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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

ASHLEY BARD, INDIVIDUALLY AND AS THE ADMINISTRATOR FOR THE ESTATE OF ZACHARY RYAN GOLDSON, ADMINISTRATOR PLAINTIFF, VS. BROWN COUNTY, ET AL., DEFENDANTS.	CASE NO. 1:15-CV643 JUDGE S. J. DLOTT MAGISTRATE K. LITKOVITZ

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS [DOC. 77]

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SUMMARY OF ARGUMENTS

Decedent Zachary Goldson's official Death and Supplementary Certificates state that Mr. Goldson's death was caused by "**strangulation**" and that the manner of death was "**homicide**.[1]" This official determination by the Brown County Coroner has not been changed by any law or court to date. The direct and circumstantial evidence in this case supports this official finding. Zachary Goldson did not commit suicide or hang himself in the Brown County Jail.

Defendants Brown County, Dwayne Wenninger, Ryan Wedmore, Larry Meyer, Jason Huff, George Dunning, Sarah McKinzie and Zane Schadle filed their Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 on March 15, 2018. Although there are numerous issues of material fact regarding the allegations set forth in Plaintiff's Complaint pertaining to the Brown County Defendants, it is undeniable that the demise of decedent, Zachary Goldson, came at the hands of those captors who housed him at the Brown County Jail on October 5, 2013 and ***not from a "staged" suicide***. The undisputed facts – to include the video-taped evidence – clearly indicates that Defendants escalated the events transpiring on that day by increasing the vulnerability of Goldson to danger in the cell and placing him in "harm's way" thereby depriving Plaintiff of a clearly defined constitutional right.

From the time that the Brown County Coroner arrived at the cell with the Ohio Bureau of Criminal Investigation Special Agent, Laetitia Schuler, "suicide" was *stated as the manner of death* by the personnel of the Brown County Sheriff's Office and

[1] Exhibit A – Death Certificate and Supplementary Medical Certification.

presented to the Ohio Bureau of Criminal Investigation [BCI] as the cause of Zachary Goldson's death. This representation by the Defendants collectively caused BCI to build their entire analysis on this faulty foundation. The video tapes, the physical characteristics of the decedent, and the jail cell design combine to establish that there are issues of fact pertaining to *how* Zachary Goldson died in the Brown County Cell on October 5, 2013. These pieces of evidence indicate that Zachary Goldson died in his cell due to conduct taken, and condoned, by the Defendants of this lawsuit. This video evidence indicates:

1. that Zachary Goldson suffered excessive force while at the Brown County Hospital grounds *prior* to being transported to the jail [Doc 75-6, PageId# 2481-2543, Exhibit A - Videos];

2. that Zachary Goldson, while on the ground was handcuffed with leg shackles and waist transport belt and clearly in custody – thereby posing no credible threat to anyone – continued to receive taunts and threats from the Brown County Sheriff's Deputies [*Id.*];

3. that Zachary Goldson, while on the ground, handcuffed with leg shackles and waist transport belt on and clearly in custody – thereby posing no credible threat to anyone – continued suffering when an officer knelt on his back applying severe pressure so as to impair his ability to breath. This was obviously heard by the deputies as he was was called "Trash", mocked ridiculed and told to "shut up". No one intervened to relieve the pressure on Mr. Goldson's back [*Id.*];

4. that Zachary Goldson, while on the ground, handcuffed with leg shackles and waist transport belt on and clearly in custody – thereby posing no credible threat to anyone – attempted to vomit. Although he was within feet of the emergency room of the Brown County Hospital, he was given neither medical assistance nor relief of any kind [*Id*];

5. that Zachary Goldson was then yanked up from the ground and hastily taken to a Brown County Sheriff's vehicle where he was again threated with having a "welcoming party" to greet him upon his return to the Brown County Jail [*Id*];

6. that Zachary Goldson, upon returning to the Brown County Jail, was abruptly yanked by his leg shackles immediately upon the rear door being opened by Defendant Jason Huff and dropped on the floor of the

Sally Port despite being handcuffed with additional leg shackles and waist transport belt on and clearly in custody – thereby posing no credible threat to anyone [Doc 75-6, PageId# 2519-2552, Exhibit A – Videos; Doc 75-7,PageID# 2657-2662 – Exhibit A Videos; Doc 90-1, PageID# 3562 – Exhibit A Videos];

7. that Zachary Goldson was roughly put in cell 15 by Defendants Huff, Wedmore, Dunning and Schadle, and all of his personal items were taken from him, to include his shoes, and thrown outside the cell into the hall way prior to the door being closed and locked [*Id.*];

8. that the video tape indicates Defendants Huff, Dunning, and Schadle brought out a pair of chrome cuffs, a pair of orange jail cuffs, and the waist transport belt, from Cell 15 but the **leg shackles were never removed from the cell** at that time [*Id.*; Doc 75-5, PAGEID#2271-76, Exhibit A Videos; Doc 75-7, PageID# 2676; Doc 90-1, PageID# 3550 – Exhibit A Videos; Doc75-8, PageID#2860-3, 2944, Exhibit A Videos];

9. that the video tape indicates that Defendant Schadle carried chrome handcuffs in his side pouch prior to entering Cell 15 and that the pouch is empty when he exited [*Id.*, See also Exhibit B – "Follow the Cuffs"]; and

10. that the Defendants misrepresented the truth to the BCI Investigator early morning following the death and therefore mislead the investigator to conclude that Mr. Goldson's death was a suicide [Doc 75-6, PageId# 2404, Exhibit A – Interview Video; Doc 75-7, PageId# 2585 – Exhibit A BCI Interview Video;].

When one takes into consideration Zachary Goldson's physical attributes and design of Cell 15, serious questions emerge. Could he pry down the escutcheon and attach the sheet to it? Would he then be able to tie the sheet around his neck? And would he be able to do all of these acts while standing barefoot on a sink rim? And, in addition, while extending his body precariously in midair? Plaintiff respectfully requests this Court to deny Defendants' Motion for Summary Judgment for the reasons set forth more fully in this Memorandum in Opposition.

SUMMARY JUDGEMENT STANDARD

Clearly, the elements listed under Federal Rule of Civil Procedure 56 must be considered in the light most favorable to the non-moving party and the burden is on the defendants to demonstrate their entitlement to Summary Judgment. *Matje v. Leis*, 571 F.Supp 918 (S.D. Ohio, W.D., 1983) citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157, 90 S.Ct. 1598, 1608, 26 L.Ed.2d 142 (1970) and *Felix v. Young*, 536 F.2d 1126 (6th Cir. 1976). Further, this case involves substantial questions pertaining to treatment of Mr. Goldson, a pretrial detainee, while under the care of Brown County Defendants while handcuffed at the Brown County Hospital and housed at the Brown County Jail. As noted in *Matje*, supra, Motions for Summary Judgment should be viewed with particular caution where civil rights violations are involved. *Id.* at 931 citing *Halperin v. Kissinger*, 606 F.2d 1192, 1209 (D.C.Cir. 1979), aff'd per curiam 452 U.S. 713, 101 S.Ct. 3132, 69 L.Ed.2d 367, (1981), *Askew v. Bloemker*, 548 F.2d 673, 679 (7th Cir. 1976), *Smith v. Jordan*, 527 F.Supp. 167, 170-71 (S.D.Ohio 1991)(Rice,J.).

This case raises substantial questions as to the propriety of actions taken by the individuals involved with the Brown County Sheriff's Department from October 4 – 5, 2013. There are substantial questions of fact as to the demise of Mr. Goldson and the fact that it was highly unlikely that he died from the "staged" hanging as set forth in Defendants' Motion. See *Matje* at 932.

FACTS

It is uncontroverted that Mr. Goldson was a pretrial detainee while housed at the Brown County Jail after his September 25, 2013 arrest [Exhibit C, BCI Doc 5361]. For

purposes of this case, the critical time frame begins at the Brown County Hospital on October 4, 2013 after Mr. Goldson's altercation with Brown County Deputy Justice. [Doc 75-6, PageId# 2481-2543, Exhibit A - Videos] Our review begins with the Georgetown Police dash camera footage that clearly shows Mr. Goldson was handcuffed, leg-shackled, and subdued after the Georgetown officer arrives on the scene. [*Id.*] Mr. Goldson was also wearing a blue paper outfit. [*Id.*] Mr. Goldson can be clearly seen on the grassy area with several law enforcement officers and hospital staff around him as he lies face down in the grass not resisting the physical restraints of the officers. [*Id.*] Further, the dash camera provides crucial audio that reveals that Mr. Goldson has surrendered and is no longer a threat as he apologizes while a law enforcement officer kneels on Mr. Goldson's back and a second officer holds Mr. Goldson's handcuffed wrists high above his back. [*Id.*]

Although subdued and no longer actively resisting, the law enforcement officers continue to berate Mr. Goldson as depicted on the video by calling him "trash." [*Id.*] While subdued, Defendant Wedmore and Defendant Meyer arrived on the scene. [*Id.*] Throughout this time, Defendant Meyer is standing right next to Mr. Goldson as he is making regurgitation sounds but chooses to walk away. [*Id.*] Law enforcement officers can clearly be seen kneeling on Mr. Goldson while also holding his handcuffed wrists high above his shoulder areas when Defendant Wedmore arrives. [*Id.*] Mr. Goldson can be heard having labored breathing and crying out in pain. [*Id.*]

When Defendant Wedmore arrives, he taunts Mr. Goldson by saying, "what the fuck is wrong with you, you stupid mother fucker" while other officers can be seen securing the leg shackles on Mr. Goldson. [*Id.*] Defendant Wedmore also states, "I hope you like prison, Bitch" but makes no attempt, along with the other law enforcement

officers, to ask the others to get off Mr. Goldson's back or take him to the ER which is only feet away to be medically examined. [*Id.*] During this time, Deputy Justice states that he believed he was struck with something from Mr. Goldson and when Mr. Goldson states he has nothing to strike or stab the deputy with; Defendant Wedmore threatens Mr. Goldson with "I'd like to break your fucking neck." [*Id.*] When Defendant Wedmore makes these statements, other officers are next to him, to include Defendant Meyer, who was a senior ranking officer to Defendant Wedmore. [*Id.*] No Defendant intervenes on behalf of Mr. Goldson who is not actively resisting yet continues to have a law enforcement officer kneel on Goldson's back. [*Id.*]

The Defendants then grab Mr. Goldson by his elbow and yank him up off the ground while never examining him for any kind of medical care. [*Id.*] While roughly escorting Mr. Goldson to Defendant Wedmore's car, Mr. Goldson can be heard writhing in pain and apologizing yet Defendant Wedmore threateningly states, "That mother fucker's getting a welcoming party when we get to the jail." [*Id.*] The video indicates that Mr. Goldson was put on the back seat of Defendant Wedmore's car laying down across the seat. [*Id.*] It is also essential to understand that based upon the testimony and videos, Mr. Goldson was wearing 1) leg shackles, 2) a transport belt around his waist, 3) a pair of orange hinged Jail hand cuffs, and 3) a pair of chrome hand cuffs belonging to Georgetown Police Officer Matt Staggs while being transported back to the Brown County Jail. [Doc 75-5, PAGEID#2249 – Exhibit A Videos]

Unfortunately for Mr. Goldson, that "welcoming party" began immediately upon arriving in the Sally Port of the Brown County Jail after having traveled in the back seat of Defendant Wedmore's car. [*Id.*] Upon arriving at the jail, Defendants Schadle, Dunning and Huff can be seen as the "welcoming party." [*Id.*] Both the transition area

between doors 16 and 17 video and Sally Port video clearly show that Defendant Schadle enters the area with chrome handcuffs pouched on his right hip area. [*Id., see also* Exhibit B – Follow the Cuffs] Footage from video also establishes that Defendant Schadle is speaking with Defendant Wedmore on a phone as Wedmore speeds back to the jail – undoubtedly to get the "welcoming party" ready. [See Exhibit D – DOCs 173-4 of BCI Report] Immediately upon stopping the car, and as Defendant Wedmore gets out of the car, Defendant Huff opens the rear left door and can be seen yanking Mr. Goldson by the leg shackles, dragging Mr. Goldson from the back seat area, leaving Goldson to violently fall to the concrete floor of the Sally Port. [Doc 75-6, PageId# 2519-2552, Exhibit A – Videos; Doc 75-7,PageID# 2657-2662 – Exhibit A Videos; Doc 90-1, PageID# 3562 – Exhibit A Videos] Once Mr. Goldson hits the ground, four members of the "welcoming party" roughly pick Mr. Goldson off the floor, keep him backwards from the direction to the staircase and aggressively push him up a stair case, through two doors and into Cell 15. [*Id.*]

Once in the holding Cell, video shows Defendants Dunning and Schadle taking Mr. Goldson in to the Cell while Defendants Huff and Wedmore watch from the hall just outside the cell door. [*Id.*] Defendants Schadle and Dunning can then be seen removing and throwing personal items of Mr. Goldson into the hallway – these items included Mr. Goldson's shoes and blanket. [*Id.*] This indicates that Mr. Goldson is now bare footed. [*Id.*]

After removing the items from Mr. Goldson's possession, the Defendants can be seen exiting the cell and walking down the hallway with several items. [*Id.*] Video footage clearly indicates that Defendant Dunning exited carrying the waist transport belt and a set of orange jail hand cuffs. [*Id.*] Further, video footage also clearly shows that

Defendant Schadle carried out a pair of hinged chrome hand cuffs. [*Id.*] These chrome hand cuffs appear to be those belonging to Georgetown Police Officer Staggs as Schadle takes them to a room to clean them. [Doc 76-1, PageID#3065, Exhibit A Videos] The video continues to show Defendant Wedmore still looking into Mr. Goldson's cell. [Doc 75-6, PageID#2516, Exhibit A Videos] Nowhere on any video footage can the leg shackles be seen being carried by anyone out of Mr. Goldson's cell. [Doc 75-5, PAGEID#2271-76, Exhibit A Videos; Doc 75-7, PageID# 2676; Doc 90-1, PageID# 3550 – Exhibit A Videos; Doc75-8, PageID#2860-3, 2944, Exhibit A Videos] This is confirmed in the BCI Report by BCI Chief Investigator Dave Hornyak. [See Exhibit D, *supra*]

Video Footage reveals that while exiting the cell and walking down the hall, Defendant Schadle's chrome hand cuffs are no longer in his pouch. [See Exhibit B] Official Testimony from Defendant McKinzie to BCI stated that Defendants returned to Goldson's cell to retrieve the leg shackles *after* Defendants Schadle and Dunning had originally exited and locked Goldson's cell door. [Doc 75-8, PageID#2863, 2944, Exhibit A Videos] Further, official testimony from Corrections Officer Felicia Landacre stated that Defendants returned to Goldson's cell to retrieve hand cuffs. [Doc 90-1, Page ID#3561, Exhibit A Video] Based upon these facts, Mr. Goldson remained in his cell presumably with the leg shackles and hand cuffs.

During this time, investigation pictures provided of Mr. Goldson also indicate that some type of ligature other than the sheet was around his neck *prior* to Defendants Schadle, Dunning and McKinzie re-entering Goldson's cell when they found him in medical distress. [Doc 74-2, PageID#829, Exhibit 1 (attached as Exhibit H)] Testimony from the Coroner's Investigator, Don Newman, with 40 years of police experience stated

that he believed the markings on the neck of Mr. Goldson were consistent with a "nylon type hobble strap" around the neck. [Doc 90-4, Page ID#3810] Also, on March 8, 2017, during the testimony of Hamersville Chief of Police Guy Sutton in the Brown County Court of Common Pleas Case, George Dunning, et al. v. Judith A. Varnau, et al., Case No. 20170146, Officer Sutton, who also has over 40 years as a police officer, stated that he believed Mr. Goldson had been hog tied with a collar around his neck when he expired in Cell 15 of the Brown County Jail. [Exhibit E – Guy Sutton Transcripts]

At 02:58:24 on October 5, 2013, Defendant Schadle puts his key in to cell 15 preparing to enter. [Doc 76-1, PageID#3087, Exhibit A Videos] Standing beside him is Defendant Dunning with Defendant McKinzie to their left not quite at the door. [*Id.*] Video footage also indicates Defendant McKinzie looking down to the ground as opposed to up at a person hanging upon reaching the cell. [*Id.*] The video jumps from 02:58:53 to 02:59:15; what happens in this 22 second time frame? [*Id.*] The video evidence does not show what transpired in the cell prior to the emergency life squad personnel arriving but testimony and other evidence indicates that no life-saving methods were being executed on Mr. Goldson when the emergency life squad personnel arrived at 03:10 on October 5, 2013. [Doc 75-5, PageID# 2706-08, Exhibit A Videos and BCI Interview Video] Although Defendants indicated they had started CPR on Mr. Goldson – unverifiable by any other sources – the Defendants colluded with each other to stop these efforts prior to the arrival of the emergency life squad personnel. [*Id.*] Testimony from the arriving medic, Sherry Ridner, clarified that the Defendants, as well as other personnel of the Jail, were just "standing there in the hallway." [Doc 74-17, PageID# 1846-7] This was within 10 minutes of Defendants calling for the emergency life squad personnel. [Doc 74-17-18] Testimony from Defendant Huff indicates that he

instructed Defendants Schadle and Dunning to cease life-saving methods, i.e. CPR, *prior* to the emergency life squad personnel arriving. [Doc 75-5, PageID# 2706-08, Exhibit A Videos and BCI Interview Video]

DEFENDANTS RESPONSIBLE – NO QUALIFIED IMMUNITY

In interpreting the protections afforded inmates in confinement facilities, the Courts have clarified that the Constitution embodies "broad and idealistic concepts of *dignity, civilized standards, humanity, and decency . . . .*" *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 290, 50 L.Ed.2d 251 citing *Jackson v. Bishop,* 404 F.2d 571 (C.A.8 1968). [emphasis added] "Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with 'the evolving ***standards of decency*** that mark the progress of a maturing society.'" *Id.* [emphasis added]

It is ironic that Defendants would begin their argument for Qualified Immunity with the following quote, "Qualified Immunity is intended to give 'government officials breathing room to make reasonable but mistaken judgments and protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Chappell v. City Of Cleveland,* 585 F.3d 901 (2009) *citing Hunter v. Bryant*, 502 U.S. 224, 229, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (quoting *Malley v. Briggs*, 475 U.S. 335, 343, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)) see also *Messerschmidt v. Millender*, 565 U.S. 535, 132 S.Ct. 1235, 182 L.Ed.2d 47 (2012) (quoting *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011) [Emphasis added]. In this case, the facts clearly reveal Defendants knowingly violated the law.

Precedent recognizes a clearly established fundamental substantive due process right "to personal security and to bodily integrity." *Doe v. Claiborne County, Tenn.*, 103 F.3d 495, 506 (6th Cir.1996). Moreover, where the state imposes a special relationship upon a person, such as when that person is held in custody, then the state owes a special duty of protection against violation of their due process rights. *Ford v. County of Oakland*, 35 Fed.Appx. 393, 2002 WL 987332 (6th Cir. 2002) [Exhibit F] citing *L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir.1992) (citing *Youngberg v. Romeo*, 457 U.S. 307, 314-25, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982)).

In *Evans v. Plummer,* 687 Fed.Appx. 434 (6th Cir. 2017) [Doc 71-7, Page ID#3293], the Court stated that "We apply the Fourth Amendment's '**objective reasonableness'** test to allegations that government officials used excessive force during the booking process, not the Fourteenth Amendment's 'shocks the conscience' test or the Eighth Amendment's 'cruel and unusual punishment' test." Citing *Burgess v. Fischer*, 735 F.3d 462, 472–73 (6th Cir. 2013). Further, the *Evens* decision pointed out that the Supreme Court recently approved of this approach by "adopt[ing] a bright line rule that 'a pretrial detainee must show only that the force purposely or knowingly used against him was **objectively** unreasonable.' " *Id. citing Morabito v. Holmes*, 628 Fed.Appx. 353, 357 (6th Cir. 2015) (quoting *Kingsley v. Hendrickson*, ––– U.S. ––––, 135 S.Ct. 2466, 2473, 192 L.Ed.2d 416 (2015)) [emphasis added]. In assessing objective reasonableness, we look "to the reasonableness of the force in light of the totality of the circumstances confronting the defendants, and not to the underlying intent or motivation of the defendants." *Id. citing Burgess*, 735 F.3d at 472; see *Kingsley*, 135 S.Ct. at 2475–76 (rejecting a subjective standard).

As will be shown, the force used against Mr. Goldson throughout the night of October 4, 2013 and in to the early morning hours of October 5, 2013 were objectively unreasonable. Further, the conduct and actions taken by Defendants created a condition of confinement that was both dangerous and demeaning to Mr. Goldson.

As stated, to defeat qualified immunity, a Plaintiff need show (1) facts sufficient to make a violation of a constitutional right and (2) that the constitutional right at issue must have been clearly established at the time of the injury. See *Pearson v. Callahan*, 555 U.S. 223, 129 S.Ct. 808, 172 L.Ed.2d. 565 (2009). In this case, Defendant had a well-established constitutional right to be protected from unreasonable harm that was clearly defined at the time of the injury[2].

The courts have also clarified that "conditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S.Ct. 2392, 69 L.Ed.2d 59 (1981). In determining if a condition amounts to punishment in violation of the Fourteenth Amendment, courts have analyzed if the condition deprives an inmate, pretrial detainee, of essential human needs in accordance with contemporary standards of human decency. See *Gilland*, supra, at 683; See also *Rhodes* at 346-47 and *Walker v. Mintzes*, 771 F.2d 920 (6th Cir. 1985). "Sanitary living conditions and personal hygiene are among the necessities of life protected by the Eighth Amendment." *Gilland* at 984 citing *Harris v. Fleming*, 839 F.2d 1232, (7th Cir. 1988); *Green v. Ferrell*, 801 F.2d 765 (5th Cir. 1986); *Walker*, supra, 771 F.2d at 928; *Ramos v. Lamm*, 639 F.2d 559, 567-70 (10th Cir. 1980). Clearly, the Courts have also

[2] It is well to note that in addition to this clearly defined constitutional duty of protection, Ohio Law mandates that the county Sheriff keep all persons confined in his jail safe. O.R.C. §341.01.

emphasized that a ***pretrial detainee cannot be punished at all, much less "maliciously and sadistically."*** *Kingsley, supra,* at 2475 quoting *Ingerham v. Wright,* 430U.S 651, 671-672, N. 40, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977); *Graham, supra,* at 395, n. 10, 109 S.Ct. 1865 (1989) [Emphasis added].

The courts have also clarified that "conditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment." *Rhodes v. Chapman*, *supra*, at 347. Prohibited conditions alone or in combination, may deprive inmates of the minimal civilized measure of life's necessities. *Gilland v. Owens*, 718 F.Supp. 665 (1989) citing *Rhodes, supra*, at 347. [emphasis added].

1. Mr. Goldson suffered excessive force while at the Brown County Hospital.

It is clear that the law establishes that putting pressure on a suspect's back while that suspect is in a face-down prone position after being subdued and/or incapacitated constitutes excessive force. *Champion v. Outlook Nashville Inc.,* 340 F.3d 893 (6th Cir. 2004); see also *Kulpa, supra,* 851 [Doc 71-7, Page ID#3239] Further, "[c]reating asphyxiating conditions by putting substantial or significant pressure, such as body weight, on the back of an incapacitated and bound suspect constitutes objectively unreasonable excessive force." *Id*. "No reasonable officer would continue to put pressure on that arrestee's back *after* the arrestee was subdued by handcuffs, an ankle restraint, and a police officer holding the arrestee's legs." *Id*. at 905.

In this case, Mr. Goldson can be seen lying in the face-down prone position with the officers around him. [Doc 75-6, PageId# 2481-2543, Exhibit A - Videos] Not only did Mr. Goldson have his wrists handcuffed behind his back, but also had leg shackles as

referred to in *Champion, supra*. [*Id*.] Of significance is the additional fact that it wasn't enough to have Mr. Goldson restrained as set forth above with a knee in his back, an additional officer applied additional pressure by holding Mr. Goldson's wrists high above his shoulder blades thereby causing more sadistic pain to **punish** Mr. Goldson for his attempted escape. [*Id*.] The pressure caused by both the kneeling on Mr. Goldson's back and holding his cuffed wrists above his shoulder was substantial as evidenced by Mr. Goldson's labored breathing and dry-heaving. [*Id*.] This was excessive as a matter of law.

During this traumatic experience, the officers maliciously and sadistically threatened Mr. Goldson and stated there would be a "welcoming party" for him when he returned to the Brown County Jail. These additional factors illustrate the maliciousness and sadistic unprofessional conduct of the Defendants in applying their "street justice" on Mr. Goldson.

The Sixth Circuit has stated that,

> "A police officer may be held **liable** for failure to intervene during the application of excessive force when: '(1) the officer observed or had reason to know that excessive force would be or was being used; and (2) the officer had both the opportunity and the means to prevent the harm from occurring.' " *Goodwin v. City of Painesville*, 781 F.3d 314, 328 (6th Cir. 2015) (quoting *Turner v. Scott*, 119 F.3d 425, 429 (6th Cir. 1997)). **We have repeatedly denied qualified immunity when officers observe the use of excessive force yet fail to intercede.** See *Ortiz ex rel. Ortiz v. Kazimer*, 811 F.3d 848, 853 (6th Cir. 2016) (denying immunity when the officer "directly observed at least some of the excessive force and had the ability and opportunity to stop it"); *Kent v. Oakland Cty.*, 810 F.3d 384, 397 (6th Cir. 2016); *Goodwin*, 781 F.3d at 328–29." *Kulpa, supra,* at 854 [Doc 71-7, Page ID#3241][Emphasis added]

In this case, none of the Defendants to this law suit ever came to the aid of Mr. Goldson after observing these transgressions. Likewise, none of the Defendants ever came to the aid of Mr. Goldson at the Brown County Jail where additional outrageous excessive force punishments were sadistically committed on Mr. Goldson.

2. Defendants Schadle, Dunning, Huff, and Wedmore become the "welcoming party" for Mr. Goldson.

The nightmare suffered by Mr. Goldson continued for him as he arrives at the Brown County Jail at approximately 02:32 on the morning of October 5, 2013. [Doc 75-6, PageId# 2519-2552, Exhibit A – Videos; Doc 75-7,PageID# 2657-2662 – Exhibit A Videos; Doc 90-1, PageID# 3562 – Exhibit A Videos] The star members of this "welcoming party" are Defendants Schadle, Dunning, Huff, and Wedmore.[3] The "welcoming" begins within seconds of Defendant Wedmore driving the police cruiser into the Sally Port Garage with Defendant Huff abruptly opening up the rear door before Defendant Wedmore can completely exit out of the vehicle. Failing to show any professionalism or restraint, Defendant Huff grabs Mr. Goldson by the leg shackles, drags him across the rear seat and allows Mr. Goldson to drop like a piece of meat on to the concrete floor of the garage. [*Id.*] All of this transpiring as other members of the "welcoming party" looked on. The video clearly reveals that when Defendant Huff rips Goldson out of the car from the left rear door, Mr. Goldson was still wearing his hand cuffs, waist transport belt, and leg shackles. Mr. Goldson had no ability to break his fall or defend himself. Once on the ground, no one checks for any injuries to Mr. Goldson. Instead, Mr. Goldson is violently grabbed and hoisted to his feet facing away from the

[3] Defendant Wedmore lied to BCI Investigators during his initial interview on the morning of October 5, 2013 when he denied making any threats to Goldson. [Doc 75-6, Exhibit A – Filed separately]

direction of the stairs and door while being hastily dragged to the cell by Defendants Huff, Wedmore, and Dunning.

When the car door was opened by Defendant Huff, there is absolutely no indication of any resistance from Mr. Goldson. Further, upon hitting the floor and being raised to his feet, Mr. Goldson showed no resistance.

3. Goldson is left in Cell 15 with leg shackles and hand cuffs.

The punishment of Mr. Goldson continues as he is being left in the cell by Defendants Schadle and Dunning. A review of the video from the jail shows the following:

1. That Defendant Schadle had a pair of personal chrome hand cuffs at his right side in a black pouch[4] [Exhibit B];
2. That Defendant Schadle throws out personal items from the cell – such as shoes and blanket – prior to shutting the door and locking it [Doc 76-1, Exhibit A];
3. That Defendant Schadle exits Goldson's cell holding a pair of chrome hinged hand cuffs that he later takes to the Sally Port Transition room and cleans [*Id.*][5];
4. That Defendant Dunning exits Goldson's cell holding a pair of orange hand cuffs and the transport belt [*Id.*]

4. That none of the "welcoming party" of Defendants Schadle, Dunning, Huff, and Wedmore exited Goldson's cell with the leg shackles.

Based on this direct evidence of the video tape, the question then becomes, "where are the leg shackles?" It is without question that they remained in Goldson's cell and based upon the pictures provided during the BCI investigation, they remained on Mr. Goldson. Further, BCI investigative documents confirm that these shackles were

[4] Defendant Schadle normally carried these hand cuffs on him and they can be seen in the video. See attached Exhibit B; follow the cuffs. See also Exhibit G, Affidavit of Dustin Downing.
[5] These handcuffs belonged to Officer Staggs, Georgetown Police Department. [Doc 75-5, PageID#2266]

left in the cell. [Exhibit D] During her initial interview with BCI on the morning of October 5, 2013, Defendant Sarah McKinzie admitted that she went with Defendants Dunning and Schadle going back to Cell 15 to retrieve the leg shackles. [Doc 75-8, PageID# 2863, 2944, Exhibit A Videos and BCI Interview] Defendant McKinzie also lied to BCI investigators on October 5, 2013 when she alleged *that she went in to the cell* to aid Defendants Schadle and Dunning when the video footage clearly shows that she never went in to the cell. [*Id.*] Also, during her initial interview with BCI on the morning of October 5, 2013, Felicia Landacre stated that Defendants Schadle and Dunning were returning to Mr. Goldson's cell to retrieve hand cuffs when they found Mr. Goldson dead. [Doc 90-1, Exhibit A BCI Interview] It would not be reasonable to leave the shackles in Goldson's cell by themselves. The chrome hand cuffs exhibited by Defendant Schadle were no longer in his side pouch when he exits the cell thereby confirming that they remained in the cell and on Mr. Goldson's wrists. [See Exhibit B - Follow the cuffs] Testimony from the Defendants also clarifies that when Defendants exited Mr. Goldson's cell and locked his door, Mr. Goldson was left on the floor. [Doc 75-6, PageID# 2513] This makes sense if he still had leg shackles and hand cuffs on his legs and wrists. The missing piece of evidence is as to what, if anything, was left on Mr. Goldson's neck at the time Defendants Schadle and Dunning exited the cell. The circumstantial evidence illustrates that the ligature was most likely a Nylon hobble-strap or dog leash.

During the deposition of Susan Allan, D.O., numerous pictures were presented and reviewed that strongly indicated that some type of ligature was wrapped around Mr. Goldson's neck when he died. [Doc 74-2, Exhibit 2 (Exhibit H)] Contrary to Defendants' arguments that Mr. Goldson had no injuries, the pictures revealed multiple

injuries on Mr. Goldson's ankles, legs, wrists, face, neck, and back. [*Id.*] The injuries around Mr. Goldson's neck are argued to be from a sheet from the "staged" hanging. No one, including Susan Allen or David Hornyak, ever thoroughly investigated whether Mr. Goldson could have successfully completed the tasks needed to hang from the escutcheon in the cell until dead. Neither BCI personnel nor Montgomery County Coroner's Office personnel ever investigated how a bed sheet could be wedged in between the concrete ceiling and the steel escutcheon without any pry tools or ladder. [Doc 74-2, PageID# 904; Doc 71-1, PageID#691] Neither BCI personnel nor Montgomery County Coroner's Office personnel ever investigated how the sheet knots were created or analyzed the actual ligature marks containing sharp edging.

What is also important to know is that Mr. Goldson had a child-hood electrocution which rendered his left middle finger and hand crippled. [Exhibit C] Further, BCI was supplied booking documents clearly showing Mr. Goldson's middle finger being so weak that he couldn't even press down enough to make a clear fingerprint.[6] Neither BCI personnel nor Montgomery County Coroner's Office personnel ever followed up to ascertain what impact this physical limitation might have on Mr. Goldson's ability to wedge a sheet between a concrete ceiling and a securely tightened steel escutcheon. [Doc 71-1, PageID#691]

Because the video cameras could not capture what was around Mr. Goldson's neck at the exact moment he died, we are left to examine the photographs and testimonial evidence. During his deposition, former Brown County Coroner's

[6] See Exhibit C; Fingerprint documents from September 25, 2013 and March 1, 2012. Note that although Mr. Goldson left a stronger crippled finger print in 2012, the 2013 finger print clearly shows deterioration of the finger on the left hand by Mr. Goldson not being able to even press hard enough to get a good image.

Investigator Donald Newman was asked about his review and investigation in to the death of Mr. Goldson. [Doc 90-4, Page ID#3810] Mr. Newman, with 40 years of police experience, stated that he believed the markings on the neck of Mr. Goldson were consistent with a **"nylon type hobble strap"** around the neck. [*Id.*] Also, on March 8, 2017, during the testimony of Hamersville Chief of Police Guy Sutton in the Brown County Court of Common Pleas Case, *George Dunning, et al. v. Judith A. Varnau, et al.*, Case No. 20170146, Officer Sutton, who also has over 40 years as a police officer, stated that he **believed Mr. Goldson had been hog tied** with a collar around his neck when he expired in Cell 15 of the Brown County Jail. [Exhibit E]

The circumstantial evidence regarding the ligature around Mr. Goldson's neck completes a chilling conclusion – that Mr. Goldson was left hogtied in Cell 15 on the morning of October 5, 2013, secured with leg shackles, hand cuffs, and some type of hobble strap or collar around his neck.

5. Original Escutcheon in Cell 15 Destroyed – False Chain of Custody.

Defendants have asserted that Plaintiff's spoilage claims must fail. Plaintiffs assert spoilage of both video footage and the escutcheon on the sprinkler located in Cell 15 on the morning of October 5, 2013. As seen throughout the videos of these events in the Brown County Jail on October 4 – 5, 2013, there are multiple areas of missing video footage. The issues pertaining to the spoilage of the video and escutcheon are unequivocally supported by videos themselves and the testimonial evidence.

"[T]he authority to impose sanctions for spoliated evidence arises . . . 'from a court's inherent process to control the judicial process.'" *Adkins v. Wolever*, 554 F.3d 650, 652 (6th Cir. 2009) (quoting *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th

Cir. 2001)). Spoliation sanctions are intended to "serve both fairness and punitive functions." *Id*. The severity of a sanction may correspond to a party's level of fault for failing to produce evidence, and may include an instruction to a jury to infer a fact based on lost or destroyed evidence. *Id*. at 652-53 (internal citation omitted).

> [A] party seeking an adverse inference instruction based on the destruction of evidence must establish (1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the records were destroyed "with a culpable state of mind"; and (3) that the destroyed evidence was "relevant" to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Beaven v. U.S. Dep't of Justice, 622 F.3d 540, 553 (6th Cir. 2010) (quoting *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002)). See also *Byrd v. Alpha Alliance Ins. Corp.*, 518 F. App'x 380, 383-84 (6th Cir. 2013). The degree of a party's culpability for the destruction of relevant evidence is a fact intensive inquiry left to the broad discretion of a district court. *Adkins*, 554 F.3d at 653.

A defendant owes a duty of due care to preserve evidence if a reasonable person in the defendant's position should have foreseen that the evidence was material to a potential civil action. *Beaven*, 622 F.3d at 553. See also *Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001) ("[t]he duty to preserve material evidence arises not only during litigation but also extends to that period before the litigation when a party reasonably should know that the evidence may be relevant to anticipated litigation").

In their brief, Defendants assert that "the original sprinkler assembly was recovered." This statement is as far from the truth as the East is from the West. Clearly, Defendants are aware that the deposition of Ray Copple, the employee of D&W Fire Safety LLC, the company responsible for maintaining, removing and installing the

sprinklers located in the Brown County Jail. [Doc 71-1] Defendants are also aware that Mr. Copple clearly testified that there is no way to unequivocally identify any of the removed heads or escutcheons that were taken from the Brown County Jail as being the original one in Mr. Goldson's Cell 15 on the morning of October 5, 2013. [DOC 71-1, PageID# 693]

Further, testimony from Mr. Copple revealed a vain attempt by Brown County Officials to fabricate a chain-of-custody for Defendants in order to mislead others on the issue of the identity of the escutcheon presented to BCI and purported to be the correct escutcheon and sprinkler that was removed from Cell 15. [Doc 71-1 through 71-5] This outrageous conduct has not gone unchecked but rather uncovered through Mr. Copple's deposition.

What is remarkable is that the removal of the escutcheons took place shortly after the death of Mr. Goldson and certainly during the time of the investigations by BCI and the Brown County Coroner's Office. Clearly, there were ongoing investigations known to Defendants.

The videos in this case – with the exception of the Georgetown Dash Camera footage – clearly show that gaps of time are missing from the footage. [Doc 74-15, PageID# 1736, see also Exhibit I – filed separately] During her deposition, Former Brown County Coroner Dr. Varnau testified as to the challenges of obtaining complete copies of the videos from the Jail and also issues of videos being overwritten. *Id.* From the beginning, it was obvious that the videos would play a pivotal role in the investigation of Zachary Goldson's death. Further, the fact that BCI investigators and the Brown County Coroner showed up to immediately begin the investigation placed

Brown County Defendants on notice of the need to preserve all evidence that could conceivably be linked to Mr. Goldson's death.

The earlier footage of the County Defendants illustrates an environment of "street justice" for Mr. Goldson. The comments made and sadistic treatment of Mr. Goldson is also indicative of a "culpable state of mind" by the Brown County Defendants to facilitate the concealment of damaging video evidence. Here, their failure to ensure its preservation was at least grossly negligent, if not intentional, given its obvious import to any investigation into and the likelihood of litigation related to Goldson's death. See *Coach, Inc. v. Dequindre Plaza*, L.L.C., No. 11-cv-14032, 2013 WL 2152038, at *10 (E.D. Mich. May 16, 2013)(Exhibit L).

6. Zachary Goldson was not physically able to tie the sheet around the escutcheon in order to commit suicide.

Throughout this case, there has been a critical question as to whether Zachary Goldson could have successfully accomplished all the physical tasks necessary to commit suicide with a sheet hanging from the escutcheon in cell 15. The facts listed above show that the direct and circumstantial evidence clearly indicates that Mr. Goldson was restrained with a set of leg shackles, a pair of hand cuffs and some type of strap around his neck. Irrespective of these apparent limitations, Zachary Goldson's physical attributes and design of Cell 15 make it virtually impossible that Mr. Goldson could have hanged himself. [See Affidavit of Scott G. Roder filed separately]

Mr. Roder and his staff completely recreated Cell 15 and tested various theories as to how Mr. Goldson could have physically completed all the tasks necessary for the alleged suicide. As indicated prior, Mr. Goldson had limitations in his left hand.

Further, there is absolutely no indication that the escutcheon was anything but flush against the concrete ceiling when Mr. Goldson entered cell 15. The testimony of Ray Copple clearly established that he always completely tightened the escutcheons up against the ceiling as far as he could possibly tighten them. [DOC 71-1, PageID# 681] Further, Mr. Copple explained that if the escutcheons were loose, they would adjust them to make sure they were flush. [DOC 71-1, PageID# 690-91] Once tightened, Mr. Copple testified you would have to use a screw driver or something to pry the escutcheon from the ceiling or, as he had done in the past, used tin-snips to cut the escutcheon off. [*Id.*]

This critical testimony again calls in to question how Mr. Goldson could even successfully get a sheet between the steel escutcheon and the concrete ceiling. Mr. Roder's reconstruction then analyzed additional challenges that Mr. Goldson would have had to overcome while trying to climb up on the sink edge in his bare feet, balance himself and then attempt to reach the escutcheon **with both hands simultaneously** in order to pry the escutcheon from the ceiling, tie the knot and not fall off the sink. [See Affidavit of Scott Roder, Report videos] Further, Mr. Roder astutely states that it would be impossible for Zachary Goldson to have the necessary finger strength to successfully pry the escutcheon from the ceiling. [*Id.*]

Others attempted to successfully complete the necessary tasks of reaching the escutcheon *with both hands* in order to pry it from the ceiling but were unable to do so. Mount Orab Chief of Police Bryan Mount testified at his deposition that he is 6'7" and has an arm reach of approximately 40-41 inches. [Doc 90-3, PageId#3713, Exhibit 2] Chief Mount testified that he had visited cell 15 in the Brown County Jail and had attempted to replicate the ability to successfully reach the escutcheon for the purposes

of prying it from the ceiling in order to hang a sheet from it. Chief Mount stated that he could not successfully "use both hands simultaneously to reach the sprinkler head assembly, create a gap between the escutcheon and the ceiling, slip a sheet into the gap, and tie multiple knots facing the bunk without first falling down to the floor by leaning too far from the sink without other support." [*Id.*] He could not do so without falling off the sink.

This determination has also been supported by Dustin Downing, a former inmate who was incarcerated two doors down from Cell 15 and can be seen in the videos lingering in the hall way. Mr. Downing has stated that he could not use both hands simultaneously to successfully tie the knot around the escutcheon with his weight being extended. [See Affidavit of D. Downing, Exhibit G] He could not do so without falling off the sink.

The testimony and illustrations completed by Police Chief Mounts and Dustin Downing, along with the extensive analysis provided by Scott Roder clearly indicate that it is physically impossible to stand on the sink, balance oneself, and not fall while trying to reach across to the escutcheon. The fact that one might be able *to touch* the sprinkler is without merit and fails to address the significant difficulty and exhaustion experiences in attempting to successfully balance oneself while reaching across the room to pry an escutcheon from the ceiling in order to wedge a sheet in between the ceiling.

7. Defendants failed to render medial aid to Mr. Goldson when he was in obvious peril.

It is undisputed that Defendants owed a duty to Mr. Goldson to render medical aid. *Kulpa, supra,* at 854 [Doc 71-7, Page ID#3241]. The Sixth Circuit has stated "[I]n

the context of pretrial detention, the fault requirement for a due process violation may be satisfied by showing that state officials were deliberately indifferent to the basic medical needs of detainees." *Id.*, *Ewolski v. City of Brunswick*, 287 F.3d 492, 510 (6th Cir. 2002) (citing *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 850, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998)). "Deliberate indifference requires that the defendants knew of and disregarded a substantial risk of serious harm to the pretrial detainee's health and safety." *Estate of Owensby v. City of Cincinnati*, 414 F.3d 596, 603 (6th Cir. 2005) (quoting *Watkins v. City of Battle Creek*, 273 F.3d 682, 686 (6th Cir. 2001) (alterations omitted)).

As stated in *Heflin, et al. v. Stewart County, et al.*, 958 F.2d 709 (6th Cir. 1992), citing *Danese v. Asman*, 875 F.2d 1239 (6th Cir. 1989), "[I]t is one thing to ignore someone who has a serious injury and is asking for help; it is another to be required to screen prisoners correctly to find out if they needed help. Heflin had a 'serious injury,' and *his condition* **cried out for help**." [Emphasis added.]

Testimony from Defendants Schadle and Dunning indicate that they started CPR on Mr. Goldson but stopped. [Doc 75-5, PageID# 2706-08, Exhibit A Videos and BCI Interview Video] What is ironic is that they admit that they found Mr. Goldson unconscious and allegedly hanging like a "wet noodle" but they proceeded to place him in hand cuffs even though he showed no signs of struggle and was in obvious distress. [Doc 76-1, PageID#3094; See Doc 75-5; Exhibit A BCI Interview Video] Testimony from Defendant Huff indicates that he intervened and stopped the life-saving measures being applied by Defendants Schadle and Dunning. [Doc 75-5, PageID# 2706-08, Exhibit A Videos and BCI Interview Video] This is absolutely outrageous in light of the fact that

none of the Defendants present, Schadle, Dunning or Huff, were medical personnel trained to make this medical determination.

The testimony of Buddy Moore also creates more issues of fact in that it appears that he was called by Defendant Meyer on the death of Mr. Goldson *prior* to 02:58:24 [Doc 90-2, PageID#3607-10, Exhibits 1 and A (Exhibits J and K); Exhibit B filed separately].

Testimony from the arriving EMT, Sherry Ridner uncovered the fact that when they arrived by 03:10 on October 5, 2013, no active life-saving measures were being applied to Mr. Goldson by any of the Defendants. [Doc 74-17, PageID# 1846-7] Also, she noticed that Mr. Goldson still had the sheet around his neck and was hand cuffed. [*Id.*] As noted above, Defendants entered Mr. Goldson's cell at approximately 02:58:24. [Doc 76-1, PageID#3087] This means that within eleven minutes, Defendants had stopped life saving measures. Defendants have cited *Kulpa, supra.* The medical personnel on staff in that case applied CPR to the decedent from 8:56 until 9:23, or almost 30 minutes. *Id.* at 850. [Doc 71-7, Page ID#3238] As a minimum, Defendants should have a taken the sheet off of Mr. Goldson's neck, removed the handcuffs, and continued CPR until the emergency personnel arrived.

> As stated in *Jones v. Gusman*,
>
> "The federal rights at issue here, particularly with respect to the Constitution, establish minimum standards rather than ideals to which a correctional institution may aspire. These minimum standards are nonnegotiable. The Constitution guarantees that inmates, including convicted inmates and pretrial detainees who are presumed innocent, receive certain **minimum** levels of medical care and mental health care." *Burns v. Robertson County*, 192 F.Supp.3d 909 (2016) *citing Jones v. Gusman,* 296 F.R.D. 416, 469 (E.D. La. 2013).

In this case, Defendants failed to render prompt aid to Mr. Goldson and gave up on giving him proper emergency aid.

OHIO STATUTORY IMMUNITY DOES NOT APPLY

Defendants set forth their argument that Plaintiffs' pendant state claims must fail based upon their interpretation of O.R.C. § 2744.01 *et seq.,* Political Subdivision Tort Liability. Specifically, Defendants argue that Plaintiffs' state claims "fail as a matter of law" as set forth under O.R.C. § 2744.03. Defendants' assertions are without merit.

Specifically, the state pendent claims set forth in Plaintiffs' Amended Complain derive from the violations of the constitution of the United States. Further, O.R.C. § 2744.09 states,

> "**This chapter does not apply to, and shall not be construed to apply** to, the following:
>
> (E) ***Civil claims based upon alleged violations of the constitution of the United States***, except that the provisions of section 2744.07 of the Revised Code shall apply to such claims or related civil actions." [Emphasis added]

See *Longstreth v. Franklin County Children Services*, 14 F.3d 601 (6th Cir. 1993) See also *Craig v. Columbus City Schools*, 760 F.Supp. 128, 130 (S.D.Ohio 1991) ("Where a plaintiff brings a civil action based upon alleged violations of a federal statute" [the Ohio Political Subdivision Tort Liability Act] "does not apply.")

As was stated in *Wohl v. Cleveland Bd. of Educ.*, 741 F.Supp. 688 (N.D.Ohio, 1990). The plain express language of this statute shows that Defendants' argument (that Chapter 2744 makes them immune from a Plaintiffs' claims), on its face, is frivolous.

CONCLUSION

The facts set forth in this case clearly show disturbing conduct from the Brown County Defendants. The Defendants used excessive force on Mr. Goldson from the time he was hand cuffed at the Brown County Jail until his death. Further, that there are factual issues that significantly show that Mr. Goldson was restrained by leg shackles, handcuffs, and some type of neck collar when he was left in Cell 15 on the morning of October 5, 2013. It is highly probable that Mr. Goldson was hogtied in his cell when he died by strangulation. The direct and circumstantial evidence sets forth a web of deceit by Defendants Schadle, Dunning, Huff, McKinzie, and Meyer in that they uniformly have acted to conceal what happened to Zachary Goldson on October 5, 2013.

Throughout the events on October 5, 2013, Defendants continually fell constitutionally short in providing medical care to Zachary Goldson during his serious medical distress. They callously allowed him to die while they watched and waited for the life squad personnel to arrive and confirm his demise. Defendants are not entitled to Summary Judgment and their motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed on May 28, 2018. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *John J. Helbling*
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