brennan, 511 U.S. 825 (1994); see also, Rish v. Johnson, 131 F.2d 1092, 1096 (4th Cir. 1997). "A serious medical need" is "one that has been diagnosed by a physician as mandating treatment, or one that is so obvious that even a layperson would easily recognize the necessity for a doctor's attention." Shelton v. Angelone, 183 F.Supp.2d 830, 840 (W.D.Va. 2002) (quoting Cox v. District of Columbia, 834 F.Supp. 439, 441 (D.D.C. 1992)). A claim regarding a disagreement between an inmate and medical personnel over diagnosis or course of treatment generally does not state a cognizable constitutional claim under the Eighth Amendment. Wright v. Collins, 766 F.2d 841, 849 (4th

Cir. 1985). Moreover, claims of medical judgment are not subject to judicial review. Russell v. Sheffer, 528 F.2d 318 (4th Cir. 1975). Mere malpractice or negligence in treatment does not amount to a claim of constitutional significance. Estelle, 429 U.S. at 105-06.

After carefully reviewing the record, I find that Monroe has failed to establish that he suffered from a serious medical condition because, at most, he suffered from a few minor bruises as a result of the too tight restraints. To the extent he complains that those contusions impeded his ability to work out and as such constitute a serious medical need, I disagree. Even if Monroe's injuries could be considered a serious medical need, he has failed to establish that Nurse Meade acted with deliberate indifference to his injury. From the record it is clear that Nurse Meade checked the tension of the restraints twice on May 22, 2000 and found at both times that she could slide two fingers up to her palm under the restraints and that Monroe had good pulses in all extremities, good capillary refill, and good sensation. As such, I find that Nurse Meade did not act with deliberate indifference to any known medical need and will grant her motion for summary judgment as to this issue.

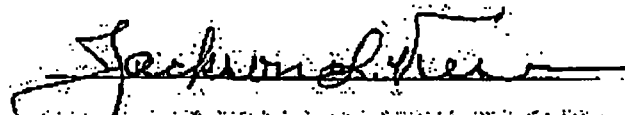
III. Conclusion

Based on the foregoing, I find that Monroe has presented issues of material fact as to his claims of excessive force and denial of due process against Security Defendants Armentrout, J. Bleving (Blevins), C. Cox, S. Fleming, G. Fowler, R.C. Greenfield, Michael Harrison, M. Hawks, B. Messingill, J. Robinson, Page True, R. Turner, J.C. Woods, and S.K. Young. Accordingly, their motion for summary judgment must be denied. However, I find that as to Security Defendants Ronald Angelone, Gene Johnson, and R.A. Young, Monroe has failed to present any issue of material fact regarding his claims of excessive force and denial of due

process. Furthermore, I find that those defendants are entitled to judgment as a matter of law and will therefore grant their motion for summary judgment. Finally, I find that Monroe has failed to show any issue of material fact as to his claim of denial of adequate medical treatment while in five-point restraints. As I find that Defendant Meade is entitled to judgment as a matter of law on this claim, I will hereby grant her motion for summary judgment.

The Clerk of the Court is directed to send a certified copy of this Opinion and accompanying Order to plaintiff and to counsel of record for the defendants.

ENTER: This 24th day of February, 2005.


SENIOR UNITED STATES DISTRICT JUDGE

#12

CLERK'S OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILED

MAR 03 2005

JOHN F. CORCORAN, CLERK
BY: J. M. O'NEAL, DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISIONJACOB DALE MONROE,
Petitioner,

v.

RONALD D. ANGELONE,
Respondent.

Civil Action No. 7:01 CV 00394

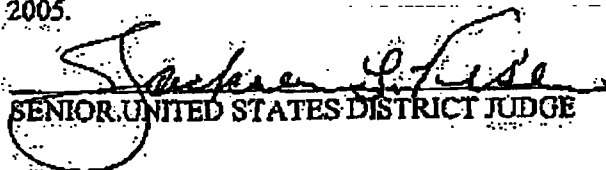
AMENDED MEMORANDUM OPINIONBy: Jackson L. Kiser
Senior U.S. District Judge

Plaintiff Jacob Dale Monroe, a Virginia inmate proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343. By order entered February 24, 2004 this court granted Security Defendants Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, and R.A. Young's motion for summary judgment as to Monroe's Eighth Amendment claim of excessive force and Fourteenth Amendment claim of denial of due process and defendant Gloria Meade's motion for summary judgment as to Monroe's Eighth Amendment claim for denial of adequate medical care.

As the final paragraph in the memorandum opinion issued in conjunction with that order failed to fully grant summary judgment as to those parties, it is hereby amended such that Ronald Angelone, J. Armentrout, Gene Johnson, Page True, S.K. Young, R.A. Young, and Gloria Meade's motions for summary judgment are granted based on the reasoning stated in that memorandum opinion:

The Clerk of the Court is directed to send a certified copy of this Opinion and accompanying Order to plaintiff and to counsel of record for the defendants.

ENTER: This 3rd day of March, 2005.


 SENIOR UNITED STATES DISTRICT JUDGE

#13

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

ROANOKE DIVISION

GARY NEAL SADLER, Redacted

Plaintiff,

against

CIVIL ACTION NO. 7:00CV00581

S. K. YOUNG, et. al.,

Defendants.

**DEFENDANTS RESPONSE TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

Comes now Defendant, S. K. YOUNG, and in response to Plaintiff's First Set of Interrogatories to Defendant, responds as follows:

1. State the names and duties of all correctional staff that assisted in the escorting, placement, temporary release and release of the Plaintiff to and from restraints on 4/2/2000 through 4/4/2000 (including all medical and supervisory staff) while in WRSP and the approximate times of such staffs' participation.

ANSWER: See Enclosure A.

2. State the exact times the Plaintiff was placed in restraints on 4/2/2000 along with all exact times and dates the Plaintiff was temporarily released from restraints until the time the Plaintiff was finally released from restraints on 4/4/2000 in WRSP.

ANSWER: See Enclosure A.

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

NOV 23 2001

JOHN F. CONCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

3. State the duties of Defendant S. K. Young, Superintendent for WRSP pertaining to enforcing Virginia DOC policies. If such duties are set forth in any job description or other document, produce the document.

ANSWER: See Enclosure B.

4. State the duties of Defendant M. Hutchinson, Institutional Investigator for WRSP pertaining to investigating inmate complaints. If such duties are set forth in any job description or other document, produce the document.

ANSWER: See Enclosure B.

5. State whether the Virginia DOC policy for the use of restraints permit staff to allow an inmate to exceed 10 hours in restraints without being momentarily release to relieve of himself.

ANSWER: Institutional Operating Procedure 432, approved by Warden Young on 10/18/99, and Regional Director R. A. Young on 10/29/99, states inmates will be partially or completely released from restraints at meal times, and for toilet use a minimum of four (4) times during each twenty-four (24) hour period, including prior to each meal.

Inmate Sadler was placed on five point restraints on 4/2/00 at 12:05 pm. He was released at 9:12 pm and inmate Sadler refused to eat. Inmate Sadler was released on 4/3/00 at 7:30 am when he refused to use the bathroom but accepted breakfast. On 4/3/00 he was again released at 1:10 pm at which time he used the bathroom. He was on restrictive feeding (loaf meal twice a day) so he did not receive a lunch meal. On 4/3/00 he was released at 5:30 pm at which time he accepted his loaf meal and used the bathroom. On 4/3/00 he was released at 11:45 pm with no notation on the incident report whether he used the bathroom. Inmate Sadler was placed face down due to vomiting. On 4/4/00 inmate Sadler was released

at 7:50 am, he ate and used the bathroom. On 4/4/00 inmate Sadler was released from five points at 11:25 am.

6. State whether the Virginia DOC policy for restraints allow the use of restraints although an inmate is no immediate threat to the security of the institution. If not, state under what specific circumstances does the Virginia DOC govern the use of restraints.

ANSWER: The use of restraining devices is authorized to assist WRSP staff in preventing escapes or controlling violent or unmanageable inmates in situations where there is substantial danger for those inmates to injure themselves or other persons or when an immediate threat to the security of any part of WRSP is perceived to exist.

7. State the exact cause of action which led to the Plaintiff being placed in restraints on 4/2/2000 through 4/4/2000.

ANSWER: On April 2, 2000 at approximately 12:00 pm, during the feeding of the lunch meal in the D-3 pod, inmate G. Sadler ^{Redacted} assaulted Officer D. Young. Inmate Sadler threw his lunch meal at Officer Young striking him in the chest and groin area.

8. State whether there are any complaints or grievances filed by inmates regarding the use of restraints and conditions suffered while in restraints while in WRSP, prior to, during and after the date of 4/2/2000.

ANSWER: Yes.

9. State whether the Virginia DOC policy for the use of restraints has been reformed or revised. If so, provide documentation to such revision (this includes the actual policy) and the reason why the policy has been revised.

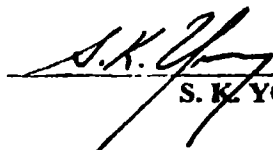
ANSWER: The security institutional operating procedure 432 Use of Restraints was initially approved by Warden S. K. Young on 10/18/99, and Regional Director R. A. Young

on 10/29/99. A new Division Operating Procedure was issued with an effective date of October 16, 2000. A new Institutional Operating Procedure was approved by Warden Young on December 18, 2000, and Regional Director R. A. Young on September 10, 2001.

10. State whether the Virginia DOC has filed any reports, complaints or fines (from the period of the opening of Wallens Ridge up until this day) against the contracted Medical Services Inc. for Correctional Institutional/Prisons in Virginia, for failing to live up to it's contract in providing adequate medical services to Wallens Ridge.

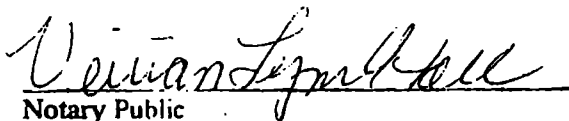
ANSWER: My understanding is that the private medical care provider that formerly provided the medical services at Wallens Ridge ---Correctional Medical Services (CMS) --- had been cited for failing to comply with all provisions of its contract with the VDOC.

I, **S. K. YOUNG**, duly swear and affirm that to the best of my knowledge, the forgoing answers given to these Interrogatories are true and correct.


S. K. YOUNG

State of Virginia
County of Wise, to-wit:

The following was sworn and acknowledged before me, a Notary Public, on this 16 day of November, 2001, by S. K. YOUNG.


Notary Public

My commission expires:

June 30, 2005

Respectfully submitted,

S. K. YOUNG
Defendant herein,

By:

Mark R. Davis
Counsel

Mark R. Davis
Senior Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
900 East Main Street
Richmond, Virginia 23219

R000950

INCIDENT REPORTS

ENCLOSURE A

A007367

R000951

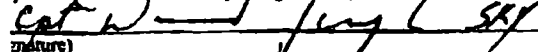
DIVISION OF ADULT INSTITUTIONS SERIOUS INCIDENT REPORT

DOP 421
Attachment #2

Redacted		DATE & TIME OF INCIDENT 000 04/02/00 12:00 PM	INSTITUTION OR UNIT 000 Wallen's Ridge State Prison	TYPE OF REPORT 000 ☒ Initial ☐ Follow-Up																		
SECTION A: NATURE OF INCIDENT		SECTION B: INCIDENT DISPOSITION																				
000 ☐ CLASS I: 000 ☐ Death/natural causes 000 ☐ Death/unnatural causes (specify) 000 ☐ Death/suicide 000 ☐ Escape 000 ☐ Riot 000 ☐ Demonstration/general disturbance 000 ☐ Discharge of firearms involving death or injury 000 ☐ Sabotage 000 ☐ Felonies committed by inmate while outside institution 000 ☐ Other (specify)		000 ☐ Pending 000 ☐ Referred to Internal Affairs Unit 000 ☒ Handled internally at institution 000 ☐ Inmate placed on detention/isolation 000 ☐ No further action 000 ☐ Other (specify)																				
000 ☐ CLASS II: 000 ☐ Aggravated assault 000 ☐ Sexual assault 000 ☐ Felonies committed by inmates, staff, or visitors on institutional property 000 ☐ Self-mutilation 000 ☐ Use of force including non-lethal weapons and chemical agents where there is injury to the inmate or staff 000 ☐ Attempted escape 000 ☐ Accidents to inmates, employees or visitors involving serious injury or significant property damage 000 ☐ Discharge of firearm 000 ☐ Fires resulting in serious injury and/or major property damage 000 ☐ Alleged assault on an inmate by an employee 000 ☐ Other (specify)		SECTION C: PRINCIPALS INVOLVED <table border="1"> <thead> <tr> <th>IDENTIFICATION</th> <th>NAME</th> <th>HOW INVOLVED</th> </tr> </thead> <tbody> <tr> <td>Redacted CT INMATE)</td> <td>G. SADLER</td> <td>ASSAULTIVE INMATE</td> </tr> <tr> <td>OFFICER</td> <td>D. YOUNG</td> <td>FLOOR OFFICER</td> </tr> <tr> <td>CAPTAIN</td> <td>D.A. TAYLOR</td> <td>WATCH COMMANDER</td> </tr> <tr> <td>SERGEANT</td> <td>M. SHORT</td> <td>SUPERVISOR</td> </tr> <tr> <td>SERGEANT</td> <td>R. DAVIDSON</td> <td>SUPERVISOR</td> </tr> </tbody> </table>			IDENTIFICATION	NAME	HOW INVOLVED	Redacted CT INMATE)	G. SADLER	ASSAULTIVE INMATE	OFFICER	D. YOUNG	FLOOR OFFICER	CAPTAIN	D.A. TAYLOR	WATCH COMMANDER	SERGEANT	M. SHORT	SUPERVISOR	SERGEANT	R. DAVIDSON	SUPERVISOR
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CAPTAIN	D.A. TAYLOR	WATCH COMMANDER																				
SERGEANT	M. SHORT	SUPERVISOR																				
SERGEANT	R. DAVIDSON	SUPERVISOR																				
000 ☐ CLASS III: 000 ☒ Simple assault (explain in narrative) 000 ☐ Inmates fighting 000 ☐ Fires resulting in less than serious injuries and/or minor property damage 000 ☐ Accidents and accidental injuries of employees or inmates involving less than serious injuries 000 ☐ Any other incident not listed here but considered by the Warden or Superintendent to warrant notification of higher authority		DESCRIBE INCIDENT (Who, What, When, Where, Why, How): On April 2, 2000 at approximately 12:00 P.M., during the feeding of the lunch meal in the D-3 pod, inmate G. Sadler Redacted assaulted Officer D. Young. Inmate Sadler threw his lunch meal at Officer Young striking him in the chest and groin area. Officer D. King notified the building Sergeant, Sergeant R. Davidson. Sergeant Davidson notified the Watch Commander, Captain Taylor, of the assault. Captain Taylor notified the ADO, Mr. Phillips, who ordered that the inmate be placed in 5-point humane restraints and on restrictive feeding to prevent further staff assaults and insure the safe and orderly operation of D-3 pod. The inmate was given a direct order by Sergeant Davidson to back up to the tray slot to be restrained. The inmate complied. Officer King placed handcuffs on the inmate and gave the inmate a direct order to kneel on the floor. The inmate complied and the D-320 cell door was accessed. Officer King placed leg irons on the inmate. Inmate Sadler was then assisted to his feet and escorted to cell D-302 by Officers Bishop and Hillman. The inmate was placed face up on the bed. Officer King placed the electronic I.C.E shield over the inmate but did not activate it. Sergeant Davidson removed the leg iron from the inmate's right leg. Sergeant Short then secured the inmate's right ankle in the humane restraint. Sergeant Davidson then released the inmates left ankle from the leg irons and secured it in the humane restraint. Sergeant Davidson then removed the inmate's right wrist from the hand cuffs and Sergeant Short secured inmate Sadler's right wrist in the 5-point humane restraint.																				
000 ☐ IF ESCAPE, CHECK TYPE 000 ☐ Facility escape 000 ☐ Non-facility, under gun 000 ☐ Non-facility, trustee walkway 000 ☐ Other (specify)		000 ☐ Still at-large 000 ☐ Surrendered 000 ☐ Wounded and in custody 000 ☐ Killed 000 ☐ Recaptured 000 ☐ Other (specify)																				
000 ☐ ESCAPE STATUS AT TIME OF REPORT: 000 ☐ Still at-large 000 ☐ Surrendered 000 ☐ Wounded and in custody 000 ☐ Killed 000 ☐ Recaptured 000 ☐ Other (specify)		000 ☐ ESCAPE REPORT MADE TO 000 ☐ State Police 000 ☐ Sheriff 000 ☐ Local Police 000 ☐ Other (specify)																				
000 ☐ SHOTS FIRED BY STAFF DURING ESCAPE? 000 ☐ Yes 000 ☐ No		000 ☐ IF ASSAULT, ASSAULT WAS: 000 ☒ Actual 000 ☐ Attempted																				
000 ☐ IF CLASS II INCIDENT: 000 ☐ Inmate on inmate with weapon 000 ☐ Inmate on inmate without weapon 000 ☐ Inmate on staff without weapon 000 ☐ Staff on inmate 000 ☐ Staff on staff		000 ☐ EXTENT OF INJURY 000 ☐ STAFF INJURY 000 ☒ No injury 000 ☐ Less than serious 000 ☐ Serious																				
000 ☐ INMATE INJURY 000 ☒ No injury 000 ☐ Less than serious 000 ☐ Serious																						

T. D.A. Taylor, Grade 12

Redacted Name & Grade of Reporting Officer)



02-00 / 2:00P.M.

Date & Time of Report)

continued

DIVISION OF ADULT INSTITUTIONS
DOP 421

SERIOUS INCIDENT REPORT

Attachment #2

(CONTINUATION PAGE)

Sergeant Davidson then removed the handcuff from the inmate's left wrist and secured the wrist in the humane restraint. Sergeant Short then secured the chest strap. The 5-point restraints were checked by CMS Nurse Harber and found to be applied correctly. All staff then exited the cell and secured the cell door. There was no use of force during this incident and no injury to staff or inmate. The entire incident was video-taped by Officer Castle.

Inmate Sadler was charged per DOP 861 with offense code 105, "Assault on any Person".

The Institutional Physician, Dr. Nwuache, approved the use of restrictive feeding, on inmate Sadler in accordance with DOP 414.

Notifications:

ADO, Mr. Randy Phillips, 12:10 P.M.

Regional Office, by Fax

Connecticut DOC, by Fax

Internal Affairs, left message with Special Agent Wiandt at 2:35 P.M.

INCIDENT REPORT

1. DATE 4-2-002. TIME Approx 12⁰⁵ pm3. LOCATION: D-320 and D-302

4. INMATE(S) NAME(S) AND NUMBER

G. Sadler Redacted

5. INVOLMENT

Assaultive inmate

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC.)

On the above date and approx time I Sgt Davidson was notified by % King that % Young had been assaulted by inmate G. Sadler. I went to the pod and spoke with % Young, he had beams on him covering his chest and groin area. I notified Unit 10 and Unit 400 of the situation. An entry team was readied. I gave the inmate a direct order to back to the door and be restrained. He complied. % King and % Hillman placed restraints on the inmate and escorted him to cell D-302. % King held the electronic TCE, shield over the inmate but did not activate it. Sgt Short secured the ~~right~~ right leg in the humane restraint and I secured the left leg. Sgt Short then secured the inmates right wrist using the humane restraint and I secured the left wrist. Sgt Short secured the chest strap. Nurse Harbor checked the restraints and found all to be in order. There was no use of force and no injury to staff or inmate. The entire incident was recorded by % Castle using the video recorder.

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1.

REPORTING OFFICER

Sgt R Davidson
SUPERVISORCpt. [Signature]
WATCH COMMANDER

8. FILE NUMBER:

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-2-00 2. TIME: 12⁰⁵/pm

3. LOCATION: D 320 / D 302

4. INMATE (S) NAME(S) AND NUMBER

G. Sallee # Redacted

5. INVOLVEMENT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

On the above date and approximate time, I Sgt M Short assisted in placing inmate Sallee on Restraints. I Sgt Short applied inmates Right leg, Right hand and Right side of chest straps. Officer King held the Ice shield on the inmate to prevent an assault. Sgt Davidson secured inmates left leg and left hand. Officer Hellmuth and Bishop assisted in these procedures. Nurse Barber checked the restraints and reported they were correct. No force was used and the Ice Shield was never activated. Capt Taylor and LT Snider were present during this incident. Officer Gutter filmed these procedures in their entirety. (EAD)

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. Sgt M Short [Signature] Cpt. [Signature]
REPORTING OFFICER SUPERVISOR WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-2-002. TIME: 12⁰⁵ P.M.3. LOCATION: D302

4. INMATE(S) NAME(S) AND NUMBER

G. Sadler #Redacted

5. INVOLMENT

Placed in 5-Point restraints

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

On the above date and approx. time, I, Cb Bishop with Cb Hillman, Cb Kinn and Sgt Short placed Inmate G. Sadler: Redacted in 5 Point restraints. Myself and Cb Hillman escorted inmate Sadler from D320 to D302. I, Cb Bishop held the Ullton and assisted Sgt Short in restraining Inmate Sadler's right leg and right arm. Cb Kinn held the shield, and Cb Hillman restrained his left arm. Sgt Davidson restrained his left leg and fit the Chest strap. Inmate was placed in 5-Point restraints without incident. Cb Castle. Filmed this event in its entirety. — RB

RB

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. Cb Bishop
REPORTING OFFICERSgt R. Davidson
SUPERVISORCpt. [Signature]
WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-2-002. TIME: 12⁰⁵pm3. LOCATION: D-320 to D 302

4. INMATE (S) NAME(S) AND NUMBER

G. Sadler Redacted

5. INVOLMENT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC.)

On the above date and approximate time TSG Hillman was called to D-3 to help place inmate G. Sadler into spirit restraints. myself, Sgt Short, Sgt Davidson, Sgt Bishop & Sgt King went to cell D-320. Sgt Davidson gave the inmate a direct order to back up to be restrained. Inmate G Sadler complied. TSG Hillman then placed handcuffs on the inmate. Inmate Sadler then got on his knees and his cell door was opened. Sgt King placed leg irons on him and myself & Sgt Bishop escorted Inmate Sadler to cell 302 where he was placed in spirit restraints without further incident. Nurse Harbor checked the inmate and said the restraints were ok. & Sgt Castle filmed the event in its entirety — END OF Report (TN)

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. Sgt Hillman
REPORTING OFFICERSgt R Davidson
SUPERVISORCpl. [Signature]
WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-2-002. TIME: 12:05 pm3. LOCATION: D-320

4. INMATE(S) NAME(S) AND NUMBER

G. SADLER Redacted

5. INVOLMENT

ASSAULT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

ON THE ABOVE DATE AND APPROXIMATE TIME, I C/A G. CASTLE VIDEO TAPED
INMATE G. SADLER Redacted BEING PLACED ON 5-POINT RESTRAINTS
BECAUSE THE INMATE ASSAULTED C/A YOUNG. END OF REPORT. — *for*

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. *Yo. Castle*
REPORTING OFFICER

Sgt R. Davidson
SUPERVISOR

Cpl. [Signature]
WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON

INCIDENT REPORT

1. DATE: 4-2-00 2. TIME: 12⁰⁰ P.M.

3. LOCATION: D BLDG 320

4. INMATE (S) NAME(S) AND NUMBER

SADLER, G Redacted

5. INVOLVEMENT

ASSAULT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

ON THE ABOVE DATE + APPROX TIME I 90 D. KING
PLACED LEG IRONS ON I/M G. SADLER WHEN HE WAS
REMOVED FROM CELL D 320. I 90 KING HELD THE
SHIELD OVER I/M G. SADLER AS HE WAS PLACED IN
5 POINT RESTRAINTS. NO ACTIVATION OF THE SHIELD
WAS NEEDED. -

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. Cpt D King
REPORTING OFFICER

Sgt R Davidson
SUPERVISOR

Cpt J King
WATCH COMMANDER

8. FILE NUMBER: _____

R000959

**TEMPORARY RELEASE FROM
5pt. RESTRAINTS**

A007376

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-2-002. TIME: 11:30 AM3. LOCATION: D-320

4. INMATE (S) NAME(S) AND NUMBER

5. INVOLVEMENT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

On the above date and approximate time I % O. Young was feeding top tier chow in D-3 pod. I % O. Young dropped the tray slot on cell 320, then told inmate G. Sadler to come and get his tray. Inmate Sadler came to the door and stepped his tray and food on me and the floor. The beans hit me from my face to my boots. Sgt Davison was notified immediately. -

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. % O. Young
REPORTING OFFICERSgt R. Davidson
SUPERVISORCpt. [Signature]
WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE 4-02-002. TIME 9:12 PM3. LOCATION: D-302

4. INMATE(S) NAME(S) AND NUMBER

G. Sadler Redacted

5. INVOLVEMENT

Sgt. ParlierC/O FortnerC/O MassieC/O DavidsonC/O I. Hamilton

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC.)

On the above date and time I Sgt. Parlier was assigned to bring inmate G. Sadler Redacted up from 5 pt restraints. The door was opened at 9:12 pm and officer Hamilton entered the cell and placed the ICE shield over inmate Sadler. Sgt. Parlier placed the mask over inmate Sadlers mouth. Sgt. Parlier then asked Sadler if he wanted to eat and he refused. Officer Davidson placed his left ankle in the leg irons and removed the humane strap. Officer Fortner placed the inmates right ankle in the leg irons and removed the humane strap. Officer Fortner then removed the chest strap. Officer Davidson placed the inmates right wrist in handcuffs and removed the humane strap. Officer Davidson placed the inmates left wrist in handcuffs and removed the humane strap. Inmate Sadler was then allowed to stand and use the bathroom. Inmate Sadler was then placed back down on the bed. Officer Fortner placed the inmates right ankle in the humane strap and removed the handcuff. Sgt. Parlier placed the inmates left ankle in the humane strap and removed the handcuff. Sgt. Parlier then placed the inmates left wrist in the humane strap and handcuff. Officer Davidson then placed the inmates right wrist in the humane strap and removed the handcuff. Officer Fortner then secured the chest strap. Nurse Baker then checked the restraints. All officers exited the cell and the door was secured at 9:29p.

USE SUPPLEMENT IF NEEDED

Filmed by Officer Massie.

SIGNATURES:

1. Sgt. I. Parlier
REPORTING OFFICER

SUPERVISOR


WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-3-00 _____ 2. TIME: 7:30am _____

3. LOCATION: D-302 _____

4. INMATE(S) NAME(S) AND NUMBER 5. INVOLVEMENT
G. Sadler Redacted

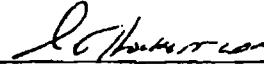
6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)
On the above date and time Inmate Sadler Redacted was released
From 5pt. Restraints. C/O Lefever held the ICE Shield it was not
Activated. C/O Porchie released all 5pt.restraints and applied
The leg irons and handcuffs with the assistance of C/O Varner.
Inmate Sadler refused to use the bathroom but accepted Breakfast.
Inmate Sadler was placed back in 5pt. Restraints by C/O Porchie
And C/O Varner. Inmate Sadler was checked by Nurse Scalf.
There was no force used. This incident was filmed by Sgt. J. Eaton.

USE SUPPLEMENT IF NEEDED

7. SIGNATURES:


 Reporting Officer

 Supervisor


 Watch Commander

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-3-00 _____ 2. TIME: 5:30pm _____
3. LOCATION: D-302 _____
4. INMATE(S) NAME(S) AND NUMBER
G. Sadler Redacted
5. INVOLVEMENT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

On the above date and time Inmate Sadler was released from Spt. Restraints. C/O Varner held the ICE Shield it was not activated. C/O Porchie removed all Spt. Restraints and applied the leg irons and Handcuffs with the assistance of C/O Lefever. Inmate Sadler accepted His loaf meal and used the bathroom. He was then placed back in Spt. Restraints and checked by Nurse Ball. There was no force used. This Incident was filmed by Sgt. J. Eaton.

USE SUPPLEMENT IF NEEDED

7. SIGNATURES:

[Signature] _____ [Signature]
Reporting Officer Supervisor Watch Commander

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE 4-3-002. TIME 11:45 PM3. LOCATION D-302 - W.R.S.P.

4. INMATE(S) NAME(S) AND NUMBER

G. SADLER # Redacted

5. INVOLVEMENT

C/O DAVISC/O BIRMANC/O SCARPOLESgt. GivensNurse Boyd

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

ON THE ABOVE DATE, LOCATION AND APPROXIMATE TIME, I, Sgt. Givens supervised and filmed inmate SADLER being let up for a break from 5-point restraints. C/O DAVIS covered inmate SADLER with the shield when door D-302 opened. C/O BIRMAN applied the leg irons and the hand cuffs. C/O SCARPOLE removed the humane STRAIT. C/O BIRMAN removed the chest strap and allowed inmate SADLER up for a break. Time was 11:45 PM. Inmate SADLER was placed in 5 points next. Inmate SADLER was throwing up and placed face down. Nurse BOYD was present. C/O SCARPOLE applied the chest strap. C/O BIRMAN applied the restraints and removed the hand cuff. C/O SCARPOLE applied the humane leg restraints and removed the leg irons. Nurse BOYD checked the restraints. All were ok. Everyone exited cell D-302 and the door was closed. No force was necessary. Time out was 12:13 A.M.

USE SUPPLEMENT IF NEEDED

SIGNATURES:

7. Sgt. T. Givens
REPORTING OFFICER_____
SUPERVISOR[Signature]
WATCH COMMANDER

8. FILE NUMBER _____

WALLENS RIDGE STATE PRISON
INCIDENT REPORT

1. DATE: 4-4-00 _____ 2. TIME: 7:50am _____

3. LOCATION: D-302 _____

4. INMATE(S) NAME(S) AND NUMBER 5. INVOLVEMENT
G. Sadler Redacted

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

On the above date and time Inmate Sadler was released from 5pt. Restraints to eat and use the bathroom. C/O Varner held the ICE Shield It was not activated. C/O Adams released all 5pt. Restraints and applied The leg irons and handcuffs with the assistance of C/O Lefever. Inmate Sadler eat and used the bathroom, he was then placed back in 5pt. Restraints and checked by nurse Thomas. There was no force used. This incident was filmed by Sgt. J. Eaton.

USE SUPPLEMENT IF NEEDED

7. SIGNATURES:

Sgt. J. Eaton
Reporting Officer_____
SupervisorD. D. D. D.
Watch Commander

8. FILE NUMBER: _____

R000967

15 MINUTE WATCH CHECKS

A007383

419 ATTACHMENT #1 FIFTEEN MINUTE CHECK

INMATE NAME / NUMBER G. Sadler Redacted

INMATE PLACED ON 15 MINUTE WATCH PER ORDERS OF AWP Phillips

PLACED ON DATE 4-2-00 TIME 1205/pm

INMATE RELEASED FROM 15 MINUTE WATCH PER ORDERS OF _____

RELEASED DATE _____ TIME _____

PLACED ON STRIP CELL PER ORDERS OF _____

PLACED ON DATE _____ TIME _____

PROPERTY ALLOWED

CODES: SLEEPING-SL

STANDING-ST

LAYING-LA

EATING-E

SHOWER-SH

DISRUPTIVE-DI

TALKING-T

AWAKE BUT UNRESPONSIVE-UN

TIME	ACTIVITY	OFFICER	TIME	ACTIVITY	OFFICER	TIME	ACTIVITY	OFFICER
1205	LA	CD	1245	LA	M	345	LA	TH
1220	LA	DE	1300	LA	M	400	LA	TH
1235	LA	DE	1315	LA	M	415	LA	TH
1250	LA	DE	1330	LA	M	430	LA	TH
105	LA	DE	1345	LA	M	445	LA	M
120	LA	DE	1400	LA	M	500	LA	M
135	LA	DE	1415	LA	M	515	LA	M
150	LA	DE	1430	LA	M	530	LA	M
205	LA	DE	1445	LA	M	545	LA	M
220	LA	DE	1500	LA	M	600	LA	M
235	LA	DE	1515	LA	M	615	LA	TH
250	LA	DE	1530	LA	M	630	LA	TH
305	LA	DE	1545	LA	M	645	LA	TH
320	LA	DE	1600	LA	M	660	LA	TH
335	LA	DE	1615	LA	M	675	LA	TH
350	LA	DE	1630	LA	M	690	LA	TH
405	LA	DE	1645	LA	M	705	LA	TH
420	LA	DE	1700	LA	M	720	LA	TH
435	LA	DE	1715	LA	M	735	LA	TH
450	LA	DE	1730	LA	M	750	LA	TH
505	LA	DE	1745	LA	M	765	LA	TH
520	LA	DE	1800	LA	M	780	LA	TH
535	LA	DE	1815	LA	M	795	LA	TH
550	LA	DE	1830	LA	M	810	LA	TH
605	LA	DE	1845	LA	M	825	LA	TH
620	LA	DE	1900	LA	M	840	LA	TH
635	LA	DE	1915	LA	M	855	LA	TH
650	LA	DE	1930	LA	M	870	LA	TH
665	LA	DE	1945	LA	M	885	LA	TH
680	LA	DE	2000	LA	TH	900	LA	TH
695	LA	DE	2015	LA	TH	915	LA	TH
710	LA	DE	2030	LA	TH	930	LA	TH
725	LA	DE	2045	LA	TH	945	LA	TH
740	LA	DE	2100	LA	TH	960	LA	TH
755	LA	DE	2115	LA	TH	975	LA	TH
770	LA	DE	2130	LA	TH	990	LA	TH

INMATE PLACED ON FIVE POINT RESTRAINTS PER ORDERS OF 12:05 PM AWP Phillips

PLACED ON DATE 4-2-00 TIME 1205 PM

RELEASED FOR MEALS/RESTROOM USE (TIME) 9:30 PM Released meal @ 7:30 PM

RESTRAINTS CHECKED BY MEDICAL STAFF W. J. Smith Scarf up 7:50 PM

RELEASED FROM 5 POINT RESTRAINTS PER ORDERS OF _____

INMATE NAME / NUMBER L-419 ATTACHMENT #1 FIFTEEN MINUTE CHECK
A. Sadler # Redacted

INMATE PLACED ON 15 MINUTE WATCH PER ORDERS OF A.W. Phillips

PLACED ON DATE 4-2-00

TIME 12:05 PM

INMATE RELEASED FROM 15 MINUTE WATCH PER ORDERS OF _____

RELEASED DATE _____

TIME _____

PLACED ON STRIP CELL PER ORDERS OF _____

PLACED ON DATE _____

TIME _____

PROPERTY ALLOWED

CODES: SLEEPING-SL

STANDING-ST

LAYING-LA

EATING-E

SHOWER-SH

DISRUPTIVE-DI

TALKING-T

AWAKE BUT UNRESPONSIVE-UR

TIME	ACTIVITY	OFFICER	TIME	ACTIVITY	OFFICER	TIME	ACTIVITY	OFFICER
1100	LA	SD	1206	LA	SD	142	LA	SD
1114	LA	SD	1220	LA	SD	156	LA	SD
1128	LA	SD	1234	LA	SD	210	LA	SD
1142	LA	SD	1248	LA	SD	224	LA	SD
1156	LA	SD	1302	LA	SD	238	LA	SD
1210	LA	SD	1316	LA	SD	252	LA	SD
1224	LA	SD	1330	LA/T	SD	306	LA	SD
1238	LA	SD	1344	LA/T	SD	320	LA	SD
1252	LA	SD	1358	LA	SD	334	LA	SD
106	LA	SD	1412	LA	SD	348	LA	SD
120	ST	SD	1426	LA	SD	402	LA	SD
134	LA	SD	1440	LA	SD	416	LA	SD
148	LA	SD	1454	LA	SD	430	LA	SD
204	LA	SD	1508	LA	SD	444	LA	SD
218	LA	SD	1522	LA	SD	458	LA	SD
232	LA	SD	1536	LA	SD	512	T	SD
246	LA	SD	1550	LA/T	SD	526	LA	SD
300	LA	SD	1604	LA/T	SD	540	LA	SD
314	LA	SD	1618	LA	SD	554	LA	SD
328	LA	SD	1632	LA	SD	608	LA	SD
342	LA	SD	1646	LA	SD	622	LA	SD
356	LA	SD	1660	LA	SD	636	LA	SD
410	LA	SD	1674	LA	SD	650	LA	SD
424	LA	SD	1688	LA	SD	664	LA	SD
438	LA	SD	1702	LA	SD	678	LA	SD
452	LA	SD	1716	LA	SD	692	LA	SD
466	LA	SD	1730	LA	SD	706	LA	SD
480	LA	SD	1744	LA	SD	720	LA	SD
494	LA	SD	1758	LA	SD	734	LA	SD
508	LA	SD	1812	LA	SD	748	LA	SD
522	LA	SD	1826	LA	SD	762	LA	SD
536	LA	SD	1840	LA	SD	776	LA	SD
550	LA	SD	1854	LA	SD	790	LA	SD
564	LA	SD	1908	LA	SD	804	LA	SD
578	LA	SD	1922	LA	SD	818	LA	SD
592	LA	SD	1936	LA	SD	832	LA	SD
606	LA	SD	1950	LA	SD	846	LA	SD
620	LA	SD	1964	LA	SD	860	LA	SD
634	LA	SD	1978	LA	SD	874	LA	SD
648	LA	SD	1992	LA	SD	888	LA	SD
662	LA	SD	2006	LA	SD	902	LA	SD

R000971

RELEASE FROM 5pt. RESTRAINTS

A007387

R000972

VISION OF ADULT INSTITUTIONS SERIOUS INCIDENT REPORT

DOP 421
Attachment #2

Redacted

DATE & TIME OF INCIDENT 000
04/04/00 11:25 AM

INSTITUTION OR UNIT 000
Wallen's Ridge State Prison

TYPE OF REPORT 000
☐ Initial ☒ Follow-Up

SECTION A: NATURE OF INCIDENT

- 000 ☐ CLASS I:
000 ☐ Death/natural causes
000 ☐ Death/unnatural causes (specify) _____
- 000 ☐ Death/suicide
000 ☐ Escape
000 ☐ Riot
000 ☐ Demonstration/general disturbance
000 ☐ Discharge of firearms involving death or injury
000 ☐ Sabotage
000 ☐ Felonies committed by inmate while outside institution
000 ☐ Other (specify) _____

- IF ESCAPE, CHECK TYPE
000 ☐ Facility escape
000 ☐ Non-facility, under gun
000 ☐ Non-facility, trustee walkaway
000 ☐ Other (specify) _____

- ESCAPE STATUS AT TIME OF REPORT:
000 ☐ Still at-large
000 ☐ Surrendered
000 ☐ Wounded and in custody
000 ☐ Killed
000 ☐ Recaptured
000 ☐ Other (specify) _____

- 000 ☐ CLASS II:
000 ☐ Aggravated assault
000 ☐ Sexual assault
000 ☐ Felonies committed by inmates, staff, or visitors on institutional property
000 ☐ Self-mutilation
000 ☐ Use of force including non-lethal weapons and chemical agents where there is injury to the inmate or staff
000 ☐ Attempted escape
000 ☐ Accidents to inmates, employees or visitors involving serious injury or significant property damage
000 ☐ Discharge of firearm
000 ☐ Fires resulting in serious injury and/or major property damage
000 ☐ Alleged assault on an inmate by an employee
000 ☐ Other (specify) _____

- ESCAPE REPORT MADE TO
000 ☐ State Police
000 ☐ Sheriff
000 ☐ Local Police
000 ☐ Other (specify) _____

- SHOTS FIRED BY STAFF DURING ESCAPE?
000 ☐ Yes
000 ☐ No

- IF ASSAULT, ASSAULT WAS:
000 ☐ Actual
000 ☐ Attempted

- IF CLASS II INCIDENT:
000 ☐ Inmate on inmate with weapon
000 ☐ Inmate on inmate without weapon
000 ☐ Inmate on staff without weapon
000 ☐ Staff on inmate
000 ☐ Staff on staff

- EXTENT OF INJURY
000 ☒ STAFF INJURY
000 ☒ No injury
000 ☐ Less than serious
000 ☐ Serious

- 000 ☒ CLASS III:
000 ☐ Simple assault (explain in narrative)
000 ☐ Inmates fighting
000 ☐ Fires resulting in less than serious injuries and/or minor property damage
000 ☐ Accidents and accidental injuries of employees or inmates involving less than serious injuries
000 ☒ Any other incident not listed here but considered by the Warden or Superintendent to warrant notification of higher authority

- 000 ☒ INMATE INJURY
000 ☒ No injury
000 ☐ Less than serious
000 ☐ Serious

SECTION B: INCIDENT DISPOSITION

- 000 ☐ Pending
000 ☐ Referred to Internal Affairs Unit
000 ☒ Handled internally at institution
000 ☐ Inmate placed on detention/isolation
000 ☐ No further action
000 ☐ Other (specify) _____

SECTION C: PRINCIPALS INVOLVED

IDENTIFICATION	NAME	HOW INVOLVED
278020 CT INMATE	G. SADLER	PRINCIPAL
OFFICER	R. LEFEAVERS	ASSISTING OFFICER
OFFICER	S. ADAMS	ASSISTING OFFICER
OFFICER	K. FLEMING	ASSISTING OFFICER
SERGEANT	J. EATON	SUPERVISOR

DESCRIBE INCIDENT (Who, What, When, Where, Why, How):

On April 4, 2000, at approximately 11:25 a.m., Sgt. J. Eaton along with Officers R. Lefeavers, S. Adams, and K. Fleming entered Cell D-302 to remove Connecticut inmate G. Sadler Redacted from 5-point restraint. Upon entering the cell, Officer Fleming placed the I.C.E. Shield over inmate Sadler to prevent assault on staff. Officer Lefeavers then placed leg irons on the inmate's ankles. Officer Adams removed the inmate's left and right ankles from the humane restraints. Officer Lefeavers then placed handcuffs on inmate Sadler's left wrist and Officer Adams removed the humane restraint from the inmate's left wrist. At this time, Officer Lefeavers secured the inmate's right wrist in the handcuffs and Officer Adams removed the humane restraint from inmate Sadler's right wrist. Officers Adams and Lefeavers then removed the chest strap and removed all the humane restraints from the cell. Officers Lefeavers and Adams assisted inmate Sadler to his feet and escorted him to the door and instructed him to kneel down. Inmate Sadler complied. Officer Adams removed the leg irons and instructed the Control Room Officer to secure the door. Once the door was closed, Officer Adams removed the handcuffs without incident.

Inmate Sadler was checked by Nurse Hobbs. There were no injuries to inmate Sadler.

There was no use of force and the I.C.E. Shield was never activated. The entire process was filmed by Sgt. J. Eaton.

Notifications:

Major T. Yates 12:00 P.M.
Regional Office by Fax
Connecticut DOC by Fax

Robert Snider Grade 11

Typed Name & Grade of Reporting Officer

[Signature] 11/14

04/04/00 12:15 PM

Date & Time of Report

DIVISION OF ADULT INSTITUTIONS
DOP 421

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-4-00 2. TIME: 11:25am
3. LOCATION: D-302
4. INMATE(S) NAME(S) AND NUMBER 5. INVOLVEMENT
G. Sadler Redacted

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC)

On the above date and time Inmate Sadler Redacted was released from 5pt. Restraints. C/O Fleming held the ICE Shield it was not activated. C/O Adams removed all 5pt. Restraints and applied the leg irons and handcuffs with the assistance of C/O Lefever. At this time Inmate Sadler was escorted to the cell door where he kneeled down. C/O Adams removed the leg irons and the cell door was secured. Inmate Sadler was then ordered to put his hands out of the tray slot so the handcuffs could be removed he complied. C/O Adams removed the handcuffs and the tray slot was secured. Inmate Sadler was seen by Nurse Hobbs with no injuries noted. There was no force used. This incident was filmed by Sgt. J Eaton.

USE SUPPLEMENT IF NEEDED

7. SIGNATURES:

[Signature] Reporting Officer [Signature] Supervisor [Signature] Watch Commander

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON

INCIDENT REPORT

1. DATE: 4-4-002. TIME: 1125/AM3. LOCATION: D-302

4. INMATE(S) NAME(S) AND NUMBER

G. Sadler Redacted

5. INVOLVEMENT

Release from 5-point restraints

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC.)

On the above date and approximate time, I Ch LeFevre along with Co Adams and Co Fleming and Supervisor Sgt. Eaton released inmate Sadler from 5-point restraints. Sgt Eaton operated the camera. Co Fleming held the shield. Co Adams removed all leather restraints and I Ch LeFevre put handcuffs and leg iron on the inmate and took the restraints off as he was secured in his cell. The inmate was checked by Nurse Habbs and deemed to be O.K. The inmate was released from 5-point restraints without incident.

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. [Signature]
REPORTING OFFICER[Signature]
SUPERVISOR[Signature]
WATCH COMMANDER

8. FILE NUMBER: _____

INCIDENT REPORT

1. DATE: 4-4-00 2. TIME: 11:25am3. LOCATION: D302

4. INMATE(S) NAME(S) AND NUMBER

G. Stadler Redacted

5. INVOLMENT

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC.)

On 4-4-00 at approximately 11:25am, myself, W.K.M. Fleming, J. LeFeviers, and J. Adams, supervised by Sgt. Eaton, removed Inmate G. Stadler Redacted from Spauldine restraints. I held the shield while J. LeFeviers and J. Adams removed restraints and applied leg irons and handcuffs. Inmate Stadler backed up to the cell door, and has the handcuffs and leg irons removed. No incident force used. Inmate Stadler was checked by Nurse Hobbs, who said he was fine. Filmed by Sgt. Eaton. END of Report.

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. W.K.M. Fleming Sgt. Eaton J. Adams
REPORTING OFFICER SUPERVISOR WATCH COMMANDER

8. FILE NUMBER: _____

WALLENS RIDGE STATE PRISON INCIDENT REPORT

1. DATE: 4-4-002. TIME: 11 ²⁵ AM3. LOCATION: D-202

4. INMATE(S) NAME(S) AND NUMBER

G. Sadler Redacted

5. INVOLVEMENT

Released From Spt. Restraints

6. DESCRIPTION (WHAT HAPPENED? HOW? BE SPECIFIC.)

ON THE ABOVE DATE AND APPROXIMATE TIME: I /
S. ADAMS ENTERED CELL D-302 TO TAKE SPT. RESTRAINTS
OFF OF INMATE G. SADLER Redacted ALL RESTRAINTS WERE
RELEASED AND NO FORCE WAS USED.

USE SUPPLEMENT IF NEEDED

SIGNATURES:

1. % S. Adams
 REPORTING OFFICER

[Signature]
 SUPERVISOR

[Signature]
 WATCH COMMANDER

8. FILE NUMBER: _____

POSITION DESCRIPTIONS FOR
S. K. YOUNG, WARDEN
AND
M. HUTCHINSON, INVESTIGATOR

ENCLOSURE B

**COMMONWEALTH OF VIRGINIA
POSITION DESCRIPTION**

INSTRUCTIONS: This position description is an important document for determining the appropriate classification, pay range and performance standards for a position. Parts I and II are generally completed by the employee in the position with supervisory review. The shaded areas of Part I, however, should be completed by the supervisor or agency personnel officer. Part III is to be filled out by the immediate supervisor. Please be sure that the information on this form is accurate and complete. You may refer to the Position Description brochure, "Here's How To Write a Position Description" for guidance in the complete of this form.

PART I: ORGANIZATIONAL INFORMATION

1. Name (Last, First, Middle) Young, Stanley K.	2. Date: March 10, 2000
3. Class Title: Corrections Chief Warden	4. Position Number: Redacted
4. Working Title if Different:	6. Agency : Department of Corrections
7. Work Location (County or City) and Location Code: Wise Co. - 195	8. Agency Code: 735
9. Title and Position Number of Immediate Supervisor: Regional Director Redacted	10. Organizational Unit: Wallens Ridge State Prison

PART II: POSITION INFORMATION

11. State the chief objective of your position in a brief statement: Plans, organizes and directs the operations of a major maximum custody prison providing comprehensive secure confinement, and other programs by setting policy and ensuring adherence to policies and procedures for the most difficult inmates in the Virginia Prison System.
12. Prior to filling out the next section, think about the tasks and duties that you perform in your position. Consider the time you spend on the tasks and duties, how important they are to achieving the objective of your position, and the processes or ways in which you perform these tasks and duties. After considering these aspects of your position, state the tasks and duties that you perform in your position on page 2 of this form. • State the most important duty first and finish with the least important duty of your position. • Calculate the percent that each duty requires of your working time. Be sure these percentages total 100%. • Include all tasks, duties and functions that you perform except those that occupy 2% or less time, unless you consider them very important.

Percentage of Total Working Time	Work Tasks and Duties
25%	Serves as chief executive officer of the prison on all matters relative to inmates, personnel, volunteers, programs, security, and other activities connected with the prison. Directs the accomplishment of the prison's mission in accordance with constitutional and legislative statutes, and the administrative framework of agency and institutional rules, guidelines and policies.
20%	Establishes and communicates to staff the philosophy and long-range goals of the prison. Formulates (with staff assistance) goals, objectives, policies, procedures and programs for the prison. Reviews all plans, policies, procedures and programs on annual basis and makes necessary revisions. Meets with staff and reviews daily operation of prison to ensure that practice is consistent with goals, objectives, policies and standards.
10%	Observes inmate activities and work programs. Approves/disapproves special visits. Reviews level I answers to inmate grievances and responds to level II grievances. Manages emergency situations involving inmates.
10%	Manages secure confinement and inmate programs through direct supervision of two Assistant Wardens.
10%	Manages a program of employee relations through direct supervision of the agency personnel supervisor to ensure the selection, retention, and promotion of all personnel on the basis of merit and specified qualifications. Ensures compliance with all Equal Employment Opportunity/Affirmative Action programs. Reviews annually all institutional personnel policies and makes necessary revisions.
10%	Responsible for fiscal policy, management, and control through direct supervision of the agency fiscal officer. Ensures that planning, budgeting, and program management functions are coordinated and linked with institutional goals and objectives. Monitors compliance with accounting policies and procedures for expenditures of appropriated funds and management of inmate funds.
10%	Ensures prison has on-going training program through the direct supervision of ITO who provides employees with on-the-job training, and specialized training programs to meet required standards and prepares employees to perform their jobs safely and efficiently.
05%	Provides for a program of public information and cooperative relations with community agencies, public groups and civic organizations; schools and colleges; and the media. Maintains positive and pro-active relations with political representatives to ensure that they are aware of institutional short and long term goals and initiatives.
100%	Other duties as assigned

(Add Additional Pages if Needed)

13. What work actions and/or decisions do you make without prior approval? To what extent do you receive advice and guidance from your supervisor? State examples of the types of supervisory advice and guidance that you receive as well as actions or decisions you make without prior approval.

Without prior approval:

- Daily utilization of staff and monetary resources
- Ongoing maintenance of security and security improvements
- Hiring actions up to Grade 10
- Program Development
- Classification Actions
- Scheduling of staff for appropriate coverage
- Resolution of inmate complaints

Advice and Guidance:

- Major and capital expenditures
- Disciplinary actions and hiring Grade 10 positions and above
- Changes and updates in policies and procedures
- Media releases
- Litigation

14. List and explain the contacts you have, if any, both within and outside the state Government, as a routing function of your work. Do not list contacts with supervisors, coworkers, and subordinates.

Persons or Organizations	Purpose	How Often	Inside/Outside Virginia Government
Regional Office	Advice, consultation, and approval of management functions	Daily	Inside
Local Civic Groups, Churches, Citizens	Public relations and provision of volunteer services	Weekly	Outside
Attorney General's Office	Legal advice, assistance with internal investigations	As Needed	Inside
Other DOC Facilities	Coordination of transfers, policy development	Weekly	Inside
Central Office Staff	Personnel, Budget, Program Development Tasks	Weekly	Inside

(Additional comments by employee)

PART III: TO BE COMPLETED BY THE SUPERVISOR

15. Please review the employee's statements and comments for this position to ensure their completeness. State any additions, and/or revisions

16. What is the most important service or product you expect of the position described in this questionnaire? Explain.

The total responsibility for the operation of the prison in accordance with constitutional and legislative statutes and the administrative framework of agency and institutional rules, guidelines and policies.

17. List the class titles, position numbers, and names of other employees under your direct supervision that have the same duties and responsibilities as this position.

CLASS TITLE

POSITION NUMBER

NAME

CLASS TITLE	POSITION NUMBER	NAME
_____	_____	_____
_____	_____	_____

18. List What you consider to be the qualifications for entry into this position:

A. What knowledge, skills, and abilities should a new employee bring to this position?

Comprehensive knowledge of total institutional operations and management of maximum security prisons; comprehensive knowledge of inmate security, inmate programs and facility operations including personnel and finance. Demonstrated ability to plan and direct the work of a large, diverse staff of professional, technical and administrative employees and to communicate effectively, both orally and in writing.

B. Special Licenses, registration or certification:

None

C. Education or training (cite major area of study):

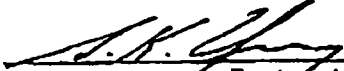
Graduation from a college or university with course work related to criminal justice, public administration or related field.

D. Level and type of experience:

Progressively responsible executive management experience in security, operations, and administration in a correctional facility.

PART IV: SIGNATURE LINES

19. We understand the above statements, and they are complete to the best of our knowledge.


Employee's Signature

2-4-00
Date


Supervisor's Signature

2/5/2000
Date

20. Attach an organization chart showing the employee's position within your organizational unit.

**COMMONWEALTH OF VIRGINIA
POSITION DESCRIPTION**

INSTRUCTIONS: This position description is an important document for determining the appropriate classification, pay range and performance standards for a position. Parts I and II are generally completed by the employee in the position with supervisory review. The shaded areas of Part I, however, should be completed by the supervisor or agency personnel officer. Part III is to be filled out by the immediate supervisor. Please be sure that the information on this form is accurate and complete. You may refer to the Position Description brochure, "Here's How To Write a Position Description: for guidance in the complete of this form.

PART I: ORGANIZATIONAL INFORMATION

1. Name (Last, First, Middle) Hutchinson, Michael E.	2. Date: 02/25/00
3. Class Title: Corrections Sgt. Inst. Investigator	4. Position Number: Redacted
4. Working Title if Different:	6. Agency : Department of Corrections
7. Work Location (County or City) and Location Code: Wise County - 195	8. Agency Code: 735
9. Title and Position Number of Immediate Supervisor: Corrections Chief Warden	10. Organizational Unit: Wallens Ridge State Prison

PART II: POSITION INFORMATION:

11. State the chief objective of your position in a brief statement: Investigates allegations of criminal activities and/or violations of rules, regulations, and policies committed by persons in the custody of the Department and allegations of staff misconduct or related incidents.
12. Prior to filling out the next section, think about the tasks and duties that you perform in your position. Consider the time you spend on the tasks and duties, how important they are to achieving the objective of your position, and the processes or ways in which you perform these tasks and duties. After considering these aspects of your position, state the tasks and duties that you perform in your position on page 2 of this form. • State the most important duty first and finish with the least important duty of your position. • Calculate the percent that each duty requires of your working time. Be sure these percentages total 100%. • Include all tasks, duties and functions that you perform except those that occupy 2% or less time, unless you consider them very important.

Percentage of Total Working Time	Work Tasks and Duties
25%	Conducts investigations on all assignments received from Warden. Interviews victims, complainants and witnesses. Develops suspects, matches evidence to suspects and prepares detailed reports of investigations. Collects and presents evidence obtained during investigations in a court of law or institutional hearings. Briefs supervisor on status of cases.
25%	Receives information and complaints from employees, inmates and general public regarding their suspicions and/or observations of crimes or violations of laws, rules, regulations, and policies. Answers inmate complaints. Investigates allegations and reports incidents to the Warden and Investigative unit as outlined in Department of Corrections policy.
15%	Maintains evidence lockers. Controls chain of custody and disposition of all evidence and contraband, to include security video tapes.
5%	Collects crime scene evidence, controlled drug evidence and other laboratory evidence and delivers such evidence to Forensic Science Laboratory in Richmond for analysis. Labels and controls chain of evidence on all control items.
5%	Established files and case numbers for all investigations. Maintains written files and records of all cases from beginning through completion. Takes fingerprints of suspects and/or deceased inmates and forwards to the Investigative Unit.
5%	Performs random monitoring of inmate telephone system. Documents and records conversations for investigations, prosecution or institutional charges.
5%	Coordinates with the local Commonwealth's Attorney office whenever a criminal offense is found. Process necessary paperwork to obtain criminal charges and/or warrants against inmates. Collects evidence for use by the local Commonwealth's Attorney and advises him/her of progress. Testify in court as needed. Acts as a liaison to other law enforcement agencies.
5%	Assists Federal, State and local law enforcement agencies in any investigation that pertains to the institution. Alerts necessary Department of Corrections staff as needed.
5%	Requests authorization to monitor inmate mail when unlawful activities are suspected. Reads inmate mail when authorized to obtain information. Performs random inspection of mail for contraband or unauthorized correspondence.
5%	Receives writs, summons, and subpoenas from sheriff's deputies regarding court appearances. Notifies staff and inmates of court appearances.
100%	Performs other duties as assigned

(Add Additional Pages if Needed)

13. What work actions and/or decisions do you make without prior approval? To what extent do you receive advice and guidance from your supervisor? State examples of the types of supervisory advice and guidance that you receive as well as actions or decisions you make without prior approval.

Investigates and prepares reports on all incidents involving physical force and possible criminal violations to the Warden. Contacts Investigative Unit in accordance with established policy and procedures.

Conducts random test of drugs and alcohol abuse in inmate population.

Sends or presents evidence to Forensics Science lab for proper evaluation.

Maintains written and oral communications with the Commonwealth's Attorney office.

Recommends that inmates be placed on General Detention depending on the severity of the incident.

14. List and explain the contacts you have, if any, both within and outside the state Government, as a routing function of your work. Do not list contacts with supervisors, coworkers, and subordinates.

Persons or Organizations	Purpose	How Often	Inside/Outside Virginia Government
Postal Inspector	Mail Fraud	As Needed	Outside
Attorney General Staff	Incidents involving staff and inmates	Weekly	Inside
Commonwealth's Attorney	Incidents involving staff and inmates	Monthly	Inside
Hospitals, Court System	Complaints on inmates and staff, felon charges, etc.; gather information	As Needed	Outside
Local Law Enforcement	Inmate activity and investigations	Monthly	Inside
Forensic Lab	Analyzing evidence	Monthly	Inside

(Additional comments by employee)

PART III: TO BE COMPLETED BY THE SUPERVISOR:

15. Please review the employee's statements and comments for this position to ensure their completeness. State any additions, and/or revisions

16. What is the most important service or product you expect of the position described in this questionnaire? Explain.

To investigate complaints, criminal activity, as well as violations of rules and regulations so that appropriate action can be taken against violators.

17. List the class titles, position numbers, and names of other employees under your direct supervision that have the same duties and responsibilities as this position.

CLASS TITLE

POSITION NUMBER

NAME

18. List What you consider to be the qualifications for entry into this position:

- A. What knowledge, skills, and abilities should a new employee bring to this position?
General knowledge of criminal law. Knowledge of criminal investigation methods and techniques and security procedures. Skill in interviewing suspects and witnesses to obtain pertinent data. Ability to secure and preserve crime scene evidence. Ability to document findings and present court hearing testimony. Ability to communicate effectively orally and in writing.
- B. Special Licenses, registration or certification:
None
- C. Education or training (cite major area of study):
High School graduate or equivalent. Training in law enforcement, corrections and investigations helpful.
- D. Level and type of experience:
Responsible investigative or security related experience.

PART IV: SIGNATURE LINES:

19. We understand the above statements, and they are complete to the best of our knowledge.

Michael P. Hutchinson
Employee's Signature

3/1/2000
Date

[Signature]
Supervisor's Signature

2-4-00
Date

20. Attach an organization chart showing the employee's position within your organizational unit.

R000986

MEDICAL RECORDS
(REGARDING BEING PLACED IN 5pt RESTRAINTS)

A007402

Inmate Name Jacques Leary

0000027
Redacted

Assignment/Date/Time _____ Complaint and Treatment _____ Signature and _____

W.R.S.F. 4/2/00 Called to 10 building to check restraints in 10:30a. Inmate #1013, no distress noted. Inmate denies suicidal thoughts. Able to fit 2 fingers between each ankle and wrist restraint. Capillary refill less than 3 seconds. Able to fit 2 fingers between chest and chest restraint. Respirations even and unlabored. No distress noted. Inmate complains that "I've got a fractured bone in my wrist." Wrist checked inmate able to move wrist, dorsal and lateral. Bony strong and equal to right wrist. No discoloration or edema noted to left hand or arm. Able to move fingers without any difficulty. Will check restraints of Shift and P.M. —————

Amber 12

4/2/00 11:30a Called to 10 Building to check Inmate #1013
burning in mid chest area.

S: "My chest is burning in the middle."

O: BP 120/60 p-60 R-98 S102-998 Abdomen by nursing that Inmate has been refusing meals. Skin W/O, Denies nausea. No acute distress noted.

A: Allt Contact

P: Instructed Inmate that he needs to eat meals offered to him. Notify Medical if symptoms worsen.

Amber 12

Date Name

Shadler, Mary

R000988

Redacted

Institution/Date/Time | Complaint and Treatment | Signature and

W.R.S.P. 4/3/00 | Called to D-Building to check restraints
7:50 AM | in 302.

(D) Alert & oriented x3. Skin warm & dry to touch. Wrist restraints intact. Radial pulses @ bilaterally. CRT < 3 sec. Able to move hands & fingers freely. Ankle restraints intact. Pedal pulses @ bilaterally. CRT < 3 sec. Can place two fingers between ankle & ankle restraints. Able to place 2 fingers between wrist & wrist restraints. Wrist restraint intact. Able to place both hands between chest & chest restraint. No abs or respiratory noted. Resp. even & unlabored. No. Expressed noted.

(A) All in comfort.

(P) Will check restraints of shift & as per security request.

Scuf 10

WESP 4/3/00 1:30 PM | Called to D-Building to check restraints
in 302.

(D) Alert & oriented x3. Skin warm & dry to touch. Wrist restraints intact. Radial pulses @ bilaterally. CRT < 3 sec. Able to place 2 fingers between wrist & wrist restraints. Ankle restraints intact. Able to place 2 fingers between ankle & ankle restraints. Pedal pulses @ bilaterally. CRT < 3 sec. Chest restraint intact. Able to place both hands between chest & chest restraint.

(P) no abs or respiratory noted. No. Expressed noted.

Inmate Name

Adams

Garey

Date

Redacted

Institution/Date/Time

Complaint and Treatment

Signature

W.R.S.P. Cont. (P) No Cyanosis noted. No acute distress noted.

(A) Plt. in conflict.

(P) Will check restraints of shift and as per security request.

Scarf 11

4/3/00

W.R.S.P.

6pm Called to D3 pod to check

I/M 5pt restraints. Wrist & ankle

restraints checked - 2 fingers clearance

present. No Cyanosis noted. CRT 3 sec.

Chest restraints intact. Hands pass

freely. No resp distress or impairment

noted - no distress noted.

(Signed)

4/4/00 0012

Called to D302 to check restraints

5 restraints in use. Able to slide

two fingers between all restraints

Skin warm and dry. CRT 3 sec.

IM claimed to have been vomiting

earlier. (Nothing charted) IM restrained

on stomach to prevent any possible

aspiration if vomiting were to

occur. No impairment of resp status

as a result of chest restraints.

IM voices no other problems at this

time. No suicidal or homicidal ideation

noted at this time.

J. A. B. D.

Inmate Name

SAULER, J. G.

R000990

Redacted

Institution/Date/Time

Complaint and Treatment

Signature

W.R.S.P. 1:00 P.

TO CELL DOOR TO CHECK I/M

4-4-00

PER SECURITY, UP FROM 5 PM RESTRAINT.

S "I'M FINE I DON'T NEED ANY
MEDICAL HELP"

O. NO SIGN OF DISTRESS, ALERT AND

ORIENTED X3- GIVE STEROID, NO

BROKEN AREA-ALTED AT THIS TIME.

A. ALTERNATION IN COMFORT.

P. CONTINUE TO MONITOR AT

I/M REQUEST. — P. HARRIS L.P.N.

300
309 Inmate Name

Shaner, Gary

Institution/Date/Time

Complaint and Treatment

Signature

W.R.S.P. 4/6/00

WRSP-SEC

WEEKLY CHECK

WEIGHT 160 lbs.

VITALS 96.8 74 18 124/60

DATE 4/6/00

Alert & Oriented x3. No A&S of acute distress noted.

Scary

4/14/00

S. Thompson - SC unit humbress

(L) hand since he was 5 points

of restraints on 4-4-00

(1) (L) hand - GRM (Gonifex)

Extremity & movement 5

Be difficulty. Sensation full

A. G/O trauma (L) hand.

R X-ray (L) hand.

No further Orders.

Amended

4-14-00

Chart Review

Mullins

R000992
DOC 11

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF CORRECTIONS

INMATE NAME 3 Adler Co INMATE # Redacted
LAST FIRST MI.

INSTITUTION/DATE/TIME	COMPLAINT AND TREATMENT	SIGNATURE AND TITLE
W. R. S. P.		
42700	WRSP-SEG WEEKLY CHECK	
	WEIGHT <u>151</u>	
	VITALS <u>110/70 98.6 84 20</u>	
	DATE <u>42700</u>	
5/4/00 9:25A.	5:1" I was tied down on 4/2/00 with my hands behind me and the weight of my body closed the hand cuffs on my wrist ever since I have numbness in my hand. "	<u>[Signature]</u>
	0: I'm brought to dept. for Lt hand series	
	P: X-Ray completed and referred to md for evaluation	<u>M. Lewis R. (R)</u>
5/19/00		

May 88 2000 19:43:17 EDT International Radiology Group MSG# 681- 03-1

R000993
Page 009 Of 014

International Radiology Group, L

1909 HI Line Drive
Dallas, Texas 75207

Facility: CM50727

Patient: Gary Sadler

Date of Birth: Redacted

Medical Record # Redacted

Referring Physician: Ortiz

Date of Study: 05/04/2000

Technologist: M. Farris

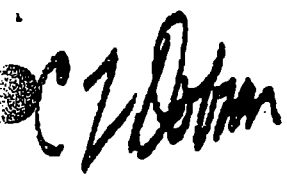
History: History of being shot 7/12/79. I/M refused right shoulder.

LEFT HAND:

Three views of the left hand demonstrate intact tubular bones of the hand and normal joints widths. Smaller bones of the wrist visualized are intact, and intercarpal joint widths are normal. No significant soft tissues abnormality is demonstrated.

IMPRESSION:

Normal left hand.


Carl Dobson M.D.
05/08/2000

A007409

5-9-00

MANAGEMENT OF INMATE BEHAVIOR
WALLENS RIDGE STATE PRISON

L.O.P. #414 ATTACHMENT #2
MARCH 18, 1999

WALLENS RIDGE STATE PRISON
AUTHORIZATION FOR RESTRICTED FEEDING

DATE: April 2, 2000
TO: Warden Mr. Young

RESTRICTED FEEDING IS AUTHORIZED FOR INMATE:

B. Sadler
INMATE NAME

Redacted
NUMBER

ON A BAG MEAL OF ONE (1) LOAF TWICE PER DAY, FOR A PERIOD 7 DAYS

BEGINNING TODAY Sunday Supper Meal April 2, 2000
(day) (date)

AND ENDING Sunday Supper Meal April 9, 2000
(day) (date)

NOT TO EXCEED SEVEN (7) CALENDAR DAYS

Specific reasons for this request are as follows: (Describe reasons for need to begin/continue restricted feeding procedures).

On April 2, 2000 B. Sadler Redacted received his lunch meal on his tray slot and he pick it up and threw it on officer A. Young hitting him with it waist high. Inmate is being put on restrictive feeding per IOP #414 H-Throwing Food.

[Signature] For AWP PHILLIPS
(WARDEN)

4-2-00
DATE

T.O. De Nardone / B. [Signature]

COPY: Chief of security, Food Service Manager/Supervisor, RNCB,
Shift Commanders (3 copies), Building Lt. And Sgt.

#14



6 of 6 DOCUMENTS

GARY NEAL SADLER, Plaintiff, v. S.K. YOUNG, ET AL., Defendants.

Case No. 2:00CV70581

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
VIRGINIA, BIG STONE GAP DIVISION

325 F. Supp. 2d 689; 2004 U.S. Dist. LEXIS 13701

July 21, 2004, Decided

SUBSEQUENT HISTORY: Reversed by, Remanded by *Sadler v. Young*, 2005 U.S. App. LEXIS 163 (4th Cir. Va., Jan. 5, 2005)

DISPOSITION: [**1] Plaintiff's motion for judgment as a matter of law granted in part and denied in part.

COUNSEL: Gary Neal Sadler, Plaintiff, Pro se.

Mark R. Davis and Joel C. Hoppe, Office of the Attorney General, Richmond, Virginia, for Defendants.

JUDGES: By: James P. Jones, Chief United States District Judge.

OPINION BY: James P. Jones

OPINION

[*690] OPINION AND ORDER

By: James P. Jones

Chief United States District Judge

This is a prisoner's rights action filed under 42 U.S.C.A. § 1983 (*West* 2003), against Virginia state prison officials who completely immobilized the plaintiff for nearly forty-eight hours by strapping his wrists, ankles, and chest to a prison bed after he slapped his food tray onto a guard. A jury found for the defendants and the plaintiff has moved for judgment as a matter of law as to his *Eighth* and *Fourteenth Amendment* claims. While the initial restraint of the prisoner did not violate his rights, I find that his continued restraint was without legitimate purpose. Accordingly, I will grant the plain-

tiff's motion and afford him a new trial limited to the issue of damages.

I

On April 2, 2000, while incarcerated [**2] at Wallens Ridge State Prison ("WRSP"), in Big Stone Gap, Virginia, Gary Neal Sadler "slapped" a food tray onto an officer as the officer attempted to deliver the tray to him. In response to this incident, WRSP officers immediately confined Sadler in five-point restraints and continued to keep him restrained for forty-seven hours and twenty minutes. Sadler was bound face-up to a prison bed by plastic restraints at his wrists, ankles, and across his chest. During his confinement, he was dressed in his undershorts, without a blanket or other covering. Sadler was temporarily released from the five-point restraints only six times during the nearly two days, for approximately fifteen minutes each time, to use the toilet and eat.

Sadler filed this § 1983 suit pro se claiming that his constitutional rights to be free of cruel and unusual punishment under the *Eighth Amendment* and to not be deprived of liberty without due process of the law under the *Fourteenth Amendment* were violated by the defendants. The four defendants are employed at WRSP. ¹ David Allen Taylor is a correctional officer who recommended that Sadler be confined in five-point restraints and supervised his initial placement [**3] in them. John M. Eaton and Terry Givens are correctional officers who supervised Sadler's temporary releases from the five-point restraints. Stanley K. Young is the warden of WRSP and did not participate in the decision to restrain Sadler or to keep him restrained but is [*691] responsible for the overall operation of the institution. Young also reviewed the grievance Sadler filed after his release from confine-

ment and determined that the officers had complied with prison policy.

1 Two WRSP nurses, Vicki Harber and Phyllis Hobbs, and a WRSP investigator, Michael E. Hutchinson, were also defendants, but Harber's and Hutchinson's motions for summary judgment were granted before trial and Hobbs' motion for judgment as a matter of law was granted at trial. Another defendant, D. Parlier, a correctional officer, was severed and granted a continuance because he had been called up on active military duty.

Sadler was housed in a Connecticut prison at the time of the trial and represented himself via video conferencing. The [**4] jury was instructed as to liability and damage issues and returned a verdict for the defendants. Sadler thereafter moved in a timely fashion for judgment as a matter of law and a new trial.

I have reviewed the parties' briefs on the motions, the trial transcript, and the trial exhibits. The motions are now ripe for decision.

II

Pursuant to *Rule 50*, a district court may grant a motion for a judgment as a matter of law after the jury has reached a verdict "if ... there is no legally sufficient evidentiary basis for a reasonable jury to find for [the non-moving] party." *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 301 (4th Cir. 1998); *Fed. R. Civ. P. 50*. The motion should not be granted unless, viewing the evidence in the light most favorable to support the jury verdict, "the evidence is so clear that reasonable men could reach no other conclusion than the one suggested by the moving party." *Persinger v. Norfolk & W. Ry. Co.*, 920 F.2d 1185, 1189 (4th Cir. 1990). In considering a *Rule 50* motion, this court cannot "weigh evidence or assess the credibility of witnesses." *Wilhelm v. Blue Bell, Inc.*, 773 F.2d 1429, 1433 (4th Cir. 1985). [**5]

The evidence at trial, viewed in the light of the foregoing principles, shows as follows.

A. The Events Leading to Sadler's Confinement in Five-Point Restraints.

Sadler is a Connecticut inmate who was temporarily incarcerated at WRSP. ² On April 2, 2000, Sadler was housed in WRSP's segregation unit, which is under twenty-three hour lockdown. ³ Because an inmate in segregation is under lockdown, correctional officers deliver meals to him by sliding a food tray through a narrow slot in the cell door that can only be unlocked by the officers. Sadler testified that during the lunch service on April 2, he had observed Correctional Officer Young "taking

something out of his mouth and putting it inside some food trays he was [**692] delivering to the inmates." (Tr. at 4.) Sadler said that he had informed Young that he would report him and that he did not wish to receive his lunch, but that Young had continued to slide the food tray into his cell's tray slot despite this request. Sadler told the jury that as he blocked the tray slot with his hands in order to prevent the meal from entering his cell, the tray fell back toward Young and spilled onto him. Young then closed and locked Sadler's [**6] tray slot and left.

2 Sadler was one of about five hundred Connecticut prisoners transferred to WRSP under a contract between the Virginia and Connecticut state governments in order to relieve prison crowding in Connecticut. The transfer was controversial in Connecticut, particularly after the deaths of two Connecticut inmates at WRSP. See *Young v. New Haven Advocate*, 315 F.3d 256, 259 (4th Cir. 2002) (regarding Warden Young's libel suit against Connecticut newspapers). The Connecticut inmates have since been removed, following an inquiry by the Connecticut Office of Protection and Advocacy for Persons with Disabilities and a federal lawsuit in Connecticut. See Craig Timberg, *Connecticut Pulls Prisoners From Wallens Ridge*, Wash. Post, July 25, 2001, at B01. One of the allegations in the lawsuit involved the indiscriminate use of five-point restraints. *Id.*

3 Inmates can be placed in the segregation unit by a watch commander, if, for example, they receive an institutional infraction such as disobeying a direct order or if an inmate fears for his safety. Inmates confined in segregation receive fewer privileges, fewer recreational opportunities, and less room to move than inmates in general population. Within seventy-two hours of being placed in segregation, the inmate receives an Inmate Classification Authority ("ICA") hearing at which the warden reviews the decision to place the inmate in segregation and determines the appropriate length of confinement depending upon the infraction. The inmate then has the opportunity to make statements in his defense. The record does not reveal why Sadler was confined in segregation.

[**7] Officer Young is no longer at WRSP and did not testify at trial, but he did record his account of the event in an incident report that day. In his report, he wrote that at approximately 11:30 a.m., when he had handed Sadler his food tray through the cell's tray slot, "Sadler came to the door and slapped his tray and food on me and the floor. The beans hit me from my face to

my boots. Sgt. Davidson was notified immediately." (Pl.'s Ex. 3.) Officer Young was not injured during this incident. (Tr. at 67.)

Captain Taylor, the watch commander, was notified of the incident and recommended to his supervisor, Administrative Duty Officer ("ADO") Randy Phillips, that Sadler be placed in five-point restraints for three reasons: (1) He believed that the assault of Young with the food tray was deliberate; (2) he was informed that after the incident Sadler began "raising hell" verbally; and (3) in the past Sadler had attempted to assault an officer by jerking the officer's arm through his cell's food tray slot while the officer had been cuffing him. ⁴ (*Id.* at 70-71.) At trial, Taylor testified that he had neither witnessed Sadler's verbal hell raising nor could he recall the nature of the [**8] threats that the officers had described to him. Pursuant to Taylor's recommendation, ADO Phillips ordered that Sadler be placed in five-point restraints and on restrictive feeding to prevent further staff assaults and ensure the safe and orderly operation of the unit. ⁵ Taylor testified that the purpose of placing Sadler in five-point restraints instead of leaving him in his cell had not been to punish him, but to ensure that he did not assault the staff. ADO Phillips did not testify at trial.

4 Sadler received disciplinary convictions at WRSP between January (when he first arrived at WRSP) and April 2000 twice for disobeying direct orders (refusing to open food slot and refusing to leave shower) and once for attempting to assault an officer (jerking officer's arm through food tray slot while being cuffed).

5 The institutional physician, Dr. Nwuache, approved the use of restrictive feeding on Sadler. (Pl.'s Ex. 3.) Sadler's placement on restrictive feeding was authorized by Warden Young on April 2, 2000, starting with his Sunday supper meal that day and ending with his Sunday supper meal on April 9. (*Id.*)

[**9] It is unclear how much time elapsed between Young's encounter with Sadler and Taylor's recommendation to place Sadler in five-point restraints. Young's Incident Report states that the tray incident occurred at approximately 11:30 a.m. Taylor's Serious Incident Report states that the incident occurred at approximately noon and that ADO Phillips was notified at 12:10 p.m. Sadler, however, testified that Young had not returned to his cell with Taylor and the other officers to restrain him for about an hour. Despite the ten-minute time lapse Taylor had indicated in his Serious Incident Report, at trial he testified that to the best of his recollection not more than five minutes had elapsed from the time that he had received the report of a disturbance until the time that he had arrived at Sadler's cell to restrain him.

At least eight officers, including Taylor, were involved in the process of physically restraining Sadler. Sadler complied with their orders to back up to the tray slot to [**693] have his wrists cuffed, kneel on the floor to have leg irons placed on him, and be escorted to the restraint cell, where he was placed face-up on the restraint bed. One officer held an electronic shield [**10] over Sadler's chest as he lay on the mattress but did not activate it. Other officers removed Sadler's right ankle from the leg iron and secured it to the bed with a restraint, removed Sadler's left ankle from the leg iron and secured it to the bed with a restraint, removed Sadler's right wrist from the handcuffs and secured it to the bed with a restraint, and then removed Sadler's left wrist from the handcuff and secured it to the bed with a restraint. The chest strap was then secured. The five-point restraints were checked by Nurse Harber and found to be applied correctly. All staff then exited the cell and secured the cell door.

In his Serious Incident Report, Taylor reported that "there was no use of force during this incident and no injury to staff or inmate." (Pl.'s Ex. 3.) Taylor's description in his Serious Incident Report is consistent with the less detailed incident reports filed by the seven other officers who participated in restraining Sadler. (*Id.*) Sadler fully complied with all of the officers' orders: He put his hands through the food slot so that he could be cuffed; he kneeled in his cell away from the door so that the officers could unlock the cell door, enter [**11] the cell, and shackle his ankles; he was peacefully escorted to the restraint cell by the officers; he permitted the officers to undress him down to his undershorts; he lay down on a plastic mattress in the restraint cell; and he did not resist while the officers placed him in five-point restraints by restraining his legs, wrists, and chest to the mattress. Once Sadler was secured in the five-points restraints, he was lying on his back on the mattress, wearing only his shorts, with his legs restrained to the bottom portion of the mattress, his arms restrained to the sides of the mattress, and a restraint across his chest.

Sadler admitted at trial that he had yelled at the officers while they had restrained him, stating that he had done so "because I was frustrated with what they were doing to me, but at no time did I threaten them." (Tr. at 10.) Taylor testified that although Sadler had not physically resisted the officers during the restraining process, he had engaged in a "tirade," had "insinuated that we needed a riot there," had "made some sexual comments," and had asked "[me if I] had ever been shot with a real gun." (*Id.* at 84, 90, 62, 65-66.) The officers videotaped the [**12] application of restraints and that tape reveals that Sadler did not yell at the officers until he was at least partially secured in the five-point restraints. When he did yell, with a spit mask on most of the time, he said that

the officers had lived a fortunate life because they had probably never been shot by a "real" gun, as people in his neighborhood had, and because they had probably never had a riot in their prison. The officers stood around Sadler while he made these comments, waiting for the nurse to arrive and examine him. At one point Captain Taylor responded, "You watch too much T.V."

Sadler testified that when he had asked the officers how long he was going to be restrained, they said that "the sergeant would come by whenever he wanted, or that [he] would be in the restraints for two days." (*Id.* at 11.)

B. The Prison's Policy on the Use of Five-Point Restraints.

The Commonwealth of Virginia's policy on the "Use of Restraining Devices" at correctional facilities at the time that Sadler was restrained permitted the restraint of an inmate solely for security purposes and only by the authorization of the Warden [*694] or the ADO. ⁶ (Pl.'s Ex. 1 at 3.) The policy provided [**13] that "any restraints applied within a cell should be removed if the inmate's dangerous or disruptive behavior has subsided and it has been determined [that] the inmate no longer poses a threat to himself or others." (*Id.*) The policy prohibited the use of restraints beyond forty-eight hours "without the express approval of the Deputy Director, Division of Field Operations." (*Id.*) It mandated that restrained inmates be partially or completely released from restraints at meal times and for toilet use a minimum of four times during each twenty-four hour period, including prior to each meal, and that restrained inmates be observed at fifteen minute or more frequent intervals by institution staff as directed by the physician or qualified mental health professional. ⁷ Correctional officers were required to prepare written documentation stating the reason for the application of restraints, the dates and times of observations, the dates and times observed by medical staff, and the dates and times when the inmate was partially or totally released from restraints. ⁸

6 Although the policy specifically refers to "four-point restraints" and does not refer to "five-point restraints" or "humane restraints" (a term the defendants' witnesses often used at trial to refer to five-point restraints) it was apparently understood by the officers at WRSP that this policy also governed the use of five-point restraints. Four-point restraints are less restrictive than five-point restraints because they secure wrists and ankles, but not the chest.

[**14]

7 The policy was changed in October 2000 to specify a total of seven temporary breaks from

restraints, although it did not specify how many hours may pass between breaks. (Pl.'s Ex. 5 at No. 7.)

8 A log indicates that Sadler was checked by a correctional officer every fifteen minutes between 12:05 p.m. on April 2 and his release at 11:25 a.m. on April 4. (Pl.'s Ex. 3.)

According to the defendants' responses to the plaintiff's interrogatories, the ADO had final authority in placing inmates in or releasing them from restraints. Watch commanders, sergeants, and lieutenants could only make recommendations on whether an inmate should be released from restraints. Verbal abuse without accompanying indications of a security threat did not constitute cause to place an inmate in restraints. (Pl.'s Ex. 6 at No. 5.)

Correctional sergeants and lieutenants were normally in charge of temporary releases of inmates from five-point restraints. The sergeant or lieutenant would directly supervise correctional officers during the release and ensure that it was filmed and documented. The supervisor was responsible [**15] for providing the inmate with a meal, if scheduled, as well as access to appropriate medical staff, conducting the release in a manner to prevent injury to staff or the inmate, and documenting the release in an incident report.

At trial, Sadler presented evidence of seventeen cases between January and June 2000 in which WRSP inmates were confined in five-point restraints for approximately forty-eight hours. ⁹ (See Pl.'s Ex. 4 at Encl. A.) According to Warden [*695] Young's responses to interrogatories and his testimony at trial, there were eight incidents in which inmates who were restrained between January and April 2, did not engage in any dangerous or disruptive behavior while placed in five-point restraints or during any of their temporary releases, yet they were restrained for a total of approximately forty-eight hours. (*Id.*; Tr. at 144-47.) In five of the seventeen incidents the inmate engaged in dangerous or disruptive behavior upon being placed in five-point restraints, but did not engage in any dangerous or disruptive behavior during any temporary release from five-point restraints, yet they were restrained for approximately forty-eight hours. (Pl.'s Ex. 4 at Encl. A; Tr. [**16] at 144-47.) Indeed, one confinement lasted over seventy-two hours even though the inmate did not engage in any dangerous or disruptive behavior during the temporary releases. (*Id.*)

9 During the three months prior to Sadler's confinement in restraints, between January and April 2, 2000, there were eight occasions in which WRSP inmates were confined in five-point restraints for approximately forty-eight hours though they did not engage in any dangerous or

disruptive behavior while being placed in restraints or during their temporary releases. These are the cases in which inmates were so confined: Victor Velasco was placed in five-point restraints for forty-eight hours and ten minutes, from January 18, 2000 at 6:10 p.m. to January 20, 2000 at 6:20 p.m.; B. Jocelyn was placed in five-point restraints for forty-eight hours and thirty-five minutes, from January 24, 2000 at 5:20 p.m. to January 26, 2000 at 5:55 p.m., and for forty-seven hours and thirty minutes, from March 7, 2000 at 8:45 a.m. to March 9, 2000 at 8:15 a.m.; R. Luciano was placed in five-point restraints for forty-eight hours and forty minutes, from January 26, 2000 at 7:25 a.m. to January 28, 2000 at 8:05 a.m.; A. Griffin was placed in five-point restraints for forty-five hours and ten minutes, from February 17, 2000 at 10:00 p.m. to February 19, 2000 at 7:10 p.m., for forty-five hours and fifty minutes, from March 28, 2000 at 10:10 a.m. to March 30, 2000 at 8:00 a.m.; F. Adorno was placed in five-point restraints for fifty-two hours and thirty-one minutes, from February 8, 2000 at 12:50 a.m. to February 10, 2000 at 5:21 a.m.; and D. Bonner was placed in five-point restraints for forty-six hours and fifty minutes, from February 9, 2000 at 9:25 a.m. to February 11, 2000 at 8:15 a.m. (Pl.'s Ex. 4 at Encl. A.)

From April 2, to June 2000, there were three additional occasions in which inmates were confined in such a way: Trini Davis was placed in five-point restraints for forty-eight hours and thirty-two minutes, from April 16, 2000 at 10:11 p.m. to April 18, 2000 at 10:43 p.m.; T. Donovan was placed in five-point restraints for forty-eight hours and thirty-five minutes, from June 17, 2000 at 7:05 a.m. to June 19, 2000 at 7:40 a.m., and for seventy-three hours and twenty-eight minutes, from June 21, 2000 at 7:02 p.m. to June 24, 2000 at 8:30 p.m. (*Id.*)

In five of the seventeen cases of confinement presented by Sadler, the inmate engaged in dangerous or disruptive behavior upon being placed in five-point restraints, but did not engage in such behavior during any of his temporary releases, even though he remained confined for approximately forty-eight hours. These are the cases in which inmates were restrained in such a way: Benjamin Cruz was placed in five-point restraints for forty-nine hours and twenty minutes, from January 12, 2000 at 4:50 p.m. to January 14, 2000 at 6:10 p.m.; T. Donovan was placed in five-point restraints for forty-six hours and fifty minutes, from February 26, 2000 at 7:13 p.m. to February

28, 2000 at 6:03 p.m., for forty-eight hours and twenty-three minutes, from May 31, 2000 at 7:05 p.m. to June 2, 2000 at 7:28 p.m., for seventy-three hours and twenty minutes, from June 21, 2000 at 7:02 p.m. to June 24, 2000 at 8:30 p.m.; and K. Ibrahim was placed in five-point restraints for forty-five hours and forty minutes, from January 10, 2000 at 5:20 p.m. to January 12, 2000 at 3:00 p.m. (*Id.*)

The average length of confinement in five-point restraints in these seventeen cases was forty-nine hours and nineteen minutes. (*Id.*)

[**17] According to Warden Young's responses to interrogatories introduced at trial, no WRSP officer had been disciplined or reprimanded for misusing five-point restraints prior to April 2, 2000. (Pl.'s Ex. 2 at No. 12.) At trial, over three years after that date, Warden Young testified that he was "not aware of any occasion where the review had demonstrated a failure of the individuals in charge to follow procedures." (*Id.* at No. 14.)

C. The Duration of Sadler's Confinement.

Sadler was placed in five-point restraints under Captain Taylor's supervision on April 2, 2000, at 12:05 p.m. (Pl.'s Ex. 6 at 1.) He was temporarily released under Sergeant Parlier's supervision on April 2 at 9:12 p.m., under Sergeant Eaton's supervision on April 3 at 7:30 a.m., 1:10 p.m., and 5:30 p.m., under Sergeant Givens' supervision on April 3 at 11:45 p.m., and again under Sergeant Eaton's [*696] supervision on April 4 at 7:50 a.m. (*Id.*) Sadler was permanently released from five-point restraints on April 4 at 11:25 a.m. under Sergeant Eaton's supervision. (*Id.*) Therefore, he was confined in five-point restraints for a period of forty-seven hours and twenty minutes, including the release intervals.

[**18] At trial, Warden Young testified that the prison policy on restraints had permitted the warden or ADO to order the restraint of inmates in order to protect themselves or others, to prevent escapes, or to maintain control of the inmate. He testified that he knew that the policy had required that the inmate be removed from restraints if his dangerous or disruptive behavior had subsided and if it had been determined that the inmate no longer posed a threat to himself or others. Young testified that neither the incident reports nor the videotape of the temporary releases provided him with enough information to assess whether it had been appropriate to confine Sadler in five-point restraints for forty-seven hours and twenty minutes.

In an interrogatory response introduced at trial, Young submitted that at the time of Sadler's restraint, possible alternatives to the use of five-point restraints had included the use of the disciplinary process, restric-

tions on inmate privileges, cell restriction, cell reassignments, and intermediate restraint procedures. Young also contended that his officers "do not use five-point restraints where the situation can be satisfactorily be [sic] handled [**19] through other means." (Pl.'s Ex. 2 at No. 15.) Ambulatory restraints are an intermediate restraining procedure in which a chain is fastened around the inmate's waist that connects to handcuffs and leg irons. Ambulatory restraints permit an inmate to walk and use his arms, but in a severely restricted manner. Young testified that ambulatory restraints had not been utilized as a less forceful alternative to five-point restraints at the time of Sadler's confinement because inmates so restrained were still able to throw fluids at the guards through cracks at their cell doors. That policy has changed and ambulatory restraints are now an option at WRSP because those cracks have since been sealed. Young also testified that the policy regarding the use of ambulatory restraints had been modified in response to changes in the prison's security level and in the staff's qualifications and experience.¹⁰

10 At the time of Sadler's restraint, WRSP had been open only one year and over sixty-two percent of the staff were new and inexperienced hires.

[**20] Taylor testified at trial that he had recommended that Sadler be placed in five-point restraints because he felt that Sadler had reached a "state of mind" that made him "dangerous at that moment." (Tr. at 74.) Taylor said that after he had made the recommendation and after ADO Phillips had ordered Sadler's confinement in five-point restraints, he provided Sadler with the opportunity to tell his side of the story. (Tr. at 80-81.) However, there is no mention in Taylor's Serious Incident Report or in the other officers' shorter incident reports that Sadler had the opportunity to speak with Taylor and defend himself either before his initial confinement in restraints or at any time after he was secured in them. (See Pl.'s Ex. 3.)

Taylor testified that he had not possessed the authority to release Sadler from the restraints, but as the shift commander it had been his duty to view Sadler twice a day to ascertain whether the continued application of restraints was necessary and to make a recommendation to the ADO, which the ADO would probably follow. Taylor testified that he had called the unit supervisor to check on Sadler before his [*697] shift ended at approximately 3 p.m. on April 2, [**21] three hours after Sadler was first restrained, and was advised that Sadler was still yelling at staff. He therefore decided not to recommend his permanent release at that time. Taylor was not on duty for the remainder of Sadler's confinement.

Eaton supervised Sadler's temporary releases at 7:30 a.m., 1:10 p.m., and 5:30 p.m. on April 3, and his final release at 11:25 a.m. on April 4. Parlier was Eaton's supervisory officer and was present during these releases, but was unavailable to testify at trial because he was on active military duty. Eaton testified that his records did not indicate that Sadler either verbally abused or physically resisted the officers, yet he did not make a recommendation to the ADO or watch commander as to whether it was necessary to keep Sadler restrained. Eaton said that he did not have the authority to permanently release an inmate from restraints, that the ADO did, but he did not recall whether the ADO had been present during the temporary releases.

Givens supervised Sadler's temporary release on April 3 at 11:45 p.m., and testified that Sadler had made a threatening comment as the restraints were being removed:

[Sadler] had made verbal threats [**22] [when informed that he was to be temporarily released and] before we brought [him] up off the five points such as, 'I get even,' or, 'Pay backs are hell.' That's what [he] made the statements to before we brought [him] up off the restraints.

(Tr. at 107.) Givens did not list this alleged verbal threat in his incident report form because he did not think it was appropriate to do so:

I felt it was inappropriate [to include the verbal threat in my Incident Report] because in the five point restraints there was nothing I felt like he could do at the time. He was no threat unless he was being brought up from the five points, or being placed in them. Verbal threats, he's made those ever since he's been at Wallen's Ridge State Prison. He makes those all the time, sir.

(Id. at 109.) Givens testified that after having released Sadler he had helped him to regain his balance and "even allowed [him] to go to the back of the cell and exercise slightly away from my officers There were no physical restraints [He was] walking and doing [his] own thing." (Id. at 110.) When at trial Sadler asked Givens whether he had resisted the officers, Givens [**23] testified, "No. You didn't resist anybody," and, "No, you were not fighting in any way. You were not physically trying to hurt anyone that I know of." (Id. at 109-10.)

Givens said that as shift supervisor, he did not have the authority to permanently release Sadler from the restraints, but he did not directly respond to the question of whether he could recommend that Sadler be released from restraints, except to say that if Sadler had any physical needs he would have notified the appropriate authorities. Like Eaton, Givens did not provide the ADO with an assessment on whether it was necessary to keep Sadler restrained.

The incident reports completed by Parlier, Eaton, and Givens and reviewed and signed by their respective watch commanders, Lieutenant Lester, Captain Hockett, Lieutenant Reynolds, and Lieutenant Combs, of Sadler's temporary releases from five-point restraints state that no force was used on Sadler during any of the releases and do not indicate any form of misconduct or resistance on Sadler's part. (Pl.'s Ex. 3.)

D. Sadler's Release.

Sadler was permanently released from confinement in five-point restraints on [*698] April 4, 2000, at approximately 11:25 a.m. At trial, [**24] having reviewed the records pertaining to Sadler's confinement in restraints and Investigator Hutchinson's investigation of it, Warden Young could not explain how it was determined that Sadler no longer needed to be restrained or who made that determination, although he "assumed it was Mr. Phillips, the administrative duty officer that week." (Tr. at 163-65.)

After his release, Sadler filed a grievance with Warden Young, who determined that Sadler's claims were unmerited and the policy concerning the use of restraints had been followed. (Tr. at 25.) Sadler was charged with an "Assault on any Person," received a hearing, and was convicted of assaulting Officer Young with a food tray. (Pl.'s Ex. 3.)

E. Sadler's Complaints of Pain and Injury.

Sadler claimed that upon arriving at the restraint cell he had smelled human waste and had seen urine and feces on the restraint mattress. Taylor, however, testified that the restraint cells had been cleaned by inmates on a daily basis, and that he had checked Sadler's restraint cell and had not seen any human waste in it.

Sadler testified that he had suffered immense physical pain throughout the two days of confinement. He said that his [**25] body "[had] hurt as if [he] had been beaten," that his chest had burned, and that he had asked the officers to allow him to use the toilet but they had refused. (Tr. at 10-11.) He testified that he had urinated on himself a few times and had been left to shiver from the wetness and cold while the officers had walked by his cell door laughing at him. (*Id.* at 11, 21.)

Sadler said that he had suffered mental pain while restrained:

It was like a mental thing When I got put back into the restraints [after a temporary release,] I had the urge to want to move, and my body would hurt even more because I couldn't move. When I got up ... [the pain] wouldn't be as bad, same thing when I had to use the bathroom. There was times I might have got up, and I didn't feel like I had to use the bathroom, and when I was put back in the restraints, almost immediately I had to use the bathroom.

(*Id.* at 9.) He said that throughout his confinement he had suffered from hallucinations that bugs were crawling on his body. (*Id.* at 14.) He also claimed that he had been unable to sleep for even one hour of his nearly two-day confinement because the ceiling light above him [**26] had remained on at all times.

Sadler testified that he had difficulty standing and walking each time the straps were removed:

I could barely stand up or walk because my body was ... hurting. I guess my muscles had relaxed or something. My entire body was hurting, especially my wrist. Now, my feet, my feet were hurting as if, you know, as if, as if I had been laying on them too long and I had a numb feeling when I got up and tried to walk.

(*Id.* at 12-13.) He said that he had been so weak and in pain during these releases that he could not get up by himself and the officers had to grab him by his arms to stand him up. Sadler claimed that during the releases the officers had refused his requests to wash off the urine that had dried up on him or clean it from the plastic restraint mattress. He testified that during these breaks he had been able to sit up and eat his meals while one wrist and both ankles remained strapped to the bed, but had been in pain while doing so.

When Sadler was permanently released from the five-point restraints, the officers had to assist him because he was unsteady. Givens testified that most inmates have [*699] difficulty standing when initially [**27] released from restraints, but will regain their mobility after a few minutes. In his opinion, Sadler's instability upon being released was not unusual. Warden Young, however, testified that he believed that Sadler

had acted deceptively before the camera. Young explained, "Normally [inmates] are ... stiff [when released from forty-eight hours of confinement in five-point restraints], but as far as the not being able to walk, can't stand up, can't sit up, that is not a normal ... reaction for an individual his age." (*Id.* at Vol. 2 p. 21.)

Sadler claimed that in between his fourth and fifth temporary releases, between 5:30 p.m. and 11:45 p.m. on April 3, he had felt his chest continue to burn, had suffered from hallucinations, had urinated and defecated on himself, and had vomited on himself due to the foul stench while the officers had walked by laughing at him. He said that during the 11:45 p.m. break, the officers had turned his mattress over because it was soiled with his vomit and waste, but had refused his requests to clean the waste and vomit off of himself. At the end of the temporary release, they had confined him face-down on his stomach to prevent him from choking [**28] on his vomit.

Givens supervised Sadler's fifth temporary release at 11:45 p.m. on April 3, and he testified that he had checked the cell and filmed the floor and mattress and did not see any evidence of vomit. This testimony is inconsistent with Givens' incident report which states that "Sadler was throwing up and [therefore] placed face down" when returned to restraints. (Pl.'s Ex. 3.) However, at trial Givens explained that what he had meant to write in his report was that Sadler had claimed that he had vomited but that there was no evidence to support his claim. (Pl.'s Ex. 3; Tr. at 116.) Givens testified that his officers had turned the mattress over because it was wet from Sadler's profuse sweating and that they had restrained him face-down due to the medical staff's instruction to do so as a precautionary measure. (Tr. at 112, 115-16.)

Sadler testified that since being confined in restraints he suffers from nightmares and becomes agitated and claustrophobic when placed in small spaces, as whenever he is shackled, handcuffed, and transported.

Sadler claimed that his left wrist had been injured by tight handcuffs a few days before his confinement in five-point restraints, [**29] and that injury had been aggravated by his initial placement in the restraints. He testified that when he had complied with the officers' orders to lie on his back on top of his cuffed wrists while they restrained his legs, the combination of his own body weight with the pressure of a large shield that an officer had held over him caused further injury to his left wrist. When this happened, he had yelled out in pain. After having successfully restrained his legs, the officers had uncuffed his wrists in order to strap them to the sides of the mattress, at which point Sadler had seen that his wrists had been bruised and were bloody and swollen.

After he was fully restrained, the officers called in Nurse Harbor, who briefly checked Sadler's wrists for injury and found none. The prison's medical records, including the regular examinations by nurses while Sadler was restrained, also do not indicate that Sadler's left wrist was ever injured. An X-ray report dated May 4, 2000, stated that Sadler's left hand was normal, and that the smaller bones of the wrist were intact. (Pl.'s Ex. 3.)

III

Sadler claims that the officers' application of force violated his rights protected by the *Eighth Amendment*.

[**30] [**700] The *Eighth Amendment* prohibits the infliction of "cruel and unusual punishments." *U.S. Const. amend. VIII*. It "protects inmates from inhumane treatment and conditions while imprisoned." *Williams v. Benjamin*, 77 F.3d 756, 761 (4th Cir. 1996). "Not every governmental action affecting the interests or well-being of a prisoner is subject to *Eighth Amendment* scrutiny'After incarceration, only the "unnecessary and wanton infliction of pain" ... constitutes cruel and unusual punishment forbidden by the *Eighth Amendment*." *Whitley v. Albers*, 475 U.S. 312, 319, 89 L. Ed. 2d 251, 106 S. Ct. 1078 (1986) (citations omitted).

In order for Sadler to show that he was subjected to cruel and unusual punishment while incarcerated, he must prove both that the officers "acted with a sufficiently culpable state of mind"(the subjective component) and that "the deprivation suffered or injury inflicted on [him] was sufficiently serious" (the objective component). *Williams at 761*.

The subjective component requires the plaintiff to show that the force was not "applied in a good faith effort to maintain or restore discipline," but was applied "maliciously and sadistically [**31] for the very purpose of causing harm." *Hudson v. McMillian*, 503 U.S. 1, 6-7, 117 L. Ed. 2d 156, 112 S. Ct. 995 (1992); *Whitley*, 475 U.S. at 321. The factors considered in determining whether the officers acted maliciously and sadistically for the purpose of causing harm to the inmate are: (1) the need for the application of force; (2) the relationship between the need and the amount of force used; (3) the threat reasonably perceived by the responsible officials; and (4) any efforts made to temper the severity of a forceful response. *Hudson*, 503 U.S. at 6-7; *Whitley at 321*. "The absence of serious injury is ... relevant to the *Eighth Amendment* inquiry, but does not end it." *Hudson at 7*. "From such considerations inferences may be drawn as to whether the use of force could plausibly have been thought necessary, or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur." *Whitley at 321*. See also *Williams*, 77 F.3d at 761-62.

The objective component addresses whether "the alleged wrongdoing was objectively 'harmful enough' to establish a constitutional [**32] violation." *Hudson at 8*. "The Eighth Amendment's prohibition of 'cruel and unusual' punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind.'" *Id. at 9-10* (citation omitted). The issue of whether the force applied is "repugnant to the conscience of mankind" is "contextual and responsive to contemporary standards of decency." *Id.* Therefore, to prove the objective component, a plaintiff must either show that the officials' use of force was more than *de minimis* or, in the alternative, that it was repugnant to the conscience of mankind.

A

The first *Eighth Amendment* issue is whether the officers used unconstitutionally excessive force in initially confining Sadler in five-point restraints.

Williams v. Benjamin, 77 F.3d 756 (4th Cir. 1996), is the single Fourth Circuit case addressing an excessive force challenge to the use of restraints. In *Williams*, the prison officials were confronted with Williams and five other inmates who were throwing liquids out of the food service windows of their cells. *Williams at 759*. [**33] The prison officials responded by first instructing [**701] the six inmates to stop and then macing them, which resulted in the prisoners immediately ceasing their actions. *Id.* While Williams hollered in pain from the mace, the officers imposed four-point restraints on him. *Id. at 760*. Williams was left in four-point restraints for more than eight hours without being provided the opportunity to wash the mace from his eyes or body or to use the toilet. *Id.* Williams claimed to have "suffered with great difficulty and immense pain while inhaling the chemical munitions" left in his cell from the mace. *Id.* Williams appealed the district court's decision granting summary judgment to the defendants on his excessive force and due process claims to the Fourth Circuit. *Id. at 760-61*.

The first factor to be considered in assessing an official's intent is the need for the application of force. As the *Williams* court explained, "the necessity of the guards' actions is not the proper focus of the inquiry. Instead, we focus on whether the evidence supports the inference that the guards wantonly punished [the inmate]." *Id. at 763-64* (citations [**34] omitted). The court held in *Williams* that it could not "conclude that there was no 'need' for the application of force or that the guards were unreasonable in their apparent belief that the imposition of four-point restraints was necessary to obtain 'order and control'" because "only minutes had elapsed since the disturbance had begun, Williams was

still 'hollering,' and it was not obvious that the disturbance had ended." *Id. at 764*.

Considering the evidence in the light most favorable to the defendants, the decision to place Sadler in five-point restraints was made, according to Captain Taylor's testimony and Serious Incident Report, approximately five to ten minutes after Sadler had "slapped" a tray at Officer Young. Additionally, when Taylor approached Sadler's cell to restrain him, he was informed by other officers that Sadler had "raised hell" verbally with them before his arrival. For these reasons, it was not obvious that the disturbance had ended. As for the third factor, the threat reasonably perceived by the responsible officials, it was not unreasonable for the officers to have perceived a threat from Sadler considering that he had just slapped a tray [**35] onto one officer during a routine feeding and then proceeded to yell at the other officers.

In *Williams*, the Fourth Circuit combined its analysis of the second and fourth factors--the relationship between the need for force and the amount of force used and any efforts made to temper the severity of a forceful response--and found that the "imposition of such restraints is seemingly a not uncommon 'next' step, if verbal commands, show of force, and mace, are ineffective in controlling prisoners." *Id. at 764*. Warden Young reported that a few alternatives to five-point restraints were available at the time, including the disciplinary process, restrictions on inmate privileges, cell restriction, cell reassignment, and intermediate restraint procedures. (Pl.'s Ex. 2 at No. 15.) Cell reassignment was not an option because Sadler was already in segregation. Instead, the officers combined the disciplinary process and restrictions on inmate privileges along with the application of five-point restraints to control Sadler by charging him with attempted assault and placing him on restrictive feeding. (Pl.'s Ex. 3.) As for intermediate restraints, Warden Young testified that [**36] the use of ambulatory restraints, which are less severe than five-point restraints, had not been utilized by WRSP at that time because an inmate confined in ambulatory restraints could have still thrown fluids at guards through an unsealed crack at the cell door.

[*702] It was reasonable for the officers not to use ambulatory restraints in this case. Although there is no indication that Sadler had thrown liquids at any officer, he had slapped a tray and food onto an officer. It was thus reasonable for the officers to believe that ambulatory restraints, leaving at least one hand free to throw food, liquids, or other items at the officers, would not effectively control the situation.

It is settled that prison officials must be granted great deference in controlling potentially dangerous in-

mates. *Hudson*, 503 U.S. at 6. Without considering whether Sadler has met the objective component of the *Eighth Amendment* violation, I find that he has not sufficiently proved the subjective element of such a violation because a reasonable jury could find that the officers' decision to initially confine Sadler in restraints does not support the inference that they wantonly punished him. [**37]

B

The next issue is whether confining Sadler in five-point restraints for forty-seven hours and twenty minutes violated the *Eighth Amendment's* prohibition of cruel and unusual punishment.

After due consideration of the record, I hold that no reasonable jury could find that Sadler's conduct necessitated an application of force for nearly forty-eight hours. There is simply no evidence indicating a need for continued restraint after 3 p.m. on April 2, three hours after Sadler was initially placed in five-point restraints. Taylor testified that Sadler had yelled at the officers who had restrained him and had continued to yell three hours later, at 3 p.m. However, there is no evidence that Sadler continued to yell after that time. Indeed, the uncontradicted evidence shows that the remainder of Sadler's confinement in restraints was uneventful. Sadler was temporarily released six times during his nearly two-day confinement to eat and use the toilet, and each of the six incident reports signed by defendants Eaton, Givens, and Parlier, who supervised and assisted in these temporary releases, states that Sadler fully complied with their orders and that there was no need to apply force [**38] during the releases. (See Pl.'s Ex. 3.) Neither the testimony nor the reports suggest any reason for keeping Sadler restrained for nearly two days.

Even when Sadler made a threatening comment to Givens, Givens did not perceive him as a threat because he felt Sadler made such comments all the time. Givens testified that during Sadler's fifth temporary release at 11:45 p.m. on April 3, Sadler had said either, "Pay backs are hell," or, "I'll get even," as he was being "brought up from the restraints," but he told the jury that had chosen not to record the statement in his Incident Report because "[Sadler had] made [verbal threats] ever since he's been at Wallen's Ridge State Prison. He makes those all the time." (Tr. at 107, 109.) In spite of Sadler's comment, Givens testified that he had "allowed [Sadler] to go to the back of the cell and exercise slightly away from [the] officers [without physical restraints]." (*Id.* at 110.) Instead of using this freedom to execute his threat to get even, according to Givens, "[Sadler] didn't resist anybody" and "[was] not fighting in any way [or] physically trying to hurt anyone." (*Id.* at 109-10.) Construing Givens' testimony [**39] in the light most favorable to the

defendants, I find that it does not provide a reasonably sufficient basis on which to find that Givens perceived Sadler as a threat because Givens said that Sadler made such comments "all the time" and he was so unintimidated by the comment that he not only continued to temporarily remove the restraints, but he also indulged Sadler with the additional freedom to exercise while officers were present in his cell.

[*703] In *Williams*, the Fourth Circuit explained that "when ... prison administrators initially apply force in a good faith effort to maintain discipline, 'how long restraint may be continued calls for the exercise of good judgment on the part of prison officials.'" 77 F.3d at 765. But the court cautioned that "deference to prison administrators does not give them constitutional license to torture inmates." *Id.* It held that there are limits to how long a prisoner can be constitutionally restrained, even if the initial restraint was in good faith: "[When] the immediacy of the disturbance is at an end ... the unnecessary infliction of continued pain throughout a prolonged time period clearly supports an inference that the guards [**40] were acting to punish, rather than to quell the disturbance." *Id.* at 765 (citing *United States v. Cobb*, 905 F.2d 784, 789 (4th Cir. 1990)) ("Punitive intent behind a defendant's use of force may be inferred when the force is not reasonably related to a legitimate nonpunitive governmental objective.") (quotations omitted)).

The absence of evidence of a need to restrain Sadler for nearly two days indicates that the defendants were executing a forty-eight hour punishment of Sadler as opposed to responding to an immediate disturbance. The policy on the use of restraints permitted the application of restraints only for security purposes and required that the restraints be removed "if the inmate's dangerous and disruptive behavior had subsided and it had been determined [that] the inmate no longer pose[d] a threat to himself or others." (Pl.'s Ex. 1 at 3.) Sergeants and lieutenants could make recommendations to the ADO, who commanded the final authority to release an inmate from restraints if his dangerous and disruptive behavior had subsided. (Pl.'s Ex. 5 at No. 5.) Although neither Eaton nor Givens perceived Sadler to be a threat, both sergeants failed [**41] to recommend his release to the ADO or even their watch commanders, who also could have presented a recommendation to the ADO. At trial, both Eaton and Givens testified that they had lacked the authority to permanently release inmates from five-point restraints, but neither explained why they had not at least recommend Sadler's release, a recommendation that the policy had empowered them to make. I find that Taylor, however, acted in good faith in keeping Sadler restrained and not recommending his release to the ADO before leaving his shift at 3 p.m. on April 2, because he reasonably perceived Sadler to be a threat due to the re-

cency of the tray incident and his continued yelling three hours later.

Although in *Williams* the Fourth Circuit explained that a failure to comply with prison policy on the use of restraints "would not mean that [the plaintiff] would automatically prevail on his *Eighth Amendment* claim," *id.* at 766 n.5, in this case Eaton's and Givens' failure to comply with the policy evidences their wanton intent. It proves that even though they repeatedly recorded in their incident reports that Sadler's temporarily releases were uneventful, they failed to report [**42] to the ADO or watch commander that the need to restrain him had long passed.

The prison policy on the use of restraints prohibited the application of restraints beyond forty-eight hours "without the express approval of the Deputy Director." (Pl.'s Ex. 1 at 3.) There is no evidence, other than speculation by Warden Young, confirming that anyone actually made a determination to permanently release Sadler. (See Tr. at 164-65.) Instead of a determination to release Sadler once his dangerous and disruptive behavior had subsided, Sadler was kept restrained until further restraint would have demanded the inconvenience of seeking express approval from the Deputy Director. [*704] The only reasonable inference is that the *de facto* policy at WRSP was to keep inmates restrained for forty-eight hours regardless of whether they continued to engage in dangerous or disruptive behavior, as further evidenced by the eight documented incidents in which WRSP officers continued to apply five-point restraints for approximately forty-eight hours on inmates who had not engaged in any dangerous or disruptive behavior during the restraining process or any of the temporary releases.

For these reasons, I hold as [**43] a matter of law that the remaining defendants did not act in good faith in restraining Sadler for forty-seven hours and twenty minutes because there is no reasonably sufficient evidentiary basis showing that the defendants perceived Sadler to be a threat after 3 p.m. on April 2, three hours after he was first restrained. At some point, an inmate's continued restraint without evidence of its necessity is unconstitutional. It is not necessary to determine at what point Sadler should have been released—whether it was immediately after he stopped yelling or after the first, second, or third temporary release was completed without incident—only that forty-seven hours and twenty minutes was too long and that his confinement for that period of time had no legitimate purpose.

I also find that there are two grounds on which Sadler has established the objective component of his excessive force claim. First, any reasonable jury would find that completely immobilizing an inmate in five-point restraints for nearly forty-eight hours constitutes

more than *de minimis* pain, even when the inmate is temporarily released for six approximately fifteen minute periods, and regardless of whether there [**44] is proof that the inmate suffered any lasting injury. In *Williams*, the Fourth Circuit noted that "mankind has devised some tortures that leave no lasting physical evidence of injury" and "for this reason, courts should be wary of finding uses of force that inflict 'merely' pain but not injury to be *de minimis*, and therefore beyond requiring justification under the *Eighth Amendment*." 77 F.3d at 762, 762 n.2. The physical and mental pain Sadler suffered while his arms, legs, and chest were restrained for forty-seven hours and twenty minutes, including the breaks, is more than sufficient to meet the objective component of a prisoner's excessive force claim. Second, any reasonable jury today would find that confining an inmate in five-point restraints for nearly two days with short breaks is the sort of force that is "repugnant to the conscience of mankind." *Hudson*, 503 U.S. at 9-10.

IV

Sadler claims that the defendants violated his rights protected by the *Due Process Clause* of the *Fourteenth Amendment*. "

11 The defendants assert that the pro se plaintiff's complaint failed to state a cause of action or facts supporting a cause of action under the *Due Process Clause*. Although the plaintiff did not cite the legal bases for his claims in his complaint, he did allege facts sufficient to state a due process claim, specifically that he had been punished without justification. (Compl. at D.) Regardless, the defendants do not claim that any inadequacy in the plaintiff's pleadings harmed them. In fact, the defendants' brief on the present motion fails to assert any defenses to the due process claim that the defendants did not present at trial. (See Defs.' Br. Opp'n at 11-13.)

[**45] Liberty interests can arise from two sources, the *Due Process Clause* itself and state law. *Sandin v. Conner*, 515 U.S. 472, 484, 132 L. Ed. 2d 418, 115 S. Ct. 2293 (1995). The *Due Process Clause* may create a liberty interest when the restraint imposed upon an inmate exceeds her sentence in an "unexpected manner." *Id.* [*705] State prison rules may also create liberty interests that are protected by the *Due Process Clause* when they "impose[e] [an] atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484-86 (holding that prisoner has no state-created liberty interest in being free from segregated confinement because it does not constitute an atypical, significant deprivation).

In *Williams*, the court acknowledged that the inmate's transfer from administrative segregation to "total immobilization in [four-point] restraints surely 'work[ed] a major disruption in his environment.'" ¹² 77 F.3d at 759,769-70 (quoting *Sandin*, 515 U.S. at 486). Although the court rejected the plaintiff's due process argument for other reasons, it held that an inmate has a "liberty interest" in not [**46] being confined in four-point restraints:

Simply because the initial application of the restraints occurred soon after a disturbance does not mean that four-point restraints may be imposed indefinitely. At some point in time, an inmate so restrained would be entitled to some procedural protection to ensure that his liberty interest was not being arbitrarily and capriciously denied. In this appeal, we decline to resolve where that point exists.

77 F.3d at 770 n.10. Therefore, the Fourth Circuit has held that inmates have a "liberty interest" in not being "arbitrarily and capriciously" confined in four-point restraints, though it has yet to determine at what time protection of that liberty interest is due.

12 In considering the plaintiff's due process claim, the *Williams* court also looked for mandatory language in the applicable prison policy and consent decree. See 77 F.3d at 769. It is not necessary to do so here because since *Williams*, the Fourth Circuit has abandoned the mandatory language requirement. See *Kitchen v. Upshaw*, 286 F.3d 179, 185-86 (4th Cir. 2002) (stating that the *Sandin* court had "reconsidered its reasoning" as to the mandatory language requirement); *Beverati v. Smith*, 120 F.3d 500, 503 n.3 (4th Cir. 1997) (finding that the *Sandin* court had "retreat[ed] from the mandatory language approach").

[**47] In order to determine whether Sadler possessed a liberty interest protected by the *Due Process Clause*, I must "compare the conditions to which [he was] exposed in [the five-point restraints] with those [he] could expect to experience as an ordinary incident of prison life." *Bevaranti v. Smith*, 120 F.3d 500, 503 (4th Cir. 1997). Being completely immobilized in five-point restraints for almost forty-eight hours is unlike the administrative segregation or the denial of work release situations that the Fourth Circuit has held do not invoke due process protections. *Kitchen v. Upshaw*, 286 F.3d 179, 185-87 (4th Cir. 2002) (holding that Virginia law does not provide prisoners with a constitutionally protected liberty interest in work release because there is nothing atypical about being denied permission to leave

jail in order to work); *Bevarati*, 120 F.3d at 502-04 (holding that administrative segregation does not impose an atypical and significant hardship on prisoners). The "ordinary incidents of prison life" do not include strapping an inmate's wrists, ankles, and chest to a bed for nearly two days with six short breaks to eat and [**48] use the toilet. Even though Sadler was already in the segregation unit and therefore had fewer privileges, fewer recreational opportunities, and less room to move than inmates in general population, his immobilization here constitutes a serious departure from even the ordinary incidents of life in segregation.

I find that there are three grounds on which Sadler may maintain his due process claim. First, the application of five-point restraints on Sadler for almost forty-eight [**706] hours, including the six temporary releases, posed an atypical and significant hardship on him; I therefore hold that he has a state-created liberty interest protected by the *Due Process Clause*. Second, Sadler also possesses a state-created liberty interest as a matter of law because (as the Fourth Circuit held in *Williams*) "at some point in time" the imposition of four-point restraints, which are less restrictive than five-point restraints, entitles the inmate to "some procedural protection to ensure that his liberty interest was not being arbitrarily and capriciously denied." Third, I hold that the *Due Process Clause* by its own force also provides Sadler with procedural protection because confinement in [**49] five-point restraints for nearly forty-eight hours exceeds a prisoner's sentence in an "unexpected manner."

As a matter of law, no reasonable jury could disagree that the defendants violated Sadler's right to due process by failing to provide him with any process during his confinement. It is not necessary to determine the exact moment during the two days when the defendants should have provided Sadler with procedural protection or what kind of procedure was necessary. In *Williams*, the Fourth Circuit stated that "at some point in time" a restrained inmate is "entitled to some procedural protection to ensure that his liberty interest was not being arbitrarily and capriciously denied." That the defendants Eaton and Givens were present throughout Sadler's lengthy confinement and did not provide him any process during the nearly forty-eight hours that Sadler was safely secured in the restraints is enough for any reasonable jury to find a violation. Because Taylor was only on duty during the first three hours of Sadler's confinement, and because Sadler was not entitled to process during that time, I will deny Sadler's *Fourteenth Amendment* claim against Taylor.

The defendants argue [**50] that if Sadler had a right to due process, he received it because Taylor gave him the opportunity to tell his side of the story before he

was restrained and because he received a disciplinary hearing after his release in which he was convicted of assaulting Officer Young. (Defs.' Brief Opp'n at 12-13.) I find that these procedures are irrelevant to Sadler's right to have received procedural protection at some time during his confinement to ensure that the remainder of his confinement was not arbitrary and capricious. It should also be noted that ADO Phillips had ordered Sadler's confinement before Taylor gave Sadler the opportunity to tell his side of the story, thus rendering that opportunity to defend himself futile.

The reasons the *Williams* court provided for denying the plaintiff's due process claim are not present here. In *Williams*, the court rejected the inmate's due process argument for three reasons: First, the inmate had not made an argument as to what sort of procedural protections were required; second, process was not possible because the restraints were imposed in response to a disturbance; and third, the inmate had not alleged that his post-deprivation state [**51] remedies were inadequate. *Williams* at 769-70. None of these points is relevant here because they speak to the situation in which the inmate seeks process before initial placement in restraints, whereas I merely hold that Sadler was entitled to process at some point during his nearly two days of confinement in five-point restraints. The holding in this case departs from the *Williams* court's holding that a restrained inmate is "entitled to some procedural protection" "at some point" only by holding that the point had passed by the time the restraint had ended.

[*707] The defendants claim that they are entitled to qualified immunity from liability for Sadler's due process claim. The qualified immunity defense "[shields] government officials performing discretionary functions ... from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982). It was clearly established in 2000, by the Supreme Court's opinion in *Sandin v. Connor*, that inmates have a liberty interest in freedom from restraint [**52] that imposes an atypical and significant hardship on them. *See* 515 U.S. at 484. Furthermore, the Fourth Circuit's opinion in *Williams v. Benjamin* clearly provides an inmate confined in four-point restraints "to some procedural protection to ensure that his liberty interest was not being arbitrarily and capriciously denied." Because *Sandin* and *Williams* were clearly established constitutional standards at the time of the offense, the defendants are not entitled to qualified immunity on the plaintiff's procedural due process claim.

V

Warden Young claims that he is not liable for any constitutional violations arising from Sadler's confinement in five-point restraints because he was not involved in the decision to restrain him or to keep him restrained. (Defs.' Br. Opp'n at 16.)

Supervisory officials may be held liable for the actions of their subordinates under § 1983 if the plaintiff can show: (1) that the supervisor had actual or constructive knowledge that his subordinates were engaged in conduct that posed "a pervasive and high risk" of constitutional injury to citizens like the plaintiff; (2) that the supervisor's response to that knowledge was so [**53] inadequate as to show "deliberate indifference to or tacit authorization of the alleged offensive practices"; and (3) that there was an "affirmative causal link" between the supervisor's inaction and the particular constitutional injury suffered by the plaintiff. *Randall v. Prince George's County, Md.*, 302 F.3d 188, 206 (4th Cir. 2002); *Shaw v. Stroud*, 13 F.3d 791, 799 (4th Cir. 1994).

A "pervasive" and "unreasonable" risk of harm requires evidence that the subordinates' "conduct is widespread, or at least has been used on several different occasions and that the conduct engaged in by the subordinate[s] poses an unreasonable risk of harm of constitutional injury." *Shaw*, 13 F.3d at 799. Deliberate indifference may be established by showing the supervisor's "continued inaction in the face of documented widespread abuses." *Id.* Such inaction provides "an independent basis for finding [the supervisor] either was deliberately indifferent or acquiesced in the constitutionally offensive conduct of his subordinates." *Id.* Causation may be direct, "where the policy commands the injury of which the plaintiff complains," or proximate, [**54] pursuant to the tort principle that "holds a person liable for the natural consequences of his actions." *Id.*

In *Slakan v. Porter*, 737 F.2d 368 (4th Cir. 1984), the plaintiff filed suit against prison officers and their supervisors because the officers had used high-pressure water hoses against him while in a one-man cell. 737 F.2d at 371. First, the court found that the plaintiff had established that the warden had knowledge of the officers' pervasive conduct because the warden testified that he knew that high-pressure water hoses had been used against inmates housed in one-man cells on seven occasions in the year preceding the attack on the plaintiff, he had personally approved such a use on one other occasion, a guard testified that the warden permitted [**708] the practice, and there was evidence that the warden had opposed state-proposed regulation of the use of high-pressure water hoses in the past. *Id.* at 373-74. Second, the court determined that the warden was deliberately indifferent to the officers' use of high-pressure water hoses because despite his knowledge, "he failed to offer adequate guidance to his subordinates concerning [**55]

the appropriate use of such techniques." *Id.* at 374. Third, the plaintiff showed an affirmative causal link between the warden's indifference and the application of force on him because the incident he experienced was a "natural and foreseeable consequence of the supervisors' indifference." *Id.* at 376.

In the present case, no reasonable jury would doubt that Warden Young knew that his subordinates were engaged in conduct that posed "a pervasive and high risk" of constitutional injury to inmates. At trial, Sadler presented evidence of eight cases between January and April 2, 2000, in which WRSP inmates were placed in five-point restraints for approximately forty-eight hours although they had not engaged in any dangerous or disruptive behavior while being placed in the restraints or during any temporary release from them. Each time a prisoner is placed in five-point restraints, the warden reviews the corresponding Serious Incident Report to determine whether procedures were properly followed. (Pl.'s Ex. 2 at No. 14.) Warden Young testified that he had reviewed the reports in these eight cases. (Tr. at 147.) Therefore, according to Warden Young's own [**56] testimony, he had knowledge of at least these eight incidents in the three months preceding Sadler's confinement in which his officers continued to apply five-point restraints for approximately forty-eight hours on inmates who had not engaged in any dangerous or disruptive behavior during the restraining process or the temporary releases.

Second, any reasonable jury would find that Warden Young's response to the knowledge that his officers were abusing the restraining process was so inadequate as to show deliberate indifference to or tacit authorization of their practice. Although he testified to reviewing incident reports cataloguing cases where officers continued to confine inmates in restraints without reporting any evidence that the inmate continued to pose a threat during or after the application of restraints, he did nothing. In fact, in response to the plaintiffs' interrogatories, Warden Young said that no WRSP officer had been disciplined or reprimanded for misusing five-point restraints prior to April 2, 2000. (Pl.'s Ex. 2 at No. 12.) The warden did not

provide evidence that he took any action in response to evidence of the officers' widespread abuses. As did the warden in [**57] *Slakan*, Warden Young has implicitly admitted that he knew of, but did not act upon, evidence that his officers were using excessive force in restraining inmates.

Third, any reasonable jury would find a causal link between Warden Young's inaction and Sadler's constitutional injuries. Had Warden Young taken action, for example, by reprimanding those officers who had unnecessarily restrained inmates for lengthy periods of time, or providing restrained inmates with the opportunity to explain why they should be released, then he may have prevented the further misuse of five-point restraints and Sadler would not have suffered an excessive use of force without justification and punishment without the benefit of process.

VI

Prison officials face difficult challenges. Prisons may be dangerous places, both for inmates and staff. It is right that we give prison administrators considerable leeway in handling disruptive inmates. Nevertheless, [**709] any society based on the rule of law must impose limits on the treatment of those convicted of crime. The uncontradicted evidence presented at trial shows that the officials here crossed that line. Inmate Sadler may deserve to be in prison, but [**58] he did not deserve under the facts of this case to be tied to a bed for nearly two days. Accordingly, and for the reasons set forth in this opinion, it is **ORDERED** that the plaintiff's motion for judgment as a matter of law is granted as to the liability of defendants Young, Eaton, and Givens, and denied as to defendant Taylor. The court will schedule a jury trial limited to the question of damages as to defendants Young, Eaton, and Givens.

ENTER: July 21, 2004

/s/ JAMES P. JONES

Chief United States District Judge

#15

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA.
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FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

SEP 21 2001

MORGAN E. SOUTT JR., CLERK
BY *[Signature]*
DEPUTY CLERKAL-MALIK ASH-SHAHID ALI,
a.k.a., WILLIE D. TURNER, JR.,

Plaintiff,

v.

T. YATES, CORRECTIONS MAJOR,
et al.,

Defendants.

Civil Action No. 7:00CV00682

MEMORANDUM OPINIONBy: Samuel G. Wilson,
Chief United States District Judge

Al-Malik Ash-Shahid Ali ("Ali"), also known as Willie D. Turner, Jr., brings this action under 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343. Ali, an inmate at Wallens Ridge State Prison, claims violations of the Eighth Amendment, Due Process, and state tort law. Essentially, he claims (1) that he was assaulted by Corporal Mark Mullins ("Mullins"); (2) that Major T. Yates ("Yates") used excessive force by ordering Ali placed in five-point restraints for forty-eight hours; (3) that Sergeant Meyers ("Meyers") subjected Ali to cruel and unusual punishment when he did not allow Ali to take a shower when he was temporarily released from five-point restraints; and (4) that Yates, Lieutenant R. Snider ("Snider"), Lieutenant Hall ("Hall"), Warden Stanley K. Young ("Young"), and Assistant Warden A.P. Harvey ("Harvey") are liable as supervisors because they were deliberately indifferent to these offensive practices.

In his complaint Ali states that he is suing the defendants in their individual and official capacities; however, Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989), prohibits § 1983 suits against state officials acting in their official capacities. Therefore, the court will assume that Ali is suing the defendants in their individual capacities only.

This case is before the court on defendants' motion for summary judgment. For the reasons stated below, the court grants summary judgment for the § 1983 claims against defendants Mullins, Meyers, Snider, Hall, Young, and Harvey; denies summary judgment for the § 1983 Eighth Amendment and Due Process claims against Yates; and declines to exercise supplemental jurisdiction as to Ali's state law claims.²

I.

On August 13, 1999 and August 14, 1999, Ali filed complaints and grievances with prison officials advising them that he was being harassed, provoked and threatened by corrections officer Mullins.³ However, no move was made to prevent contact between Mullins and Ali. On August 22, 1999, at approximately 6:55 a.m., there was an altercation between Ali and Mullins while officers Mullins and Carnes were distributing breakfast trays to the inmates. Ali and Mullins give conflicting versions of this event.

Ali claims that the officers gave him a meat tray when he should have received a vegetarian tray. After Ali suggested that the officers give him cheese as a substitute for the meat, Carnes gave Ali the cheese and told him, "you don't have to be a smart-ass either." Ali said he was not trying to be a smart-ass and explained to the officers the normal procedures the staff usually follow. As Ali reached for his cheese, Mullins hit the food tray knocking it into Ali's face. In the process, the keys in Mullins' hand hit Ali's head cutting him above his eye. Ali claims that

²The court previously entered an order dismissing Ali's claims of improper medical treatment, due process violations and improper grievance determinations against defendants Ball, Ballard, Harber, Flanary, R.A. Young, and Hensley.

³On a motion for summary judgment, the court must view the facts in the light most favorable to the nonmoving party. Ross v. Communications Satellite Corp., 759 F.2d 355. Thus, unless otherwise stated, the following facts are Ali's version of the events.

the cut bled for a short time and caused swelling.

Corrections officers Mullins and Carnes, however, tell a different story. They claim that when given his meal, Ali asked where his "god damned cheese" was. When Mullins attempted to give Ali his cheese, Ali grabbed Mullins' hand and pulled it through the tray slot, bruising his arm. Also, Ali attempted to throw his tray through the slot, but was stopped when Carnes closed the tray slot. The officers claim that Ali was cursing and threatening them during the altercation.

After the altercation, Ali requested an emergency grievance, but when Officer Thompson arrived, Mullins claimed that Ali had attacked him. Sergeant Stanley investigated the event and noticed that Ali had injured his eye. Ali denied that he had jerked cheese out of the hand of a corrections officer, and filed an emergency grievance against Mullins. Around 8:00 a.m., Ali was handcuffed and brought out of his cell to the nurses station. The nurse reported that Ali had a two centimeter cut above his eye. The cut was not bleeding, however, and Ali experienced no headache or blurred vision. The nurse cleaned the cut and applied a Band-Aid. Ali was then taken into another office where Lieutenant Gallihar took a picture of Ali's eye and questioned him about the incident. Ali again denied that he assaulted Mullins. Ali was placed back in his cell and given another breakfast tray.

After the initial incident with Mullins, there is no indication that Ali was disruptive. Nevertheless, Major Yates made the decision to place Ali in five-point restraints due to his alleged assault on Mullins and following disruptive behavior. At 9:05 a.m., over two hours from the time of the alleged assault, officers Wilkins, Janeway, and Gallihar placed handcuffs and leg irons on Ali and escorted him to another cell where he was placed in five-point restraints. Gallihar stated that no force was used to place Ali in five-point restraints because Ali offered no resistance.

Ali was kept in five-point restraints for forty-eight hours. Ali claims that he begged to be let up to go to the bathroom, but when his pleas were ignored, he was forced to urinate and defecate on himself. When Ali was released from his restraints for a bathroom break, Sergeant Meyers refused to let him shower. Ali was given a towel to clean himself and a new pair of boxer shorts. He was then placed back in five-point restraints. The cell floor, however, was still covered in urine and feces.

Thereafter, Ali was allowed out of his restraints to eat and use the bathroom. In his affidavit, Major Yates states that Ali was given eight restroom breaks during the forty-eight hours in which he was in five-point restraints.⁴ Yates states that Ali refused two of those breaks. Yates also states that according to Division Operating Procedure 432, inmates may be restrained within a cell for security reasons when their actions pose a physical threat to themselves or others. An inmate may not be restrained beyond forty-eight hours without approval of the Deputy Director. Also, an inmate in restraints must be released to use the bathroom a minimum of four times during a twenty-four hour period, including prior to each meal. According to Yates, these procedures were followed during Ali's restraint.

Ali claims that the cell was cold and he had on nothing but boxer shorts. Ali, who had previously been diagnosed with inflammation in his shoulder, claims that the cold environment made his shoulder ache. At 3:30 p.m., Ali complained about the pain in his shoulder and requested pain

⁴Ali was originally placed in restraints on August 22, 1999, at 9:05 a.m. Although it is unclear from the prison's records, it appears that Ali was released to eat and use the bathroom on August 22, 1999 at 1:00 p.m., 3:00 p.m., and 7:00 p.m. After 7:00 p.m., Ali was given another chance to be released, but he supposedly refused. On August 23, 1999, Ali was released at 7:30 a.m., 12:50 p.m., and 8:00 p.m. Again, Ali supposedly refused a chance to be released sometime after 8:00 p.m. Ali was not permanently released from the restraints until 9:00 a.m. on August 24, 1999. The time intervals between these breaks range from two hours to thirteen hours.

medication. He was not given any medicine, nor was he allowed out of five-point restraints. The nurse advised him to have his shoulder checked once he was released from the restraints. On August 23, 1999, at 10:20 a.m., Ali complained of chest pains and that his shoulder, back, and chest were sore from the restraints. The nurse took his blood pressure and checked his restraints. Finding both to be normal, she advised Ali to have his chest pain checked once he was released from the restraints.

While in five-point restraints, Ali was served with a disciplinary infraction for his alleged assault on Mullins. Later, Ali was convicted of the charge and lost twenty days good time. Ali was released from five-point restraints at 9:00 a.m. on August 24, 1999. A nurse examined Ali upon his release and found no visible signs of injury. Ali does not claim that he suffers any lasting physical injury from the two days he spent in five-point restraints.

II. Eighth Amendment Claims

The court construes Ali's complaint to state Eighth Amendment claims against Mullins, Yates and Meyers. The Eighth Amendment, enforced against the states through the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments." U.S. CONST. AMENDS. VIII, XIV. The Eighth Amendment protects individuals against excessive prison sentences as well as inhumane treatment and excessive force while imprisoned. To establish an Eighth Amendment excessive force claim against a prison official, an inmate must satisfy a subjective component (did the official act with a sufficiently culpable state of mind?) and an objective component (was the harm sufficiently serious?). Williams v. Benjamin, 77 F.3d 756, 761 (1999).

The subjective component is met if the corrections officer applied force "maliciously and sadistically for the very purpose of causing harm." Id.; see also McCreight v. Davis, 168 F.3d

482, No. 97-7826, 1999 WL 11277, at **3 (4th Cir. January 13, 1999) (unpublished opinion) (stating that the subjective component was met if the force used by the corrections officer "inflicted unnecessary and wanton pain and suffering.")³ This question "ultimately turns on 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." McCreight, 1999 WL 11277 at **3 (citing Hudson v. McMillian, 503 U.S. 1, 6 (1993)).

Also, the inmate must satisfy a requirement that the corrections officer's actions were objectively harmful enough to amount to a constitutional violation. An inmate "need not show that such force caused an 'extreme deprivation' or 'serious' or 'significant' pain or injury to establish a cause of action. All that is necessary is proof of more than *de minimis* pain or injury." Williams, 77 F.3d at 761. However, "absent the most extraordinary circumstances, a plaintiff cannot prevail on an Eighth Amendment excessive force claim if his injury is *de minimis*." Taylor v. McDuffie, 155 F.3d 479, 483 (1998).

The court will address Ali's Eighth Amendment claims against Mullins, Yates and Meyers separately:

A. Mullins: Assault

First, Ali claims that Mullins used excessive force when he hit Ali's food tray and cut Ali above the eye with his keys. The court finds, however, that Ali cannot prove that the injuries he suffered as a result of this force were more than *de minimis*. While there is no requirement that a plaintiff suffer significant injury, "injuries can be so insignificant as to justify a conclusion that

³Although unpublished opinions of the Fourth Circuit are not binding precedent, they are entitled "to the weight they generate by the persuasiveness of their reasoning." Hupman v. Cook, 640 F.2d 497, 501 n.7 (4th Cir. 1981).

excessive force was not employed." Norman v. Taylor, 25 F.3d 1259, 1263 n.2 (4th Cir. 1994) (finding insufficient injury to establish an Eighth Amendment violation when a prison guard hit an inmate on the thumb with his keys). In the Fourth Circuit, "a *de minimis* injury, without more, is dispositive of an excessive force claim." Id. at 486 (Murnaghan, J., dissenting) (criticizing the majority's "fiction that *de minimis* injury means *de minimis* force").

Viewing the facts in a light most favorable to Ali, the court concludes that the injury above his eye was *de minimis*. Lieutenant Gallihar described Ali's injury as a "small scrape." (Yates Aff., Enclosure A) The nurse who looked at Ali's injury after the incident described it as a two centimeter cut which was not bleeding and did not cause a headache or blurred vision. (Looney Aff.) Although Ali claims that the cut was bleeding at first and did cause some swelling, he admits that it soon stopped bleeding. (Comp. p. 8, ¶ 11) The court finds that Mullins' alleged assault caused only *de minimis* injury and that the force used was not of the sort repugnant to the conscience of mankind. Accordingly, Mullins is entitled to judgment as a matter of law as to the Eighth Amendment claim against him.

B. Yates: Use of Five-Point Restraints

Ali also claims that Major Yates used excessive force when he ordered Ali placed in five-point restraints for forty-eight hours. Even though Ali has not suffered an enduring injury from his two days in five-point restraints, the court still finds that this use of force could be a constitutional violation. In Norman v. Taylor, the Fourth Circuit stated:

We recognize that there may be highly unusual circumstances in which a particular application of force will cause relatively little, or perhaps no, enduring injury, but nonetheless will result in an impermissible infliction of pain. In these circumstances, we believe that either the force used will be "of a sort repugnant to the conscience of mankind," and thus expressly outside the *de minimis* force

exception, or the pain itself will be such that it can properly be said to constitute more than *de minimis* injury.

25 F.3d at 1263 n.4 (citations omitted). Additionally, in Williams v. Benjamin, 77 F.3d 756 (1996), the Fourth Circuit implied that the use of four-point restraints for eight hours could be sufficient to establish the objective component of an Eighth Amendment violation. Id. at 762 (noting that "[m]ankind has devised some tortures that leave no lasting physical evidence of injury").

Here, the court finds that forty-eight hours in five-point restraints is the type of unusual circumstance that the Fourth Circuit mentioned in Norman. Even though Ali did not suffer any enduring injury, the use of five-point restraints for such an extended period of time, as alleged by Ali, is "repugnant to the conscience of mankind," and Ali's pain itself was such that it can properly be said to constitute more than *de minimis* injury. The pain Ali allegedly suffered in his shoulder, back and chest was more than *de minimis*, even though he may not have an enduring injury. Additionally, the emotional pain he suffered may be enough to satisfy this requirement. See Jordan v. Gardner, 986 F.2d 1521, 1526 (9th Cir. 1993) (finding that psychic pain female prisoners suffer when subjected to cross-gender pat down search satisfies objective component). Ali claims he was restrained for forty-eight hours and was not allowed to use the bathroom for extended periods of time. He was forced to lie in his own urine and feces for many hours and was not given an opportunity to clean himself. In short, Ali alleges that he was subjected to conditions that offend contemporary standards of decency, even for a state prison. Thus, he has met the objective requirement.

In order to establish an Eighth Amendment claim, Ali must also meet the subjective

requirement that the prison official applied force "maliciously and sadistically" for the purpose of causing harm. Williams, 77 F.3d at 761. The Supreme Court and the Fourth Circuit have set out the following factors to consider in determining whether a prison official acted maliciously and sadistically:

(1) the need for application of force, (2) the relationship between that need and the amount of force used, (3) the threat reasonably perceived by the responsible officials, and (4) any efforts made to temper the severity of a forceful response.

Hudson, 503 U.S. at 7; Williams, 77 F.3d at 762.

Viewing the facts in a light most favorable to Ali, the court finds that the decision to place Ali in five-point restraints was not a good faith effort to maintain or restore discipline; instead, force was used maliciously and sadistically for the purpose of causing harm. First, there was little need for the application of force. According to Ali, Mullins provoked the altercation between he and Ali. Ali was simply a victim. However, Major Yates, who ordered Ali placed in five-point restraints, obviously believed Mullins' version of the incident. Even if Mullins' version is true, however, there was little need for the application of force. Ali was not placed in five-point restraints until two hours after the altercation with Mullins. During those two hours Ali was not disruptive or hostile. He was interviewed by several prison officials. He was taken to the nurses station, where he was given medical treatment. He was taken to another office where he was photographed. Then, he was returned to his cell and given another breakfast. During this time nobody claimed that Ali was hostile. If Ali was well behaved enough to be taken out of his cell, interviewed, given medical attention and served breakfast again, there seems little need to apply force to restore discipline.

Second, the relationship between whatever force was needed and the amount of force

used was disproportionate. Forty-eight hours in five-point restraints is extremely severe considering the fact that Ali was calm and not disruptive for two hours after the alleged assault. Even if the initial imposition of five-point restraints was necessary to restore order, forty-eight hours is a long time to be strapped to one's bed. In a case involving the imposition of four-point restraints for eight hours, the Fourth Circuit noted that "the unnecessary infliction of continued pain throughout a prolonged time period clearly supports an inference that the guards were acting to punish, rather than to quell a disturbance." Williams, 77 F.3d at 765. Similarly, the fact that Ali was left in five-point restraints for two days demonstrates that the prison officials were punishing Ali, rather than attempting to restore discipline.

Third, the threat reasonably perceived by the responsible officers was minor. At the most, Ali grabbed cheese from a corrections officer's hand and threw his food tray at two officers while cursing them. While this is threatening behavior which cannot be tolerated in a prison, it is not the type of immediate threat that necessitates such harsh force for such a lengthy period of time.

Fourth, other efforts could have been used to restore order. In fact, officer Carnes closed the food tray slot when Ali supposedly began throwing food. With Ali in a confined cell where he could not attack another officer or throw food on anyone, there was no immediate need to resort to five-point restraints. In a similar case involving the use of four-point restraints, the Fourth Circuit noted:

In our civilized society, we would like to believe that chaining a human being to a metal bed frame in a spread-eagled position would never be necessary. Unfortunately, it sometimes is. Courts have thus approved the limited use of four-point restraints, as a last resort, when other forms of prison discipline have failed.

Williams, 77 F.3d at 763. In Ali's case, other forms of prison discipline did not fail.

Closing the food tray door and leaving Ali alone was all that was necessary to restore discipline. Viewing the facts in a light most favorable to Ali, the court concludes that the use of five-point restraints was not a last resort to maintain discipline; instead, it was a malicious and sadistic use of force meant to punish Ali. Since the court finds that there is a genuine issue as to whether Yates' decision to place Ali in five-point restraints was an Eighth Amendment violation, the court must address the issue of qualified immunity.

Qualified immunity shields government officials performing discretionary functions "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982). However, "[i]f the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct." Id. at 818-19. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. 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 preexisting law the unlawfulness must be apparent." Wilson v. Layne, 526 U.S. 603, 614-15 (1999).

The court finds that Major Yates, who ordered Ali placed in five-point restraints for forty-eight hours, is not entitled to qualified immunity for his actions. One would hope that a corrections officer does not need a court to specifically tell him that chaining a man to his bed for two days without reason, as alleged by Ali, is a constitutional violation. Even if Major Yates did not naturally know this, he certainly should have known that his actions were constitutionally problematic after the Fourth Circuit's 1996 decision Williams v. Benjamin, 77 F.3d 756 (4th Cir.

1996). In Williams, the court overruled a district court's grant of summary judgment for defendant corrections officers who placed an inmate in four-point restraints for an eight hour period after the inmate was sprayed with mace without providing the inmate the benefit of medical care or the use of a toilet. See id. The court's language in Williams clearly established that the punitive use of four-point restraints for extended periods of time was constitutionally questionable. Since Yates should have known that his actions, as alleged by Ali, were constitutional violations, Yates is not entitled to qualified immunity.

Accordingly, the court denies defendants' motion for summary judgment in regard to Ali's Eighth Amendment claim against Yates.

C. Meyers: Denial of Shower

Ali also claims that Sergeant Meyers violated the Eighth Amendment by refusing to allow Ali to shower when he was temporarily released from five-point restraints. Viewing the facts in the light most favorable to Ali, the court finds that Meyers' actions do not rise to the level of cruel and unusual punishment. Ali has not produced evidence that Meyers acted maliciously and sadistically; instead, Meyers' actions appear to be a good faith effort to maintain discipline. Also, while denying Ali the opportunity to shower certainly created an uncomfortable situation for Ali, Ali did not suffer more than *de minimis* injury. The court finds that this is not one of the "highly unusual circumstances" in which a *de minimis* injury can constitute an Eighth Amendment violation. Norman, 25 F.3d 1259, 1263 n.4.

III. Supervisor Liability

Construing Ali's complaint liberally, Ali alleges that defendants Yates, Snider, Hall, Young and Harvey are liable under § 1983 as supervisors. Ali claims that he notified these

defendants about the fact that he was being harassed and threatened by Mullins; however, these defendants did nothing to stop further harassment.

Supervisory liability under § 1983 is based "not upon notions of *respondere superior*, but upon a recognition that supervisory indifference or tacit authorization of subordinate misconduct may be a direct cause of constitutional injury." Miltier v. Beorn, 896 F.2d 848, 854 (1990). The plaintiff must show that the inmates faced a pervasive and unreasonable risk of harm from some specified source and that the supervisor's corrective inaction amounted to deliberate indifference or tacit authorization of the offensive practices. Id. Ordinarily, a plaintiff "cannot satisfy his burden of proof by pointing to a single incident or isolated crimes." Slakan v. Porter, 737 F.2d 368, 373 (1990). "A supervisor's continued inaction in the face of documented widespread abuses, however, provides an independent basis for finding he either was deliberately indifferent or acquiesced in the constitutionally offensive conduct of his subordinates." Id.

Here, Ali has not produced sufficient evidence to suggest that defendants Snider, Hall, Young, or Harvey were deliberately indifferent or acquiesced in any constitutionally offensive conduct of their subordinates. The only possible constitutional violation here was the placement of Ali in five-point restraints for forty-eight hours. Ali has not shown that anybody but Major Yates, who authorized the five-point restraints, is liable for this action. Accordingly, the court grants summary judgment for defendants Snider, Hall, Young and Harvey.

IV. Due Process

The Eighth Amendment serves as the primary source of substantive protection to convicted prisoners. Williams 77 F.3d at 768. The due process clause affords a prisoner no greater substantive protection than does the cruel and unusual punishments clause. Id. Although

Ali's substantive due process claim adds nothing to his Eighth Amendment claim. Ali may have a procedural due process claim. An inmate has a state-created liberty interest in restraint which "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995). The court holds that the punitive imposition of five-point restraints and the conditions of Ali's restraint, as alleged by Ali, constituted an atypical and significant hardship on him in relation to the ordinary incidents of prison life.⁶ See Williams, 77 F.3d at 769 (stating that plaintiff had a "forceful argument that confinement in four-point restraints poses an atypical and significant hardship" on him in relation to the ordinary incidents of prison life); Davis v. Lester, 2001 U.S. Dist. LEXIS 10642 (W.D.V.A. July 26, 2001) (unpublished) (finding that an inmate's allegation that he was placed in five-point restraints for forty-eight hours, under similar conditions as alleged here, was sufficient to state a claim that he was deprived of liberty without due process). Accordingly, the court denies defendants' motion for summary judgment as to Ali's procedural due process claim against Yates.

V. State Law Claims

Ali also alleges that Mullins committed an assault and battery under Virginia state law when he hit Ali in the face with his keys. Although the court finds that Mullins' action does not rise to the level of an Eighth Amendment violation because Ali's injuries were only *de minimis*, Ali may still prevail under a state law claim for assault and battery. The court, however, declines

⁶The court notes that the imposition of five point restraints is not under all circumstances a violation of due process; however, here, the length of Ali's restraint, the harshness of the conditions, and the alleged punitive purpose behind Yates' decision indicate that, in this case, there might be a violation of due process.

to exercise supplemental jurisdiction over these state law claims. See 28 U.S.C. § 1367. If Ali wishes, he can pursue them in state court.

VI

For the reasons stated above, the court grants summary judgment for the § 1983 claims against defendants Mullins, Meyers, Snider, Hall, Young, and Harvey. However, the court denies summary judgment for the § 1983 claims of excessive force and denial of due process against Yates. Also, the court declines to exercise supplemental jurisdiction over Ali's state law claims. Thus, Yates is the only remaining defendant in this action.

The court will enter an appropriate order this day. The Clerk of the Court is directed to send certified copies of this Memorandum Opinion and accompanying order to the plaintiff.

ENTER: This 20th day of September, 2001.


CHIEF UNITED STATES DISTRICT JUDGE

#16

Affidavit of Gary Neal Sadler

I, Gary Neal Sadler, being duly sworn, depose and state as follows:

1. I am a thirty-year-old, African-American inmate at MacDougall-Walker Correctional Institution in Suffield, Connecticut. My Connecticut Department of Correction ("CDOC") Inmate Number is Redacted I base this affidavit on my personal knowledge.
2. On July 23, 1998, when I was nineteen years old, I was convicted of first-degree manslaughter in the Waterbury Superior Court, New Haven County, Connecticut, and was sentenced to thirty years in prison.
3. Beginning in October 1999, the CDOC transferred approximately five hundred inmates to Wallens Ridge State Prison ("Wallens Ridge") in Big Stone Gap, Virginia. I was one of them. On January 10, 2000, the CDOC loaded me onto a bus with a number of other inmates and transported us overnight to Wallens Ridge. At that time, Wallens Ridge was a Level 6, super-maximum security prison. The prison from which I was transferred, MacDougall Correctional Institution ("MacDougall"), was a Level 4 facility. I remained at Wallens Ridge until November 3, 2000.
4. We arrived at Wallens Ridge on January 11, 2000. A crowd of correctional officers met our bus as we pulled up to the prison. One officer boarded the bus and said something to the effect of, "The word is, you guys are the worst of the worst. We have guns and stun guns. You will comply with our orders at all times or we will shoot you." Some inmates exchanged looks of confusion. I had a Level 4 security classification in Connecticut, and was not a problem inmate. I did not understand why this officer was calling me the "worst of the worst."

5. Most of the Connecticut inmates sent to Wallens Ridge were African-American or Hispanic, while almost all the corrections officers at Wallens Ridge were white. Some of the white officers at Wallens Ridge used racial slurs toward minority inmates. For example, once, as Officers Goins and Rich escorted me to an outside recreation cage, Officer Goins said to me, "If it were up to me, I would send all you niggers back to Africa." Another officer once referred to me and my "black ass" when ordering me to shave. Before my transfer from Connecticut, I had never experienced—or even imagined—a place like Wallens Ridge.

6. On April 2, 2000, I was housed in a segregation unit at Wallens Ridge where inmates were confined to their cells twenty-three hours a day. Guards delivered meals to inmates by sliding a food tray through a narrow slot in the cell door, which only the guards could unlock. At approximately 11:30 a.m. on April 2, I saw Officer D. Young take something out of his mouth and put it in the food that he was distributing to inmates in the pod. When Officer Young came to my cell, I told him that I saw what he did and that I was going to report him. I also told him that I did not want to eat the food, which he had contaminated. Despite what I said, Officer Young opened the tray slot in my cell door and tried to push the food tray through. I put my hands up to the slot to block the tray from coming into my cell. As I did, some of the food spilled on Officer Young. He then closed the tray slot, locked it, and walked off.

7. Approximately a half hour later, Captain David A. Taylor came to my cell with about seven other officers. One of the guards ordered me to back up to the door and put my hands through the tray slot. I immediately complied, and an officer cuffed my hands behind my back. An officer then ordered me to kneel on the floor. When I did, the guards opened my door and placed me in leg irons. They then escorted me to a strap-down cell in the D-3 pod. I did not resist the officers at any time during this process

8. When we arrived at the strap-down cell, the room smelled of human waste and there appeared to be blood and feces on the mattress. The officers removed all of my clothes, except for my boxer shorts, and placed me on the mattress with my legs shackled and my hands cuffed behind my back. One of the officers pressed an (inactivated) electronic stun shield down on my upper body, while other officers removed the leg irons and strapped my legs to the bed. As the officer pressed down on my chest with the shield, the handcuffs pushed in on my wrists behind my back, causing me a great deal of pain. When the guards finished strapping my legs to the bed, they uncuffed my hands and strapped my arms to the side of the bed. They then fastened a strap across my chest to hold down my upper body. I could not move once all the restraints were in place, except to raise and lower my head. When I asked the officers how long they intended to keep me restrained, they told me that I would be there for two days, unless a supervisor decided to let me out earlier. Nurse Harber entered the cell to check the restraints, and I told her that my left wrist was injured. She touched my wrist for a second or two, but did not say anything to me. She then exited the cell, and the guards shut the door.

9. In addition to the five-point restraints, Officer Young prepared a Major Offense Report on April 2, 2000, regarding the food tray incident, in which he charged me with violating Offense Code 105, "Assault upon any person." That same day, Warden Stanley K. Young authorized placing me on a restricted feeding schedule, in which I received just one horrible tasting "loaf meal" twice a day for seven days.

10. I did not physically resist the officers at any time while they applied the five-point restraints. Although I yelled at the guards in frustration as they strapped me to the bed, I did not physically resist them. I complied with all of their orders.

11. In the first few hours after the guards placed me in five-point restraints, my body began to hurt as though I had been beaten. I also had to use the bathroom. Officers looked in on me from outside the cell about every fifteen minutes. I yelled to them that I was in pain and needed to use the bathroom, but they would not release me from the restraints. I urinated on myself when I could not wait any longer. I began shivering because the room was cold, I was wet from my own urine, and I was dressed in only my boxer shorts. I could see and hear the guards laughing at me when they looked in the cell. They did not let me up until 9:12 p.m.—more than nine hours after they first strapped me to the bed.

12. When the guards released me from the five-point restraints, they put me in metal handcuffs and leg irons. They then allowed me to stand to use the toilet in the cell. I could barely move because my body was stiff and in pain. I almost fell as I tried to walk to the toilet. My wrist also hurt. After I used the toilet, the guards would not let me take a shower or wash off the urine that had dried on my body. They also would not let me clean the mattress. During this break, I did exactly as the officers told me. I did not yell at them or resist in any way. After about fifteen minutes, the guards removed the handcuffs and leg irons and placed me back in five-point restraints.

13. I remained tied to the bed for the next ten hours. Once again, I had to urinate on myself. I also began to cry, which caused my chest and eyes to burn. After a while, I began to hallucinate, thinking that little bugs were crawling on me. The guards released me from five-point restraints at about 7:30 a.m. on April 3, 2000, and placed me in metal handcuffs and leg irons. When I tried to get off the bed, I was so weak, and my body hurt so badly, that I could barely stand. The officers had to grab me by the arms to stand me up. I ate a small breakfast in the cell, which consisted only of the loaf meal. The guards did not allow me to wash myself,

change my boxer shorts, or clean the mattress before eating the food. Although I obeyed all of their instructions during this break, they put me back in five-point restraints after about fifteen minutes.

14. I stayed in five-point restraints until 1:10 p.m. At that time, the guards temporarily released me from the five-points restraints, placed me in handcuffs and leg irons, and allowed me to use the toilet. I did not receive any lunch because my restricted feeding schedule limited me to just two loaf meals a day. After about fifteen minutes, the officers placed me back in five-point restraints, even though I had complied with all of their instructions. When Nurse Scalf checked the restraints, I told her that my left wrist was hurting me. She looked at the restraints and told the officers to loosen the restraint on my left wrist. She also told the officers that the metal handcuffs they had used on me while I was out of five-point restraints had blood on them.

15. At about 5:30 p.m., the officers temporarily released me from the restraints, placed me in handcuffs and leg irons, and allowed me to use the toilet. The guards also gave me my loaf meal, which I had to eat in my filthy conditions. After about fifteen minutes, they placed me back in five-point restraints.

16. For the next six hours, I remained in restraints. During that time, the burning in my chest returned. I also urinated, defecated, and vomited on myself. As before, the officers who looked in on me from outside the cell refused my requests for help. They laughed at me instead. The guards finally released me at 11:45 p.m. and placed me in handcuffs and leg irons. My body hurt all over, and the officers had to help me up from the bed. I collapsed on the floor when I tried to stand. The guards had to pick me up and assist me back to the bed so I could gather myself. They then assisted me to the toilet. The officers flipped the mattress over, but

they did not allow me to wash off. After about twenty or thirty minutes, they placed me back in five-point restraints. This time, however, the guards strapped me to the bed face down so that I would not choke if I vomited again.

17. I remained strapped down in that position for almost eight hours. At 7:50 a.m. on April 4, 2000, the guards released me from the restraints and placed me in handcuffs and leg irons. I was still in a great deal of pain, and the officers had to help me up. After I used the toilet and ate my loaf breakfast in the cell, the guards placed me back in five-point restraints. I did not threaten or resist the guards in any way.

18. Finally, at 11:25 a.m., the guards released me from the restraints for the last time and returned me to my cell. By that time, I had been in five-point restraints for almost forty-eight hours. I did not sleep during this entire ordeal because I was in constant pain and the light directly above me in the cell remained on twenty-four hours a day. During these two days, I never physically resisted any of the officers. I complied with all of their orders from the moment they handcuffed me in my cell on April 2, 2000, to the time they returned me to my cell almost forty-eight hours later.

19. Nurse Hobbs was present when the guards permanently released me from the five-point restraints. I told her that my whole body was hurting, and that my left wrist was causing me severe pain. Her only response was that I should submit a written sick call request. Although I did as Nurse Hobbs suggested, the doctor did not examine me until April 14, 2000, ten days after I was released from the restraints. By then, the pain throughout my body had stopped, but my left wrist still hurt. The doctor ordered x-rays of my wrist, but they were not taken until May 4, 2000. The x-rays failed to show that there was anything wrong with my wrist, but today I still experience pain from the injury.

20. Almost nine years later, I continue to have nightmares about the five-point restraints. I grew up in a tough environment, but I never experienced anything like what I went through during those two days. The officers treated me like an animal, forcing me to soil and vomit on myself and to eat in filth. To this day, I have a hard time staying in one place for an extended period of time. If I have to sit in handcuffs for very long, I feel agitated and claustrophobic. I never felt that way before being placed in five-point restraints.

21. On April 5, 2000, I filed an administrative complaint at Wallens Ridge regarding these incidents. On April 11, 2000, Michael Hutchinson, the Institutional Investigator, denied my complaint without ever speaking with me. His response stated, "If medical has approved of the 5-point, then everything has been done according to policy." A true and correct copy of my administrative complaint and Investigator Hutchinson's response is attached as Exhibit A. On April 14, 2000, I filed a Level I administrative grievance with Warden Young. Three days later, Warden Young responded by stating that my grievance was "unfounded." True and correct copies of my grievance and Warden Young's response are attached as Exhibits B and C, respectively. On May 18, 2000, I appealed Warden Young's Level I response to the DOC Regional Director, R.A. Young. On June 14, 2000, Regional Director Young upheld Warden Young's decision. True and correct copies of my appeal and Regional Director Young's response are attached as Exhibits D and E, respectively.

22. On July 24, 2000, I filed a lawsuit *pro se* under 42 U.S.C. § 1983 with the United States District Court for the Western District of Virginia entitled, *Gary Neal Sadler v. S.K. Young, et al.*, Civil Action No. 7:00CV00581. Among other things, my complaint alleged that defendants Warden Young, Captain Taylor, and Officers John Eaton and Terry Givens (who had

supervised my temporary releases from five-point restraints) violated my right to be free of cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution.

23. In this litigation, I served Warden Young with three sets of interrogatories. Warden Young's sworn interrogatory responses are attached as Exhibits F, G, and H, respectively. I also served the defendants with requests for admission. Their responses to those requests are attached as Exhibit I.

24. The jury trial of my case occurred on October 8, 2003, before the Honorable James P. Jones of the U.S. District Court for the Western District of Virginia in Abingdon. The jury found that the defendants did not violate my Eighth Amendment rights. However, on July 21, 2004, Judge Jones entered judgment notwithstanding the verdict as to defendants Young, Eaton, and Givens. A true and correct copy of Judge Jones's decision, which was reported at 325 F. Supp.2d 689 (W.D. Va. 2004), *rev'd on other grounds*, 2005 U.S. App. LEXIS 163 (4th Cir. Jan. 5, 2005) is attached as Exhibit J.

25. Judge Jones found:

The Commonwealth of Virginia's policy on the "Use of Restraining Devices" at correctional facilities at the time that Sadler was restrained permitted the restraint of an inmate solely for security purposes and only by the authorization of the Warden or the ADO [Administrative Duty Officer]. ... The policy provided that "any restraints applied within a cell should be removed if the inmate's dangerous or disruptive behavior has subsided and it has been determined [that] the inmate no longer poses a threat to himself or others." ... The policy prohibited the use of restraints beyond forty-eight hours "without the express approval of the Deputy Director, Division of Field Operations." ... It mandated that restrained inmates be partially or completely released from restraints at meal times and for toilet use a minimum of four times during each twenty-four hour period, including prior to each meal

See Exhibit J at 4 (*Sadler*, 325 F. Supp.2d at 693-94). See also Exhibit F at Answer 5 and Exhibit G at Answers 2-4.

26. I presented evidence at trial of seventeen cases in which Wallens Ridge inmates were confined to five-point restraints between January and June 2000. *See* Exhibit J at 4 (*Sadler*, 325 F. Supp.2d at 694).¹ Judge Jones noted that:

According to Warden Young's responses to interrogatories and his testimony at trial, there were eight incidents in which inmates who were restrained between January and April 2, did not engage in any dangerous or disruptive behavior while placed in five-point restraints or during any of their temporary releases, yet they were restrained for a total of approximately forty-eight hours. ... In five of the seventeen incidents the inmate engaged in dangerous or disruptive behavior upon being placed in five-point restraints, but did not engage in any dangerous or disruptive behavior during any temporary release from five-point restraints, yet they were restrained for approximately forty-eight hours. ... Indeed, one confinement lasted over seventy-two hours even though the inmate did not engage in any dangerous or disruptive behavior during the temporary releases. ... According to Warden Young's responses to interrogatories introduced at trial, no [Wallens Ridge] officer had been disciplined or reprimanded for misusing five-point restraints prior to April 2, 2000. ... At trial, over three years after that date, Warden Young testified that he was "not aware of any occasion where the review had demonstrated a failure of the individuals in charge to follow procedures."

See Exhibit J at 4-5 (*Sadler*, 325 F. Supp.2d at 694-95).

27. In analyzing whether defendants Young, Eaton, and Givens had violated my Eighth Amendment right to be free of cruel and unusual punishment, Judge Jones stated:

I hold that no reasonable jury could find that Sadler's conduct necessitated an application of force for nearly forty-eight hours. There is simply no evidence indicating a need for continued restraint after 3 p.m. on April 2, three hours after Sadler was initially placed in five-point restraints. Taylor testified that Sadler had yelled at the officers who had restrained him and had continued to yell three hours later, at 3 p.m. However, there is no evidence that Sadler continued to yell after that time. Indeed, the uncontradicted evidence shows that the remainder of Sadler's confinement in restraints was uneventful. Sadler was temporarily

¹ According to Warden Young's interrogatory answers, there were at least seventeen cases between January and June 2000, in which inmates were placed in five-point restraints. *See* Exhibit H at Enclosure A. My interrogatory requests relating to these seventeen cases were based on information that I had received from other Connecticut inmates who were incarcerated with me at Wallens Ridge. In my interrogatories, I asked about these specific inmates who I understood had been placed in five-point restraints. Although I also asked Warden Young to identify every Wallens Ridge inmate who was placed in five-point restraints prior to April 2, 2000, he refused to answer that interrogatory. It is therefore possible that many additional Wallens Ridge inmates were placed in five-point restraints during the January to June 2000 period, including inmates from other pods with whom I did not have contact.

released six times during his nearly two-day confinement to eat and use the toilet, and each of the six incident reports signed by defendants Eaton, Givens, and Parlier, who supervised and assisted in these temporary releases, states that Sadler fully complied with their orders and that there was no need to apply force during the releases.

...

The absence of evidence of a need to restrain Sadler for nearly two days indicates that the defendants were executing a forty-eight hour punishment of Sadler as opposed to responding to an immediate disturbance. The policy on the use of restraints permitted the application of restraints only for security purposes and required that the restraints be removed "if the inmate's dangerous and disruptive behavior had subsided and it had been determined [that] the inmate no longer pose[d] a threat to himself or others."

...

The prison policy on the use of restraints prohibited the application of restraints beyond forty-eight hours "without the express approval of the Deputy Director." ... Instead of a determination to release Sadler once his dangerous and disruptive behavior had subsided, Sadler was kept restrained until further restraint would have demanded the inconvenience of seeking express approval from the Deputy Director. The only reasonable inference is that the de facto policy at [Wallens Ridge] was to keep inmates restrained for forty-eight hours regardless of whether they continued to engage in dangerous or disruptive behavior, as further evidenced by the eight documented incidents in which [Wallens Ridge] officials continued to apply five-point restraints for approximately forty-eight hours on inmates who had not engaged in any dangerous or disruptive behavior during the restraining process or any of the temporary releases.

For these reasons, I hold as a matter of law that [defendants Young, Eaton and Givens] did not act in good faith in restraining Sadler for forty-seven hours and twenty minutes

...

I also find that there are two grounds on which Sadler has established the objective component of his excessive force claim. First, any reasonable jury would find that completely immobilizing an inmate in five-point restraints for nearly forty-eight hours constitutes more than de minimis pain, even when the inmate is temporarily released for six approximately fifteen minute periods, and regardless of whether there is proof that the inmate suffered any lasting injury. ... Second, any reasonable jury today would find that confining an inmate in five-point restraints for nearly two days with short breaks is the sort of force that is "repugnant to the conscience of mankind."

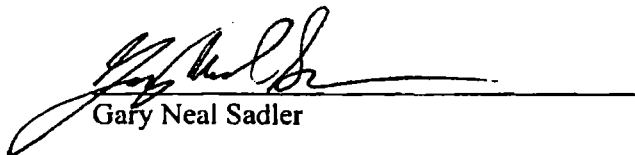
See Exhibit J at 10-11 (*Sadler*, 325 F. Supp.2d at 702-04).²

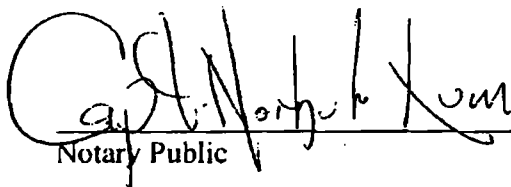
28. I have not been promised or provided any assistance with any legal matters in which I am involved, or any other benefit, in exchange for this affidavit.

29. I was never contacted by anyone claiming to represent Thomas A. Porter at his capital murder trial in Virginia, or in his appeal. I never heard from Joseph Migliozi, Michelle Atkins, Daryl Van Horn, Jennifer Schweizer, or anyone else acting on Mr. Porter's behalf. I have been incarcerated in Connecticut continuously since my return in November 2000 and would have been easy to find. Had I been asked, I would have been willing to testify at Mr. Porter's trial, or give a deposition or other statement, and would have told the truth about my experiences at Wallens Ridge.

I have read the above statement and declare under the pains and penalties of perjury that it is true and correct.

Dated this 23rd day of April, 2009.


Gary Neal Sadler


Notary Public

NORBERTO F. LUNA
NOTARY PUBLIC
MY COMMISSION EXPIRES 12/31/2010

4/23/09

² Judge Jones also held that the defendants violated my right to due process by failing to provide me with any process during my confinement in five-point restraints, and that the defendants were not entitled to qualified immunity on that claim. See Exhibit J at 12 (*Sadler*, F. Supp.2d at 706). The United States Court of Appeals for the Fourth Circuit later reversed the portion of Judge Jones's order denying them qualified immunity on the due process claim after determining that I had alleged only an Eighth Amendment claim. See Attachment K (*Sadler v. Young*, No. 04-7337, 2005 U.S. App. LEXIS 163 (4th Cir. Jan. 5, 2005)). The Fourth Circuit declined to exercise jurisdiction over the defendants' arguments that Judge Jones erred in granting me judgment as a matter of law on my Eighth Amendment claim, to which the defendants did not assert qualified immunity. *Id.*

#17

Affidavit of James K. Hart

I, James K. Hart, being duly sworn, depose and state as follows:

1. I am a thirty-one-year-old, African-American man. I am an inmate at Wallens Ridge State Prison ("Wallens Ridge") in Big Stone Gap, Virginia. My Virginia Department of Corrections ("DOC") Inmate Number is Redacted I base this affidavit on my personal knowledge.
2. On April 3, 1996, when I was eighteen years old, I was convicted in the Richmond City Circuit Court of second-degree murder, voluntary manslaughter, and the use of a firearm in the commission of a felony. I received a thirty-three-year prison sentence.
3. In April 1999, the DOC transferred me from Sussex I State Prison in Waverly, Virginia, to Wallens Ridge. At that time, Wallens Ridge was a newly opened, Level 6, super-maximum security facility, which had just begun to receive prisoners. I remained at Wallens Ridge until about May 2002, when the DOC transferred me to Red Onion State Prison ("Red Onion") in Pound, Virginia. Red Onion was also a Level 6, super-maximum security prison, which was located approximately twenty-five miles from Wallens Ridge. In February 2003, the DOC transferred me back to Wallens Ridge, which had since been downgraded to a Level 5 prison.
4. On the day that I arrived at Wallens Ridge in April 1999, a large group of correctional officers ("COs") met our transport van when we pulled up to the prison. The guards wore full riot gear, including helmets with face visors, and many of them carried taser guns and handheld stun devices. The K-9 squad was also present with their barking attack dogs. One of the officers boarded the van and yelled, "You are now at Wallens Ridge State Prison. This is unlike any other prison you have been to. If you fail to obey any orders, you will be met with

immediate firepower." Two guards then pulled us off the van one-by-one and brought us to the reception area, where we were forced to remove all of our clothes, open our mouths, lift our genitals, bend, spread our buttocks, and cough, as the COs inspected our bodies and belongings for hidden contraband.

5. Thomas Porter and I were housed in the same segregation unit, or "pod," at Wallens Ridge, which contained about twenty-two inmates. In segregation, we were locked in our cells twenty-three hours a day, seven days a week. Each cell was about 8' x 12' in size and contained nothing more than a steel slab with a thin mattress for a bed, a steel desk and shelf, and a toilet-sink unit. We ate all of our meals alone in our cells, which the COs delivered to us on trays passed through narrow slots in our cell doors. The only time we left our cells was when the COs brought us shackled to stand outside the building for "recreation" in individual, kennel-like cages for an hour, which was permitted five days a week if no other restriction was in place, or to take a shower, which was permitted three times a week if no other restriction was in place.

6. In the time that I knew him, Thomas was not a violent or disruptive inmate. I never saw or heard Thomas threaten or antagonize any COs or other inmates. In fact, he was a very laid-back person who generally kept to himself. Thomas and I used to communicate by hollering to each other through our cell doors. This was a difficult way to have a conversation, but it helped us deal with the boredom and isolation that comes from spending all of your time alone in a small cell. I really liked and enjoyed Thomas as a person. Thomas and I were eventually transferred to different pods, but I continued to yell to him and smile whenever I saw him.

7. Wallens Ridge was a particularly bad place in the first few years after it opened. The COs went out of their way to demean inmates and antagonize them into making some kind

of response, and would then retaliate with a disproportionate punishment. For example, the COs used to keep inmates in five-point restraints for extended periods of time for little or no reason, such as for kicking a cell door. Much of the behavior of many of the COs would never be tolerated in normal society or in most prisons. For example, the COs expressed a great deal of racism toward African-American inmates. Most of the COs at Wallens Ridge were white, while most of the inmates were African-American. Many COs consistently insulted African-American inmates by calling them "nigger" or "boy," and used the same language when referring to African-American inmates in conversation. Guards said these words to me, and I heard them use these words toward other African-American inmates countless times. I heard Officer Scott Adkins and Officer Bellamy, among other COs, call African-American inmates "niggers" on numerous occasions. COs also made taunting and provocative sexual comments to inmates. For example, I heard Sergeant J.B. O'Quinn say, "Suck my dick" to inmates.

8. In addition to the hardships of prison life, like extreme restrictions on movement, contact with family or friends, or just having the chance to make something out of your life, the COs at Wallens Ridge and Red Onion during the time that Thomas Porter and I lived at these facilities made it extremely difficult to behave appropriately. They tried very hard to provoke us to act in ways that would get us in trouble and justify further punishment. Thomas and I had to learn how to avoid, or how to endure, this targeted abuse on a day-to-day basis. Every day that we survived without an incident in Wallens Ridge and Red Onion was the result of our restraint and effort not to allow the aggressors to stir up trouble for us. This was very difficult to do when the persons seeking to cause trouble also were in charge of virtually every aspect of our daily lives, and operated essentially free from supervision.

9. I have not requested or been promised or provided any assistance with any legal matters in which I am involved, or any other benefit, in exchange for this affidavit.

10. I was never contacted by anyone claiming to represent Thomas Porter at his capital murder trial in Virginia, or in his appeal. I never heard from Joseph Migliozi, Michelle Atkins, Daryl Van Horn, Jennifer Schweizer, or anyone else acting on Thomas's behalf. I have been incarcerated in Virginia since 1996. Had I been asked, I would have been willing to testify at Thomas's trial, or give a deposition or other statement, and would have told the truth about my experiences at Wallens Ridge and with Thomas.

I have read the above statement and declare under the pains and penalties of perjury that it is true and correct.

Dated this 27 day of May, 2009.

James K. Hart
James K. Hart

V. Sch
Notary Public

5-27-09
Date



#18

Affidavit of Curtis D. Hilliard

I, Curtis D. Hilliard, being duly sworn, depose and state as follows:

1. I am a 39-year-old African-American man. I am an inmate at Augusta Correctional Center in Craigsville, Virginia. My Virginia Department of Corrections ("DOC") Inmate Number is Redacted I base this affidavit on my personal knowledge.
2. In April 2000, I was convicted in the Circuit Court of the City of Richmond on charges of murder, use of a firearm in the commission of murder, maliciously shooting into an occupied vehicle, and discharging a firearm within 1,000 feet of a school. The Circuit Court sentenced me to 61 years in prison. The Court of Appeals of Virginia reversed my convictions in August 2004, and the Supreme Court of Virginia affirmed the Court of Appeals' decision in June 2005. In July 2006, I pleaded guilty to these same charges, and the Circuit Court sentenced me to 61 years in prison, but with 44 years suspended.
3. In August 2001, the DOC assigned me to Wallens Ridge State Prison ("Wallens Ridge"), which was a horrendous place. I arrived at Wallens Ridge in a bus with other inmates. When we pulled-up to the facility, huge corrections officers ("COs") in riot gear, some of whom had attack dogs, surrounded the bus. One of the officers boarded the bus and gave a speech about the kinds of things that would not be tolerated at the prison. When one of the inmates on the bus laughed, the COs pulled him out of his seat and took him off the bus. As the guards removed the inmate, they held an electronic stun device to his heart and told him that they would shock him if he made any moves. Each of us was then taken to the intake area of the prison, where we were strip-searched. I had to remove all my clothes, bend over, and spread my buttocks in front of the guards.

4. I was placed in a segregation unit for the first few days after I arrived at Wallens Ridge, and was then transferred to general population. On my first day in general population, one of the COs announced to the housing unit, or "pod," that it was time for recreation. When the doors to our cells opened, I hurried to get a shower, which I had not had since I arrived at the prison. All of a sudden, I heard a gun shot. When I turned around, all the inmates in the pod were laying on the floor, so I also got down. At that point, approximately 15 guards came through a door, picked me up, and brought me back to the segregation unit. The COs told me that the reason for the gunshot, and for me being placed in segregation, was because I supposedly ran to the shower, even though all I did was walk quickly.

5. After about thirty days in segregation, I was placed back in general population. Soon after I returned to general population, an inmate in the cell next to mine yelled something at Sergeant J.B. O'Quinn. Sergeant O'Quinn came to my cell door and accused me of being the one who yelled at him. He called me a "baldheaded nigger," and ordered me to back up to my cell door so that he could cuff my hands behind my back through the slot in the door. I refused to let Sergeant O'Quinn cuff me because I had not done anything wrong. Sergeant O'Quinn continued to abuse me verbally until the person in the cell next door told Sergeant O'Quinn that he was the one who had yelled at him. After this incident occurred, I submitted an emergency grievance against Sergeant O'Quinn. The next day, he came back to my cell with a number of other COs and brought me to the segregation unit, where I remained for the next four months. Sergeant O'Quinn lied by saying that I had cursed at him and threatened to kill him the day before.

6. I encountered a great deal of racism at Wallens Ridge. For example, as I was leaving the chow hall one day, a white CO told me to stand still for a pat-down search. When I

asked the CO why he wanted to search me, he responded by saying, "Nigger, do what I tell you. You're in our world now." I heard many other COs at Wallens Ridge use racial slurs against African-American inmates. Officer Scott Adkins was one of these COs. I heard Officer Adkins call other African-American inmates "niggers," and witnessed him rough up several inmates while they were in handcuffs.

7. I have not requested or been promised or provided any assistance with any legal matters in which I am involved, or any other benefit, in exchange for this affidavit.

8. I was never contacted by anyone claiming to represent Thomas Porter at his capital murder trial in Virginia, or in his appeal. I never heard from Joseph Migliozi, Michelle Atkins, Daryl Van Horn, Jennifer Schweizer, or anyone else acting on Mr. Porter's behalf. I have been incarcerated in Virginia since 2000. Had I been asked, I would have been willing to testify at Mr. Porter's trial, or give a deposition or other statement, and would have told the truth about my experiences at Wallens Ridge.

I have read the above statement and declare under the pains and penalties of perjury that it is true and correct.

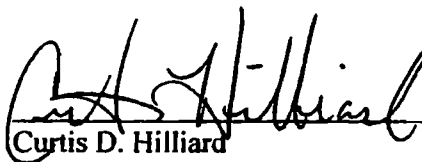
Dated this 14TH day of JULY, 2009.

STATE OF VIRGINIA

COUNTY OF AUGUSTA

ACKNOWLEDGED BEFORE ME

THIS 14TH DAY OF JULY 2009


Curtis D. Hilliard


Notary Public

MY COMM. EXP. 6/30/2013

14 JULY 2009
Date

D. H. SPROU
Notary Public
Reg. #108302
Commonwealth of Virginia

#19

Affidavit of Marcus D. Sandidge

I, Marcus D. Sandidge, being duly sworn, depose and state as follows:

1. I am a thirty-year-old African-American man. I am also an inmate at Pocahontas State Correctional Center in Pocahontas, Virginia. My Virginia Department of Corrections ("DOC") Inmate Number is ^{Redacted} I base this affidavit on my personal knowledge.

2. In August 1998, when I was nineteen years old, I was convicted in the Lynchburg Circuit Court of numerous counts of robbery, statutory burglary, grand larceny, and the use of a firearm in the commission of felonies.

3. In or about May 1999, the DOC assigned me directly from receiving and classification at the Southampton Reception & Classification Center to Wallens Ridge State Prison ("Wallens Ridge"). At that time, Wallens Ridge was a Level 6, super-maximum security prison. I remained at Wallens Ridge until 2002.

4. I arrived at Wallens Ridge with a number of other inmates. A group of correctional officers ("COs") wearing full riot gear met our van as we pulled up to the prison. An officer boarded the van and told us that we were now at Wallens Ridge. He said that Wallens Ridge was like no other prison and that the guards could do whatever they wanted to the inmates.

5. I experienced a lot of racism at Wallens Ridge. Throughout my time at Wallens Ridge, the COs routinely called me and other African-American inmates "boy" and "nigger." When an inmate complained or filed a grievance about the treatment he received from the COs, the guards often retaliated by targeting him for harassment. The guards frequently tried to provoke inmates into a reaction that would justify the guards filing disciplinary charges against the inmate or transferring him to the segregation unit.

6. The COs at Wallens Ridge frequently fired their guns for little or no reason, such as when an inmate crossed a red line on a walkway or when they claimed an inmate had moved too close to one of the guards. Whenever a CO fired his or her weapon, all the inmates in the area were supposed to lie on the ground. When an inmate failed to do so, the guards usually dragged him off to segregation.

7. One example of how many of the guards treated inmates at Wallens Ridge occurred during indoor pod recreation. Officer Buchanan, who was one of the more "trigger happy" guards at Wallens Ridge, fired his gun from the control booth for no apparent reason. A group of COs entered the pod and began pulling guys off the floor. I saw Sergeant Sturgill take one of these inmates and push him against the wall. He then pushed the inmate's face into the wall and yelled, "Don't move!" Sergeant Sturgill and another officer spread the inmate's legs apart. As they did so, Sergeant Sturgill claimed that the inmate tried to turn around. He and the other officer then violently slammed the inmate to the floor, cuffed his hands behind his back, and took him off to the segregation unit.

8. As another example of how certain guards treated inmates at Wallens Ridge, I once witnessed Officer Scott Adkins hit an inmate for no apparent reason after he and a sergeant had pulled the man out of his cell. Officer Adkins and the sergeant then slammed the inmate onto the floor, and Officer Adkins continued to hit the man. On other occasions, I heard Officer Adkins verbally abuse inmates, including by calling them "faggots."

9. I also observed guards at Wallens Ridge beat inmates during cell extractions. Typically, when the COs forcibly removed inmates from their cells, they began by spraying mace into the cell through a narrow slot in the cell door. A group of five or six guards in full riot gear would then storm into the cell. The first guard in the door would hit the inmate with a stun

shield, and the other guards would then cuff the inmate's hands behind his back and shackle his ankles. Once the man was fully restrained, the guards would then punch and kick the inmate. Although most cell extractions were videotaped, the guard operating the video would often point the camera toward the ground or a wall while the other guards beat the inmate.

10. I have not requested or been promised or provided any assistance with any legal matters in which I am involved, or any other benefit, in exchange for this affidavit.

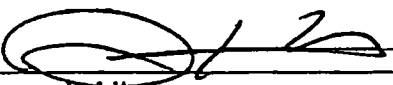
11. I was never contacted by anyone claiming to represent Thomas Porter at his capital murder trial in Virginia, or in his appeal. I never heard from Joseph Migliozi, Michelle Atkins, Daryl Van Horn, Jennifer Schweizer, or anyone else acting on Mr. Porter's behalf. I have been incarcerated in Virginia since 1998. Had I been asked, I would have been willing to testify at Mr. Porter's trial, or give a deposition or other statement, and would have told the truth about my experiences at Wallens Ridge.

I have read the above statement and declare under the pains and penalties of perjury that it is true and correct.

Dated this 14 day of July, 2009.



Marcus D. Sandidge



Notary Public

07/14/2009

Date



#20



115 of 140 DOCUMENTS

Copyright 1999 The Richmond Times Dispatch
Richmond Times Dispatch (Virginia)

April 7, 1999, Wednesday, ONE STAR EDITION

SECTION: AREA/STATE, Pg. B-1

LENGTH: 611 words

HEADLINE: 7 FIGHTING INMATES FIRED ON;
MOST WOUNDS AT RED ONION MINOR

BYLINE: FRANK GREEN; Times-Dispatch Staff Writer

BODY:

The pace of gunfire at Red Onion State Prison, Virginia's toughest, picked up last month when seven inmates were hit by rubber pellets fired from 12-gauge shotguns in three separate incidents.

Most of the inmates received superficial injuries, but one had the small pellets embedded in his face and required hospitalization. Authorities said all of the inmates who were shot had been fighting and refused orders to stop.

The shootings mean 10 inmates have been hit by "stinger rounds," and 41 shots - most of them warning rounds - have been fired at the supermax prison since it opened in August.

In February, an inmate at the state's new Sussex 1 State Prison, near Waverly, was wounded with birdshot from a shotgun and two other inmates were hit with rubber pellets. Virginia is one of only three state prison systems in which correctional officers carry firearms inside inmate housing areas.

Red Onion, near Pound in Southwest Virginia, is under investigation by a group called Human Rights Watch. Last month, the Virginia Department of Corrections refused to allow a representative of the international human rights group to tour the prison.

Gov. Jim Gilmore on Friday will open a new twin facility, the Wallens Ridge State Prison near Big Stone Gap, which will begin receiving inmates this month.

"In our society, we, as adults must accept responsibility for our actions. . . . Inmates are no different, therefore, inmates must also accept responsibility for their actions," said Larry Traylor, spokesman for the Department of Corrections. "Inmates are aware of all policies and the consequences for violating policy."

Authorities would not release the names of the officers or inmates involved. The department offered the following summaries of the incidents:

* March 5, at 12:05 p.m., three inmates were fighting in a recreation yard. An armed officer ordered them to stop, and they ignored the warning. Then the officer fired a warning round, and they ignored that, too.

They ignored further verbal warnings. The gun-post officer then fired four times "at the inmates' lower extremities," but the inmates continued to fight. The officer reloaded, warned them again, and then fired three more rounds at the inmates' "lower extremities."

They finally stopped fighting. "All inmates had superficial wounds to arms, legs and areas of the back," said Traylor.

7 FIGHTING INMATES FIRED ON; MOST WOUNDS AT RED ONION MINOR Richmond Times Dispatch
(Virginia) April 7, 1999, Wednesday,

* March 19, 7:30 a.m., two inmates were fighting on a segregation recreation yard. The inmates ignored both a verbal warning and a warning shot. The officer then fired once at their "lower extremities," and the inmates stopped fighting.

Both inmates received superficial wounds. One inmate had a pellet embedded in his right thigh. It was removed by a nurse.

* March 25, 5:45 p.m. two inmates on their way to dinner were fighting and ignored both verbal warnings and a warning shot. An officer fired a stinger round at their "lower extremities." The inmates stopped fighting. They were ordered to lie down on the ground, but they refused to comply.

The officer fired another stinger round, then the inmates got down on the ground. One inmate had superficial wounds. "The other inmate had one pellet lodged in the right side of the nose, [and] two pellets lodged above his left eye," said Traylor.

Traylor said it was unclear how the inmate was struck in the face when the round was aimed low. However, he said if the inmates were fighting on the ground when the shot was fired it could explain the facial wounds.

The inmate was sent to a medical center where the pellets were removed and the wounds were treated. The inmate was then sent back to Red Onion.

LOAD-DATE: April 8, 1999

#21



8 of 8 DOCUMENTS

Copyright 1999 The Washington Post
The Washington Post

April 18, 1999, Sunday, Final Edition

SECTION: METRO; Pg. C01**LENGTH:** 1987 words**HEADLINE:** The Hardest Time; At the Toughest Prison in Va., Tight Controls**BYLINE:** Craig Timberg, Washington Post Staff Writer**DATELINE:** WISE COUNTY, Va.**BODY:**

Slug a cellmate, grab a guard at a Virginia prison, and you'll end up here, locked down for 23 hours a day in the solitary confinement wing of Red Onion State Prison, where they have taken the "corrections" out of the Virginia Corrections Department.

Forget classes, a job in the laundry, lifting weights, playing ball. Even the occasional friendly visit from a grandmother or wife is almost always off limits. And that one hour a day of freedom? Get used to wearing handcuffs and leg shackles while a guard wielding a 50,000-volt stun gun walks you to the shower -- with bars of its own -- or the small concrete courtyard for exercise.

And even if you get out of solitary and your day is broken up by trips to the dining hall or a few hours in the day room, there will be a shotgun, loaded with hard rubber pellets, trained on your every move.

"You step out of line, you're going to get shot," says Joseph M. Giarratano, a 41-year-old convicted murderer, clad in a bright orange prison uniform and black canvas shoes without laces. "And that works. . . . In the short term, that works."

Virginia prison officials say such severe restrictions are needed to control "the worst of the worst," inmates so dangerous that it's better to forget about rehabilitation and simply warehouse them.

Red Onion, which opened here in August, and Wallens Ridge State Prison, an identical twin that will open in nearby Big Stone Gap this month, are "super-max" prisons, part of a massive prison-building program launched by then-Gov. George Allen (R). His tough-on-crime agenda lengthened sentences, abolished parole and swelled prison populations.

The two super-maxes are designed to hold a combined 2,400 inmates, with about 700 of those in 23-hour-a-day solitary confinement cells. Those not in solitary can spend several hours a day outside their cells and hold jobs in the kitchen or laundry to earn money. There is no law library, little job training and only one classroom.

While human rights advocates and criminologists blast the lack of rehabilitation efforts, state prison officials say there is little they can do to force rehabilitation on prisoners who have no interest in bettering themselves.

Ronald J. Angelone, Virginia's tough-talking corrections director, is an advocate of super-max. "It's not a nice place," he says. "And I designed it not to be a nice place."

The Hardest Time: At the Toughest Prison in Va., Tight Controls The Washington Post April 18, 1999, Sunday, Final Edition

Many of the inmates are in prison for life, but not all. Corrections Department records show that about 200 -- one of every five in Red Onion -- are scheduled for release in the next 10 years. Sixty-six will be 30 or younger; 184 will be 40 or younger.

Giarratano, who was on Virginia's death row until then-Gov. L. Douglas Wilder (D) spared his life, says he has found peace through Zen meditation. But he sees the effects of extreme security measures on others, including those who someday will be released.

"They start cracking up. They start acting out," he says, making tiny constricted gestures with his handcuffed hands. "What are they going to do when they get out on the streets?"

The New York-based group Human Rights Watch, a leader in investigating prisons, has been denied tours of Red Onion because of the state's safety concerns. Based on interviews with prisoners, the group alleges that racism, excessive violence and inhumane conditions reign inside. State prison officials deny those charges.

Human Rights Watch also contends -- and prison officials also deny -- that Virginia and many other states in the super-max building boom are rushing to fill those cells to justify the expense, pulling many less-dangerous inmates such as Giarratano into unnecessarily extreme conditions.

Most super-maxes take only those who have misbehaved at other prisons, but Virginia also sends inmates with life sentences to Red Onion. Jamie Fellner, of Human Rights Watch, says the policy "is clearly just an effort to fill the prison."

Criminologists are alarmed by the prospect of super-max graduates returning to society.

The only education efforts are literacy and high school equivalency courses offered over closed-circuit television. Job training is limited to skills useful behind bars such as wall painting or picking up trash.

"What no one is talking about," says James Alan Fox, a criminologist at Northeastern University, "is what happens down the road when more ex-cons come out with bad attitudes and little skills to wreak havoc on our streets."

Red Onion and Wallens Ridge sit atop mountains in Southwest Virginia coal country, hundreds of miles from Richmond, Northern Virginia and the other urban areas most super-max inmates once called home.

The remoteness -- visitors sometimes must drive seven or eight hours to get there -- can fray family ties. But the new prisons have brought an economic spark to this depressed region. Each one cost more than \$ 70 million to build. Between them, they will employ nearly 800 and have combined payrolls of \$ 27 million a year.

For all the complaints about Virginia's new super-max prisons, they seem well equipped to control very dangerous prisoners who might otherwise attack guards or other prisoners or try to escape.

Angelone says it is cheaper and safer to house "the worst of the worst" in Red Onion or Wallens Ridge than in the state's other prisons, which are usually called "correctional facilities."

Those other prisons, once rid of their troublemakers, run better and make rehabilitation there easier, Angelone says. Even the threat of a super-max, he adds, makes inmates elsewhere behave better. Since super-max inmates can return to lower-security prisons in as little as two years given good behavior, Angelone hopes prisoners throughout the system will be scared straight by stories of the prisons' severity.

"You touch an officer, and you're going to Red Onion," he says.

Escape from Red Onion, many prisoners concede, is almost impossible to imagine. Prisoners live in 11-by-8-foot cells with five-inch-wide slits for windows and slots in the 1 1/2-inch-thick steel doors for delivering meals or mail.

Inside the prisons, the cells are Spartan. The toilet and sink, with no knobs or handles that could be fashioned into weapons, are a single stainless-steel unit. The desk, beds and a small shelf are mere slabs of steel bolted to the wall. Mattresses and small pillows are thin and plastic.

Guards in a control room open and close all doors with the whoosh and crash that are the unmistakable soundtrack of prison life. And the common areas, also locked from the outside, are watched constantly by guards holding shotguns, trained to fire non-lethal rounds at prisoners who misbehave.

The Hardest Time: At the Toughest Prison in Va., Tight Controls The Washington Post April 18, 1999, Sunday, Final Edition

The same is true of the yard, where prisoners who are not in solitary confinement can exercise and chat with other inmates. The only recreation facility is a single basketball court, where crossing one of several red-painted lines draws immediate fire from the gun port above.

Virginia is one of three prison systems in the country to use firearms behind bars, and they are used at the super-maxes -- designed to offer clean sight lines for guns -- far more often than at other prisons. In Red Onion's first nine months, shots have been fired 63 times. Most were warning shots, but 15 involved the pellets called "stinger rounds," which sometimes penetrate the skin.

Federal prisons and most state ones shy away from trying to control inmates with firearms, both because the practice is seen by many as inhumane and because of fears that the guns could fall into the hands of inmates. But Red Onion warden George Deeds says that possibility is remote because the weapons, while aimed through bars into common areas, stay in locked control rooms.

"There's no possible way inmates can get their hands on these weapons," Deeds says, "unless there's a serious mistake."

The perimeters of both prisons are protected by coils of razor wire and double fences with sensors. Guards in two towers, armed with live rounds, watch for escape attempts. A patrol car constantly circles each prison.

"I'm never getting out of prison," says 53-year-old inmate Billy R. Kelly, gaunt, bearded and shackled in three different ways as he speaks with a visitor; he is serving a 72-year sentence for murder. "You have to keep inventing a reason to live every day."

For many others, the thought of leaving prison is not so abstract. Inmate Reginald Yelverton, 30, grew up in Southeast Washington but has been in prison for 12 years on a second-degree murder charge. The D.C. Department of Corrections pays to house 69 prisoners such as Yelverton at Red Onion. He expects to make his first visit to a parole board next year.

"Red Onion," he says, "is very terrible, very racist" -- a common complaint from African American prisoners such as Yelverton. Though prison officials say they work to fight racism, most of the guards, like most of the population of Southwest Virginia, are white.

Another inmate who can imagine freedom is Robert L. Smith Jr., 29, who also grew up in Washington but was sent to Red Onion for a kidnapping and weapons charge in Fairfax County. Smith says he received his high school diploma while in another prison and was on his way to early release for good behavior when he threw a punch at an aggressive fellow inmate while on a work detail. Prison officials, who do not reveal disciplinary histories of inmates, sent Smith to Red Onion.

The incident set back his possible release date, but even without parole, his 12-year sentence ends in December 2003, when Smith will be 34.

There is little research to predict what Yelverton, Smith or other prisoners will do once they leave Red Onion. There are at least 30 super-max prisons in the country now, according to a new federal study by Chase Riveland, a former correctional director in Washington state and Colorado. Data on their effectiveness, however, is scant.

"Over the long term," Riveland says, "the jury is really out."

But Craig Haney, a psychologist at the University of California at Santa Cruz who studies solitary confinement, says super-max prisons may breed more violence as inmates become both emotionally detached and enraged.

"There are some people who react to that deprivation with anger and resentment, and sometimes uncontrollable anger and resentment," Haney says. "You don't necessarily have to care -- unless you let them out."

Michael Bonhom, a 36-year-old murderer from Anacostia, echoes the thought. "You're going to have rage in you," says Bonhom, who is seeking a new trial in hopes of getting free. "And all it takes is a second" -- he snaps his fingers -- "and you're going to explode." ON WATCH: Officer Ronnie Rhoten, of the Wallens Ridge prison, holds a non-lethal weapon that guards use. IN CHARGE: Red Onion warden George Deeds said prisoners can't get weapons absent "a serious mistake." ON TARGET: A prison official holds two of the non-lethal rubber pellets used to subdue disruptive inmates. An officer holds a semiautomatic rifle on one of the towers just outside the double security fence surrounding Virginia's super-maximum Wallens Ridge prison, which opens this month. Above, Jason Deahl, a day-shift segregation officer, in one of several rooms used to watch over inmates at Wallens Ridge State Prison, which will open this month.

The Hardest Time; At the Toughest Prison in Va., Tight Controls The Washington Post April 18, 1999, Sunday, Final Edition

Below, Capt. David Taylor examines an immobilization shield. The shields are designed to stun inmates during disruptions at the prison with 50,000-volt charges. Prison guards at Wallens Ridge and its nearby twin, Red Onion, also carry stun guns and other non-lethal weapons to control Virginia's most dangerous and unruly 2,400 inmates. Sgt. Donnie Lester stands in one of the segregation units at Wallens Ridge. The five-inch-high window behind him will provide the inmate who occupies this cell his only view of the world outside the prison for 23 hours a day.

GRAPHIC: Map, TWP; Photo, ROBERT A. REEDER

LOAD-DATE: April 18, 1999

#22



7 of 8 DOCUMENTS

Copyright 1999 The Washington Post
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April 27, 1999, Tuesday, Final Edition

SECTION: METRO; Pg. B01

LENGTH: 544 words

HEADLINE: Virginia Rethinking Hard-Core Prisons; Effect on Inmates Could Backfire

BYLINE: Craig Timberg, Washington Post Staff Writer

DATELINE: RICHMOND, Va., April 26

BODY:

Complaints about severe conditions at Virginia's two new super-max prisons have prompted the State Crime Commission to study whether the prisons could be making some criminals even more dangerous.

State officials built Red Onion and Wallens Ridge state prisons, both in Southwest Virginia, to house "the worst of the worst" -- inmates with life sentences or those who have misbehaved at other prisons. Their combined capacity is 2,400, with 700 cells dedicated to 23-hour-a-day solitary confinement.

But several lawmakers, reacting to news accounts and a report by a New York-based human rights group, are questioning whether the right inmates are ending up at the super-max prisons. The crime commission, which includes both lawmakers and local law enforcement officials, plans to study whether prisoners due for release in the next several years are becoming more hardened by stays there.

"If they're getting out, obviously we have a responsibility to make sure they at least have an opportunity to be functioning members of society," said state Sen. Kenneth W. Stolle (R-Virginia Beach), chairman of the crime commission. "Most people envisioned that Red Onion and Wallens Ridge were going to be dedicated to people with life sentences."

An analysis of super-max inmates by The Washington Post this month found that one in five was slated for release in the next 10 years. Super-max prisons make minimal efforts at education, recreation and job training.

The group Human Rights Watch contended in a report last week that the super-max prisons -- which rely heavily on guns loaded with non-lethal rubber pellets to control prisoners -- are brutal, inhumane and rife with racism. The group also contends that Red Onion, which opened last August, and Wallens Ridge, which opened this month, are being filled with prisoners who don't merit such extreme security.

"I think it's an important step for the crime commission to look at who is being sent to Red Onion," said Jamie Feller, of Human Rights Watch. "We still think it's important for Virginia to examine and reconsider the use-of-force policies."

Corrections Director Ronald J. Angelone rejected the criticism today, saying the super-max prisons are necessary and humane -- even for inmates due out in the next few years.

Virginia Rethinking Hard-Core Prisons; Effect on Inmates Could Backfire The Washington Post April 27, 1999.
Tuesday, Final Edition

"There is no Department of Corrections magic wand that makes them decent human beings while in prison," Angelone said. "They have to be housed appropriately so that the employees and the other inmates aren't subjected to violent behavior."

Although Stolle said the commission plans to focus on whether rehabilitation efforts are adequate for prisoners with little time left on their sentences, other lawmakers urged a broader review of the super-max prisons.

"That will be the initial inquiry, but sometimes one thing leads to another," said Det. Clifton A. "Chip" Woodrum (D-Roanoke), another crime commission member.

State Sen. Janet D. Howell (D-Fairfax), also a member of the crime commission, says she too wants answers to a range of questions. "We maybe had the population for one" super-max prison, Howell said. "I doubt we need two."

The commission's meeting on May 20 is tentatively scheduled to include a discussion on the super-max prisons.

LOAD-DATE: April 27, 1999

#23



84 of 140 DOCUMENTS

Copyright 2000 The Richmond Times Dispatch
Richmond Times Dispatch (Virginia)

February 28, 2000. Monday, CITY EDITION

SECTION: AREA/STATE, Pg. B-1

LENGTH: 1140 words

HEADLINE: SUPERMAX PRISONS ASSAILED;
BUT OFFICIALS DISPUTE EXPERTS, DEFEND 2 VA. UNITS

BYLINE: Frank Green; Times-Dispatch Staff Writer; Call Frank Green at (804) 649-6340 or e-mail him at;
fgreen@timesdispatch.com

DATELINE: WASHINGTON

BODY:

An ACLU attorney says the construction of so-called "supermax" prisons across the country is a symptom that the criminal justice system is breaking down. A Harvard University professor calls them "breeding grounds of sadism."

Virginia has two new such prisons, both in Wise County: the Red Onion Mountain Maximum Security State Prison and Wallens Ridge Maximum Security State Prison. The two, however, differ in key ways from similar facilities elsewhere.

The Virginia Department of Corrections disputes the criticism of its supermaxes, calling them successes that have made the rest of the state's prison system safer. But officers at Virginia's supermaxes have fired weapons at inmates - either warning shots or rubber pellets - more than 250 times since the beginning of last year.

Elizabeth Alexander, director of the ACLU's National Prison Project, said the proliferation of such prisons is a result of assembly-line justice that as of this month has filled the nation's prisons with 2 million inmates.

Dr. Stuart Grassian, a psychiatrist and professor at the Harvard Medical School and an expert on solitary confinement, said that "in my experience, these places are breeding grounds of sadism."

Grassian and Alexander's remarks came at a two-day conference last week that focused on super maximum security prisons. The conference was sponsored by Alexander's group, Human Rights Watch, Amnesty International and others.

Speakers at the conference said supermax prisons, where inmates are generally held one to a cell for 23 hours a day, are the result of crowded prisons and undertrained, overstressed staff - conditions that lead to unruly inmates. Inmates that do not behave in other prisons are sent to the supermax prisons as punishment.

In the Virginia supermax prisons, roughly 60 percent of the inmates live two to a cell, are allowed out of their cells for up to eight hours a day and can congregate in groups.

However, the Virginia inmates are under the supervision of armed officers who have lethal and nonlethal ammunition. And many inmates do live one to a cell and are confined in them for up to 23 hours a day.

The conference speakers attacked supermax facilities as places where officers and inmates become brutalized and human rights are violated. They also charge that the wrong kind of inmates are being sent to these prisons.

SUPERMAX PRISONS ASSAILED; BUT OFFICIALS DISPUTE EXPERTS, DEFEND 2 VA. UNITS Richmond
Times Dispatch (Virginia) February 28, 2000, Monday,

A Human Rights Watch investigation of Red Onion State Prison in April concluded that inmates who do not belong in supermax facilities are being confined at Red Onion, where they are subject to unnecessary and abusive use of force.

Staff members at Red Onion have fired at inmates with shotguns for misconduct that should have been handled by unarmed staff, and inmates have also been shocked with electronic stun devices, according to the New-York based international human rights group.

It's 24-page report began: "At Red Onion, unfortunately, the Virginia Department of Corrections has failed to embrace basic tenets of sound correctional practice and laws protecting inmates from abusive, degrading or cruel treatment."

The FBI is now doing a preliminary investigation at Wallens Ridge prison in the wake of allegations that some New Mexican prisoners being held there had been abused.

The Department of Corrections strongly disputed the allegations made by Human Rights Watch, a New-York-based organization. It also disagreed with much of what was said at last week's conference.

The new prisons have made the rest of the system safer by taking the bad apples out of the other prisons, Virginia Department of Corrections spokesman Larry Traylor said.

The department is cooperating fully with the FBI investigation at Wallens Ridge State Prison, he said.

"The Virginia DOC and New Mexico DOC have found the allegations of inmate abuse to be frivolous and groundless in almost every instance," Traylor said. "We are confident that this current independent investigation by the FBI will affirm the results of New Mexico's investigation and our own - thus proving that Wallens Ridge State Prison follows nationally accepted, sound constitutional correctional practices."

Both the \$ 72 million Red Onion Mountain Maximum Security Prison, in Pound, and the \$ 74 million Wallens Ridge Maximum Security Prison, near Big Stone Gap, have 704 cells and can house 1,211 inmates.

Red Onion opened on Aug. 5, 1998, and now holds 1,022 inmates. Wallens Ridge opened on April 19, 1999, and holds 971. In addition to Virginia inmates, Red Onion also holds 88 inmates from the District of Columbia. Wallens Ridge holds 65 inmates from New Mexico and 480 from Connecticut.

There were 167 shooting incidents - warning shots and rubber pellets actually fired at inmates - at Red Onion during 1999. Traylor said the figure for the number of inmates hit was not available. However, as of Aug. 16, the department had reported at least 63 inmates had been hit.

As of earlier this month, 24 shots had been fired and seven inmates hit for this year.

At Wallens Ridge in 1999, 44 shots were fired but there were no reports of inmates being hit. As of mid-February, there had been 17 shots fired and no reports of inmates being hit for this year.

James Austin, co-director of the Institute on Crime, Justice and Corrections at George Washington University, said that, at most, no more than 1 percent of a state's prison population is dangerous enough to belong in a supermax prison.

Traylor, however, called the 1 percent figure "ludicrous." He said "prison industry experts have reasoned that as much as 10 percent of an inmate population may be considered for supermax incarceration."

Austin also said that prisons today are not receiving a more dangerous inmate population contrary to the assertions of many in the corrections business.

"The inmate population today is a much easier population to manage," he said, because new prison admissions have leveled off.

There are more people in prisons now because they are staying longer than before. That leads to older inmates and older inmates tend to be easier to manage. The need for high security will diminish in the coming years, not increase.

"I don't think the offenders are more dangerous. But I think some of the prisons are more dangerous" across the country because of crowding and high staff turnover which leads to the use of inexperienced officers.

Austin also noted that there are now 300,000 inmates in the United States serving life sentences. "This is a time bomb that's going to keep ticking," causing overcrowding and increases in medical costs.

SUPERMAX PRISONS ASSAILED;BUT OFFICIALS DISPUTE EXPERTS, DEFEND 2 VA. UNITS Richmond
Times Dispatch (Virginia) February 28, 2000, Monday.

As of Dec 22, Virginia prisons had 1,922 inmates serving life or multiple life sentences. Many of those serving life terms, however, are eligible for parole or become eligible for parole at some point during their sentence.

GRAPHIC: PHOTO

LOAD-DATE: March 2, 2000

#24



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February 8, 2001 Thursday
Final Edition

SECTION: METRO; Pg. B03

LENGTH: 978 words

HEADLINE: METRO;
In Brief

BODY:

VIRGINIA

The American Civil Liberties Union filed a federal lawsuit yesterday contending that the transfer of Connecticut prisoners to a Virginia prison was cruel and unusual punishment.

The ACLU alleges that guards commonly abuse prisoners at Wallens Ridge State Prison in Big Stone Gap, Va., and Red Onion State Prison in Pound, Va. The suit was filed on behalf of Wallens Ridge inmate Robert Joslyn and seeks class-action status to represent about 200 Connecticut inmates.

Connecticut Department of Corrections Commissioner John J. Armstrong is the only defendant. The lawsuit seeks a court order banning the transfers. Spokeswoman Christina Polce said the department has not seen the lawsuit.

Nearly 500 Connecticut prisoners were sent to Wallens Ridge in 1999 to ease prison crowding. Some have been moved to the Greensville Correctional Center in Jarratt, Va.

Virginia Sen. John W. Warner, chairman of the Armed Services Committee, has accelerated fundraising for his campaign for a fifth term next year, raising \$ 249,145 in the last half of 2000, according to federal disclosure forms released this week.

Warner reported \$ 429,292 of cash in hand, well ahead of the \$ 182,141 he raised at a similar point six years ago. Warner, 73, faced a costly Republican primary in 1996 and was nearly swamped by a \$ 12 million general election challenge by Mark R. Warner, a millionaire Alexandria investor who is the 2001 Democratic candidate for governor. John Warner won in 1996 with 52 percent of the vote. He faces no known Republican opponent; Democrats are recruiting a candidate.

University of Virginia Medical School researchers have developed a computer program designed to detect infections of the bloodstream in premature infants, university officials said.

The program is being tested on hundreds of infants in intensive care nurseries at U-Va. and at the Wake Forest University School of Medicine. The study should be complete by the end of the year. Findings will be presented to the Food and Drug Administration next year.

THE DISTRICT

Residential facilities for ex-offenders could not be located within 500 feet of a school, under a bill introduced Tuesday by D.C. Council member Jim Graham (D-Ward 1).

The bill, which five other legislators co-sponsored, would apply to community-based adult and youth rehabilitation homes and halfway houses. Graham said he introduced the measure because the federal Bureau of Prisons is considering allowing the Bureau of Rehabilitation Inc., a Lanham-based nonprofit agency, to run a halfway house for 22 adult felons in a row house at 19th and California streets NW, near Adams Elementary School.

"Ward 1 shoulders more than its share of the burden," Graham said. "We have the largest concentration of community residential facilities and group homes of any ward in the District of Columbia."

District school officials will hold an informational meeting on the construction of a new Kelly Miller Middle School, which is scheduled to be the second new school built in the District in the past 20 years. The old school was closed in 1997.

The meeting will be held today from 7 to 9 p.m. at the Evans Middle School auditorium, 5600 East Capitol St. NE, school officials said.

School officials will discuss planning for the demolition of the old building and the construction of the new building at 49th and Brooks streets NE. The new school will house 600 children.

The D.C. Council voted to create an earned-income tax credit for low-income working families last year, and some groups are pressing Mayor Anthony A. Williams (D) to expand it.

With the backing of all 13 council members, a broad coalition of social service, labor and advocacy organizations plans to launch a campaign to persuade the mayor to allot an estimated \$ 11.3 million in his fiscal 2002 budget proposal to increase the credit, currently pegged at 10 percent of the federal earned-income tax credit. The proposal would increase the credit to 25 percent.

The coalition will hold a news conference at 9:30 a.m. today at One Judiciary Square, 441 Fourth St. NW.

MARYLAND

To help natural resource managers measure recreational crabbing in Maryland, legislation proposed this week would require every person older than 16 who wants to set out a crab trap, pot or trotline to buy a state license.

As the number and size of blue crabs harvested from the Chesapeake Bay have declined, state scientists have struggled to understand how annual catches may be contributing to the problem. They also haven't had a clear picture of how many recreational crabbers are out there catching an untold number of blue crabs.

The licensing requirement would give state officials a better handle on the number of recreational crabbers and provide funds to survey them to find out how much they're catching.

Under the proposed law, recreational crabbers would pay \$ 5 for a crabbing license or \$ 2 if they have a fishing license.

Despite pressure from the City Council, the Annapolis Alcoholic Beverage Control Board voted 4 to 1 yesterday against repealing a quirky rule requiring the city's 18 liquor stores to check the identification of all customers.

The council had argued that liquor store owners should not have to card silver-haired patrons. But the board, citing apparent public apathy toward the rule, decided to keep it in force until December, when members will revisit the issue.

The rule's opponents say it discriminates against package stores, which are the only licensed sellers of alcohol required to card patrons. Hillard Donner, the owner of Mills Wine and Spirit Mart, counts many tourists and boat owners among his clientele and said that he has lost significant business. "People coming off their boats don't have IDs," he said. "What right do I have to card a 60- or 70-year-old person? It's a stranglehold around my neck."

LOAD-DATE: April 2, 2002

#25



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The Roanoke Times (VA)

February 8, 2001

SECTION: Pg. C1

ACC-NO: 70188142

LENGTH: 953 words

HEADLINE: CONN. INMATES FILE SUIT FOR BETTER TREATMENT AT VA.'S WALLENS RIDGE;
VIRGINIA

BYLINE: Hammack, Laurence

BODY:

Byline: LAURENCE HAMMACK THE ROANOKE TIMES

Small-time drug dealers and petty thieves are treated like Hannibal Lecter at Wallens Ridge State Prison, the ACLU claims in a lawsuit portraying "endemic" excessive force at the supermax facility.

The class-action suit, filed Wednesday in U.S. District Court in Hartford, Conn., seeks better treatment for all Connecticut inmates transferred to the Wise County prison to ease overcrowding in their home state.

John Armstrong, head of the Connecticut Department of Correction, acted with "deliberate indifference" by sending inmates to a prison where cruel and unusual punishment is all too usual, the suit claims.

Among the allegations:

Improper use of "five-point restraints" to strap inmates to steel beds by their hands, feet and chest for up to 48 hours, often for minor offenses such as kicking cell doors or spilling food.

Unnecessary use of stun guns that zap inmates with 50,000 volts of electricity. The lawsuit mentions Lawrence Frazier, an inmate who died last year after being shocked repeatedly with a stun gun, but does not make a wrongful death claim on his behalf.

Inadequate medical attention for inmates held in five-point restraints so long they lose circulation to their hands and feet, and are forced to urinate and defecate on themselves.

"Connecticut inmates convicted of nonviolent drug offenses and low-level crimes like burglary are being treated like Hannibal Lecter, and some of them are dying," said David Fathi, an attorney with the American Civil Liberties Union's National Prison Project in Washington D.C. Fathi's reference was to a cannibalistic serial killer kept under tight security in the movie "The Silence of the Lambs."

The suit asks for no monetary damages. All the inmates want is a court order either sending them back to Connecticut or forcing Virginia to stop mistreating them.

Wallens Ridge and an identical 1,200-bed supermax, Red Onion State Prison, have been criticized often in the past. But Wednesday's lawsuit marked the first time a class-action suit has been filed, and it may become the toughest legal challenge of the supermax philosophy in Virginia.

The ACLU spent almost a year investigating conditions at the two prisons before filing suit.

Christina Polce, a spokeswoman for the Connecticut prison system, said she had not seen the lawsuit Wednesday and declined to comment. She did not respond after a copy of the suit was faxed to her.

Larry Traylor, spokesman for the Virginia Department of Corrections, wrote in an e-mail that "we respectfully decline to respond to press inquiries" about the allegations.

In the past, prison officials have said they use no more force than necessary in dealing with the types of inmates held in the supermaxes.

The two prisons were designed to hold Virginia's most dangerous inmates serving life sentences. But a surplus of empty cells has led the Department of Corrections to import prisoners from other states, some of whom are serving shorter terms for relatively minor offenses.

One example is Robert Joslyn, the only plaintiff named in the lawsuit. Joslyn, who is from Connecticut, is serving an 11 1/2 -year sentence at Wallens Ridge for second-degree burglary. His mandatory release date is in October 2003.

A year ago, Joslyn was accused by a Wallens Ridge guard of throwing his empty meal tray into a trash can, spilling food on the guard in the process, the suit claims. Joslyn says he was placed in five-point restraints for 48 hours. He was allowed to sit up and eat twice a day, but with his feet still strapped to the restraint bed and his hands still in shackles, the suit claims.

In March, Joslyn was put back in five-point restraints, this time for kicking his cell door, the suit claims. He was held in restraints for so long that he was forced to defecate on himself.

Other inmates are expected to join Joslyn as plaintiffs as the case progresses, Fathi said. The ACLU's investigation found that between Jan. 3 and Aug. 17 of last year, 45 Connecticut inmates were put in five-point restraints at Wallens Ridge. Thirteen of them were tied down for kicking their cell doors; other reasons included throwing clothes and sticking a rolled-up piece of paper out of a cell door.

Five-point restraints should be used only on out-of-control inmates to protect themselves and others, Fathi said.

"Excessive force is endemic at Wallens Ridge," the suit states. "Often force is used not in a good faith effort to maintain prison security, but to inflict summary punishment on prisoners who have somehow annoyed or displeased prison staff."

Virginia inmates are not included in the lawsuit because none have gone through a lengthy grievance process that must be exhausted before they can file suit, Fathi said.

Nor is the Virginia Department of Corrections named as a defendant, despite the suit's scathing accusations of cruel and unusual punishment. "The buck stops with Mr. Armstrong and not in Virginia," said Kini Schoop, spokeswoman for the ACLU. "He knows what's going on down there."

In 1999, Connecticut transferred about 500 inmates to Wallens Ridge. Some have since been sent to other Virginia prisons; 171 remain.

The lawsuit is just the latest chapter in the supermax controversy. The Civil Rights Division of the U.S. Justice Department is investigating conditions at Red Onion, and the Connecticut Commission on Human Rights and Opportunities is due to release its report on its inquiry of Wallens Ridge today.

And 10 lawsuits filed by New Mexico inmates sent to Wallens Ridge are pending in U.S. District Court in Albuquerque. It was complaints from New Mexico that started an FBI investigation that still is pending.

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LOAD-DATE: July 27, 2007



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The Washington Post
July 25, 2001 Wednesday
Final Edition

SECTION: METRO; Pg. B01

LENGTH: 751 words

HEADLINE: Connecticut Pulls Prisoners From Wallens Ridge

BYLINE: Craig Timberg, Washington Post Staff Writer

DATELINE: RICHMOND July 24

BODY:

Connecticut prison officials decided to remove 133 inmates from Virginia's Wallens Ridge supermax prison after Virginia's top prison official refused to allow a tour by a Connecticut state agency charged with protecting the rights of the mentally ill.

Connecticut prison officials portrayed their decision to remove the prisoners from Wallens Ridge as part of a restructuring of Connecticut's inmate population, some of which will be relocated to a medium-security Virginia prison south of Richmond. They declined to confirm or comment on the action by Virginia Corrections Director Ronald J. Angelone.

Angelone acknowledged his action in a statement tonight, related by Virginia corrections spokesman Larry Traylor. The group whose visit Angelone rejected is the Connecticut Office of Protection and Advocacy for Persons with Disabilities, which also is charged with monitoring the rights of the mentally ill.

"I'm not about to roll the Virginia Department of Corrections over for every group in Connecticut that has a political ax to grind," Angelone said in the statement. "These groups neither want the truth nor respect the truth. Their only desire is to further their own agenda. That's a game I simply refuse to play."

James D. McGaughey, executive director of the Office of Protection and Advocacy, called Angelone's description of the office "a gross mischaracterization of our purpose."

McGaughey said a representative from his office visited Wallens Ridge in the spring, but Angelone refused this month to allow a second visit with a psychiatric expert. The office was seeking to investigate reports that Connecticut inmates were not receiving proper psychiatric care.

Connecticut prison officials urged Angelone to reconsider his decision, even traveling to Virginia to press their case, and decided to remove the prisoners from Wallens Ridge after Angelone refused, McGaughey said.

"We're simply trying to find out if people are safe, and if they're well-treated," McGaughey said.

A Connecticut plaintiff's attorney, Antonio Ponvert III, of Bridgeport, said he heard the same account from a top state prison official during the official's deposition. Ponvert represents the families of two inmates who died at Wallens Ridge, neither of whom received necessary psychiatric care, he said.

Connecticut Pulls Prisoners From Wallens Ridge The Washington Post July 25, 2001 Wednesday

Ponvert said that by moving the inmates to a second, less-controversial prison, officials in both states are ducking scrutiny.

"Angelone refused, so they cut a deal," Ponvert said. "It's an unbelievable and outrageous shell game, with inmates' lives at stake."

A spokesman for Connecticut's prison system, Brian Garnett, said he could not confirm or deny the account. "We just don't have confirmation tonight," Garnett said.

Connecticut officials said today that some prisoners returned to the state from Wallens Ridge this week. Others are being transferred to Greensville Correctional Center in Jarratt, Va., and some prisoners in Connecticut also will be sent to that prison.

The housing of Connecticut prisoners at Wallens Ridge -- one of two supermax prisons in Virginia designed to house what Angelone has called "the worst of the worst" -- has stirred a divisive political debate in Connecticut, particularly after the two inmates died there last year. The arrangement, in which Connecticut pays \$ 64 per prisoner per day to Virginia, also has drawn sharp criticism from human rights groups and a federal lawsuit by the American Civil Liberties Union.

Some Connecticut state lawmakers and prison officials have toured Wallens Ridge, in Big Stone Gap in far southwest Virginia. But Angelone has refused to allow visits by Amnesty International and Human Rights Watch.

Angelone said in his statement tonight that he has welcomed some visits.

"This department has made its facilities and its personnel available to responsible people within the Connecticut Department of Corrections. The fact that this doesn't suit certain advocacy groups within Connecticut is not Virginia's problem," he said.

The American Civil Liberties Union applauded the state's decision to remove its prisoners from Wallens Ridge. A lawsuit the group filed in federal court in Hartford in February called Connecticut's decision to house some prisoners in Wallens Ridge "cruel and unusual punishment" because of what it claimed was indiscriminate use of five-point restraints and stun guns.

Remaining in Wallens Ridge are more than 900 inmates from several states, including New Mexico, Wyoming and Virginia.

LOAD-DATE: July 25, 2001

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January 9, 2000, Sunday, Final Edition

SECTION: A SECTION; Pg. A10

LENGTH: 476 words

HEADLINE: FBI Asked to Probe Va. Prison

BYLINE: Josh White, Washington Post Staff Writer

BODY:

The New Mexico attorney general's office has asked the FBI to investigate allegations that New Mexico prisoners have been mistreated at one of Virginia's "super-max" prisons.

Dozens of inmates who were transferred to Wallens Ridge State Prison in Big Stone Gap, Va., in September after a New Mexico prison riot have complained of severe beatings from guards, widespread use of stun guns and the denial of medical treatment at the Virginia facility, among other allegations.

Virginia officials said the charges are untrue. They said they are aware of the request for a federal investigation but have not been told by the FBI or the Justice Department whether such a probe will be undertaken.

Both Wallens Ridge and Virginia's Red Onion State Prison were designed to hold dangerous and volatile prisoners serving long-term sentences and offer little in the way of rehabilitative services. The group Human Rights Watch said in a report last year that the super-max prisons are inhumane and rife with racism and are being filled with prisoners who don't merit such extreme security.

Benjamin S. Cohn, an assistant attorney general in New Mexico, said he has received more than 150 letters from inmates and their families complaining of prisoner mistreatment at Wallens Ridge. Several inmates have filed lawsuits against the state of New Mexico requesting a transfer.

"We've taken the position that if there are things going on like what is being described to us—that there could be civil rights violations—we want the federal government to make an inquiry about it," Cohn said. "We're taking these concerns very seriously."

Corrections officials in both New Mexico and Virginia said they investigated the complaints and did not find evidence to substantiate them. But several New Mexico lawmakers have demanded an independent review. In addition to the request for an FBI investigation, the New Mexico attorney general appointed a panel that is expected to release a report within the next two weeks.

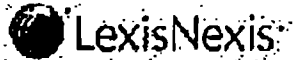
"This has been way overblown," said Larry Traylor, a spokesman for the Virginia Department of Corrections. "This is a groundless attempt by these inmates to get back home. New Mexico is using Virginia as a political football. ... If New Mexico is unhappy with the way Virginia is running the prison, they can come and get their inmates," he said.

FBI Asked to Probe Va. Prison: The Washington Post January 9, 2000, Sunday, Final Edition.

One inmate, Robert Trujillo, successfully fought to be transferred out of Wallens Ridge, returning to a New Mexico prison on Christmas day, said Trujillo's brother-in-law, Felix Candelaria, of Los Lunas, N.M. Candelaria said Trujillo was sentenced to 20 months in a minimum-security prison for writing bad checks before his transfer to Wallens Ridge. He said his brother-in-law suffers from seizures as a result of being beaten during his four months in the Virginia prison.

LOAD DATE: January 09, 2000

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The Roanoke Times (VA)

March 1, 2000

SECTION: Pg. A1

ACC-NO: 70849493

LENGTH: 1065 words

HEADLINE: SUPERMAX WARDEN CRITICIZED CONNECTICUT LAWMAKERS OBJECT TO CIVIL WAR
SCENES;
VIRGINIA

BYLINE: Hammack, Laurence

BODY:

Byline: LAURENCE HAMMACK THE ROANOKE TIMES

The warden of Wallens Ridge State Prison removed Confederate memorabilia from his office recently after critics called it unsuitable for a supermax facility where guards have been accused of racial intolerance.

Criticism came mostly from Connecticut lawmakers, who noticed framed prints of Civil War battle scenes - some of which included the Confederate flag - during a visit to Wallens Ridge.

The Wise County prison currently holds about 400 inmates from Connecticut, and legislators from the state toured the facility in January.

Three legislators said the display in Warden Stan Young's office was especially offensive to them in light of complaints of racial strife at the supermax, which has a predominantly minority population and a mostly white staff.

Democratic Rep. Michael Lawlor likened the display to "waving a red flag in the face of a bull when you're talking about young black and Puerto Rican kids from Connecticut."

"Whether or not the staff at Wallens Ridge is intentionally trying to provoke a problem, they're provoking a problem," he said.

In interviews Monday and Tuesday, Lawlor, Rep. Wade Hyslop and Sen. Alvin Penn apparently were unaware that the items had been removed. A spokesman for the Virginia Department of Corrections said Tuesday afternoon when Young "became aware of the offensive nature of these personal items, he immediately removed them from his office."

Larry Traylor said Young is a history buff who has accumulated a personal collection of "very tasteful" artwork of Civil War scenes. "It's what you might see in a restaurant or even in the state Capitol," Traylor said.

But in Connecticut, the Confederate flag issue has fueled opposition to the transfer of Northern inmates to a faraway prison in a Southwest Virginia locality that some see as a vestige to the days of slavery.

**SUPERMAX WARDEN CRITICIZED CONNECTICUT LAWMAKERS OBJECT TO CIVIL WAR SCENES;
VIRGINIA: The Roanoke Times (VA) March 1, 2000**

"You're talking about the Civil War, and you're getting ready to see some people out here on the battlefield who are not playing," said Carolyn Nah, president of the NAACP chapter in Bridgeport, Conn.

Even with the memorabilia removed, Nah said, family members and advocates of Connecticut inmates are so concerned about conditions at Wallens Ridge that there are plans to bus opponents to Big Stone Gap for a protest outside the prison.

"(Young) may have taken down the visible signs, but the mental stuff is still there," Nah said, referring to what she and others call an undercurrent of racism displayed by guards at Wallens Ridge.

"I'm concerned about the mindset there," said Penn. During his visit to Wallens Ridge, the senator said, he was taken aback when he walked into Young's office to find a roomful of Confederate memorabilia and a ball and chain on display.

Yet Traylor said Virginia officials "have yet to receive a formal complaint" from Connecticut lawmakers.

Young could not be reached for comment Tuesday. He was described by Traylor as a former history student and teacher who has collected Civil War memorabilia since the age of 7.

Although Connecticut officials looked to Virginia for a solution to its problems with prison overcrowding, the transfer of inmates to Wallens Ridge became controversial after reports of abuse began to surface.

Groups such as Amnesty International, Human Rights Watch and the ACLU's National Prison Project have alleged that racially hostile guards use excessive force against inmates at Wallens Ridge and its twin supermax, Red Onion State Prison.

At the request of New Mexico's attorney general, the FBI has begun an investigation into allegations that New Mexico inmates were mistreated after their transfer to Wallens Ridge last August.

In briefing New Mexico lawmakers, Corrections Secretary Rob Perry said last year that while there was no credible evidence of excessive force, he did have concerns that guards at Wallens Ridge may have used racial slurs against Hispanic and other minority inmates.

Human Rights Watch has asked the FBI to expand its probe to cover allegations at both Wallens Ridge and Red Onion. Jamie Fellner, associate counsel of the New York-based group, said her investigation found that guards use shotguns and stun guns "unnecessarily, dangerously and even maliciously."

While some inmate complaints are common for any prison, Fellner said the "several hundred" letters she has received from inmates in Virginia's supermaxes suggests a real problem that has so far gone ignored by correctional officials.

"We believe that human rights abuses flourish when those who engage in them do so with impunity," Fellner wrote last month in a letter to Donald Thompson, special agent in charge of the Richmond FBI office.

An FBI representative confirmed recently that the department has received Fellner's letter, but declined to say what action was taken as part of an ongoing investigation.

Virginia Department of Corrections Director Ron Angelone has said his correctional officers have used force only when necessary to control disruptive inmates, and that the practice of isolating the "worst of the worst" inmates in supermaxes has made other prisons safer.

While two legislative subcommittees and the Virginia Crime Commission have made inquiries since Fellner's report was released last year, criticism of the supermax prisons has been somewhat muted within the state. Resolutions calling for a study of the supermaxes by the Joint Legislative Audit Review Committee were rejected by the General Assembly.

Most of the complaints have come from national groups such as Human Rights Watch and legislators from other states that export inmates to Virginia.

In addition to rising concerns about racism and excessive force, critics say a surplus of supermax beds has led Virginia prison officials to misplace less serious inmates in prisons designed to warehouse rather than rehabilitate.

"It's fair to ask: 'Why are these guys going down there?'" Lawlor said. With Connecticut officials as eager to relieve their overcrowding as Virginia is to fill its supermaxes, he said, "It's not for security at all."

**SUPERMAX WARDEN CRITICIZED CONNECTICUT LAWMAKERS OBJECT TO CIVIL WAR SCENES;
VIRGINIA The Roanoke Times (VA) March 1, 2000**

Laurence Hammack can be reached at 981-3239 or laurenceh@roanoke.com

CAPTION(S): photo - NATALEE WATERS THE ROANOKE TIMES. Wallens Ridge Warden Stan Young has created controversy with his display of Confederate paintings in his office. "Whether or not the staff at Wallens Ridge is intentionally trying to provoke a problem, they're provoking a problem," one critic says. color.

LOAD DATE: July 24, 2007

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The Roanoke Times (VA)

March 30, 2000

SECTION: Pg. B3

ACC-NO: 70851088

LENGTH: 634 words

HEADLINE: LAWMAKER WANTS SHOOTING INVESTIGATED WALLENS RIDGE GUARDS FIRED ON INMATES;
VIRGINIA

BYLINE: Hammack, Laurence

BODY:

Byline: LAURENCE HAMMACK THE ROANOKE TIMES

Shotgun blasts of rubber pellets fired on two fighting inmates at Wallens Ridge State Prison also struck a third prisoner who was doing nothing wrong, a Connecticut legislator said Wednesday in calling for an investigation of the incident.

"It leads you to wonder what kind of policies they have ... when they can start shooting when other innocent people are in the line of fire," Rep. Michael Lawlor said.

Monday night's shooting at Wallens Ridge, which holds nearly 500 Connecticut inmates, is the latest incident prompting Lawlor and others to question whether their prisoners should be in one of Virginia's "supermax" prisons, so-called for its reputation for toughness.

Virginia officials say Wallens Ridge guards followed proper procedure when reacting to a fight between two inmates inside the Wise County prison. The guards issued a verbal warning, then fired a warning shot, then peppered the inmates with rubber pellets about one-third of an inch in diameter.

Department of Corrections spokesman Larry Traylor said two inmates were treated at the prison's infirmary for injuries that were not life-threatening.

Although Traylor made no mention of a third, uninvolved inmate being struck, Lawlor said he obtained that information from the Connecticut Department of Correction. Lawlor, a Democrat, heads a legislative committee that monitors prison issues.

Lawlor - who earlier raised concerns about artwork in the Wallens Ridge warden's office that included the Confederate battle flag - said it may be time for Connecticut to rethink its decision to reduce prison overcrowding by sending some of its inmates to Virginia.

"There's a big picture here," he said. "What's going on at Red Onion and Wallens Ridge is almost unique to the nation."

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LAWMAKER WANTS SHOOTING INVESTIGATED WALLENS RIDGE GUARDS FIRED ON INMATES;
VIRGINIA The Roanoke Times (VA) March 30, 2000

Red Onion State Prison is Virginia's other supermax, also in Wise County.

Lawlor said most states do not post armed guards inside their prisons "for the reasons you saw the other night."

"You start shooting off shotguns inside a concrete building, innocent people are going to get hurt," he said. "That's not the best way to break up a fist fight."

Traylor declined to identify the inmates who were shot. But Lawlor said Daniel Westberg, a 34-year-old serving an eight-year sentence for robbery, was the innocent bystander wounded in the shooting.

It was not clear whether Westberg was struck by ricochets or direct fire intended for William Valcun and Andres Davila, identified by Lawlor as the two inmates who were fighting inside a pod area.

Westberg's mother, Carol Westberg of West Haven, Conn., said her son was hit twice in the back but did not receive immediate medical attention. "There's something very wrong with the system down there," Westberg told The Associated Press. "My son is not safe. None of the inmates are safe."

The incident is not the first time Wallens Ridge has been criticized. Some lawmakers have accused guards of racism, and the FBI is conducting a preliminary investigation into complaints about the treatment of New Mexico inmates at Wallens Ridge.

The American Civil Liberties Union, Human Rights Watch and Amnesty International have alleged human rights violations at Virginia's supermaxes. The groups contend that many of the prisons' inmates are not the hardened, dangerous cons the facilities were designed to house.

In calling for a full investigation, Lawlor said he will wait for internal prison reviews before deciding what to do next. In Connecticut prisons, he said, guards would have used Mace or other methods to break up a fight.

"Obviously, no one's lives were in danger," he said, questioning Virginia's policy of using gunfire in such situations. "If police did that on the street, I think there would be hell to pay."

Laurence Hammack can be reached at 981-3239 or laurenceh@roanoke.com

LOAD-DATE: July 24, 2007

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FOCUS - 104 of 163 DOCUMENTS

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The Virginian-Pilot (Norfolk, VA)

May 1, 2000; Monday; FINAL EDITION

SECTION: FRONT; Pg. A1.

LENGTH: 2261 words

HEADLINE: ABUSE CLAIMS MOUNT AT VA. PRISONS THE ALLEGATIONS: INMATES SAY GUARDS' USE OF SHOCK DEVICES, RUBBER BULLETS IS EXCESSIVE THE RESPONSE: STATE LAWMAKERS' ATTEMPTS TO STUDY PRISON CONDITIONS DIED IN COMMITTEE

BYLINE: BY BILL SIZEMORE, STAFF WRITER**BODY:**

A cascade of complaints alleging brutal treatment of inmates at Virginia's two new mountaintop maximum-security prisons has sparked a federal investigation, several lawsuits and fierce criticism by human rights groups.

Virginia and its "supermax" prison personnel have been accused of abusing inmates with high-voltage shock devices and of beating them and shooting them with rubber pellets. Black and Hispanic inmates accuse the nearly all-white prison guard staff of racism.

Despite growing condemnation of the prisons and mounting legal claims, state lawmakers and prison officials have been slow to react.

Efforts by three Virginia lawmakers in this year's General Assembly to initiate a state-level probe of prison conditions were thwarted.

Sen. Janet Howell, D-Fairfax, and Del. Robert Bloxom, R-Accomack, sought a broad study of the two "supermax" facilities - Red Onion and Wallens Ridge state prisons - by a legislative watchdog agency, the Joint Legislative Audit and Review Commission. A third measure offered by Del. James Almand, D-Arlington, asked the Virginia State Crime Commission to study the use of force by prison guards.

Each proposal died in committee with little or no debate.

"I pointed out that Virginia was getting an awful lot of bad press," Howell said, but the committee squelched the matter rather dramatically.

"There wasn't really much explanation," Almand said of the reception his resolution received.

Defenders of the prisons say the General Assembly and outsiders shouldn't meddle.

Sen. Kenneth Stolle, R-Virginia Beach, chairman of the state Crime Commission, said he plans to call corrections officials to a commission meeting in May or June to discuss use-of-force policies. But Stolle, like other Republican leaders, opposes an independent investigation of the two prisons.

"It's not our job to run the prisons," said Stolle, a former Virginia Beach police officer. That is a job best left to the Department of Corrections, he said.

"As a matter of fact," Stolle said, "quite candidly, if I was a correctional officer and the Crime Commission came to me and said, 'We want to interview you about the use of force,' I'd tell you to go to hell."

ABUSE CLAIMS MOUNT AT VA. PRISONS THE ALLEGATIONS: INMATES SAY GUARDS' USE OF SHOCK DEVICES, RUBBER BULLETS IS EXCESSIVE THE RESPONSE; STATE LAWMAKERS' ATTEMPTS TO STUDY PRISON CONDITIONS D

The three proposals by Virginia legislators to launch probes into the supermaxes were rejected because the Assembly is inundated with study requests and doesn't have staff to do them all, said House Speaker Vance Wilkins, R-Amherst.

"It looks like they're trying to run the Corrections Department - micromanage it," Wilkins said.

Del. Frank Hargrove, R-Hanover, who chaired a subcommittee that considered the study requests, characterized studying the use of force in prisons as unnecessary and "a feel-good thing."

Much of the acrimony over prisoner punishment in Virginia flows from New Mexico and Connecticut. Faced with prison overcrowding, each state ships felons to Virginia, which has a surplus of 4,000 prison cells.

Virginia's two supermax prisons are designed for the most violent felons, those who pose discipline problems or escape risks. However, many of the inmates imprisoned there are serving time for drug convictions or other nonviolent crimes.

The Virginia Department of Corrections, the agency that runs the state's prisons, has refused to provide a breakdown of the inmate population.

In lawsuits, New Mexico inmates exported to Virginia last fall graphically describe physical abuse from prison guards that left some of them bloody and traumatized.

The New Mexico prisoners, many of them minimum- and medium-security inmates doing time for offenses such as burglary and drug possession, claim to have been severely beaten and stunned with high-voltage electric shock guns by guards at Wallens Ridge.

At the request of the New Mexico attorney general, the FBI is investigating whether civil rights violations have occurred.

Meanwhile, Connecticut lawmakers are clamoring to get inmates from their state sent back from Virginia following several recent violent incidents, including a suicide and three inmates being shot with rubber bullets by a Wallens Ridge prison guard.

These and other claims of mistreatment have provoked human rights activists in the United States and abroad to condemn the Virginia prisons as modern-day torture chambers that violate international standards for treatment of prisoners.

Corrections Director Ron Angelone has declined to comment on the allegations. His boss, Secretary of Public Safety Gary K. Aronhalt, pointed out that New Mexico is still housing prisoners in Virginia.

"I'm assuming that if there was any validity to any of these charges, the first response would have been to remove the prisoners," he said.

The two supermax prisons are both in Wise County in the mountainous southwest. They're new facilities built as part of a wave of prison construction launched by Gov. George Allen, a law-and-order Republican who held office from 1994 to 1998. The prison building boom outstripped the need, leaving the state with 4,000 empty cells that now are being filled with out-of-state inmates.

Almost as soon as Red Onion opened in August 1998, human rights organizations began hearing complaints from prisoners.

Human Rights Watch, a New York-based advocacy group, investigated the complaints and issued a blistering report last year alleging excessive force and racist conduct by guards. The group also charged that Virginia was sending prisoners to Red Onion who didn't need to be kept in such a harsh, high-security environment.

Virginia corrections officials called the report biased and inaccurate.

Since Wallens Ridge opened last spring, inmates indicate that conditions there are as bad - if not worse - than at Red Onion, said Jamie Fellner, an associate counsel at Human Rights Watch who wrote the Red Onion report.

The Virginia supermaxes "display in a rather egregious manner the problem supermaxes pose nationwide. Once they're built, they'll be filled," Fellner said. "And they'll be filled with people who don't really require the kind of extraordinary restrictions that are imposed. It's an absolute classic case of that problem."

ABUSE CLAIMS MOUNT AT VA. PRISONS THE ALLEGATIONS: INMATES SAY GUARDS' USE OF SHOCK DEVICES, RUBBER BULLETS IS EXCESSIVE THE RESPONSE; STATE LAWMAKERS' ATTEMPTS TO STUDY PRISON CONDITIONS D

Supermaxes are for inmates with a history of violence in prison. But a study of the state prison population by James Austin, a prison classification expert at George Washington University, found that prison violence is rare in Virginia.

"You don't see a huge number of people with assaultive behavior," Austin said in an interview.

According to the 1998 Corrections Yearbook, there were 80 assaults on inmates and 58 assaults on staff in the state's 31,000-inmate system in 1997. The average per state that year was 578 assaults on inmates and 306 on staff.

Virginia inmates are assigned to security levels based on a point system. It was revised last year in a way that makes it easier to bump inmates up to a higher level.

They accrue points not just for violence or escape but also for sentence length and nonviolent infractions of prison rules - such as the new mandatory haircut policy introduced last fall.

Refusal to submit to the required haircut - no more than 1 inch long for men - bumps up an inmate's security count by 16 points. A total count of 34 lands him in Level 6, the supermax classification.

Fellner said the Virginia supermaxes are also notable for their "philosophy of force as the first and last response."

To control inmates, guards carry 12-gauge shotguns loaded with rubber pellets. Virginia is one of three states where firearms are routinely carried within the prisons, not just in guard towers. The other two are California and Nevada.

Virginia guards also use a plethora of electric-shock devices, some delivering up to 50,000 volts.

The firearms policy was brought to Virginia by Angelone, who headed the Nevada system before Allen hired him.

"In Wallens Ridge and Red Onion, if you act in an aggressive manner, if you don't hop to quickly enough or whatever, they say, 'We're going to fire at you,'" said Fellner, of Human Rights Watch.

She said prison officials respond by saying, "Well, gee, they know the procedure. These are adults. If they don't follow the rules, they know the consequences."

"But that begs the question of whether the consequences are necessary and proportionate."

Critics say using firearms inside prison walls is unnecessary and poses undue risks. For example, they cite two incidents of gunfire that occurred within a three-week period in March at Wallens Ridge.

On March 27, a guard fired rubber pellets to try to break up a fight between two Connecticut inmates. The two inmates were wounded, and so was a third who was uninvolved in the fight. A prison spokesman said none of the injuries were serious, but the incident sparked concerns in the Connecticut legislature.

The rubber pellets, known as "stinger" rounds, are classified as non-lethal. They are, however, capable of causing serious injury.

Kenneth Lewis, a Virginia inmate, found that out last May at Red Onion.

In a letter to The Virginian-Pilot, Lewis said he was an innocent bystander when a guard fired to stop two other inmates from fighting. Trying to escape the pellets, Lewis said, he and other prisoners dropped to the floor. Lewis was hit and lost the sight in his right eye.

"I didn't cause any problems," Lewis wrote. "I got shot while lying on the floor."

Lewis, 31, is serving eight years for assault and battery and burglary. He was one of three Virginia inmates shot by prison guards who filed suit last fall, alleging that Angelone's firearms policy constitutes cruel and unusual punishment.

In a response to the lawsuit, prison officials said Lewis was fighting.

The dispute may never be resolved. Lewis' Richmond-based lawyers dropped his case after a judge ruled that it had to be tried in Wise County, a seven-hour drive away, making the cost prohibitive for lawyers with an indigent client.

Prison officials would not allow The Virginian-Pilot to interview Lewis, saying he was in administrative segregation.

ABUSE CLAIMS MOUNT AT VA. PRISONS THE ALLEGATIONS: INMATES SAY GUARDS' USE OF SHOCK DEVICES, RUBBER BULLETS IS EXCESSIVE THE RESPONSE: STATE LAWMAKERS' ATTEMPTS TO STUDY PRISON CONDITIONS D

Virginia prison shootings have recently attracted the attention of another human rights group, London-based Amnesty International.

In a March 15 letter to Wallens Ridge Warden Stan Young, the group expressed concern about a shooting on March 7 when one of two fighting inmates was wounded, along with five others who were lying on the floor. One of the bystanders was hit in the eye.

Amnesty International has begun sending its members "urgent action" alerts - the kind typically sent on behalf of people jailed by repressive regimes - expressing fear that inmates at the Virginia supermaxes are being tortured.

Reach Bill Sizemore at 446-2276 or size(AT)pilotonline.com

GRAPHIC: VIRGINIA'S "SUPERMAX" PRISONS;

NATALIE WATERS;

Roanoke Time file;

WALLENS RIDGE STATE PRISON;

LOCATED IN BIG STONE GAP, VA., THIS IS ONE OF TWO "SUPERMAX" PRISONS DESIGNED FOR THE MOST VIOLENT FELONS, THOSE WHO POSE DISCIPLINARY PROBLEMS OR ESCAPE RISKS. HOWEVER, MANY OF THE INMATES THERE ARE SERVING TIME FOR DRUG CONVICTIONS OR OTHER NONVIOLENT CRIMES;

JASON DAVIS / File;

RED ONION STATE PRISON;

ALMOST AS SOON AS THIS WISE COUNTY PRISON OPENED IN AUGUST 1998, HUMAN RIGHTS ORGANIZATIONS BEGAN HEARING COMPLAINTS FROM PRISONERS. AN ADVOCACY GROUP THAT INVESTIGATED THE COMPLAINTS ISSUED A REPORT LAST YEAR ALLEGING EXCESSIVE FORCE AND RACIST CONDUCT BY GUARDS;

PRISONS;

TO REDUCE PRISON CROWDING, NEW MEXICO AND CONNECTICUT SHIP FELONS TO VIRGINIA;

WHICH HAS A SURPLUS OF 4,000 PRISON CELLS;

Sen. Kenneth W. Stolle, R-Virginia Beach, says he is planning a Crime Commission meeting for May or June on the prisons' use-of-force policies;

House Speaker Vance Wilkins, R-Amherst, says efforts to study the prisons died because the Assembly was overwhelmed with study requests;

NATALEE WATERS / Landmark News Service;

Prisoners shipped from New Mexico to Virginia's Wallens Ridge State;

Prison, above, claim guards severely beat them and stunned them with electric-shock guns. At the request of the New Mexico attorney general, the FBI is investigating whether civil rights violations occurred.

LOAD-DATE: June 15, 2000



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The Roanoke Times (VA).

August 26, 2000

SECTION: Pg. A1

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HEADLINE: QUESTIONS OF NEGLECT SURROUND CONN. INMATE'S DEATH LAWRENCE FRAZIER HAD FILED A LAWSUIT COMPLAINING ABOUT POOR MEDICAL CARE AT WALLENS RIDGE, VIRGINIA

BYLINE: Hammack, Laurence

BODY:

Byline: LAURENCE HAMMACK THE ROANOKE TIMES

As a bus full of convicts made its way from Connecticut to the western tip of Virginia, Lawrence Frazier had good reason to fear what awaited him at the mountaintop prison that would be his final destination.

Frazier, a diabetic inmate, later said he nearly died because he was not given insulin during the 22-hour trip in December.

Once he arrived at Wallens Ridge State Prison, Frazier claimed in a lawsuit, he continued to have problems getting insulin and medical care in a "supermax" facility where inmates are under the constant watch of shotgun-toting guards.

A federal judge dismissed Frazier's lawsuit June 23, ruling that allegations of medical malpractice alone were not enough to make a claim of cruel and unusual punishment against the state prison in Wise County.

Less than two weeks later, Frazier was dead.

His lawsuit - along with letters written by Frazier's cellmate and other inmates - raise new questions about conditions at Virginia's two supermax prisons, which are being investigated by the FBI and the Civil Rights Division of the U.S. Justice Department.

"Here's a guy who was screaming, basically, that he didn't get the treatment he needed, and ultimately he dies," said Richard Bieder, a Connecticut lawyer who represents Frazier's family.

In handwritten papers filed May 25 in U.S. District Court in Roanoke, Frazier claimed he was not given insulin on at least two occasions. And when he began to have seizures the day he lapsed into a coma, inmates say in letters, guards waited for more than an hour before responding to calls for help.

While the family is itching to file a lawsuit that might go further than Frazier's jailhouse petition, Bieder said it is too soon to say what legal action he will take in a case that seems to offer more questions than answers.

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QUESTIONS OF NEGLECT SURROUND CONN. INMATE'S DEATH LAWRENCE FRAZIER HAD FILED A LAWSUIT COMPLAINING ABOUT POOR MEDICAL CARE AT WALLENS RIDGE, VIRGINIA The Roanoke Times (VA) August 26, 2000

This much is known: On the morning of June 29, Frazier was taken from his cell to the Wallens Ridge infirmary after apparently suffering from low blood sugar. Once there, he became combative and was shocked several times with a stun gun, prison officials have said.

Frazier, who then was strapped to a bed, was found unconscious some time later. He died July 4 at a Richmond hospital.

Connecticut prison officials have said Frazier likely died of heart failure, although an autopsy conducted in Virginia is pending.

With no autopsy results and several investigations still under way, speculation has abounded about what killed Frazier. Inmate advocacy groups such as Amnesty International have said it likely was the stun gun; the Virginia Department of Corrections countered that its study has eliminated electric shock as a factor.

Frazier's lawsuit and letters from fellow inmates provide a new theory: That his death was caused, at least in part, by medical neglect.

Judi Walters of Friends and Family Who Care, a group opposed to the transfer of Frazier and about 500 other Connecticut inmates to Wallens Ridge, said letters she has received from inmates convince her that Frazier's problems began long before guards zapped him with 50,000 volts from a stun gun.

"It starts with the level of medical care," Walters said.

Larry Traylor, a spokesman for the Virginia Department of Corrections, said earlier this week that there were no "documented complaints" from Frazier about his medical care.

Asked if prison officials had found any relationship between Frazier's death and his medical treatment at Wallens Ridge, Traylor said he could not comment on a pending investigation.

In a "To whom it may concern" letter sent to Connecticut prison officials, Frazier's cellmate wrote that, on the morning of June 28, Frazier became ill while eating breakfast and was taken to the infirmary for observation.

Frazier "looked kind of funny" when he was returned to his cell about noon that day, cellmate Angel Soto wrote in the letter. After eating an apple and some soup that Soto gave him, Frazier drifted off to sleep.

About 6 a.m. the following day, Soto said, he was awakened by the sound of Frazier falling out of his bed. "I jumped down from my bed and asked him if he wanted me to call for the medical personnel," Soto wrote. "He was making weird noises, after a few seconds he cried out and said, 'Yes, please.'"

Using an intercom to contact guards in a control room, Soto asked for help. More than an hour passed, he said, with Frazier having seizures so severe that Soto had to hold Frazier to keep his head from striking the wall.

"He kept saying to me that he was sorry for the way he was seizing," Soto wrote.

Finally, Soto said, a nurse and three correctional officers showed up. One guard was carrying a stun gun.

Soto said he was ordered out of the cell, but could hear Frazier screaming for help. "I also heard the nurse say she didn't know what to do to another nurse who had come to help," he wrote.

A few minutes later, guards carried Frazier out of the cell. The inmate looked "like a dead animal on a stick; legs and hands handcuffed. They were more worried about putting handcuffs and shackles on him than his medical needs," Soto said.

Although one guard had a stun gun, Soto said he could not tell if the weapon was used on Frazier. But Victor West, another inmate housed nearby, wrote in a letter that he could hear a stun gun going off inside the cell while Frazier was yelling.

Frazier appeared to be unconscious when he was taken from his cell in chains, placed on a gurney and wheeled away, West wrote in a letter provided by Walters.

That account differs from the version told by Connecticut prison officials, who say the stun gun was not used until Frazier became combative in the infirmary. Members of Frazier's family say his seizures might have been misconstrued as resistance.

QUESTIONS OF NEGLIGENCE SURROUND CONN. INMATE'S DEATH LAWRENCE FRAZIER HAD FILED A LAWSUIT COMPLAINING ABOUT POOR MEDICAL CARE AT WALLENS RIDGE, VIRGINIA The Roanoke Times (VA) August 26, 2000

In the days after Frazier's death, Virginia officials referred most questions to the Connecticut Department of Correction. The only detailed information came in the form of a news release from Traylor announcing that an independent medical study had found that the stun gun played no role in Frazier's death.

But Andrew Reese, the doctor who conducted the study, never examined Frazier's body and has declined to talk about his findings. The Virginia Department of Corrections also has declined to release a copy of Reese's report.

Autopsy results, meanwhile, are pending. Robert Holloway, regional administrator for the Medical Examiners Office in Richmond, said laboratory test results are needed before making a final determination.

Frazier is the second inmate to die at Wallens Ridge since the 1,200-bed facility opened in April 1999. David Tracy, another inmate from Connecticut, used a bed sheet to hang himself from his bunk bed earlier this year, officials have said.

Because Tracy did not fit the criteria for supermax inmates - the 20-year-old, small-time drug dealer was due to be released in November - his death led to opposition in Connecticut that only grew louder after Frazier died.

Critics of Wallens Ridge and its twin supermax facility, Red Onion State Prison, say that correctional officers at both facilities are trigger-happy with stun guns and shotguns that fire rubber pellets.

The facilities were designed to isolate the state's most dangerous inmates from the rest of the prison population. But in a report released last year, Human Rights Watch asserted that Virginia prison officials are sending ordinary criminals to the supermaxes "in a blatant effort to fill large facilities whose capacity exceeds the state's needs."

Kara Peterman, a spokeswoman for the Justice Department in Washington, D.C., confirmed Thursday an investigation of the two prisons is under way, but declined further comment.

When confronted with criticism of the supermaxes, Virginia corrections Director Ron Angelone has dismissed the allegations as unsubstantiated griping from inmates who resent being in the state's toughest prisons.

Critics often ignore the fact that building two supermaxes has made the rest of the state's prisons safer, Angelone recently told the Virginia Crime Commission.

Supermax supporters often point to the crimes inmates commit. Frazier, for example, was serving a 30- to 60-year sentence for rape. Connecticut officials said he broke into a suburban house, waited for the family to come home, then tied them up and raped the mother while other family members were forced to watch.

Although Traylor said there were no documented complaints about Frazier's medical care, the inmate's lawsuit contains copies of grievances that he filed making such a complaint.

"I have read your complaint that you almost died because of medical negligence," Wallens Ridge Warden Stan Young wrote in an April 15 memorandum that is included as an exhibit to Frazier's lawsuit. But because that allegedly happened during the bus ride to Wallens Ridge, Young wrote, Frazier should have raised the issue with Connecticut officials.

In Connecticut, however, an attorney for the Inmates Legal Assistance Program advised Frazier that he didn't have a case against that state.

"Since you left Connecticut custody when you boarded the bus ... your diabetes issue is not a Connecticut issue," managing attorney Jane Starkowski wrote in a Feb. 9 letter to Frazier.

Left to fend for himself, Frazier wrote up a fill-in-the-blanks lawsuit and mailed it to Roanoke with authorization for the federal clerk's office to deduct \$150 from his inmate account to cover the filing fee.

"I've only met resistance," Frazier said in a handwritten cover letter that accompanied his lawsuit. "I pray the court accept my suit, as it is because of the finger-pointing and blocking of my attempts to get a resolution."

Laurence Hammack can be reached at 981-3239 or laurenceh@roanoke.com.

CAPTION(S): Headshot of Frazier

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 Richmond Times Dispatch (Virginia)

August 15, 2003 Friday City Edition

SECTION: AREA/STATE, Pg. B-1

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HEADLINE: FILING PROBES LINK TO DOCTOR'S FIRING;
 LAWSUIT TIED TO DEATH OF PRISONER

BYLINE: Rex Bowman, Times-Dispatch Staff Writer. Contact Rex Bowman at (540) 344-3612 or rbowman@timesdispatch.com

DATELINE: ROANOKE

BODY:

A company that provided health care at a state prison where an inmate died after being zapped with a stun gun fired one of its doctors after he concluded the electric shocks killed the man, according to papers filed yesterday in federal court in Roanoke.

The documents suggest the prison doctor's firing is part of a larger effort to hide the role of the stun gun in the inmate's death.

The company, meanwhile, says it let the doctor go because the state Department of Corrections ordered him barred from Wallens Ridge State Prison.

The death in July 2000 of inmate Larry Frazier at Wallens Ridge in Wise County is at the center of a \$204 million lawsuit that accuses guards of killing Frazier with the Ultron II electroshock device. Frazier was one of a number of prisoners from Connecticut being held in Virginia prisons under a state contract.

The documents filed yesterday in support of the lawsuit allege that Correctional Medical Services Inc. terminated its contract with Dr. Larry Eugene Howard almost immediately after Howard told his employer and state corrections officials in July 2000 that he believed Frazier died as a result of the repeated shocks. Howard's opinion contradicted the state's position.

Yesterday, Ken Fields, spokesman for the St. Louis medical company, said Howard's employment contract was terminated because the prisons department decided to bar the doctor from Wallens Ridge. "The Department of Corrections made the decision to lock Howard out of the facility. That is substantiated by the evidence in this case, including the deposition of at least one state official."

Though another doctor also concluded use of the stun gun might have led to Frazier's death - a fact the company divulged only recently - the state and a medical examiner's report say the device bears no blame. The 2001 medical examiner's report said Frazier, 50, died because of a heart problem "due to stress while being restrained following stunning with Ultron II device." The examiner determined the death was "natural." The corrections department nevertheless has suspended use of the Ultron II device.

A representative of the company called Howard on his cell phone to fire him as he was driving back to Big Stone Gap after meeting with DOC officials in Richmond, according to a portion of Howard's deposition included in the court papers. Howard was the physician on call June 29, 2000, the day Frazier struggled with Wallens Ridge guards and was zapped with 50,000 volts of electricity as guards pinned him to a gurney. He lapsed into a coma and died five days later.

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FILING PROBES LINK TO DOCTOR'S FIRING; LAWSUIT TIED TO DEATH OF PRISONER Richmond Times Dispatch (Virginia) August 13, 2003 Friday City Edition

Asked at the July 10, 2000, meeting in Richmond for his opinion on the cause of Frazier's death, Howard recalled saying, "I think it was a result of him being stunned," according to his deposition. During his drive home, he said, a company representative told him over a cell phone that he was "barred from the facility" and "reminded me that my contract stated that that meant there wasn't a contract anymore."

Howard could not be reached for comment yesterday. A spokesman for the corrections department also could not be reached late yesterday.

The court documents, which allege that Correctional Medical Services is withholding information about Frazier's death, were filed as part of a \$204 million lawsuit brought by Frazier's family against the company, the corrections department, former Virginia prisons director Ron Angelone and Howard. The lawyers representing Frazier's family, John Fishwick Jr. and John Lichtenstein, both of Roanoke, are asking the U.S. District Court in Roanoke to order the company to produce more documents. The lawyers also want the court to sanction the company for its "willful violation" of a June 10 court order to turn over all relevant material, the papers state.

Yesterday, Richmond lawyer John McChesney, who represents the company, referred all questions to Fields, the company spokesman.

Fields said the company has already turned over ample documents. "CMS is complying and has complied with discovery in this case and is not withholding any documents. The assertion that documents exist simply because plaintiff's attorneys say they exist does not mean they exist."

In documents filed in court, the company unequivocally denies any blame for Frazier's death. The denial reads, in part: "[N]o evidence indicates that any entity, including those for whom CMS is responsible or CMS itself, was deliberately indifferent to any of the decedent's serious medical needs at any time, the allegations do not specify any policy or custom that denied any inmate, including the decedent, of adequate medical care, there is no evidence that CMS was deliberately indifferent in supervising and training subordinates, and there is no evidence that any wrongful acts were in fact committed by anyone, much less CMS."

Despite a court order, the company has been reluctant to turn over requested documents, Fishwick and Lichtenstein allege. In their filing yesterday, they said they did not learn until two months ago of a confidential memo written by an independent doctor sent to the prison shortly after Frazier's death.

That memo, written by Dr. John Barnett, states that "it appears that the repeated use of the Ultron II stun gun may have precipitated the events that led to the cardiac arrest." Barnett recommended that the stun gun be banned. He also concluded that medical staff at the prison, including Howard, acted properly.

Following the death, Frazier's family filed suit against the Connecticut Department of Correction, which had sent Frazier and other prisoners to Wallens Ridge. In March 2002, Connecticut agreed to pay the Frazier estate \$1.1 million.

Wallens Ridge State Prison, built to house Virginia's most violent offenders, dropped Correctional Medical Services in January 2001.

LOAD DATE: August 20, 2003