VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 10th day of December, 2020.

Present: All the Justices

Conrad Burke, Appellant,

against Record No. 200095
Circuit Court No. CL19-1226

Stanley Young, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Tazewell County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

I. BACKGROUND

On February 22, 2019, Conrad Burke (the "appellant") received four disciplinary charges when he was housed in a medical isolation cell at the Pocahontas State Correctional Center. After the appellant received his fourth disciplinary charge, prison officials determined that he needed to be placed in ambulatory restraints, consisting of handcuffs, leg irons, and a "waist chain" linking the handcuffs and leg irons.

Around 6:40 p.m., a team of seven correctional officers entered the appellant's cell to apply the ambulatory restraints. One of the officers recorded video footage of the restraining process using a handheld video camera. The ambulatory restraints were removed at approximately 3:00 p.m. on February 23, 2019.

On July 18, 2019, the appellant filed a petition pursuant to 42 U.S.C. § 1983 alleging that prison officials and various correctional officers (the "appellees") violated the Eighth Amendment of the United States Constitution.[1] The appellant argued that the appellees

[1] The appellant proceeded pro se until his petition for appeal was granted by this Court.

subjected him to cruel and unusual punishment when they unjustifiably placed him in improperly applied ambulatory restraints for an extended period of time.

The appellant alleged that he was stripped to his underwear and "hog tied," or restrained in a "hog like position," for 20 hours. He maintained that being restrained in this position greatly limited his ability to move and caused "extreme pain" in his back, arms, legs, wrists, and ankles. Furthermore, the appellant alleged that he was placed in the ambulatory restraints based on a fabricated disciplinary charge.

On August 8, 2019, the appellant filed a motion requesting permission to engage in discovery. He filed a similar motion on August 22, 2019. In his second motion, the appellant specifically requested a copy of the video footage of the "incident" that occurred on February 22, 2019.

The appellees filed a motion for summary judgment on September 12, 2019. They did not file a demurrer or any other responsive pleadings at this time. The appellees submitted various incident reports, medical records, and affidavits to support their motion for summary judgment. The appellees, however, did not submit any video footage for the circuit court to review. They also did not provide a copy of the requested video footage to the appellant.

The appellees argued that the application of ambulatory restraints did not constitute cruel and unusual punishment. They submitted affidavits from two correctional officers to support their argument. The affidavits explained that a prisoner could move around his or her cell, eat, and use the toilet while he or she was confined in ambulatory restraints. One of the affidavits asserted that the correctional officers applied the ambulatory restraints "per training and policy" on February 22, 2019.

On October 7, 2019, the appellant filed a response to the appellees' motion for summary judgment. He also filed a supporting affidavit. The appellant's affidavit asserted that he was not restrained in the manner described by the appellees. The appellant's affidavit explained that he was "restrained in a hog-tied position . . . where [his] body was bent-over arm towards [his] feet." The appellant's affidavit stated that he was "unable to use the restroom, clean [himself], [or] drink any water [for] over 23 hours."

The appellant maintained that a review of the pertinent video footage would support his claims. Accordingly, the appellant requested that the circuit court hold an evidentiary hearing to review the video footage. Alternatively, the appellant requested that the circuit court order the

appellees to "provide . . . a true copy of the [video] footage" to the appellant and the court. The appellant claimed that the video footage would "prove concretely" that the "restraints were not properly applied" and that he was "restrained in an awkward painful position."

The circuit court granted the appellees' motion for summary judgment without holding an evidentiary hearing or reviewing the video footage. Based primarily on the appellees' affidavits and the incident reports, the circuit court determined that the application of the ambulatory restraints did not constitute cruel and unusual punishment.

II. ANALYSIS

The circuit court erred when it granted the appellees' motion for summary judgment without reviewing the video footage that showed the application of the ambulatory restraints.

The Virginia Prisoner Litigation Reform Act applies to pro se civil actions that are brought by incarcerated prisoners. *See generally* Code §§ 8.01-689–8.01-697. Pursuant to Code § 8.01-695, "[n]o prisoner shall be permitted to request subpoenas for witnesses or documents, or file discovery requests, until the court has ruled upon any demurrer, plea or motion to dismiss." A pro se prisoner, however, has a limited right to engage in discovery when a case proceeds past these "initial dispositive motions." *Id.* In such circumstances, "the court shall require the prisoner seeking discovery to demonstrate that his requests are relevant and material to the issues in the case." *Id.*

In the present case, the appellees did not file a demurrer, plea, or other motion to dismiss. They only filed a motion for summary judgment. Code § 8.01-696 addresses motions for summary judgment that arise during the course of pro se prisoner litigation. In pertinent part, Code § 8.01-696 requires a court to enter summary judgment when "there is no genuine issue of material fact and . . . the moving party is entitled to a judgment as a matter of law." However, it is "not appropriate" to grant summary judgment when a request for that relief will "short-circuit [the] litigation" by deciding genuine issues of material fact prior to trial. *Fultz v. Delhaize Am., Inc.*, 278 Va. 84, 88 (2009). This occurs in cases where "the evidence is conflicting on a material point or if reasonable persons may draw different conclusions from the evidence" presented in connection with the request. *Id.* (citing *Jenkins v. Pyles*, 269 Va. 383, 388 (2005); *Stockbridge v. Gemini Air Cargo, Inc.*, 269 Va. 609, 618 (2005); *Smith v. Smith*, 254 Va. 99, 103 (1997); *Slone v. General Motors Corp.*, 249 Va. 520, 522 (1995); *Renner v. Stafford*, 245 Va. 351, 352 (1993); *CaterCorp, Inc. v. Catering Concepts, Inc.*, 246 Va. 22, 24 (1993)).

The record in this case unequivocally demonstrated that the parties disagreed concerning the manner in which the ambulatory restraints were applied. The appellant maintained that he was "hog tied" in a manner that caused him to suffer unnecessary pain. The appellees, however, maintained that the ambulatory restraints were applied properly and that the appellant could move around his cell, eat, and use a toilet while he was restrained.

The video footage was of critical importance under these circumstances. It was both relevant and material,[2] and it would have likely provided dispositive proof regarding the manner in which the ambulatory restraints were applied to the appellant. Nevertheless, the appellees refused to produce the video footage and the circuit court never addressed the appellant's discovery motions.

The circuit court erred when it granted the appellees' motion for summary judgment without reviewing the video footage at issue. Accordingly, the Court reverses the entry of summary judgment and remands this case for further proceedings. Upon remand, the circuit court is directed to: (1) order the appellees to produce unedited and unredacted video footage from February 22, 2019, showing the application of the ambulatory restraints, (2) review the video footage, and (3) reconsider the appellees' motion for summary judgment in light of any conclusions drawn from the video footage.

This order shall be certified to the Circuit Court of Tazewell County.

A Copy,

Teste:

Clerk

[2] We note that an Eighth Amendment cruel and unusual punishment claim has two components: (1) an objective component, which asks whether a prison official's "alleged wrongdoing was objectively 'harmful enough' to establish a constitutional violation," and (2) a subjective component, which asks whether the prison official "'act[ed] with a sufficiently culpable state of mind.'" *Hudson v. McMillian*, 503 U.S. 1, 8 (1992) (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). The video footage would have been relevant and material to both components.