STATE OF MINNESOTA

IN SUPREME COURT

A20-1481

Court of Appeals

Thissen, J.
Dissenting, Gildea, C.J.

Christopher Welters,

Respondent,

vs.

Filed: December 14, 2022
Office of Appellate Courts

Minnesota Department of Corrections, et al.,

Appellants.

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota, for respondent.

Keith Ellison, Attorney General, Michael Goodwin, Assistant Attorney General, Saint Paul, Minnesota, for appellants.

Vicki A. Hruby, Jardine, Logan & O'Brien, P.L.L.P., Lake Elmo, Minnesota, for amicus curiae Association of Minnesota Counties.

John J. Choi, Ramsey County Attorney, Rebecca Krystosek, Assistant County Attorney, Saint Paul, Minnesota, for amicus curiae Minnesota County Attorneys Association.

Richard D. Hodsdon, Minnesota Sheriffs' Association, Saint Paul, Minnesota, for amicus curiae Minnesota Sheriffs' Association.

S Y L L A B U S

1. When no specific, immediate threat to order or institutional security exists, the deliberate indifference standard applies to Eighth Amendment claims seeking relief under 42 U.S.C. § 1983 for injuries resulting from corrections officers overly tightening

and unsafely applying mechanical restraints while transporting an inmate to a medical procedure, while the inmate is waiting in a medical holding cell, and while the inmate is undergoing a medical procedure.

2. The inmate's claim under 42 U.S.C. § 1983 cannot be dismissed on summary judgment based on the corrections officers' qualified immunity defense because a reasonable factfinder could conclude that the facts alleged show an objective and substantial risk of harm that the corrections officers subjectively recognized and nevertheless disregarded, and because the constitutional obligation to prevent the substantial risk of harm posed by the improper use of restraints in non-emergency situations was clearly established on the date the restraints were used.

Affirmed.

O P I N I O N

THISSEN, Justice.

The Eighth Amendment to the United States Constitution prohibits inflicting "cruel and unusual punishments." U.S. Const. amend. VIII; *see also Wilson v. Seiter*, 501 U.S. 294, 296–97 (1991). Respondent Christopher Welters is incarcerated in the Stillwater correctional facility. On July 31, 2017, he was transported from the Stillwater correctional facility to the Oak Park Heights correctional facility for an endoscopy. Welters alleges that Appellants Cornelius Emily and Ernest Rhoney, Minnesota Department of Corrections officers, subjected him to cruel and unusual punishment when they improperly applied handcuffs in a manner that caused him injury and refused to loosen the handcuffs when he complained that the handcuffs were too tight and causing numbness. Welters remained in

the overtightened handcuffs for 3½ hours, including while under general anesthesia for the endoscopy. Welters suffered serious injury in both wrists that required surgery and left him with permanent nerve damage that continues to cause pain and decreased function. He sued Officers Rhoney and Emily under 42 U.S.C. § 1983, seeking damages to compensate him for his injuries.

We are asked to answer two questions in this case. First, we must determine whether Welters's Eighth Amendment claim should be assessed under the deliberate indifference standard (applicable to conditions of confinement and medical care) or under the malicious and sadistic standard (applicable in Eighth Amendment excessive use of force cases). Eighth Amendment claims arising from conditions of confinement and medical care are subject to the deliberate indifference standard, which asks whether officers knowingly disregarded an objective risk of serious harm. *Wilson*, 501 U.S. at 303. In contrast, when officers take security measures to "resolve a disturbance" that "indisputably poses significant risks to the safety of inmates and prison staff," the applicable Eighth Amendment standard is "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." *Whitley v. Albers*, 475 U.S. 312, 320–21 (1986) (citation omitted) (internal quotation marks omitted). We conclude that the deliberate indifference standard applies in this case.

Second, we must determine whether qualified immunity bars Welters's deliberate indifference claim. This analysis has two parts. As an initial matter, because this case comes to us from a district court decision granting summary judgment in favor of Officers Rhoney and Emily, we must assess whether a jury, viewing the facts and inferences drawn

from those facts in the light most favorable to Welters, reasonably could find that the corrections officers acted with deliberate indifference. We conclude that a jury could do so.

Next, we must decide whether, on July 31, 2017, a reasonable corrections officer would have known that improperly applying handcuffs for routine medical transportation in a manner that caused serious injury and refusing to loosen the overtightened handcuffs when Welters complained that they were too tight and causing him numbness, violated Welters's Eighth Amendment rights. We conclude that a reasonable corrections officer would have understood that such conduct violated the Eighth Amendment's prohibition on cruel and unusual punishment. Accordingly, the right was clearly established such that Officers Rhoney and Emily are not entitled to qualified immunity.

Accordingly, we hold that Welters's section 1983 claim survives summary judgment. We affirm the decision of the court of appeals, which reversed the district court's decision to grant summary judgment in favor of Officers Rhoney and Emily, and we remand for further proceedings in accordance with this opinion.

FACTS

We are reviewing the district court's decision to grant summary judgment in favor of Officers Rhoney and Emily. Accordingly, we recite the facts in the light most favorable to Welters as the nonmoving party. *Mumm v. Mornson*, 708 N.W.2d 475, 481 (Minn. 2006). These facts are, of course, subject to proof at trial.

On July 31, 2017, Officers Rhoney and Emily were tasked with transporting inmates from the Minnesota Correctional Facility–Stillwater to their appointments scheduled at the

outpatient medical clinic housed at the Minnesota Correctional Facility–Oak Park Heights. Welters was an inmate at Stillwater and was scheduled for a routine endoscopy under general anesthesia that day at Oak Park Heights. He had been incarcerated for nearly 30 years and testified that, during that time, he had no altercations with officers, no assaults on other inmates, and no escape attempts. Officers Rhoney and Emily both testified that they did not have any specific safety or security concerns about Welters, and Officer Rhoney testified that this was just a "routine" transportation for medical treatment.

Minnesota Department of Corrections (DOC) policy requires that all offenders be transported in full restraints, regardless of the individual offender's security classification. Minn. Dep't of Corr., Policy Manual 301.096(C)(1) (Nov. 5, 2019).[1] Full restraints include handcuffs, a waist chain, a black box (applied over the chain and lock area of handcuffs to form a rigid link between the two wristlets), and leg irons. *Id.* at 301.096. DOC Policy also requires handcuffs and leg irons to be "double locked"—a safety measure that prevents the cuffs from continuing to tighten. *Id.*

When Officer Rhoney applied Welters's restraints in preparation for transport, Welters testified that he noticed right away that the handcuffs were "tighter than usual," but he did not mention it to Officer Rhoney at that time because he "didn't think it was important." About 15 to 20 minutes later, however, Welters began feeling symptoms. He testified that prior to getting into the transport vehicle, he told Officer Rhoney that the cuffs

[1] This opinion cites the most recent Minnesota Department of Corrections Policy Manual, which is available at https://policy.doc.mn.gov/DOCPolicy/. There have been no substantive changes in the cited policies since the time of the incident.

were "pretty tight." Welters testified that Officer Rhoney responded, "Oh, it's only a 15-minute drive, it'll be all right."

When they were getting into the van, Welters felt his handcuffs click tighten, indicating that they were not double locked in violation of DOC policy. When Welters mentioned this to Officer Rhoney and asked him to "fix this before we leave," Officer Rhoney pushed on the cuff, clicked it even tighter, told Welters he "was right," but then did nothing to correct the situation, repeating that they would be there in only 15 minutes.

During the drive to Oak Park Heights, Officer Rhoney sat in the back of the vehicle with Welters and one other inmate, and Officer Emily rode in the front with a third officer. Upon arrival at Oak Park Heights, neither Officer Rhoney nor Officer Emily did anything to tend to Welters's overtightened handcuffs. Rather, Welters and the other Stillwater inmate were placed in medical holding cells and left alone, still in full restraints. Welters noticed that none of the other eight inmates in the other medical holding cells had any restraints on. The third officer and Officer Rhoney then left to go back to Stillwater, leaving Officer Emily at Oak Park Heights. Welters estimates that he and the other Stillwater inmate were left alone for at least half an hour, during which time his hands were becoming increasingly cold and numb. Welters testified that, in his decades of incarceration, he had been transported "many, many, many times" and that this was the first time handcuffs had been put on too tight. Welters asked an Oak Park Heights officer about getting his restraints removed and that officer responded that a Stillwater officer would need to attend to that.

Welters testified that when Officer Emily came back about 45 minutes later and opened the door to the cell, Welters told him that his hands were numb and asked Officer Emily to "loosen them, please loosen them." Officer Emily did nothing to fix Welters's handcuffs. Stating that he needed to go find the other Stillwater officers, Officer Emily closed the door of the holding cell and left. According to Welters, that was the last time he saw Officer Emily until after he was recovering from anesthesia and the procedure.

When an Oak Park Heights officer came to take him back for his procedure, Welters asked that officer to loosen his restraints and the officer responded that he would have to get a Stillwater officer to do that. Welters testified that the nurse then asked that officer "Why is he still in his restraints?" and the Oak Park Heights officer replied that he was looking for Stillwater officers. According to Welters, the nurse then asked Welters why he was still in restraints, expressed that it was not normal for inmates to remain in restraints during the procedure, and stated to another officer, "Why are these offender's restraints still on? I said I wanted them removed." Welters testified that he could "barely sign" the pre-procedure paperwork because his hands were "so numb," although they were not yet blue. When he told the nurse how numb his hands were, she reportedly stated that "the officers should take them off soon."

Once in the operating room and prior to the administration of anesthesia, Welters testified that the medical staff again asked the Oak Park Heights officer who was present why Welters was still in restraints and that officer replied that they were still "looking for the Stillwater staff." Welters was then placed on the gurney on his back, still in full restraints. After medical personnel told him to roll to his side so they could administer the

anesthesia, Welters again asked if they were going to put him under and do the procedure with his restraints still on and they told him that "they should be removing [the restraints] soon." Welters was then placed under anesthesia and the endoscopy was performed.

Welters was still in full restraints when he awoke from the procedure and reportedly could not feel his hands "at all." He testified that when he asked the nurse if they had been on the whole time, she replied affirmatively and stated that she had "never seen a dangerous procedure done on an offender in full restraints" in her 10 years of working at Oak Park Heights. When Officer Emily came to get him, Welters contends that he again told Officer Emily that he could not feel his hands and that he needed to go to the bathroom, but Officer Emily again did not adjust his handcuffs. Welters tried to urinate but was unable to maneuver to do so because he could not feel his hands, so he recalled that he "just didn't use the bathroom." He was then returned to the medical holding cell, still in the overtightened handcuffs and full restraints, to wait for transport back to Stillwater. Welters observed that another Stillwater inmate already in the same holding cell awaiting transport did not have any restraints on.

By the time Welters arrived back at Stillwater, his wrists had been in overtightened handcuffs for 3½ hours, and he observed that his hands were "light bluish." When the cuffs were removed, he showed an officer the gouges left in his wrists and that officer told him to "[b]ring it to medical." The nurse at Stillwater noted that his blood pressure was high and kept him there awhile to observe him because he was not feeling well. Welters

testified that the nurse explained that his elevated blood pressure was an indication that he was in pain and advised him to "call a lawyer."[2]

Welters testified that his hands remained "very numb" until the next morning, when they "became alive with pain." He saw a doctor that day who diagnosed "probabl[e] nerve decompression" and prescribed steroids. When the steroids did not help, Welters was put into wrist braces. He described the pain as "intense" in the palms of his hands, with bruising on his wrists that lasted "at least a week."

On August 1, 2017, the day after Officers Rhoney and Emily transported him for his procedure at Oak Park Heights, Welters submitted an Offender Kite Form (kite),[3] reporting the overtightened handcuff incident. Welters reported: "It was horrific, painful

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[2] In deposition testimony, Officers Rhoney and Emily told a very different story from Welters. Most notably, they both contended that Welters never asked them to loosen or remove his restraints at any point on July 31, 2017. Officer Rhoney testified that he checked Welters's cuffs for tightness and that he would have double locked them, "[a]s per policy." He testified that he did not know anything about Welters's wrist complaints until "weeks later." Officer Emily testified that Welters "never" complained of pain or discomfort either before or after his procedure and that no medical personnel requested that the restraints be removed. Contrary to Welters's account, Officer Emily testified that he brought Welters back for his medical procedure, and he asked the nurse if restraints were needed. Officer Emily contended that Welters "piped up" and volunteered to stay in restraints, stating that when he was incarcerated in California, they did procedures with restraints on "all the time." Officer Emily also testified that he asked Welters, "Are you good?" to which Welter's replied, "Yes, I'm good." Based on the procedural posture of the case, we are required to assume Welters's testimony is true and to disregard any contradictory testimony by Officers Rhoney and Emily. We note that a jury would be under no such obligation and would be free to credit the testimony of Officers Rhoney and Emily if it found that testimony more persuasive.

[3] The "kite" is a printed form issued by the DOC and operates as the mechanism for offenders to communicate with staff "in an effort to promptly resolve concerns/issues." Minn. Dep't of Corr., Policy Manual 303.101 (June 16, 2020).

and humiliating. It is a clear violation of policy and procedure. It violated my rights as a human being. It was cruel and unusual punishment for no reason at all. Deliberate indifference and a true violation of my constitutional rights." In response, Captain Byron Matthews interviewed the staff about the incident and issued a kite response memorandum on August 24, 2017. The memorandum stated that the corrections officers denied that Welters or the nurse requested that his restraints be removed during the procedure. The memorandum further said that the nurse "knew it wasn't normal protocol for offenders to be restrained during medical procedures." The kite response memorandum concluded: "The staff . . . 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."

Following the handcuffing incident, Welters continued to lose function in his hands to the point that he struggled to hold his toothbrush. Welters suffered from worsening pain, was placed on medical leave from prison work, and eventually required carpal tunnel surgery in both wrists. According to Welters, the surgeries relieved his "intense pain," but his wrists persistently "ache" and "don't work the same as they once did."[4]

Welters filed a section 1983 complaint in Washington County district court, alleging that Officers Rhoney and Emily acted with deliberate indifference towards his health,

[4] On March 29, 2019, Dr. Meletiou (an orthopedic specialist and expert) authored an expert report opining that "continuous compression resulting from being handcuffed during anesthesia" was "the primary mechanism of injury" and the "substantial contributing factor" to Welters's bilateral carpal tunnel syndrome. Dr. Meletiou noted that Welters had no previous risk factors and that nerve compression injuries from overtightened handcuffs is "well documented in the literature."

safety, and substantial risk of serious harm in violation of the Eighth Amendment. Officers Rhoney and Emily moved for summary judgment. They argued that to prove that they violated his Eighth Amendment rights, Welters had to establish that they acted with malicious or sadistic intent for the purpose of causing harm when they refused to double-lock and to loosen Welters's handcuffs after they knew the handcuffs were not double locked and were overtightened so much that they were restricting Welters's circulation and causing numbness in his hands. They asserted that Welters failed to prove the requisite intent under the malicious and sadistic standard. Instead, the officers argued that use of restraints during medical procedures falls within officer discretion.

In the alternative, the corrections officers argued that they are shielded from suit by qualified immunity. Framing Welters's claim as whether "the use of handcuffs for a medical transport and medical procedure at another correctional facility" violates the Eighth Amendment, the officers argued that no such right was clearly established on July 31, 2017.

The district court granted summary judgment on the ground that the facts did not show that the officers acted maliciously and sadistically and, accordingly, Welters did not prove a violation of the Eighth Amendment. The district court did not reach the issue of qualified immunity.

The court of appeals reversed. It held that the district court applied the wrong standard when assessing Welters's Eighth Amendment claim. *Welters v. Minn. Dep't of Corr.*, 968 N.W.2d 569, 583–84 (Minn. App. 2021). The court of appeals concluded that the deliberate indifference standard applied and not the malicious and sadistic standard. *Id.*

And the court determined that Welters had sufficiently alleged his deliberate indifference claim, stating:

> [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.' "

Id. (alteration in original) (emphasis added) (quoting *Hope v. Pelzer*, 536 U.S. 730, 738 (2002)). The court of appeals also concluded that clearly established law barred qualified immunity, stating: "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." *Id.* at 582. We granted review.

ANALYSIS

Officers Rhoney and Emily ask us to reverse the court of appeals and reinstate the district court's grant of summary judgment in their favor. We review summary judgment rulings de novo. *Schroeder v. St. Louis Cnty.*, 708 N.W.2d 497, 503 (Minn. 2006). When reviewing an appeal from a summary judgment decision, we must determine whether the district court erred in applying the law and whether genuine issues of material fact exist. *Mumm*, 708 N.W.2d at 481. "A genuine issue of material fact arises when there is sufficient evidence regarding 'an essential element . . . to permit reasonable persons to draw different conclusions.' " *Kelly for Washburn v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017) (alteration in original) (quoting *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997)). In such cases, summary judgment "should not be granted." *Staub v.*

Myrtle Lake Resort, LLC., 964 N.W.2d 613, 620 (Minn. 2021). We view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving party. *Id.* In doing so, we do not "weigh facts or determine the credibility of affidavits and other evidence." *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)).

I.

We turn first to the threshold issue in this case: Does the "malicious and sadistic" standard or the "deliberate indifference" standard apply?

The Eighth Amendment prohibits state officials from inflicting cruel and unusual punishment on persons convicted of crimes. U.S. Const. amend. VIII. This prohibition extends to "the treatment a prisoner receives in prison and the conditions under which he is confined . . . ." *Helling v. McKinney*, 509 U.S. 25, 31 (1993). As the United States Supreme Court has explained:

> [W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well being . . . . The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment.

Id. at 32 (quoting *DeShaney v. Winnebago Cnty. Dep't Soc. Servs.*, 489 U.S. 189, 199–200 (1989)).

In the prison context, the Eighth Amendment does not prohibit routine discomfort. *Hudson v. McMillan*, 503 U.S. 1, 9 (1992). But for nearly half a century, the Supreme Court of the United States has recognized that the unnecessary and wanton infliction of pain on prisoners is unconstitutional because it serves no penological purpose and is inconsistent with contemporary standards of decency. *Estelle v Gamble*, 429 U.S. 97, 102–04 (1976); *see also Hope*, 536 U.S. at 737; *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

To prove that an official acted wantonly when inflicting pain or injury, the offender must show "more than ordinary lack of due care for the prisoner's interests or safety." *Whitley*, 475 U.S. at 319. But what that something more is depends on the type of violation alleged. *See, e.g., Stark v. Lee Cnty., IA*, 993 F.3d 622, 625 (8th Cir. 2021) (quoting *Howard v. Barnett*, 21 F.3d 868, 871 (8th Cir. 1994)). Courts have stated that close attention should be paid to the factual context when assessing the appropriate substantive standard to apply in passive restraint cases. *See, e.g., Jackson v. Gutzmer*, 866 F.3d 969, 976 n.3 (8th Cir. 2017). The focus on context in which the official's decision is being made, as opposed to a focus on the particular type of act in which an officer engages (for instance, applying force), is important and is the primary distinction between our analysis on the question of which standard applies and that of the dissent.[5]

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[5] Courts sometimes refer to the malicious and sadistic standard as the "excessive force" standard. Like many shorthand catchphrases, "excessive force" does not capture the essential distinction between the context when the malicious and sadistic culpability is required and circumstances when a deliberate indifference level of culpability is required to establish Eighth Amendment liability. *See, e.g.*, *Farmer v. Brennan*, 511 U.S. 825, 840 (1994) (stating that "Eighth Amendment liability . . . is thus based on the Constitution and our cases, not merely on a parsing of the phrase 'deliberate indifference' "). (Footnote continued on next page)

The question of whether an official's act "can be characterized as 'wanton' depends upon the constraints facing the *official*." *Wilson*, 501 U.S. at 303. Specifically, the United States Supreme Court has recognized that, in addition to the " 'duty to assume some responsibility for [the] safety and general well-being' " of offenders in their custody, *Helling*, 509 U.S. at 32 (quoting *DeShaney*, 489 U.S. at 200), prison officials also must maintain order and institutional security in the facility, *Hudson*, 503 U.S. at 6. When corrections officers are reacting to urgent circumstances that force them to balance their obligations to maintain order and institutional security and to protect the well-being of inmates, courts will be more deferential to the decisions of those officers. *Wilson*, 501 U.S at 302. In other words, when corrections officers face a threat of unrest that requires the use of force to restore order and discipline, that clash of obligations is most clearly present and greater deference is afforded because the officers' actions are taken with haste and under pressure. *Hudson*, 503 U.S. at 6; *Whitley*, 475 U.S. at 320–22 (defining the malicious and sadistic standard, clarifying that it applies when a disturbance "indisputably poses significant risks to the safety of inmates and prison staff," and determining that

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As discussed below, the "malicious and sadistic" standard applies in circumstances when the question is whether officers used excessive force to restore order and discipline when faced with a threat of unrest, especially when the officials are making decisions in haste and under pressure. The deliberate indifference standard applies in cases when those conditions do not exist. Accordingly, the mere fact that the mechanism by which an officer inflicted pain or injury involved the use of force (overtightening handcuffs, for example) is not dispositive or necessarily relevant to which standard of culpability applies. For that reason, we refer to the "malicious and sadistic" and "deliberate indifference" standards henceforth since those formulations refer to the level of officer culpability, which is the focus of the Eighth Amendment test.

officers did not violate the Eighth Amendment when they shot a prisoner in the leg in response to a prison riot).

Accordingly, depending on the circumstances facing prison officials, courts apply one of two different tests to determine whether the official who inflicted pain acted wantonly. When corrections officers are acting in the face of a threat that may reasonably require the use of force to restore order and discipline, they violate the Eighth Amendment only when they act "maliciously and sadistically to cause harm." *Hudson*, 503 U.S. at 7–9 (noting that the "context" determines whether the excessive force standard applies and determining that when officers, *in response to a disturbance*, beat an inmate on the way to lockdown, the context required an excessive force analysis). When officers act "in a good faith effort to maintain or restore discipline," their conduct does not violate the Eighth Amendment. *Id.* at 6. On the other hand, when corrections officers face a situation that does not implicate their duty to maintain order and institutional security in the face of a threat (for example, when implementing routine security measures), then they act wantonly if they are subjectively aware that a prisoner faced a substantial risk of serious harm and yet disregarded the risk by failing to take reasonable efforts to abate it. *Farmer v. Brennan*, 511 U.S. 825, 835–47 (1994). In 2002, the Supreme Court applied the deliberate indifference standard in determining that a prisoner, who was handcuffed to a hitching post without food or water or bathroom breaks for 7 hours, stated a claim under the Eighth Amendment. *Hope*, 536 U.S. at 737–38. Although Hope's punishment was in response to a "wrestling match with a guard," in applying the deliberate indifference standard, the Supreme Court observed that "[a]ny safety concerns had long since abated by the time the

petitioner was handcuffed to the hitching post because Hope had already been subdued, handcuffed, placed in leg irons, and transported back to the prison." *Id.* at 734, 737.[6]

We agree with the court of appeals that Officers Rhoney and Emily's conduct in this case should be assessed under the deliberate indifference standard. Indeed, that is how Welters framed his section 1983 claim alleging that Officers Rhoney and Emily violated the Eighth Amendment with their cumulative conduct: overtightening of his handcuffs for transport; failing to double-lock them to prevent further tightening in violation of Department of Corrections policy; ignoring his reports of numbness; refusing his requests

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[6] The dissent places heavy but misplaced reliance on *Hudson*. *Hudson* was a case where the corrections officers were responding to a specific threat of unrest that required the temporary use of force to restore order and discipline. 503 U.S. at 4. The prisoner alleged that the corrections officers beat him on the way to lockdown. *Id.* The incident arose when the prisoner and a corrections officer argued. *Id. In response to the disturbance*, two corrections officers placed the prisoner in handcuffs and shackles, took the prisoner out of his cell, and walked him toward the penitentiary's "administrative lockdown" area. *Id.* On the way there, the corrections officer punched Hudson in the mouth, eyes, chest, and stomach. *Id.* A supervisor on duty watched the beating but merely told the officers "not to have too much fun." *Id*. *Hudson* fits squarely within our distinction between prison contexts where corrections officers face a threat of unrest that requires the use of force to restore order and discipline, and contexts where corrections officers are implementing routine security measures and not responding to a specific threat or disturbance. And *Hudson* cannot be currently understood without reference to the *Hope* Court's subsequent decision.

In this case, there is not a whiff of any disturbance. The corrections officers point to none, and one of them testified that he had no specific safety concerns during any of his interactions with Welters or at any point during the transport, waiting, or medical procedure that day. Moreover, there is no indication that the corrections officers incorrectly applied the handcuffs and applied them too tightly because they needed to do so to respond to some kind of threat or disturbance. Finally, Welters does not accuse the corrections officers of using excessive force; he accuses them of deliberately ignoring the risk of severe injury from dangerously tight handcuffs.

to loosen them, knowing that he was going into a medical procedure; and unnecessarily subjecting him to overtightened handcuffs for 3½ hours.

There is no suggestion in the record that Officers Rhoney and Emily's conduct was taken in response to a threat that required the use of force to restore or maintain discipline. Welters did not disobey the officers at any point on July 31, 2017, and he caused no disturbance. Indeed, Officer Rhoney testified that this was a "routine" transport for a "routine" medical procedure,[7] and Officer Emily testified that he had no specific safety concerns during any of his interactions with Welters or at any point during the transport, waiting, or medical procedure that day. Further, Welters was held in a secure cell while waiting for his medical procedure at Oak Park Heights—a maximum security facility with other corrections officers around, and every offender in the other holding cells had their restraints removed.

For safety and security reasons, Department of Corrections policy requires that restraints, including handcuffs, are used during transportation to medical procedures. *See* Minn. Dep't of Corr., Policy Manual 301.096(C)(1). But Welters is not attacking that general policy. He does not claim that the use of handcuffs during transport in compliance with Department of Corrections policy is itself unconstitutional.

Rather, Welters contends that the handcuffs were unnecessarily and improperly applied too tightly, subjecting him to a substantial risk of serious injury, and that Officers

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[7] The dissent objects to our characterization of the activities here as "routine." Based on the record, the characterization is appropriate—including the fact that the *corrections officers* characterized the activities as routine.

Rhoney and Emily knew that. The Department of Corrections policy mandates transportation in "full restraints," which specifically requires that handcuffs be "double locked." *See* Minn. Dep't of Corr., Policy Manual 301.096. But Welters's handcuffs were not double locked, and there is no argument that either officer had to *overtighten* the handcuffs or *refuse to double-lock* them in an effort to respond to a threat or to restore or maintain order and discipline. And there is nothing in the record to support a conclusion that either officer lacked the time or opportunity to loosen Welters's handcuffs because they were faced with such a threat to order and discipline.

We reject Officers Rhoney and Emily's argument that, under *Whitley* and *Hudson*, deference must be afforded "anytime an officer inflicts pain in the course of any prison security measure, whether or not faced with an emergency." Supreme Court precedent is clear that the malicious and sadistic standard applies when corrections officers are faced with a threat—whether it be from an individual inmate refusing to obey orders or a full-blown riot—and use force to maintain order and discipline. Officers Rhoney and Emily's position that the malicious and sadistic standard applies to any act taken to maintain general security would swallow even the day-to-day security measures taken as part of the conditions of confinement of prison life.

We find persuasive that, in accordance with Supreme Court case law, and consistent with our conclusion here, the Eighth Circuit has consistently applied the deliberate indifference standard to the use of restraints during inmate transportation. *See, e.g.*, *Reynolds v. Dormire*, 636 F.3d 976, 979 (8th Cir. 2011) (citing *Davis v. Oregan Cnty., Mo.*, 607 F.3d 543, 548 (8th Cir. 2010) (quoting *Nelson v. Corr. Med. Serv.*, 583 F.3d 522,

528 (8th Cir. 2009) (en banc))) (applying the deliberate indifference standard to analyze whether the refusal by officers to remove restraints during an all-day transport to another correctional facility violated the Eighth Amendment); *Brown v. Fortner*, 518 F.3d 552, 558–59 (8th Cir. 2008) (citing *Farmer*, 511 U.S. at 836) (applying the deliberate indifference standard to a claim arising from the officer's failure to apply seatbelts to inmates in full restraints during transport). Even more specifically, the Eighth Circuit has distinguished cases arising from restraints during medical procedures from "cases involving prison riots, for example" and thus determined conclusively that the *Whitley* malicious and sadistic standard does not apply to medical transport restraint injury cases. *Nelson*, 583 F.3d at 528.[8]

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[8] The dissent offers three Eighth Circuit cases and several from other federal circuit courts that it suggests are contrary to this conclusion. We disagree.

For instance, in *Aldalpe v. Lambert*, the jury found that a corrections officer violated an inmate's Eighth Amendment rights when he handcuffed the inmate from behind, contrary to medical orders that precluded such handcuffing because of the inmate's pre-existing shoulder injury. 34 F.3d 619, 623 (8th Cir. 1994). Critical to our consideration here, *Aldalpe* simply does not address whether the malicious and sadistic standard or the deliberate indifference standard applies. That was not a question before the *Aldalpe* court. Rather, in appealing his conviction, the officer argued among other things that the prisoner's injury was not significant enough to constitute an Eighth Amendment violation. The court rejected that argument as contrary to *Hudson*. *Id.* at 624 (citing *Hudson* for the proposition that an injury need not be significant to violate the Eighth Amendment). The officer also argued that the instructions to the jury suggested that it should presume the officer knew about the medical order precluding behind-the-back cuffing. The court determined that the jury instructions required the jury to find as a fact that the officer knew about the medical order. *Id.*

The same is true about *Davidson v. Flynn*, 32 F.3d 27 (2d Cir. 1994). There was no dispute about *what* standard governed. The only question was whether the standard the district court used was properly applied. And, indeed, the Second Circuit ruled in favor of the prisoner, finding his allegation that the corrections officers applied his handcuffs too tightly stated a claim even under the more rigorous standard. *Id.* at 30. Similarly, in *Pelfry v. Chambers*, 43 F.3d 1034 (6th Cir. 1995), the court did not address the question of *what*

standard applied. Instead, the court was asked whether an assault on an inmate constituted punishment. *Pelfry*, 43 F.3d at 1037. And, as in *Aldalpe* and *Davidson*, the *Pelfry* Court found in favor of the inmate and held that he stated a claim even under the more rigorous standard. *Id.* The same is true of *Wilkins v. Moore*, 40 F.3d 954 (8th Cir. 1994), in which a prisoner alleged Eighth Amendment violations when he was assaulted, denied clothing, and denied medical care. Once again, there was not discussion in the case about *what* standard applied. Further, the case is quite different from the one before us, arising when a corrections officer confronted the plaintiff prisoner for wearing gang colors. *Id.* at 955. Other inmates got involved and an altercation among officers and prisoners broke out. *Id.* After the altercation, the prisoner was taken to a room where he was told to sign a statement exonerating the officers. *Id.* When the prisoner refused, he was beaten, abused, and placed in detention without clothes. *Id.* And, like all the other cases, the Eighth Circuit ruled in favor of the prisoner, concluding that he sufficiently alleged an Eighth Amendment violation. *Id.* at 958. Finally, in *McReynolds v. Alabama Department of Youth Services*, an unpublished case, the Eleventh Circuit applied the sadistic and malicious standard in a case where, after the juvenile detainee *refused to cooperate with the corrections officers*, the officers beat him. 204 F. App'x. 819, 820–21 (2006). Once again, there was no discussion of *what* standard applied. And like the other cases, the court held for the juvenile detainee. *Id.* at 821–22.

Notably, all these cases aside from *McReynolds* were decided in the mid-1990s before the decision in *Hope v. Peltzer*, 536 U.S. 730 (2002). As earlier noted, in *Hope* the Supreme Court concluded that a prisoner who was handcuffed to a hitching post without food, water, or bathroom breaks for 7 hours as punishment for an earlier disturbance stated an Eighth Amendment claim. *Id.* at 737–38. In reaching its conclusion, the Court applied a *deliberate indifference* standard, citing *Hudson* for support. *Id.* The fact that the *Hope* court cited *Hudson* (a sadistic and malicious case) suggests that the distinction between the standards was on the court's mind.

In *Walker v. Bowersox*, unlike here, the officers were using non-routine restraints in response to a disturbance: the inmate had slipped out of his handcuffs and refused to submit to handcuffs while also refusing to cooperate with the addition of a cellmate. 526 F.3d 1186, 1188 (8th Cir. 2008). Likewise, the cases cited by the dissent from other circuits apply the malicious and sadistic standard in non-routine contexts where officers were responding to a specific disturbance or acute safety concern. *See, e.g.*, *Lunsford v. Bennet*, 17 F.3d 1574 (7th Cir. 1994) (flood response); *Campbell v. Sikes*, 169 F.3d 1353 (11th Cir. 1999) (self-injurious inmate); *Jackson v. Gutzmer*, 866 F.3d 969 (8th Cir. 2017) (same); *Stevenson v. Cordova*, 733 F. App'x. 939 (10th Cir. 2018) (inmate's refusal to submit to handcuffs and physical altercation with officers).

Further, we are not convinced by Officer Emily's contention that the malicious and sadistic standard should apply because he was generally concerned for his own safety.[9] First, the facts in the record do not support his concerns. Welters and the other inmate were transported from Stillwater directly to a secure holding cell at Oak Park Heights—a Level 5 maximum-security prison. Welters remained in that cell when he told Officer Emily that his hands were numbing because the handcuffs were too tight and requested relief. And further, Officers Rhoney and Emily do not dispute that there were Oak Park Heights corrections officers present and assisting with the management of offenders attending medical appointments. Moreover, hundreds of prisoners at Stillwater leave their cells and move through the facility every day without handcuffs and other restraints. Finally, Officers Rhoney and Emily do not identify any safety concern that would have been implicated by simply loosening Welters's handcuffs while he was confined to a holding cell to restore feeling to his hands and ensuring that the handcuffs were double locked.

We therefore conclude that the district court erred when it applied the malicious and sadistic standard to Welters's restraint injury claim.

II.

We turn now to the question of whether qualified immunity bars Welters's deliberate indifference claim against Officers Rhoney and Emily. Welters brought his

[9] These generalized concerns flow from the contention that Officer Emily was not accompanied by another Stillwater corrections officer when Welters requested that his handcuffs be loosened while Welters was in the medical holding cell. Officer Emily stated that he "[doesn't] trust these guys if I'm by myself," and he stated that he perceived Welters without any handcuffs as a safety issue.

Eighth Amendment claim under 42 U.S.C. § 1983, which provides an enforcement remedy for violations of constitutional rights by public officials. Qualified immunity is a judicially created affirmative defense that allows public officials to avoid liability to citizens harmed by public officials' unconstitutional actions, leaving the individuals to bear the costs and burdens of their injuries themselves. *Elwood v. Rice Cnty.*, 423 N.W.2d 671, 674 (Minn. 1988); *Harlow v. Fitzgerald*, 457 U.S. 800, 815 (1982). Qualified immunity is designed to balance two important interests. On the one hand, when a citizen claims that a public official violated his constitutional rights, "an action for damages may offer the only realistic avenue for vindication of constitutional guarantees." *Harlow*, 457 U.S. at 814. Constitutional guarantees do not mean as much if they cannot be enforced. On the other hand:

> [I]t cannot be disputed seriously that claims frequently run against the innocent as well as the guilty—at a cost not only to the defendant officials, but [also] to society as a whole. These social costs include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will "dampen the ardor of all but the most resolute, or the most irresponsible [public officials], in the unflinching discharge of their duties."

Id. (footnote omitted) (quoting *Gregoire v. Biddle*, 177 F.2d 579, 581 (2d Cir. 1949)). In assessing the application of qualified immunity, we must remain cognizant of both of these interests. *See Harlow*, 457 U.S. at 814. Importantly, the public officials seeking to invoke a qualified immunity defense have the burden to prove it. *Crawford-El v. Britton*, 523 U.S. 574, 586–87 (1998).

This case arises from a grant of summary judgment to Officers Rhoney and Emily. When considering whether qualified immunity bars a section 1983 suit from proceeding, we consider two questions. First, we determine whether the plaintiff alleges facts showing the violation of a federal constitutional right. Second, we ask whether the constitutional right was clearly established at the time of the alleged violations, such that reasonable officials would have known that their actions were unlawful. *See Pearson v. Callahan*, 555 U.S. 223, 232 (2009). "Qualified immunity is appropriate only if no reasonable factfinder could answer yes to both of these questions." *Nelson*, 583 F.3d at 528. When there are contradictory facts relevant to the issue of qualified immunity, "summary judgment is prohibited." *Id.* at 531.

A.

In the preceding section, we concluded that Welters's Eighth Amendment claim should be assessed under a deliberate indifference standard. Applying that standard here means that a constitutional violation is shown with evidence that (1) an objective and substantial risk to his health or safety existed; and (2) Officers Rhoney and Emily had subjective knowledge of the risk and nevertheless disregarded it. *See Farmer*, 511 U.S. at 842; *Nelson*, 583 F.3d at 528–29. The second prong of this analysis requires proof of "a state of mind more blameworthy than negligence," but it is "satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result." *Farmer*, 511 U.S. at 835. Under the deliberate indifference standard, the evidence need not show that the public official had knowledge that harm *would* actually occur; the evidence must show that the public official had knowledge of a substantial risk

that serious harm would occur. *Id.* at 842. Further, when a risk of harm was "obvious" such that a "reasonable prison official would have noticed it," the prisoner has no burden to prove knowledge; the requisite knowledge is imputed to prison officials. *Id.*

We conclude that at this stage of the proceedings, Welters has shown that the overtightened and improperly applied handcuffs posed a substantial risk to his health or safety. Welters alleges several undisputed facts that demonstrate that the manner in which Officers Rhoney and Emily handcuffed him posed an objective risk of serious harm: (1) his handcuffs were overly tight; (2) his handcuffs were not double locked as required by Department of Corrections policy to avoid overtightening, and thus were subject to increased tightening; (3) as a result, his handcuffs continued to tighten; (4) he complained about the tightness; and (5) his hands became numb. Welters's resulting serious wrist injury also demonstrates that an objective risk of harm from overly tight handcuffs existed.[10] Indeed, Officers Rhoney and Emily do not dispute that an objective substantial risk of harm from overly tight handcuffs existed for purposes of this appeal.

Officers Rhoney and Emily do contend, however, that the evidence in the summary judgment record is insufficient to prove that the two officers had subjective knowledge that the unsafely applied and overtightened handcuffs posed a substantial risk of harm to Welters. We disagree.

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[10] Dr. Meletiou's expert report opined that the overtightened handcuffs caused Welters's wrist injury and pointed to the "well documented" risk of handcuffs during anesthesia, further demonstrating the existence of an objective and serious risk. *See Nelson*, 583 F.3d at 529 (determining that expert testimony that shackling during labor is "inherently dangerous" satisfied the objective prong of the deliberate indifference inquiry).

Whether officers had subjective knowledge of a substantial risk that an inmate will suffer harm is a "question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Id.* Among other things, a "factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Id.*[11] When a risk is obvious, a reasonable jury may find that an officer had knowledge of the risk even if the officer did not have medical training, the inmate did not expressly state their level of pain or discomfort, and medical personnel did not expressly forbid the use of restraints. *Nelson*, 583 F.3d at 529; *see also Lenz v. Wade*, 490 F.3d 991, 995 (8th Cir. 2007) ("An obvious risk of a harm justifies an inference [that] a prison official subjectively disregarded a substantial risk of serious harm to the inmates."). Department of Corrections policies regarding mechanical restraints recognize the obvious risks of overtightened and improperly applied handcuffs.[12] Moreover, it is common knowledge

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[11] Of course, the corrections officers may prove at trial that they were unaware of even an obvious risk to inmate health and safety. *Farmer*, 511 U.S. at 844 ("That a trier of fact may infer knowledge from the obvious, in other words, does not mean that it must do so."). But on the record before us at the summary judgment stage, we can conclude that a reasonable trier of fact may infer that Officers Rhoney and Emily knew that the overtightened handcuffs posed a substantial risk of harm to Welters.

[12] Department of Corrections policies require safety measures that are specifically aimed at protecting against the obvious risk of harm from overtightened handcuffs. The mechanical restraint policies mandate the following:

> (d) Mechanical restraints must not be used:
> (1) Longer than necessary;
> (2) As punishment; . . .
> (4) To cause undue discomfort;
> (5) To inflict physical pain; or
> (6) To restrict blood circulation or breathing.

that constriction that causes numbness is dangerous and should not be ignored. *See Fourte v. Faulkner Cnty., Ark.*, 746 F.3d 384, 388 (8th Cir. 2014) (recognizing the principle that some inmate needs are "so obvious that even a layperson would easily recognize" them (citation omitted) (internal quotation marks omitted)).

Moreover, evidence that officers ignored a request from an inmate to address a risk of harm is evidence that suggests knowledge and supports a finding of deliberate indifference. *See, e.g.*, *Brown*, 518 F.3d at 559–60 (determining that officers had knowledge of risk of harm to an inmate when they ignored the inmate's request for a seatbelt and to slow down during transport while the inmate was shackled in a way that prevented him from applying his own seatbelt). Further, an officer's "self-serving contention that they did not have the requisite knowledge does not provide an automatic bar to liability in light of the objective evidence to the contrary." *Vaughn v. Gray*, 557 F.3d 904, 909 (8th Cir. 2009); *see also Reynolds*, 636 F.3d at 980 (determining that the officers had knowledge when they had been previously warned of the type of accident at issue by another officer and when other inmates had fallen the same way).

> (e) If the mechanism contains a safety lock [double lock], mechanical restraints must be safely locked once it is possible for the officer to do so.
> (f) It is the responsibility of all officers to ensure that, once an incarcerated person is placed in restraints, visual and physical control of the incarcerated person is maintained at all times.
> (g) First aid must be provided whenever restraints are used. . . .

Minn. Dep't of Corr., Policy Manual 301.081(B)(2)(d)–(g) (Nov. 22, 2021); *see also id.* at 301.096 (requiring handcuffs and leg irons to be "double locked"). DOC policy also requires that mechanical restraints be "used on a selective basis." *Id.* at 301.081(B)(2)(b).

Accordingly, on summary judgment, Officers Rhoney and Emily can prevail in showing no constitutional right was violated only if no reasonable factfinder could infer from the evidence that Officers Rhoney and Emily: (1) knew that Welters's handcuffs were unsafely applied such that the required protections against overtightening were not in place, or knew that the handcuffs were too tight; (2) that, as a result, Officers Rhoney and Emily knew there was a substantial risk that Welters could suffer harm; and (3) that Officers Rhoney and Emily nonetheless took no steps to loosen the handcuffs and engage the safety mechanism.

We start our analysis with Department of Corrections policy, which supports an inference of the obvious risk of harm from improperly applied and overtightened handcuffs. The policy directs that handcuffs and other restraints be double locked. Minn. Dep't of Corr., Policy Manual 301.081(B)(2)(e); *see also id.* at 301.096 (requiring that handcuffs and leg irons be "double locked" during medical transportation). The purpose of double locking is to prevent the handcuffs from further tightening after putting them on an offender.[13] In other words, these safety requirements are specifically aimed at protecting against the obvious risk of harm from overtightened handcuffs. This conclusion is further reinforced by the fact that the mechanical restraint policies mandate that handcuffs are not to be used longer than necessary; to cause undue discomfort or inflict physical pain; or to restrict blood circulation or breathing. *Id.* at 301.081(B)(2)(d). The

[13] *See Titus v. Unger*, No. 8:12CV261, 2013 WL 5937328, at *3 (D. Neb. Nov. 4, 2013) ("The function of double locking is to prevent the handcuffs from tightening on the wrists if a suspect rotates or maneuvers in the cuff.").

policy also directs that first aid be provided as necessary when restraints are used. *Id.* at 301.081(B)(2)(g). A reasonable juror could readily infer from the Department of Corrections policy provisions that trained corrections officers would understand that the reason handcuffs are to be double locked and not overtightened is that a substantial risk of harm exists when those precautions and policies are not followed.

Further, Welters's testimony supports an inference that Officers Rhoney and Emily knew that his handcuffs were dangerously tight. In the transport van, Welters told Officer Rhoney that his handcuffs were tight and not double locked. Officer Rhoney checked the handcuffs by pressing on them and in the process clicked them even tighter (something that would not happen had they been properly double locked). Officer Rhoney acknowledged that the handcuffs were not double locked, but he did not loosen them or double lock them. Instead, he told Welters that "it's only a 15-minute drive, it'll be all right." Officer Rhoney's statement seemed to suggest to Welters that he would adjust the handcuffs when they arrived at Stillwater, which is relevant because it demonstrates Officer Rhoney's knowledge that he had an obligation to do so. A reasonable juror could certainly infer from his statement that Officer Rhoney knew that the handcuffs should be double locked to avoid the substantial risk of harm that flows from overtightened handcuffs and that Welters's handcuffs should have been loosened and safely locked. Yet, once they arrived at Oak Park Heights after the 15-minute drive, Officer Rhoney neither adjusted nor double locked Welters's handcuffs before he left him there and returned to Stillwater, running the risk of injury. We conclude that these facts are sufficient to allow a reasonable jury to conclude an Eighth Amendment violation occurred.

After the van arrived at Oak Park Heights, Welters was taken to a medical holding cell in the prison. At that point, Welters specifically told Officer Emily that the handcuffs were too tight, causing numbness in his hands.[14] Officer Emily did not adjust or loosen Welters's handcuffs and subsequently disappeared. Moreover, Captain Matthews stated in the kite response memorandum that, after the incident, he "reminded" the officers that restraints should be removed upon admittance to Oak Park Heights. This statement supports the conclusion that Officers Rhoney and Emily had been previously informed of this policy and thus knew at that time that by keeping the improperly applied and overtight handcuffs on Welters, they were acting in knowing violation of safety policy and practice intended to prevent harm.

The reason for Welters's visit to Oak Park Heights also bears on our analysis. It is undisputed that Officer Emily knew that Welters was at Oak Park Heights for a medical procedure. Department of Corrections policy makes it clear that the use of restraints, including overtight handcuffs, may carry additional risks of harm during medical procedures. For instance, DOC policy states:

> If 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 or treatment. . . . Officers are authorized to leave the offender in full restraints

[14] Officers Rhoney and Emily acknowledge that Welters "complained of numbness." They argue that Welters's complaint is insufficient because he did not expressly say that he was in "pain." They imply without citation that the Eighth Amendment requires knowledge of a risk that the offender will suffer "substantial pain." The corrections officers are wrong. The Eighth Amendment standard requires knowledge of a substantial risk of *harm*; not a substantial risk of *pain*. Further, a reasonable jury could conclude that overtight handcuffs causing numbness due to lack of circulation could result in injury and harm to the offender.

> if, in their best judgment, control of the offender would be jeopardized even with additional security staff.

Minn. Dep't of Corr., Policy Manual 301.096(H)(5); *see also Nelson*, 583 F.3d at 534 (finding an Eighth Amendment violation when a corrections officer kept an inmate in restraints during a serious medical procedure). And Department of Corrections policy has additional requirements when an offender is going under anesthesia: "If the offender needs surgery requiring complete anesthesia [as Welters's surgery did], at least one officer must be present and maintain visual contact of the offender." Minn. Dep't of Corr., Policy Manual 301.096(H)(5). Accordingly, in order to comply with Department of Corrections policy, the corrections officer must have some knowledge of the nature of the medical procedure—at the very least, whether the medical procedure requires complete anesthesia—and should be in communication with medical personnel.

Finally, viewing the facts in the light most favorable to Welters, Stillwater officers (and not Oak Park Heights officers) had exclusive responsibility for ensuring that Welters was secure. Accordingly, on these facts, a reasonable juror could infer that Officer Emily had notice that Welters was having a serious medical procedure under anesthesia. The fact that Officer Emily disappeared and was unreachable immediately before and during Welters's endoscopy meant that no one could authorize the removal of Welters's restraints, including the overtightened and improperly applied handcuffs, during the medical procedure.[15]

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[15] On several occasions, medical personnel expressed surprise that Welters remained in restraints as he was going into surgery and requested that Oak Park Heights officers

In short, these facts would allow a reasonable jury to infer that Officer Rhoney knew that the handcuffs on Welters were too tight and not properly double locked. A reasonable jury could further conclude that Officer Rooney knew that overtightened and unsafely locked handcuffs posed a substantial risk of precisely the harm that Welters suffered in this case, and yet he took no steps to adjust the handcuffs.

These facts would also allow a reasonable jury to infer that Officer Emily was aware that Welters's handcuffs were too tight and causing numbness in his hands. The facts would further allow a reasonable jury to conclude that Officer Emily understood that a substantial risk existed that Welters would suffer harm and injury as a result of the overtightened handcuffs, especially since Welters was scheduled to undergo a serious medical procedure. Finally, the facts support the conclusion that Officer Emily disregarded that risk and failed to loosen the handcuffs. Accordingly, a reasonable jury presented with these facts and the reasonable inferences to be drawn from these facts could readily conclude that Officers Rhoney and Emily subjectively knew of a substantial risk of harm to Welters and did nothing. We therefore conclude that Welters has adduced sufficient facts to support his claim that Officers Rhoney and Emily violated the Eighth Amendment.

We acknowledge in reaching this conclusion that Officers Rhoney and Emily may still put Welters to his proof at trial. *See Farmer*, 511 U.S. at 844 (explaining that officers have an opportunity *at trial* to "prove" that they were "unaware even of an obvious risk to inmate health or safety"). A reasonable jury may not believe Welters's allegations. A

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remove the restraints. The Oak Park Heights officers told the medical personnel that only a Stillwater corrections officer could authorize removal of the restraints.

reasonable jury could also conclude that the corrections officers' conduct does not rise to the level of deliberate indifference but was merely negligent. At this stage of the proceedings, however, where all facts and inferences from those facts must be construed in Welters's favor, we cannot agree that the *only* conclusion a reasonable jury could reach is that Welters is lying or that Officers Rhoney and Emily's conduct was merely negligent.

B.

The second prong of the federal qualified immunity standard asks whether Welters's Eighth Amendment rights were clearly established at the time the conduct occurred. Whether the constitutional right was "clearly established" is a question of law reviewed de novo. *Elder v. Holloway*, 510 U.S. 510, 516 (1994).

A constitutional right is clearly established when its contours are "sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). "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 pre-existing law the unlawfulness must be apparent." *Hope*, 536 U.S. at 741 (quoting *Anderson*, 483 U.S. at 640 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 535 n.12 (1985))); *see also Morris v. Zefferi*, 601 F.3d 805, 812 (8th Cir. 2010) ("The lack of a factually identical case is not dispositive.").

In other words, the "salient question" that must be asked is whether the "state of the law" at the time of the alleged offenses gave officials "fair warning" that their alleged actions were unconstitutional. *Hope*, 536 U.S. at 741. Reasoning in a binding case can provide notice to officials within that court's jurisdiction, even when the holding does not.

Id. at 743 (pointing to reasoning in another case that cautioned against conduct similar to the presently alleged conduct, even though the facts were different).

To determine whether the Eighth Amendment right that Welters claims Officers Rhoney and Emily violated was clearly established, we must precisely define the right. Welters claims that Officers Rhoney and Emily violated the Eighth Amendment conditions of confinement prohibition against deliberate indifference to a substantial risk of serious harm to an inmate.

In this case, the general conditions of confinement at issue were the routine transportation for medical treatment from one correctional facility to another with restraints, the continued use of restraints in a medical holding cell, and the continued use of restraints during the procedure. The question, however, is not whether it was clearly established that those general conditions violated the Eighth Amendment. Rather, the question is whether it was clearly established that the use of *unsafely applied* and unnecessarily *overtightened* restraints during those conditions of confinement—when Officers Rhoney and Emily were informed that the handcuffs were unsafely applied and overtightened such that the inmate's hands went numb and resulted in serious injuries—violated the Eighth Amendment.

We conclude that a reasonable corrections officer would have understood and had fair warning on July 31, 2017, that Welters had an Eighth Amendment right to routine conditions of confinement when the officers were not facing a specific, immediate threat to order and institutional security. And reasonable corrections officers on July 31, 2017, would have understood that this right required that the corrections officers adjust handcuffs

once they knew that the handcuffs were unsafely applied, such that a substantial risk of harm from overtightening existed or that the handcuffs were dangerously tight and causing numbness so as to pose a substantial risk of injury to a prisoner, or both.

Eighth Amendment conditions of confinement law had been clear for many years before July 31, 2017: the Constitution prohibits conduct by prison officials that carries a substantial risk of causing a prisoner harm or injury when that conduct is not necessary to fulfill a penological purpose. *See Hope*, 536 U.S. at 737–38; *see Farmer*, 511 U.S. at 833. That basic directive was sufficient to put Officers Rhoney and Emily on notice that their refusal to adjust unnecessarily overtightened and unsafely applied handcuffs, when they knew that the unsafely applied handcuffs were too tight and ran a substantial risk of harm as a result and/or that the handcuffs were limiting circulation and therefore subjecting Welters to substantial risk of injury, was unconstitutional. The obligation to adjust the handcuffs to prevent injury follows immediately from the constitutional prohibition against the cruel and unusual punishment of routine conduct that causes penologically unnecessary harm under circumstances where the officer is aware of a substantial risk that such harm will result. *See Mullenix v. Luna*, 577 U.S. 7, 16 (2015). The constitutional obligation to loosen and adjust the handcuffs under the circumstances of this case to prevent a substantial risk of harm to Welters would be obvious to a reasonable corrections officer. *See Farmer*, 511 U.S. at 842. Critically, Officers Rhoney and Emily offer no justification for refusing to adjust handcuffs that were dangerously tight and unsafely applied.

When an officer's decision to take an unconstitutional action (imposing a condition of confinement that unnecessarily harms a prisoner) is not justified by a competing

government interest (the need to respond to a security threat), less particularity is required to provide fair warning of the unconstitutionality of the officer's actions.[16] Consequently, concern about holding an officer to a constitutional standard at too high a level of generality is reduced. *Cf. Mullenix*, 577 U.S. at 12–19 (concluding that fact-specific case law was required to clearly establish that an officer violated the Fourth Amendment when the officer shot at a fleeing suspect during a high speed chase in response to reports that he was armed and threatening to shoot officers); *Brosseau v. Haugen*, 543 U.S. 194, 198–99 (2004) (concluding that general constitutional tests were insufficient to clearly establish that

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[16] Most of the qualified immunity cases decided by the Supreme Court involve alleged violations of the Fourth Amendment. The Court has repeatedly noted the distinct challenges presented to public officials in the Fourth Amendment context because "[i]t is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts." *Mullenix*, 136 S. Ct. at 308 (citation omitted) (internal quotation marks omitted).

The same may hold true for corrections officers responding to a threat that may reasonably require the use of force to restore order and discipline in the prison. *See, e.g.*, *Hudson*, 503 U.S. at 6 ("[O]fficials confronted with a prison disturbance must balance the threat unrest poses to inmates, prison workers, administrators, and visitors against the harm inmates may suffer if guards use force . . . ."). In those types of intense, rapidly-changing situations, more fact-specific case law is required to provide fair warning to officers of the contours of what actions the Constitution allows. *See Anderson*, 483 U.S. at 640.

But when a corrections officer is engaging in routine conduct that does not require quick decision-making to evaluate and protect a competing government interest, there is less nuance involved and thus less particularity is required to clearly establish what the constitution requires. *See Hope*, 536 U.S. at 742 (cautioning against "the danger of a rigid, overreliance on factual similarity" when determining whether the unnecessary infliction of pain outside of an emergent situation clearly violates the Eighth Amendment).

There is little difficulty for a corrections officer to understand that a prohibition against acting with deliberate indifference to the risk of injury means that corrections officers should adjust handcuffs once they are on notice that the handcuffs are unsafely applied such that a real risk of harmful overtightening exists or that the handcuffs are so tight that they are causing numbness and thus pose a substantial risk of serious injury.

shooting a fleeing suspect to protect other officers violated the Constitution, requiring instead law "particularized" to the specific context that the officer faced).

This conclusion is consistent with the basic premise of section 1983 and the qualified immunity doctrine: the need to *balance* the important interest in vindicating the fundamental constitutional rights of American citizens (which often may be vindicated only through an action for damages), with the important competing interests of ensuring that public officials are not unduly deterred from discharging their duties or burdened by frivolous lawsuits. *See Harlow*, 457 U.S. at 814. How to properly strike that balance will vary depending on the constitutional right at stake. Requiring corrections officers to avoid knowingly inflicting unnecessary pain or subjecting prisoners to risk of serious injury when engaging in routine conduct related to restraints will minimally impinge on the officers' ability to discharge their duties.

Even though the nature of the constitutional violation at issue here means that less particularity in governing law is required before the right is deemed "clearly established," there is no need for us in this case to parse precisely where that line is to be drawn. That is because here, factually analogous case law clearly establishes that officers violate the Eighth Amendment when they act with deliberate indifference to the risk of injury from mechanical restraints, including handcuffs. First, the *Hope* Court held that corrections officers acted unconstitutionally and with deliberate indifference in violation of the Eighth Amendment because "[d]espite the clear lack of an emergency situation," they restrained an inmate in a manner "that created a risk of particular discomfort and humiliation." 536 U.S. at 737–38. The inmate in *Hope* was handcuffed to a hitching post for several

hours in the sun with no bathroom breaks after an altercation with a guard at a chain gang worksite. *Id.* at 733–35. Certainly, the facts in *Hope* are more egregious than those in this case. But the egregiousness of the officer's acts goes to the question of whether a constitutional violation occurred, and we have already determined that the evidence in the record on summary judgment here sufficiently alleges a constitutional violation. *Hope* clearly established the legal and constitutional principal that deliberate indifference to the risk of harm from the use of restraints used outside of an emergency situation violates the Eighth Amendment. *Id.* at 743.[17]

Indeed, *Hope* has been cited repeatedly across circuits for the rule that the use of passive restraints in a way that causes unnecessary harm in the absence of a penological purpose is unconstitutional. *See, e.g.*, *Young v. Martin*, 801 F.3d 172, 177 (3rd Cir. 2015); *Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1248 (9th Cir. 2016). Cases further cite *Hope* as clearly establishing such a right. *See, e.g.*, *Barker v. Goodrich*, 649 F.3d 428, 434–37 (6th Cir. 2011). *see generally Stainback v. Dixon*, 569 F.3d 767, 772 (7th Cir. 2009) (recognizing that by 2002 it was well established that "an officer may not knowingly

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[17] The *Hope* Court recognized that its reasoning was clearly establishing Eighth Amendment rights in other contexts, stating: "Our opinion in *Lanier* thus makes clear that officials can still be on notice that their conduct violates established law even in novel factual circumstances." 536 U.S. at 741 (affirming and applying the "clearly established" standard from *United States v. Lanier*, 520 U.S. 259, 269 (1997)).

Addressing arguments attempting to distinguish case law based on specific details, such as the differences between hitching posts, shackling bars, fences, or bars of cells, the Court warned against "the danger of a rigid, overreliance on factual similarity." *Id.* at 742. Accordingly, the Court specifically concluded that the Eleventh Circuit erred in its "position that a violation is not clearly established unless it is the subject of a prior case of liability on facts materially similar to those charged." *Id.* at 746 (citation omitted) (internal quotation marks omitted).

use handcuffs in a way that will inflict unnecessary pain or injury on an individual who presents little or no risk of flight").

Notably, the Seventh Circuit in *Ajala v. Tom* invoked the *Hope* standard as giving rise to a clearly established right under the Eighth Amendment on nearly identical facts to those Welters alleges. 658 F. App'x. 805 (7th Cir. 2016). The officers in *Ajala* refused to loosen painfully tight handcuffs for 4½ hours during a transport, resulting in chronic injury and pain. *Id.* at 806. Citing *Hope*, the Seventh Circuit reversed the district court's grant of qualified immunity because it determined that, like Officers Rhoney and Emily here, the officers "never even *alleged* a penological justification for refusing to loosen Ajala's handcuffs" and that "reasonable officers in their positions would have known that it was unlawful for them to disregard Ajala's pleas for help." *Id.* at 806–07. *Hope* is thus binding case law from the Supreme Court that is sufficiently specific to have given fair warning to Officers Rhoney and Emily that their actions violated Welters's Eighth Amendment rights, as other courts have similarly held.

Moreover, even if the qualified immunity doctrine requires the existence of judicial decisions that direct corrections officers to comply with Department of Corrections policy (requiring constitutionally mandated and common-sense conduct) before a court may even entertain a lawsuit seeking damages for harm caused by the constitutional violation, that case law also exists here. The Supreme Court in *Hope* determined that corrections officers' noncompliance with prison regulations specifically aimed at avoiding cruel and unusual punishment supported the conclusion that "they were fully aware of the wrongful character of their conduct" and thus "violated clearly established law." *Hope*, 536 U.S. at 743–45.

The Eighth Circuit—which Officers Rhoney and Emily concede is a source for clearly established law—has held similarly. "Prison regulations governing the conduct of correctional officers are [] relevant in determining whether an inmate's right was clearly established." *Treats v. Morgan*, 308 F.3d 868, 875 (8th Cir. 2002) (concluding that an inmate's Eighth Amendment right was clearly established based on general principles of law and on prison regulations that did not authorize the use of pepper spray in the way it was used by the officers); *see also Nelson*, 583 F.3d at 531, 533 (stating that a "review of these sources" can lead to the conclusion that a constitutional right was clearly established and finding that the regulations in effect "reflected the constitutional protections recognized in these judicial decisions").

Officers Rhoney and Emily argue that Welters was restrained "pursuant to policy" because DOC policy affords them "discretion in the use of mechanical restraints during medical appointments." This argument relies on the general medical transportation provisions, Minn. Dep't of Corr., Policy Manual 301.096, and it ignores the specific requirements mandating safe mechanical restraint use, Minn. Dep't of Corr., Policy Manual 301.081.

When prison regulations "authorize" an action generally, but officials do not comply with specific requirements guiding their implementation of that action, officials likely have "fair warning" that their actions violate "clearly established law." *See Hope*, 536 U.S. at 743–44 (concluding that although DOC regulations generally authorized using a hitching post in certain circumstances, officials violated clearly established law when they did not keep an activity log or offer bathroom breaks as those regulations required). As alleged,

Officers Rhoney and Emily did not comply with DOC policy forbidding the use of handcuffs for longer than necessary, in ways that cause "undue discomfort" or pain, or in ways that restrict circulation. *See* Minn. Dep't of Corr., Policy Manual 301.081(B)(2)(d). Officers Rhoney and Emily did not follow the policy directive that handcuffs be double locked to prevent precisely the injury that Welters suffered here. *Id.* at 301.096. And they did not attend to Welters or provide first aid during their use of mechanical restraints. *See id.* at 301.081(B)(2)(f), (g).

Finally, it is relevant that Welters was handcuffed and placed in other restraints precisely because he was going to a medical treatment involving surgery under anesthesia. Welters asserts that the Eighth Circuit's decision in *Nelson* squarely controls this case because it clearly established that corrections officers violate the Eighth Amendment when they act with deliberate indifference to the substantial risk of severe injury from restraints during medical procedures. *See* 583 F.3d at 524–34.[18] The *Nelson* court concluded that a corrections officer acted with deliberate indifference in violation of the Eighth Amendment when he kept an inmate restrained during labor in the absence of any acute security concerns, when the officer was instructed not to shackle her, and because the restraints caused "unnecessary suffering at a time when . . . [she] would have likely been physically

[18] Welters also points to *Key v. McKinney* as clearly establishing what officers must do to avoid Eighth Amendment violations in conditions of confinement restraint cases. 176 F.3d 1083, 1085 (8th Cir. 1999). In *Key*, officers placed an inmate in restraints for 24 hours for throwing water on a corrections officer, pursuant to policy. *Id.* at 1084–85. The court determined that officers were *not* deliberately indifferent because they modified restraints in response to the inmate's need to take care of bodily functions, they regularly checked on his conditions, they *loosened his handcuffs*, and they considered his medical conditions. *Id.* at 1086.

unable to flee . . . ." *Id.* at 530. Like Welters, the inmate in *Nelson* suffered severe injuries from the restraints, *see id.*, and Welters was also physically unable to flee while he was locked in a secure holding cell and while he was under general anesthesia. Officers Rhoney and Emily flatly disregard *Nelson*, however, contending that it is "distinguishable on its face," presumably because it involved an inmate receiving medical care in labor and not an inmate receiving medical care under general anesthesia. The officers in *Morris* similarly attempted to distinguish *Nelson* on its facts. 601 F.3d at 809–10. The *Morris* Court rejected those arguments, *id.* at 12, and we likewise reject them here.[19]

The Eighth Circuit has cited *Nelson* several times when determining whether officers acted with deliberate indifference to serious medical needs or risk of harm in various contexts. Accordingly, the reasoning and holding in *Nelson* is not limited only to factual contexts that include labor and childbirth. *See, e.g.*, *McCaster v. Clausen*, 684 F.3d 740, 746 (8th Cir. 2012) (citing *Nelson* in determining that "it is well established" that deliberate indifference to an inmate's serious medical needs violates the Eighth Amendment); *Morris*, 601 F.3d at 808–12 (affirming the denial of qualified immunity against Eighth Amendment claims arising from transporting a detainee in full restraints in a dog kennel in a K-9 transportation vehicle, and stating, "We believe our decision in this case is controlled by the reasoning of *Nelson*").

[19] Although Officers Rhoney and Emily argued that *Nelson* was distinguishable on its facts, they conceded on the record in this case that "case law from the U.S. Supreme Court, the Eighth Circuit, or this Court finding an Eighth Amendments violation under facts similar to those alleged here" could give rise to clearly established law.

Because we conclude that Welters has sufficiently alleged violations of his clearly established Eighth Amendment rights, Officers Rhoney and Emily are not entitled to qualified immunity.

CONCLUSION

For the foregoing reasons, we affirm the court of appeals.

Affirmed.

D I S S E N T

GILDEA, Chief Justice (dissenting).

Christopher Welters is serving two life sentences in connection with a double homicide. He is an inmate at Minnesota Correctional Facility–Stillwater, a high-level security prison that houses violent offenders. Welters needed to be transported to the prison at Oak Parks Heights, Minnesota's only maximum-security prison and a prison that houses high-risk offenders, for a medical procedure. He alleges that two Minnesota Department of Corrections officers, Ernest Rhoney and Cornelius Emily, violated his Eighth Amendment right to be free from cruel and unusual punishment during the transport and his time at Oak Park Heights. Welters specifically asserts that Officer Rhoney overtightened his handcuffs and that Officer Rhoney and Officer Emily failed to loosen the handcuffs when he eventually told them that they were causing him discomfort. The district court dismissed Welters's section 1983 claim on summary judgment, concluding that "[n]othing in the record indicates that either Officer Rhoney or Officer Emily acted with the intent to cause Plaintiff harm, let alone acted maliciously or sadistically." The court of appeals reversed, applying the deliberate indifference standard rather than the malicious and sadistic standard. *Welters v. Minn. Dep't of Corr.*, 968 N.W.2d 569, 582–87 (Minn. App. 2021).

The principal question raised by the parties is what legal standard should govern the Eighth Amendment claim of an inmate who alleges that corrections officers overtightened his handcuffs during a transfer to a maximum-security prison and failed to loosen those handcuffs when he informed them of his discomfort. This question turns on whether the

inmate's injury stems from the officer's excessive use of force or whether the cause of injury is better classified as a failure to attend to serious medical needs or arising from the conditions of confinement. The majority concludes that, because the corrections officers' handcuffing of the inmate was for " 'routine' transport for a 'routine' medical procedure," the lower deliberate indifference standard should be applied. I disagree. I agree with the district court and conclude that Welters's injuries stem from the officers' application of allegedly excessive force via the overtightened handcuffs. I would therefore apply the heightened malicious and sadistic standard and affirm the district court's grant of summary judgment to Officer Rhoney and Officer Emily. Accordingly, I dissent.

A.

The Eighth Amendment bars the infliction of "cruel and unusual punishments." U.S. Const. amend. VIII. But not all injuries suffered while incarcerated are punishment. Instead, only "a deliberate act intended to chastise or deter" can be considered punishment. *Wilson v. Seiter*, 501 U.S. 294, 300 (1991) (quoting *Duckworth v. Franzen*, 780 F.2d 645, 652 (7th Cir. 1985) (Posner, J.)). As a result, once a criminal sentence has been "formally meted out . . . by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer" to qualify as punishment. *Id.* An "ordinary lack of due care for the prisoner's interests or safety" is not sufficient. *Whitley v. Albers*, 475 U.S. 312, 319 (1986); *see also Estelle v. Gamble*, 429 U.S. 97, 105 (1976) (explaining that "[a]n accident, although it may produce added anguish, is not on that basis alone to be characterized as" cruel and unusual punishment). Instead, once an individual is incarcerated, there must be the "unnecessary and *wanton* infliction of pain" to violate the

prohibition against cruel and unusual punishment in the Eighth Amendment. *Whitley*, 475 U.S. at 319 (emphasis added) (quoting *Ingraham v. Wright*, 430 U.S. 651, 670 (1977)).

"Wanton" is not a static concept. Whether a given act rises to the level of "wanton infliction of pain" requires us to appreciate the "differences in the kind of conduct against which an Eighth Amendment objection is lodged." *Id.* at 320. As a result, there are two standards by which we judge whether an officer's conduct was wanton.

The first category of conduct involves excessive use of physical force. In *Hudson v. McMillian*, the United States Supreme Court "h[e]ld that *whenever* prison officials stand accused of using excessive physical force . . . the core judicial inquiry is . . . whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." 503 U.S. 1, 6–7 (1992) (emphasis added); *see also Porter v. Nussle*, 534 U.S. 516, 528–29 (2002) (reaffirming *Hudson*). *Hudson* was clear that it was "[e]xtending *Whitley*'s application of the 'unnecessary and wanton infliction of pain' standard to *all* allegations of excessive force," 503 U.S. at 7 (emphasis added), and that this standard is no longer limited to "decisions involving the use of force to restore order in the face of a prison disturbance," *see Whitley*, 475 U.S. at 320. The highly deferential malicious and sadistic standard "extends to . . . prophylactic or preventive measures intended to reduce the incidence of [actual confrontations] or any other breaches of prison discipline." *Id.* at 322. Although "[m]ost excessive force cases involve beatings, physical altercations, or use of force such as Tasers," the use of passive restraints may involve excessive force requiring the application of the malicious and sadistic standard. *Jackson v. Gutzmer*, 866 F.3d 969, 976 n.3 (8th Cir. 2017) (applying the malicious and sadistic

standard to a prisoner's claim that he was subjected to excessive force when he was placed on a restraint board for 3½ hours).[1]

The deferential malicious and sadistic standard is appropriate when examining claims of excessive use of force because prison officials "must balance the need 'to maintain or restore discipline' through force against the risk of injury to inmates." *Hudson*, 503 U.S. at 6. And this standard serves to effectuate the principle that prison officials "should be accorded wide-ranging deference in the adoption *and execution* of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Id.* (emphasis added) (quoting *Whitley*, 475 U.S. at 321–22).

The second category of conduct involves claims of inadequate medical care and conditions of confinement. When a prisoner challenges a condition of confinement or their medical care, a finding of deliberate indifference will suffice to establish wantonness.[2]

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[1] The majority argues that the Supreme Court's decision in *Hope v. Peltzer*, 536 U.S. 730 (2002), implicitly narrowed the explicit holding in *Hudson* that the malicious and sadistic standard should be applied "*whenever* prison officials stand accused of using excessive physical force," 503 U.S. at 6–7 (emphasis added). But there was no dispute in *Hope* about what standard should apply; the parties agreed that the deliberate indifference standard should govern their claims. *Hope*, 536 U.S. at 738. As a result, there is no analysis in *Hope* about when the malicious and sadistic standard should apply and when the deliberate indifference standard should be used. *See id.* Instead, the Supreme Court only addressed whether prison officials were deliberately indifferent to the prisoner's health or safety when they handcuffed him to a hitching post and left him in the Alabama sun. *Id.*

[2] Deliberate indifference is a higher standard than mere negligence and equates to "subjective recklessness as used in the criminal law." *Farmer v. Brennen*, 511 U.S. 825, 839 (1994). Nevertheless, it is more lenient to the plaintiff than the highly deferential malicious and sadistic standard that applies to excessive use of force claims. *See Wilson*, 501 U.S. at 305.

Wilson, 501 U.S. at 303 (extending the deliberate indifference standard to all condition-of-confinement claims); *Estelle*, 429 U.S. at 104 (holding "that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment" (citation omitted) (internal quotation marks omitted)). This more lenient standard is appropriate because providing medical care and humane conditions of confinement "ordinarily does not conflict with competing administrative concerns." *Hudson*, 503 U.S. at 6.

When, like here, "the use of passive restraints is challenged, careful analysis of the factual context may be needed to determine the appropriate substantive standard." *Jackson*, 866 F.3d at 976 n.3. After undertaking this careful analysis, I conclude that the malicious and sadistic standard is the appropriate standard to judge Welters's claims against Officer Rhoney and Officer Emily. I reach this conclusion because Welters's alleged injury ultimately stems from a use of force—the overtightening of his handcuffs—and we must apply the malicious and sadistic standard "*whenever* prison officials stand accused of using excessive physical force." *Hudson*, 503 U.S. at 6–7 (emphasis added).[3]

The majority acknowledges that "Welters contends that the handcuffs were unnecessarily and improperly applied too tightly." One would expect that this would be the end of the majority's analysis given the clear binding instruction in *Hudson* that we are

[3] The Second Circuit reached a similar conclusion in *Davidson v. Flynn*, 32 F.3d 27 (2d Cir. 1994). In *Davidson*, a prisoner alleged that his handcuffs were purposefully overtightened during transport to a different correctional facility, cutting off his circulation. *Id.* at 29. The Second Circuit applied the malicious and sadistic standard to his overtightened handcuff claim. *Id.* at 29–30.

to apply the malicious and sadistic standard "*whenever* prison officials stand accused of using excessive physical force." *Hudson*, 503 U.S. at 6–7 (emphasis added). But it is not. Instead, the majority attempts to reason around *Hudson* by noting that this application of force occurred during "a 'routine' transport for a 'routine' medical procedure." In the majority's analysis, because the application of excessive force occurred during transport and persisted through a medical procedure, it is somehow transformed into a condition of confinement and medical care claim. I disagree.

Central to the majority's analysis is the assumption that an active disturbance or individualized safety concern is required for us to employ the malicious and sadistic standard. This assumption is wrong. Instead, the Supreme Court is clear that the malicious and sadistic standard should also be applied to "prophylactic or preventive measures intended to reduce the incidence of [actual confrontations] or any other breaches of prison discipline." *Whitley*, 475 U.S. at 322. Although it is true that the need for quick and decisive decision-making has been used as one justification for the malicious and sadistic standard, it is not a prerequisite. Instead, *Hudson* noted that the situations in which the malicious and sadistic standard should appropriately be applied "*may* require prison officials to act quickly and decisively," not that they must. 503 U.S. at 6 (emphasis added). Accordingly, the majority's reliance on the absence of an emergency to justify its use of the deliberate indifference standard is misplaced.[4]

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[4] This conclusion is supported by decisions from other jurisdictions that regularly apply the malicious and sadistic standard to excessive force claims even when the force is not alleged to have been used in response to an active disturbance or individualized security concern. *See, e.g.*, *Pelfrey v. Chambers*, 43 F.3d 1034, 1035–37 (6th Cir. 1995)

Further, the use of handcuffs during the transport of Welters (a convicted violent offender) to and from a high-security facility, and while he underwent a medical procedure at Minnesota's only maximum-security prison, is plainly the kind of preventive measure intended to ensure the safety of the public, staff, medical personnel, and other prisoners. If there could be any doubt on this score, the Minnesota Department of Corrections Policy 301.095 governing the transportation of inmates in full restraints explicitly provides that its purpose is "[t]o ensure the safety of the public . . . while also providing for the safe, secure, and humane treatment of offenders during transport." Minn. Dep't of Corr., Policy Manual 301.095(C)(1) (Nov. 5, 2019). This balance between the use of force and others' safety is precisely why the malicious and sadistic standard is necessary. *Compare Hudson*, 503 U.S. at 6 (explaining that one of the primary concerns undergirding the malicious and sadistic standard is that "corrections officers must balance the need 'to maintain or restore discipline' through force against the risk of injury to inmates" (quoting *Whitley*, 758 U.S. at 320–21)), *with Wilson*, 501 U.S. at 302 (explaining that the deliberate indifference standard is appropriate in medical care and condition of confinement cases because the State's responsibility "does not ordinarily clash with other equally important governmental responsibilities," such as the safety of other inmates) (quoting *Whitley*, 475 U.S. at 320)).

(concluding that a spontaneous assault of a prisoner amounted to "malicious and sadistic use of force to cause harm"); *Wilkins v. Moore*, 40 F.3d 954 (8th Cir. 1994) (applying the malicious and sadistic standard to a prisoner's claims that he was physically and sexually assaulted by prison officials when he refused to sign a statement exonerating those officials of wrongdoing); *McReynolds v. Ala. Dep't of Youth Servs.*, 204 F. App'x 819, 820–22 (11th Cir. 2006) (per curiam) (applying the malicious and sadistic standard to a minor prisoner's claims that guards assaulted him with a nightstick after he requested a complaint form).

This is not a situation where there are no "competing administrative concerns" that could justify the use of the deliberate indifference standard. *Hudson*, 503 U.S. at 6.[5]

Nor is it sufficient for the majority to justify its conclusion that the deliberate indifference standard should apply because Welters "does not claim that the use of handcuffs during transport . . . is itself unconstitutional" but rather "contends that the handcuffs were unnecessarily and improperly applied too tightly" in his specific case. An explicit purpose of the malicious and sadistic standard is to give appropriate deference to prison officials in the "*execution* of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Hudson*, 503 U.S. at 6 (emphasis added) (quoting *Whitley*, 475 U.S. at 321–22). Officer Rhoney and Officer Emily were executing just such a policy here—the DOC's restraint policy—when they applied Welters's handcuffs and declined to remove or adjust them once Welters complained. It is only proper that they receive the deferential review that the Supreme Court has mandated for those in their circumstance.[6]

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[5] For this reason, the combined transport and medical procedure case that the majority cites—*Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009) (en banc)—is inapposite. *Nelson* involved a female "nonviolent offender" in the late stages of labor whose injuries arose from being shackled to a delivery bed and unable to move while in a civilian hospital. *Id.* at 525–26. The Eighth Circuit specifically noted that "from the record evidence in Nelson's case there does not even appear to have been a competing penological interest in shackling her." *Id.* at 530. By contrast, there are competing penological interests when handcuffing a violent offender like Welters for transport to and from a high-security facility that houses only violent offenders.

[6] Welters's allegations about how the officers executed the policy are troubling to be sure. But how the officers executed the policy, whether rightly or wrongly, goes to whether the standard is met. It does not go to which standard to apply.

The Eighth Circuit cases that the majority cites to support its conclusion that Welters's claims should be treated as a condition of confinement because he was transported are also easily distinguished. None of the transport cases cited by the majority involve physical injury from the restraints and, as a result, do not involve the application of excessive force. *See Reynolds v. Dormire*, 636 F.3d 976, 979–80 (8th Cir. 2011) (addressing a prisoner's complaints that he was handcuffed during a day-long transport and would have had difficulty relieving himself had he chosen to do so); *Brown v. Fortner*, 518 F.3d 552, 558–59 (8th Cir. 2008) (addressing a prisoner's complaints that officers refused to fasten his seatbelt when he was in full restraints, resulting in his subsequent injury when the vehicle was involved in an accident).[7]

Finally, it is important to note that the majority overlooks cases from the Eighth Circuit that do not support its conclusion. For instance, in *Aldape v. Lambert*, the Eighth Circuit applied the malicious and sadistic standard to a prisoner's claim that officers handcuffed him behind his back to perform a strip search, that he had a medical order that should have precluded handcuffing behind his back, and that the officers were aware of his condition. 34 F.3d 619, 623–24 (8th Cir. 1994). And in *Walker v. Bowersox*, the Eighth Circuit applied the malicious and sadistic standard to a prisoner's claim that he was

[7] It is also worth noting that the federal circuits do not agree about what standard to apply to Eighth Amendment claims arising from transport. For instance, in *Thompson v. Commonwealth of Virginia*, the Fourth Circuit held that, under similar facts as *Brown*, a prisoner's claims that he was injured in a transport van due to erratic driving while in full restraints should be judged by the malicious and sadistic standard (rather than the deliberate indifference standard) because the claim is "essentially . . . that [the officer] applied force against him without any legitimate purpose . . . using the transport van's momentum." 878 F.3d 89, 99 (4th Cir. 2017).

restrained on a bench for 24 hours after initially expressing displeasure over a proposed cell mate, even though his claim also involved conditions of confinement such as no access to water, food, or bathroom facilities. 526 F.3d 1186, 1188 (8th Cir. 2008) (per curiam). Recently, the Eighth Circuit applied the malicious and sadistic standard in *Jackson v. Gutzmer* when analyzing a prisoner's claim that he was placed on a restraint board for 3½ hours. 866 F.3d at 976. Admittedly, the parties in *Jackson* agreed that the proper standard was the malicious and sadistic standard, but the panel went out of its way to note that the malicious and sadistic standard may be warranted in passive restraint cases depending on the "factual context" in which they arrive. *Id.* at 976 n.3.[8]

I do not suggest that these Eighth Circuit cases definitively resolve the issue before us today. Rather, the varied decisions from the Eighth Circuit (and elsewhere) reinforce the need to look to the Supreme Court's rulings on when to apply the malicious and sadistic standard and when to apply the deliberate indifference standard. Because I believe that binding Supreme Court precedent requires us to apply the malicious and sadistic standard

[8] Other federal circuit courts have also applied the malicious and sadistic standard to passive restraint cases. For example, in *Lunsford v. Bennet*, the Seventh Circuit applied the malicious and sadistic standard to three prisoners' complaints that they were subjected to cruel and unusual punishment when prison officials shackled them to their cells for 3 hours in order to remove flood water. 17 F.3d 1574, 1581–82 (7th Cir. 1994). And in *Campbell v. Sikes*, the Eleventh Circuit applied the malicious and sadistic standard to an inmate's claims that she was subjected to cruel and unusual punishment when prison officers placed her in full restraints for extended periods of time when she posed a threat to her own safety. 169 F.3d 1353, 1359–60, 1376–78 (11th Cir. 1999). Recently, the Tenth Circuit applied the malicious and sadistic standard to a prisoner's allegations that officers overtightened his handcuffs, resulting in the loss of circulation. *See Stevenson v. Cordova*, 733 F. App'x 939, 945 (10th Cir. 2018).

"*whenever* prison officials stand accused of using excessive physical force," *Hudson*, 503 U.S. at 6–7 (emphasis added), I would apply that standard to Welters's claims.

B.

Having concluded that the appropriate standard to apply to Welters's claim is the malicious and sadistic standard, I turn to the application of that standard to the facts of the case. As previously stated, the district court determined that "[n]othing in the record indicates that either Officer Rhoney or Officer Emily acted with the intent to cause [Welters] harm, let alone acted maliciously or sadistically." Welters does not challenge the district court's conclusion or argue that he should prevail if we apply the malicious and sadistic standard. Accordingly, I would reverse the court of appeals and reinstate the grant of summary judgment for Officer Rhoney and Officer Emily.

I respectfully dissent.