STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1481

Christopher Welters,
Appellant,

vs.

Minnesota Department of Corrections, et al.,
Respondents.

Filed October 25, 2021
Affirmed in part, reversed in part and remanded.
Hooten, Judge

Washington County District Court
File No. 82-CV-19-2268

Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

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Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Smith, John, Judge.[*]

SYLLABUS

In cases analyzing an Eighth Amendment claim, corrections officers' actions pertaining to the use of mechanical restraints on an inmate for purposes of a routine medical transport or procedure are evaluated under the deliberate indifference standard.

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

HOOTEN, Judge

Appellant Christopher Welters challenges the summary judgment dismissal of his claims against respondents, the Minnesota Department and Commissioner of Corrections (DOC) and two corrections officers, for personal injuries suffered during his incarceration. Welters asserts that the district court erred by (1) dismissing his Eighth Amendment claims; (2) dismissing his negligence claims as barred by official immunity and for lack of causation evidence; and (3) dismissing his First Amendment retaliation claim for lack of causation evidence. We affirm in part, reverse in part, and remand.

FACTS

The mechanical restraint during Welters' medical transport and procedure

On July 31, 2017, Welters, who is incarcerated at Minnesota Correctional Facility-Stillwater (MCF-Stillwater), was scheduled for a medical procedure at Minnesota Correctional Facility-Oak Park Heights (MCF-OPH). Around 12:15 p.m. that day, Welters was escorted to the security center inside MCF-Stillwater to prepare for his medical transport. Respondent Officer Ernest Rhoney then placed Welters in full restraints, which included handcuffs with a handcuff cover—known as a black box, a waist chain, and leg irons. Welters, in his deposition, testified that Officer Rhoney "did not know what he was doing" because he "had to mess with the transport chains three or four different times" and "put them on backwards." According to Welters, Officer Rhoney told him, "[I haven't] done this for a while, so forgive [me]." Welters testified that Officer Rhoney did not test

the handcuffs for tightness. Welters also testified that he noticed that his handcuffs were "snug" and "tighter than usual," but he did not tell Officer Rhoney that at that time.

A short time later, Officer Rhoney and Sergeant Michael Wildung escorted Welters and another inmate (Inmate 1) from the security center to a transport vehicle, where respondent Officer Cornelius Emily, of MCF-Stillwater, was already waiting. According to Welters, as he was walking to the transport vehicle from the security center, he told Officer Rhoney that his handcuffs were "pretty tight," but Officer Rhoney responded, "Oh, it's only a 15-minute drive, it'll be all right."

According to Welters, he heard his handcuffs click as he was getting into the vehicle and realized that they were not double-locked, meaning that they could continue to tighten. Welters testified that he told Officer Rhoney that his handcuffs were not locked, so Officer Rhoney "grabbed one of the handcuffs and pushed down on it and it clicked." Welters testified that Officer Rhoney then told him that he was correct. Welters stated that Officer Rhoney's actions made the right handcuff even tighter, and he asked Officer Rhoney if they should fix the handcuffs before they left, but Officer Rhoney responded, "It's only a 15-minute drive." However, during his deposition, Officer Rhoney disputed Welters' allegations and testified that he checked the tightness of the handcuffs when he double-locked them.

Once they arrived at MCF-OPH, Welters and Inmate 1 were placed in a large medical holding cell. According to Welters, his handcuffs were not removed, his wrists were not feeling very good, and his hands became cold. Welters also testified that after he noticed that inmates in other holding cells were not handcuffed or restrained, he and

Inmate 1 asked an MCF-OPH officer (Officer 1) who was walking by why their restraints had not been removed. Officer 1 responded that he was not from MCF-Stillwater and could not help them. Later, while still in the holding cell, Welters and Inmate 1 asked Officer Emily why their restraints had not been removed. Welters testified that he told Officer Emily that his "hands were numb" and he "wanted to get [the] restraints off," but Officer Emily stated that he needed "to go find his partners" and left.

Welters testified that less than an hour later, another MCF-OPH officer (Officer 2) escorted him to medical intake. Welters stated that he asked Officer 2 to remove or loosen his handcuffs, but Officer 2 said that he would have to get an MCF-Stillwater officer to do that. Welters testified that he was then taken to a nurse who asked Officer 2 why Welters was still in restraints and Officer 2 responded that he was currently looking for the MCF-Stillwater officers. Welters testified that he told the nurse that he could not feel his hands, and the nurse responded that the MCF-Stillwater officers should be removing his handcuffs soon. Welters stated that when he was subsequently wheeled into the operating room, one of the medical staff asked why he was still in restraints, and Officer 1, who was also in the operating room at that time, responded that they were still looking for the MCF-Stillwater officers to remove them.

According to Welters, while lying on the gurney, he was asked to turn on his left side with his full restraints still on. Welters testified that he asked the anesthesiologist if they were going to do the procedure with his restraints on, and the anesthesiologist responded, "[t]hey should be removing them soon." Welters was then placed under anesthesia for the medical procedure with his restraints still in place.

When Welters awoke, he was still in full restraints, and he testified that he could not feel his hands and that they were "light bluish" in color. Officer Emily, accompanied by another MCF-Stillwater officer (Officer 3), entered the medical room to help Welters prepare for his transport back to MCF-Stillwater. Welters testified that he told these officers that he could not feel his hands. Welters also told Officer 3 that his restraints had been on since he had left MCF-Stillwater earlier that day and asked him to remove them, but Officer 3 said they were leaving. Welters testified that he was then placed into a holding cell with another prisoner from MCF-Stillwater who was not in restraints.

According to Welters, approximately 3.5 hours after departing MCF-Stillwater, he returned, and his restraints were removed. He was then escorted to the medical area, where he was examined and released to his living unit. Welters testified that, at that point, his hands were numb and had started to tingle, and his wrists were red to the point where "you could see where the cuffs were on them."

Welters claimed he woke up the next morning with intense and sharp pain in his palms. That day, he submitted a complaint to MCF-Stillwater alleging that his hands and wrists were injured by the conduct of Officer Rhoney, Officer Emily, and Sergeant Wildung. Welters testified that by August 2, 2017, two days after his procedure, his wrists were visibly bruised.

MCF-Stillwater Captain Bryon Matthews investigated Welters' allegations and responded on August 24, 2017, as follows:

> After carefully reviewing your complaint, I interviewed the staff you indicated regarding this issue/concern and received the following information. Your OPH medical

> appointment was from 1230 to 1500 2 and ½ hours not 4 as you indicated. The staff however should have removed your restraints upon placement into the OPH holding cell. All involved officers have been reminded to always remove offender restraints upon admittance unless there is a safety concern which would prevent the restraint removal.
>
> The staff also indicated neither yourself or the nurse requested to have the restraints removed during the procedure, the nurse indicated she never requested to have the restraints removed however she knew it wasn't normal protocol for offenders to be restrained during medical procedures.
>
> . . . .
>
> The officers indicated you made no complaint to them regarding injuries sustained from the restraints nor did they observe any injuries while removing the restraints. You did not indicate a request to see health services staff for assessment or treatment of any alleged injuries during your return intake process.

Welters testified that the intense pain in his palms lasted approximately one year, and he developed carpal tunnel syndrome in both of his wrists due to being handcuffed. He testified that, because of his injuries, he experienced dysfunction in his hands and was unable to continue hobbies. He also testified that he was prescribed steroid injections, but they did not provide any relief. He subsequently had carpal tunnel release surgery on both wrists. A neurologist confirmed nerve damage in both of his wrists, and an orthopedic surgeon opined that the injury was likely a result from being handcuffed.

DOC restraint policy

The transportation and use of restraints on inmates, for purposes of medical transports and procedures at other locations, are governed by DOC policy. As part of discovery in this case, the DOC produced policies that were in effect on July 31, 2017.

DOC policy 301.096 directs DOC officers to transport offenders "to the medical provider facility in full restraints." This policy also contains a separate section dealing with medical transports to MCF-OPH. That section provides that transporting MCF staff must make sure that "all offenders [are] in full restraints at all times during movement." This section defines "full restraints" as the use of a "waist chain, black box (with padlock), handcuffs (double-locked), and leg irons (double-locked)." This policy states that upon arrival at the provider facility, "restraint levels may be modified at the discretion of the [corrections officer]."

This policy also provides that, during the actual medical appointment, offenders "must be in full restraints," but "[i]f medical staff request the offender's restraints be either partially or fully removed for a medical procedure or treatment, officers must remove only those restraints that would interfere with the examination and/or treatment." According to DOC policy, "[o]fficers are authorized to leave the offender in full restraints if, in their best judgment, control of the offender would be jeopardized even with additional security staff."

DOC policy 301.081 pertains to the use of force on and restraint of adults and states that "DOC does not tolerate the use of force without justification, or the use of force with proper justification but in excessive amounts." This policy, which defines "mechanical restraint" as "handcuffs, leg restraints, and waist chains," provides that "[m]echanical restraints [should be] used on a selective basis to ensure control . . . to transport offenders outside the facility." It also provides that "[m]echanical restraints must not be used: (1) Longer than necessary; . . . (4) To cause undue discomfort; (5) To inflict physical pain; or (6) To restrict blood circulation or breathing." Just like policy 301.096, policy 301.081

also requires the double-locking of handcuffs, stating that "[i]f the [restraint] mechanism contains a safety lock, mechanical restraints must be safely locked once it is possible for the officer to do so." Policy 301.081 also states that "[i]t is the responsibility of all officers to ensure that, once placed in restraints, visual and physical control of the offender is maintained at all times" and that "[f]irst aid must be offered, provided, and monitored, if needed."

During their depositions, Officers Rhoney and Emily both testified that they were aware of policies 301.096 and 301.081. Officer Rhoney testified that he believed he complied with the policies during his transport of Welters on July 31, 2017. When asked if he was required to comply with these policies during his transport of Welters, Officer Emily testified, "I [would] say it was officer discretion."

The inmate attack

On May 9, 2018, Welters was assaulted by another inmate (Inmate 2), who had a history of prior assaults. The MCF-Stillwater Office of Special Investigations (OSI) reviewed the assault, which was captured on surveillance video. Welters signed a "prosecution declination" and waived criminal prosecution against Inmate 2. The investigation into the incident was closed because OSI has a policy that, without a cooperating victim, it does not continue to investigate assaults or seek criminal prosecutions.

During his deposition, Welters testified that after the attack, he first considered whether it was motivated by his refusal to join a prison gang, but he ultimately decided that he was attacked because of a rumor that he was a "rat"—meaning a prison informant.

Welters testified that on the day before he was assaulted, he heard that "a rat was going to get hit in the unit." Welters further testified that after his assault by Inmate 2, numerous people reported to him that he was "sliced in the face because [he] was a rat," due to false rumors spread at MCH-Stillwater by prison staff and because "staff wanted [Inmate 2] to do it." Welters testified that he believed this is in part because he overheard Sergeant Wildung saying something about him as he was passing by and he was attacked on Sergeant Wildung's unit.

In an affidavit, an inmate at MCF-Stillwater (Inmate 3) testified that about one week after Welters filed his initial grievance regarding the mechanical restraint during Welters' medical transport and procedure, Officer Rhoney "came up to [him] out of the blue and told [him] that Mr. Welters was accusing Officer Rhoney of injuring Mr. Welters and that he thought that Mr. Welters was in some '[W]hite' gang." Inmate 3 testified that Officer Rhoney appeared upset when he relayed the information to him.

Another inmate (Inmate 4) testified in an affidavit that shortly before the date of the inmate attack, "Officer Emily told [him] that Mr. Welters was a racist rat/informant and that Mr. Welters raped a black girl." Inmate 4 stated that "Officer Emily also told [Inmate 4] that [Officer Emily] wanted other inmates to assault Mr. Welters" and that "Officer Emily provided the same information to other inmates at [MCF-Stillwater] as well." In his affidavit, Inmate 4 also indicated that as a result of Officer Emily spreading the rumor that Welters was an informant, Welters became labeled as a snitch at MCF-Stillwater. According to the affidavit, inmates associated with a prison gang on Welters' unit wanted

Welters off their unit because he was a snitch, and so they orchestrated the assault by Inmate 2.

Procedural history

On November 11, 2019, Welters filed a second amended complaint, which is the operative pleading in this matter, alleging three counts of violations of his federal civil rights as well as five counts of tort violations under Minnesota state law. Respondents filed a motion for summary judgment on all of Welters' claims. Subsequently, Welters filed a motion to amend the complaint to add a claim for punitive damages against Officers Rhoney and Emily. During a district court hearing on respondents' motion for summary judgment, Welters voluntarily dismissed the majority of his claims, including those against Sergeant Wildung. He proceeded only on his claims against Officers Rhoney and Emily, alleging that (1) they were liable, in their individual capacities, under 42 U.S.C. § 1983 (2018) for violations of Welters' Eighth Amendment and First Amendment rights; and (2) that they, in their individual capacities, were negligent under Minnesota law. Welters also alleged that the DOC was vicariously liable to him for the negligence of its employees under Minnesota law. Following the summary judgment hearing, the district court issued an order granting respondents' motion for summary judgment and dismissing Welters' complaint with prejudice. The district court's order did not refer to Welters' motion to amend his complaint to add a claim for punitive damages. Welters appeals.

ISSUES

I. Whether the district court erred by dismissing Welters' Eighth Amendment claims against Officers Rhoney and Emily.

II. Whether the district court erred by dismissing Welters' negligence claims against Officers Rhoney and Emily as barred by official immunity and against the DOC as barred by vicarious immunity.

III. Whether the district court erred by dismissing Welters' First Amendment retaliation claim.

ANALYSIS

Appellate courts "review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). A material fact is one that will affect the outcome of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996). "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). We view "the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted). We review the applicability of immunity de novo. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599 (Minn. 2016). The party asserting immunity has the burden of demonstrating entitlement to that defense. *Rehn v. Fischley*, 557 N.W.2d 328, 333 (Minn. 1997).

I. The district court did not err by dismissing Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the inmate attack, but the district court erred by dismissing Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the mechanical restraint during Welters' medical transport and procedure.

A government official may raise qualified immunity as a civil rights claim under 42 U.S.C. § 1983. *Elwood v. County of Rice*, 423 N.W.2d 671, 674 (Minn. 1988). In addition to protection from liability, "[q]ualified immunity is an entitlement not to stand trial or face the other burdens of litigation." *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (quotation omitted). Qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

"The test for qualified immunity at the summary judgment stage is an objective one." *Electric Fetus Co. v. City of Duluth*, 547 N.W.2d 448, 452 (Minn. App. 1996) (quotation omitted). To determine the applicability of qualified immunity, courts consider (1) whether the plaintiff alleged facts showing the violation of a statutory or constitutional right and (2) whether the plaintiff had a right "clearly established" at the time of the alleged violation. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009). Courts may "exercise their sound discretion in deciding" the order to address these elements. *Id.* at 236.

Conduct violates clearly established law when "the contours of a right are sufficiently clear [such] that every reasonable official would have understood that what [they are] doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (quotations omitted). In determining whether a right is clearly established, the Supreme Court has stated that it does not "require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* The Eighth

Amendment "prohibits the infliction of cruel and unusual punishments on those convicted of crimes." *Wilson v. Seiter*, 501 U.S. 294, 296–97 (1991) (quotation omitted). To violate the Eighth Amendment "offending conduct must be wanton." *Id.* at 302. The meaning of the term "wanton" in an Eighth Amendment context is not fixed and depends upon the circumstances and type of case in which the alleged violation occurs. *Id.*

In cases dealing with allegations of excessive force, the inquiry focuses on "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). If the use of force was applied maliciously and sadistically, then it was wanton. *Id*. at 8.

In cases involving conditions of confinement or the deprivation of medical care, courts apply a deliberate indifference standard in which wanton means that the official "acted or failed to act despite his knowledge of a substantial risk of serious harm." *Farmer v. Brennan*, 511 U.S. 825, 842 (1994).

In his complaint, Welters alleges that his Eighth Amendment rights were violated by Officers Rhoney and Emily as a result of both the inmate attack and the mechanical restraint during Welters' medical transport and medical procedure. We therefore address Welters' Eighth Amendment claims regarding each incident in turn.

The inmate attack

1. *Constitutional rights clearly established*

"Prison officials have a duty to protect prisoners from violence at the hands of other prisoners." *Farmer*, 511 U.S. at 833 (quotation omitted). The Eighth Amendment requires prison officials to "take reasonable measures to guarantee the safety of the inmates." *Id.*

at 832 (quotation omitted). Therefore, Welter's Eight Amendment rights were clearly established at the time of the attack.

2. *Violation of Constitutional rights*

A constitutional violation based on a failure to prevent harm requires proof of: (1) conditions posing a substantial risk of serious harm, and (2) deliberate indifference to health or safety. *Id.* at 834. Deliberate indifference requires more than mere negligence but less than purpose or knowledge. *Id.* at 835. Instead, deliberate indifference is analogous to recklessness, as "the official[s] must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] must also draw the inference." *Id.* at 837. An official's knowledge of the risk may be demonstrated through circumstantial evidence and inference, and "a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.* at 842. Nevertheless, there is no constitutional violation when the officials knew of a substantial risk to health or safety and they "responded reasonably to the risk, even if the harm ultimately was not averted." *Id.* at 844.

Welters relies on affidavits submitted by Inmates 3 and 4 to support his assertion that Officers Rhoney and Emily knew that Inmate 2 posed a substantial risk to Welters' safety. However, the district court determined that Welters could not rely on these affidavits to avoid summary judgment because they contained inadmissible hearsay based on rumors. *See In re Trusts A & B of Divine*, 672 N.W.2d 912, 921 (Minn. App. 2004) ("When deciding any summary-judgment motion, the district court must disregard hearsay evidence that would be inadmissible at trial."). After excluding the affidavits from its

analysis, the district court concluded that Welters' Eighth Amendment claim based on the inmate attack failed because "[t]he record is devoid of any evidence shedding any light on why the inmate assaulted [Welters]."

Even if we were to rely on the affidavits and view them in the light most favorable to Welters, we would still be left without any evidence connecting Inmate 2's assault of Welters to any purported rumors spread by Officers Rhoney and Emily. In his affidavit, Inmate 3 alleges that Officer Rhoney spread a rumor that Welters was in a "White gang" nine months before the inmate attack, but Inmate 3 does not mention the inmate attack or what motivated the attacker. In his affidavit, Inmate 4 attempts to connect the inmate attack with purported rumors spread by Officer Emily, but he provides no evidence that Inmate 2 had knowledge of any rumors or attacked Welters because of any rumors. Without any evidence that Inmate 2 knew about any alleged rumors or attacked Welters because of those alleged rumors, it is impossible to conclude that Officers Rhoney and Emily had any reason to know that there was a substantial risk to Welters' safety. Additionally, Welters testified that he had never met or spoken to Inmate 2.

Therefore, this record, viewed in the light most favorable to Welters, contains insufficient evidence to support a conclusion that Officers Rhoney and Emily were "aware of facts from which the inference could be drawn that a substantial risk of serious harm" to Welters existed. *See Farmer*, 511 U.S. at 837. Because Welters failed to submit any evidence of a violation of his constitutional rights on this issue, the district court did not err in dismissing his claim that his Eighth Amendment rights were violated by the inmate attack. *Pearson*, 555 U.S. at 232.

Mechanical restraint during Welters' medical transport and procedure

1. *Constitutional rights clearly established*

In determining whether a right is clearly established, the Constitution, decisions of the United States Supreme Court, and decisions of lower federal courts may provide notice of established constitutional rights. *See Hope v. Pelzer*, 536 U.S. 730, 741–42 (2002).

The Eighth Amendment prohibits "cruel and unusual punishments." U.S. Const. amend. VIII. The Supreme Court and the lower federal courts have concluded that the Eighth Amendment bar on cruel and unusual punishments forbids the inhumane use of restraints that cause injury to prisoners. *See Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 877 F. Supp. 634, 668–69 (D.D.C. 1994), *vacated in part*, *modified in part on other grounds*, 899 F. Supp. 659 (D.D.C. 1995). In *Women Prisoners*, the court held the prison official defendants liable for violating a pregnant woman's Eight Amendment rights, explaining that a prison official who shackles a woman while she is in labor during childbirth acts with "deliberate indifference . . . since the risk of injury to women prisoners is obvious." *Id.* at 669.

Likewise, in 2002, the Supreme Court provided guidance to officials on the constitutional limits of restraining prisoners in a Section 1983 action brought by an inmate alleging that his Eighth Amendment rights had been violated by officials responsible for handcuffing him to a prison hitching post. *Hope*, 536 U.S. at 733–35. The Court determined that the defendant prison officials had acted with deliberate indifference to the inmate's health and safety in violation of the Eighth Amendment by restraining him

"[d]espite the clear lack of an emergency situation" in a manner "that created a risk of particular discomfort and humiliation." *Id.* at 738.

Based on this caselaw, we believe that a reasonable factfinder could determine from the record in this case that Officers Rhoney and Emily, like the officials in *Hope*, were not facing an emergency situation but nevertheless "subjected [Welters] to a substantial risk of physical harm, to unnecessary pain caused by the [shackles] and the restricted position of confinement . . . [and] created a risk of particular discomfort and humiliation." *See id.*

Further, there is no evidence presented by the officers in their motion to the district court indicating that restraining Welters was justified by any legitimate penological concern, and there is no evidence that Welters was dangerous to himself or others. Officer Emily testified that he did not believe Welters presented any particular or unique safety concern, yet he nonetheless kept Welters in restraints because he did not trust inmates while he was alone with them. However, there was evidence in the record that Officer 1 was in the vicinity of the holding cell and that Officer Emily was not alone. Additionally, there is no evidence in the record that Welters posed a flight risk. Once he arrived at MCF-OPH, Welters was locked in a large medical holding cell, and during his surgery, he was placed under anesthesia and so would have been unconscious.

Therefore, Welters' Eighth Amendment rights were clearly established at the time of his restraint.

2. *Violation of Constitutional rights*

The parties disagree on whether the use-of-force standard or the deliberate indifference standard applies to the determination of whether Welters' constitutional rights

were violated. The district court applied the use-of-force standard and concluded that Welters' claim regarding his mechanical restraint during the medical transport and procedure failed because "[n]othing in the record indicate[d] that either Officer Rhoney or Officer Emily acted with the intent to cause [Welters] harm, let alone acted maliciously or sadistically."

Agreeing with the district court, Officers Rhoney and Emily argue that this is a case involving the use of excessive force that therefore requires us to determine whether the force used was applied "maliciously and sadistically for the very purpose of causing harm." *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (quotation omitted). Welters, however, argues that this is a case involving a condition of confinement and therefore the deliberate indifference standard is appropriate.

The resolution of the appropriate legal standard to apply when an inmate is fully restrained throughout a medical transport and medical procedure is an issue of first impression before a Minnesota appellate court. Although their reasoning is not controlling,[1] several federal courts have analyzed factually similar claims and applied the deliberate indifference standard. *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009); *Villegas v. Metro. Gov't of Nashville*, 709 F.3d 563 (6th Cir. 2013).

Nelson involved an Eighth Amendment claim arising out of the use of restraints while a pregnant prisoner was in labor. The Eighth Circuit in *Nelson* determined that the test to analyze whether a prison official was deliberately indifferent is: "(1) whether [the

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[1] We are not bound by the lower federal courts, even on issues of federal law. *See Jendro v. Honeywell, Inc.*, 392 N.W.2d 688, 691 n.1 (Minn. App. 1986).

plaintiff] had a serious medical need or whether a substantial risk to [the plaintiff's] health or safety existed, and (2) whether [the official] had knowledge of such serious medical need or substantial risk to [the plaintiff's] health or safety but nevertheless disregarded it." 583 F.3d at 529.

Adopting the reasoning of the Eighth Circuit in *Nelson*, the Sixth Circuit in *Villegas* reasoned that a use-of-force analysis was "not well adapted" for petitioner's claim arising out of being shackled during labor and postpartum recovery, which more closely resembled a crossover between a conditions of confinement case and a medical needs case. 709 F.3d at 570–71. In conditions of confinement cases, courts specifically consider whether the detainee or prisoner was denied "the minimal civilized measure of life's necessities." *Farmer*, 511 U.S. at 834. This includes ensuring the safety of inmates and making sure they "receive adequate food, clothing, shelter, and medical care." *Id*. at 832. And, in medical needs cases, "deliberate indifference to *serious medical needs* of prisoners constitutes the unnecessary and wanton infliction of pain." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (emphasis added) (quotation omitted).

We agree with their reasoning and adopt the test utilized by the *Nelson* court. We do so because this approach persuasively combines both medical needs language from *Estelle*, 429 U.S. at 104, and conditions of confinement language from *Farmer*, 511 U.S. at 842. We therefore consider whether a substantial risk to Welters' health or safety existed. *Nelson*, 583 F.3d at 529.

There is sufficient evidence in the record from which a factfinder could conclude that a substantial risk to Welters' health and safety existed when he was handcuffed in an

allegedly inappropriate manner as he was transported to and from MCF-OPH and throughout the duration of his medical procedure on July 31, 2017. The DOC's own policy 301.081 states that an inmate should not be restrained "[l]onger than necessary" and that while an inmate is restrained, "[f]irst aid must be offered, provided, and monitored, if needed." The record, viewed in the light most favorable to Welters, could support a conclusion that the handcuffs were inappropriately put on, that they were so tight that they caused injury, and that he was restrained longer than necessary. Welters was allegedly restrained for approximately 3.5 hours, including while he was placed in an MCF-OPH holding cell and throughout the duration of his medical procedure. In his response to Welters' grievance, Captain Matthews agreed that while restraints were necessary during a medical transport, they were to be removed upon "placement into the OPH holding cell." He explained: "All involved officers have been reminded to *always* remove offender restraints upon admittance unless there is a safety concern which would prevent the restraint removal." (Emphasis added.)

The record, viewed in the light most favorable to Welters, could also support a conclusion that there was a substantial risk to his health and safety as a result of being inappropriately handcuffed with restraints tighter than necessary and being restrained longer than necessary. Welters testified that the intense pain in his palms from being restrained lasted approximately one year, and that, as a result, he experienced motor and grip dysfunction, stopped exercising, was unable to hold items in his hands, and was unable to continue with his art hobby. Welters also stated that he developed carpal tunnel syndrome in both of his wrists as a result of being handcuffed. A neurologist at Noran

Neurological Clinic examined Welters and confirmed nerve damage in both of his wrists. Additionally, Welters submitted an expert report by an orthopedic surgeon, who opined that it was "more likely than not that the continuous compression resulting from being handcuffed during anesthesia played a substantial contributing factor to the development of Mr. Welters' bilateral carpal tunnel syndrome." Welters testified that he had carpal tunnel release surgery on both wrists and that the surgeries helped with his intense pain in his hands. But Welters complained that his wrists still ache and he still cannot paint because his "hands don't work the same as they once did."

This evidence in the record, when viewed in the light most favorable to Welters, therefore presents a genuine issue of material fact so as to preclude summary judgment.

We next consider whether Officers Rhoney and Emily had knowledge of a substantial risk to Welters' health or safety but nevertheless disregarded it. *See Nelson*, 583 F.3d at 529. Welters testified that he told Officer Rhoney that his handcuffs were not locked, and that he asked Officer Rhoney if they should fix the handcuffs before they left for MCF-OPH, but Officer Rhoney responded, "It's only a 15-minute drive." Welters testified that, while he was in the holding cell, he told Officer Emily that his "hands were numb" and that he "wanted to get [the] restraints off," but Officer Emily stated that he needed "to find his partners" and left. Welters also testified that when he awoke from his surgery, he was still in full restraints, he could not feel his hands, and his hands were "light bluish" in color. Officer Emily entered the medical room to help Welters prepare for his transport back to MCF-Stillwater and therefore would have been able to observe Welters' hands at that time. Welters testified that he also told Officer Emily that he could not feel

his hands, but notwithstanding his complaints, the handcuffs were not removed. When viewed in a light most favorable to Welters, there is sufficient evidence in the record from which a factfinder could conclude that Officers Rhoney and Emily did have knowledge of the substantial risk to Welters' health and safety but nevertheless disregarded it.

Our obligation at this stage of the case is not to resolve the ultimate issue of whether Welters can prevail on his Eighth Amendment claim against Officers Rhoney and Emily; it is only to examine the record before the district court to determine whether it erred in granting the officers qualified immunity under the relevant summary judgment standard. Because Welters produced sufficient evidence to demonstrate that inappropriately restraining him during a medical transport and procedure could violate a clearly established right, the district court erred by dismissing Welters' Eighth Amendment claim on this issue.

II. The district court erred by dismissing Welters' negligence claims against Officers Rhoney and Emily as barred by official immunity and against the DOC as barred by vicarious immunity.

Official Immunity

"Common law official immunity generally applies to prevent a public official charged by law with duties which call for the exercise of his judgment or discretion from being held personally liable to an individual for damages." *Schroeder v. St. Louis County*, 708 N.W.2d 497, 505 (Minn. 2006) (quotation omitted). "The purpose of official immunity is to protect public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties." *Ireland v. Crow's Nest Yachts, Inc.*, 552 N.W.2d 269, 272 (Minn. App. 1996) (quotation omitted). "Whether official immunity applies turns on: (1) the conduct at issue; (2) whether the conduct is discretionary

or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014).

"The discretionary-ministerial distinction is a nebulous and difficult one." *Shariss v. City of Bloomington*, 852 N.W.2d 278, 281 (Minn. App. 2014) (quotation omitted). However, it is important to make this distinction because "common law official immunity does not protect officials when they are charged with the execution of ministerial, rather than discretionary, functions." *Anderson v. Anoka Hennepin Sch. Dist. 11*, 678 N.W.2d 651, 655 (Minn. 2004). We "focus our inquiry on the nature of the act itself and acknowledge that in doing so almost any act involves some measure of freedom of choice." *Schroeder*, 708 N.W.2d at 507. "Some degree of judgment or discretion will not necessarily confer discretionary immunity on an official." *Elwood*, 423 N.W.2d at 677.

A duty is discretionary if it involves "individual professional judgment that necessarily reflects the professional goal and factors of a situation." *Mumm v. Mornson*, 708 N.W.2d 475, 490 (Minn. 2006) (quotation omitted). We typically consider duties discretionary when they involve "responding to uncertain circumstances that require the weighing of competing values on the grounds that these circumstances offer little time for reflection and often involve incomplete and confusing information such that the situation requires the exercise of significant, independent judgment and discretion." *Shariss*, 852 N.W.2d at 282 (emphasis omitted) (quotation omitted). Examples of discretionary duties include a police officer choosing the speed at which to drive through a red light while responding to an emergency under a statute imposing a duty on the officer to "slow down

as necessary for safety," *Vassallo*, 842 N.W.2d at 463; and a bus driver choosing to keep a bus moving on a highway while passengers attacked each other, under the driver's duty to ensure the safety of all passengers. *Watson by Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 415 (Minn. 1996).

These duties required the employees to use their professional judgment to choose between a variety of options under uncertain circumstances and without the benefit of time for reflection. But even with time for reflection, a duty may still be discretionary. *See Schroeder*, 708 N.W.2d at 506 (holding that decision of a road-grader operator to grade against traffic on highway, under county's policy allowing him that judgment, was discretionary).

By contrast, a "ministerial duty is one that is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Anderson*, 678 N.W.2d at 656 (quotation omitted). A ministerial duty need not be imposed by law and may arise from an unwritten policy or protocol that dictates a particular course of conduct. *See id.* at 657–59. And the "mere existence of some degree of judgment or discretion will not necessarily confer common law official immunity; rather, the focus is on the nature of the act at issue." *Id.* at 656.

Welters alleges that he was harmed when Officers Rhoney and Emily "failed to double-lock his handcuffs and when they failed to adjust or remove his restraints upon placement inside a holding cell" at MCF-OPH. The district court determined that the conduct at issue on appeal—failing to adjust or remove Welters' restraints—was discretionary, reasoning that "DOC policy provides that upon arrival at the medical facility,

the prison official's duty regarding the handcuffs becomes discretionary, and removing the handcuffs is left to the judgment of the supervising officer."

We disagree. We find that the alleged conduct at issue here was ministerial, not discretionary. Policy 301.096 directs DOC officers to transport offenders "to the medical provider facility in full restraints." According to the policy, full restraints include double-locked handcuffs. Policy 301.081 also requires that handcuffs be double-locked: "If the [restraint] mechanism contains a safety lock, mechanical restraints *must* be safely locked once it is possible for the officer to do so." (Emphasis added.) During his deposition, Officer Rhoney admitted that double-locking the handcuffs is required per policy:

> WELTERS' COUNSEL: And the cuffs were double-locked?
> OFFICER RHONEY: As per policy, yes.

We therefore conclude that policies 301.096 and 301.081 imposed a ministerial duty, and not a discretionary one, upon Officers Rhoney and Emily to double-lock Welters' handcuffs.

However, the parties disagree as to whether Welters' handcuffs were double-locked. According to Welters, he heard his handcuffs click as he was getting into the vehicle and realized that they were not double-locked, meaning that they could continue to tighten. During his deposition, Officer Rhoney testified that he double-locked Welters' handcuffs and checked them for tightness. "[W]hen predicate facts are in dispute, we cannot determine whether official immunity applies until the factual disputes are resolved." *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 675 (Minn. 2006). "[A]dditional analysis as to what in fact occurred would be wholly speculative and call for fact-finding,

a task beyond the scope of our review." *Id.* Because the predicate fact of whether Welters' handcuffs were double-locked is in dispute, Officer Rhoney is not entitled to summary judgment on grounds of official immunity on this portion of Welters' negligence claim, and we therefore remand this issue to the district court. *See id*. (reversing and remanding negligence claim for trial to determine if officers were entitled to official immunity when genuine issue of material fact existed as to whether officers initiated a "vehicular pursuit" of motorist as defined by vehicle operation policy).

This same analysis applies to Welters' claim against Officers Rhoney and Emily for failing to remove or at least loosen his handcuffs after he was placed inside a holding cell at MCF-OPH. Policy 301.081 explicitly states that "Mechanical restraints *must not be used*: (1) Longer than necessary; . . . (4) To cause undue discomfort; (5) To inflict physical pain; or (6) To restrict blood circulation or breathing." (Emphasis added.) Policy 301.081 also states that "[f]irst aid must be offered, provided, and monitored, if needed." Based on the use of the mandatory term "must" in these portions of policy 301.081, the policy imposed a ministerial duty upon Officers Rhoney and Emily to leave the restraints on Welters only if necessary and to offer and provide first aid to him when he needed it. However, the parties disagree as to how long it was necessary to keep Welters restrained and as to whether he was properly monitored for any necessary first aid.

As we indicated previously, the predicate facts are in dispute. Therefore, Officers Rhoney and Emily are not entitled to summary judgment on grounds of official immunity on this portion of Welters' negligence claim, and we remand the case to the district court for trial to determine whether (1) the officers kept Welters in restraints "longer than

necessary"; (2) the handcuffs were appropriately fastened; and (3) the officers "offered, provided, and monitored" first aid according to the meaning of these provisions in policy 301.081.

Vicarious immunity

"In general, when a public official is found to be immune from suit on a particular issue, his government employer will enjoy vicarious official immunity from a suit arising from the employee's conduct." *Schroeder*, 708 N.W.2d at 508. Conversely, "if a public official is not entitled to official immunity, the public official's employer is not entitled to vicarious official immunity." *Raymond v. Pine Cnty. Sheriff's Off.*, 915 N.W.2d 518, 527 (Minn. App. 2018). Because we remand this case to the district court without determining whether Officers Rhoney and Emily are entitled to official immunity on Welters' negligence claims, we are unable to determine whether the DOC is entitled to vicarious official immunity at this stage. If the district court determines that Officers Rhoney and Emily are not entitled to official immunity because they violated their ministerial duty, then the district court shall address whether the DOC is entitled to vicarious official immunity.

III. The district court did not err by dismissing Welters' First Amendment retaliation claim against Officers Rhoney and Emily in their individual capacities.

Welters argues that the district court erred in dismissing his retaliation claim against Officers Rhoney and Emily in their individual capacities under Section 1983. "The filing of a prison grievance, like the filing of an inmate lawsuit, is protected First Amendment activity." *Lewis v. Jacks*, 486 F.3d 1025, 1029 (8th Cir. 2007). To successfully establish

a prima facie case of retaliation under the First Amendment, plaintiffs must demonstrate that (1) they engaged in protected conduct; (2) the defendant committed an adverse action; and (3) a causal connection exists between the two. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983).

The parties do not dispute that Welters engaged in protected conduct by filing a prison grievance. As to the remaining prongs, Welters argues that genuine issues of material fact preclude summary judgment against him. To support this argument, Welters relies on affidavits submitted by Inmates 3 and 4 to support his claim against Officers Emily and Rhoney.

The district court concluded that Welters' First Amendment claim fails as a matter of law because Welters "failed, altogether, to establish a causal connection between the assault and the purported rumors." As previously discussed, even if we were to rely on the affidavits of Inmates 3 and 4 and view them in the light most favorable to Welters, we would still be left without a genuine issue of material fact regarding a link between any purported rumors spread by Officers Rhoney and Emily and Inmate 2's assault of Welters.

Welters therefore failed to create a genuine issue of material fact regarding the alleged causal connection between his grievance and the inmate attack, without which he is unable to successfully establish a prima facie case of retaliation under the First Amendment. Because no genuine issue of material fact exists regarding whether the inmate attack resulted from Welters' grievance, the district court did not err by dismissing

Welters' First Amendment retaliation claim against Officers Rhoney and Emily in their individual capacities.[2]

DECISION

In conclusion, we affirm the district court's (1) dismissal of Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the inmate attack, and (2) dismissal of Welters' First Amendment retaliation claims against Officers Rhoney and Emily. We reverse the district court's (1) dismissal of Welters' Eighth Amendment claims against Officers Rhoney and Emily regarding the mechanical restraint utilized during Welters' medical transport and medical procedure, and (2) dismissal of Welters' negligence claims against Officer Rhoney, Officer Emily, and the DOC regarding the mechanical restraint utilized during Welters' medical transport and medical procedure. Finally, we remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

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[2] Welters also alleges that the district court abused its discretion by implicitly denying his motion to amend his complaint to add a claim for punitive damages. Because the district court did not address this motion, we direct the district court to consider this motion on remand considering this opinion. *See Johnson v. Paynesville Farmers Union Co-op.*, 817 N.W.2d 693, 714 (Minn. 2012) (Holding that, in considering a motion to amend to add a punitive damage claim, the district court must consider whether such claim could survive summary judgment).