IN THE DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM DAVIS, et al.,	)	
	)	
Plaintiffs,	)	1:21-cv-01773 GBW -EGT
	)	
v.	)	
	)	JURY TRIAL DEMANDED
KIRK NEAL, et al.,	)	
	)	
Defendants.	)	

OPENING BRIEF IN SUPPORT OF PLAINTIFF TURNER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT KRAFT

YOU ARE IN THE POSSESSION OF A CONFIDENTIAL FILING FROM THE DISTRICT COURT OF THE STATE OF DELAWARE.

If you are not authorized to view this document under Rule 5.1 or by Court Order, read no further than this page and contact the following person:

Daniel A. Griffith, Esq. (#4209)
Whiteford Taylor & Preston LLC
600 North King Street, Suite 300
Wilmington, DE 19801
(302) 357-3254

A public version of this document will be filed on or before June 6, 2025.

IN THE DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WILLIAM DAVIS, et al.,	)	
	)	
Plaintiffs,	)	1:21-cv-01773 GBW -EGT
	)	
v.	)	
	)	JURY TRIAL DEMANDED
KIRK NEAL, et al.,	)	
	)	
Defendants.	)	

OPENING BRIEF IN SUPPORT OF PLAINTIFF TURNER'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT KRAFT

/s/ Daniel A. Griffith
Daniel A. Griffith, Esq. (ID # 4209)
Whiteford, Taylor & Preston LLC
Courthouse Square
600 North King Street, Suite 300
Wilmington, DE 19801-3700
Telephone: (302) 353-4144
Email: dgriffith@wtplaw.com
Attorneys for Plaintiffs

Dated: May 30, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

STATEMENT OF NATURE AND STAGE OF PROCEEDINGS

Nature of the case: This case arises from the systematic, appalling, and unconstitutional abuse of thirty-four men incarcerated or detained in Sussex Correctional Institute during 2020 and 2021 by correctional officers. This case arises because Warden Mears and Deputy Warden Beck encouraged such abuse by adopting unconstitutional policies and practices, knowingly failed to stop the abuse and promoted rather than disciplined abusive correctional officers.

Stage of proceedings: On July 21, 2022, Plaintiff Charles Turner ("Turner"), along with other victims, filed a Second Amended Complaint, which defendants timely and unsuccessfully moved to dismiss. On August 17, 2023, the Court (J. Ambro) granted defendants' motion as to the entirety of Count VII based on the law of dignity and partially granted dismissal of certain claims but denied the balance of the Motion. D.I. 49 and 50.

On September 19, 2023, Turner, along with other victims, filed a Third Amended Complaint ("TAC") to conform the pleading to the Court orders. D.I. 60. On December 1, 2023, Defendants – all of whom are represented by the same lawyers – filed an Answer. D.I. 69.

On October 15, 2024, this Court adopted a scheduling order (via an email adopting the parties' stipulation, D.I. 260) that governed the litigation of the TAC and required fact and expert discovery to be concluded by March 31, 2025 and motions for summary judgment to be filed by May 30, 2025. The parties timely concluded discovery.

On December 16, 2025, the parties are required to file a joint proposed pretrial order. On December 23, 2025, the Court will hold a pretrial conference beginning at 1pm.

On January 12, 2026, at 9:30 am, there will be a twelve-day trial before a jury. *See* D.I. 190 at 10.

By this motion, Turner seeks partial summary judgment against Defendant Kraft on TAC Count I – Excessive Use of Force. Turner will be pursuing the remainder of his claims against

Defendant Kraft and all his claims against the other Defendants, as well as a finding of damages on all claims, during the January 2026 Trial.

SUMMARY OF ARGUMENT

As explained below in Section A, excessive force claims by pre-trial detainees such as Turner arise under the Fourteenth Amendment and are adjudicated based on an ***objective*** standard of reasonableness. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015); *Colburn v. Upper Darby Township, Inc*. 838 F.2d. 663, 668 (3d Cir. 1988). Pre-trial detainees may not be punished in any way. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982) (they are "entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.")

As explained below in Section B, the indisputable evidence set forth in the appended Statement of Facts ("SOF") establishes that CO Kraft stormed up to Turner and sprayed him in the face with pepper spray from close range despite the fact that Turner posed no threat to CO Kraft or anyone else. CO Kraft made no effort whatsoever to avoid the use of force. Quite the contrary, CO Kraft deliberately sprayed Turner from inches away and thus inflicted maximum harm. CO Kraft's use of force against Turner was deemed to be excessive by the Delaware Department of Corrections ("DOC"), which disciplined him for his misconduct.

Given the evidentiary record, this motion falls into a narrow category governed by *Scott v. Harris*, 550 U.S. 372, 380 (2007). There, the Supreme Court recognized that even in fact-intensive cases, summary judgment should be granted if one party's story is "blatantly contradicted by the record, so that no reasonable jury could believe it . . .." *Id*. No reasonable jury could find in favor of CO Mitchell. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986) (summary judgment should be granted if the standard for a directed verdict is met). Turner

respectfully requests that this Court grant his F.R.C.P. 56 (a) motion for partial summary judgment against CO Kraft on Count I – Excessive Force.

STATEMENT OF FACTS

Turner's motion relies exclusively on indisputable facts, which are set forth here and in the appended Statement of Material Facts That Are Not In Dispute.

1. In 2017, Defendant Joseph Kraft joined the Delaware Department of Corrections ("DOC"). Joint Appendix ("J.A.") [JA_02601] (Kraft Tr. 60: 13-17.) He attended the CEIT academy that year and graduated as a correctional officer. [JA_02601] (Kraft Tr. 60:18-24, 60:21, 61: 1-7.)

2. Defendant Kraft admitted that he has been trained regarding the permissible use of force. [JA_02594] (Kraft Tr. 7:2-5.) He admitted that he knows that he has an obligation to use only reasonable force on the job, which means "reasonable under the circumstances. [JA_02597, JA_02599] (Kraft Tr. 16: 10-13, 18: 20-24; 18-24, 19:1-24). He admitted that he knows he has an obligation to de-escalate situations when possible. [JA_02599] (Kraft Tr. 17: 18-21). He admitted that he had an obligation to use the least amount of force possible. [JA_02600] (Kraft Tr. 23: 8-24, 24:1-9). He admitted that he knows several means of de-escalation that can be used in order to use less force, such as removing himself from the situation or bringing in another staff member. [JA_02600] (Kraft Tr. 24:10-24). He admitted that the purpose of de-escalation is to prevent or minimize the use of force. [JA_02600] (Kraft Tr. 25: 1-4).

3. Defendant Kraft has admitted that he has been certified on the use of OC spray. [JA_02594] (Kraft Tr. 7: 6-17). He admitted that he has seen training slides on OC spray that state the minimum range is three feet. [JA_02594, JA_02595] (Kraft Tr. 8:2-11, 9: 2-4, 15-17, 10:7-18); *see also* (DOC_SCI_0041931). He admitted that he had been trained that using OC spray closer

than three feet may cause hydraulic needling, although he was ignorant about what that actually was. [JA_02595] (Kraft Tr. 12: 8-12). He admitted that if it is "possible" to stand three feet or further before spraying, you should do so. [JA_02595] (Kraft Tr. 13: 20-23).

4. Defendant Kraft has only worked at SCI and was working there during the time period of the lawsuit. (Answer, Dkt. 69 at ¶ 55); [JA_02601] (Kraft Tr.60: 21-23).

5. On or about February 24, 2021, Plaintiff Turner, a pretrial detainee, was present at SCI and involved in an incident. (Answer, Dkt. 69 at ¶ 279); [JA_00431] (DOC_SCI_0030392).

6. Contemporaneous video produced by DOC pursuant to a subpoena captures the encounter between pretrial detainee Turner and correctional officer Joseph Kraft on that day. [JA_03286] (Clip 332_01 0:00 – 1:55). The video shows detainee Turner calmly handing in paperwork. Defendant Kraft walked up behind Turner and pepper sprayed him in the face from mere inches away. As Defendant Kraft continued to spray directly in Turner's face, he twisted Turner around and forcibly threw him to the ground. *Id*.

7. On February 24, 2021, Defendant Kraft electronically filed a disciplinary report alleging Turner refused to lock in, refused to obey an order and engaged in disrespect and active resistance towards staff. [JA_00441] (DOC_SCI_0030396). This disciplinary report describes the specifics of the incident in a manner that does not conform to the video evidence. *Compare* id. to [JA_03286] (VideoClip332_01). Due to the disciplinary report, Turner was transferred to the Transitional Housing Area and kept there until March 2, 2021. (Answer, Dkt. 69 at ¶ 294.)

8. On March 1, 2021, Officer Matthew Long held a disciplinary hearing and found Plaintiff Turner not guilty of a disciplinary infraction. (Answer, Dkt. 69 at ¶ 296); [JA_00443] (DOC_SCI_0030398). Officer Long expressly held "[v]ideo evidence of the incident does not support the officers report." *Id*.

9. During his deposition, Defendant Kraft admitted that he twice sprayed Turner in his face. [JA_02612, JA_02613] (Kraft Tr. 116:15-24, 117:1-7). He also admitted he was disciplined for using excessive force against Turner. [JA_02603] (Kraft Tr. 73:6-8, 14-15). He also admitted he previously had been disciplined for his treatment of a different person. [JA_02603, JA_02604, JA_02605] (Kraft Tr. 73: 16-24, 74:1-24, 75:1-13).

10. Despite the finding by Long, nobody investigated Defendant Kraft's use of force against Turner until Turner filed his lawsuit. At that time, Internal Affairs investigator Clark investigated the incident and concluded Kraft used excessive force against Turner.

Q. And so you – you found that there had been an excessive use of force?

A. Yes; in this instance.

Q. Okay. And the – the excessive use of force was by Corporal Kraft.

A. That's correct.

[JA_02169] (Clark Tr. 125:2-9). *See also* [JA_02168, JA_02169, JA_02172, JA_02173, JA_02174] (Clark Tr. 124:12-24, 125:1; 129: 15-24, 130: 1-24, 131:1-6.)

11. During her deposition, Commissioner Taylor admitted Defendant Kraft used excessive force against Plaintiff Turner:

Q. And Kraft is now - it - it was determined by the Department of Corrections that Kraft had used excessive force; right?

A. Correct.

Q. And he was disciplined for that.

A. Correct.

[JA_03113] (Taylor Tr. 79:19-24.)[1]

12. In addition to Turner, Plaintiff Ray has alleged Joseph Kraft used excessive force against him. Third Amended Complaint ¶ 806.

I. ARGUMENT

A. The Supreme Court Requires That Any Force Used by Correctional Officers Against Pretrial Detainees Be Objectively Reasonable.

F.R.C.P. 56 (a) and the Supreme Court cases applying it hold that summary judgment cannot be granted if a reasonable jury could return a verdict for the nonmoving party. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). The non-moving party receives the benefit of having all facts viewed in the light most favorable to him, and having all inferences drawn in his favor. *Gonzalez v. Sec'y of Dep't of Homeland Sec.*, 678 F.3d 254, 257 (3d Cir. 2012). But summary judgment may be granted when the opposing party fails to rebut – credibly - the record evidence. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

The body of relevant record evidence that should be considered "material" and "relevant" turns on the substantive law that controls the litigation. *Graham v. Connor*, 490 U.S. 386, 394 (1989) (applicable body of law turns on "the specific constitutional right allegedly infringed by the challenged application of force.") Excessive force claims by pre-trial detainees such as Turner arise under the Fourteenth and Eighth Amendments and are adjudicated based on an objective standard of reasonableness. *Kingsley v. Hendrickson*, 576 U.S. 389 (2015) (applying *Hudson v. McMillian*, 503 U.S. 1, 4 (1992) factors to pretrial detainees); *Colburn v. Upper Darby Township, Inc*. 838 F.2d. 663, 668 (3d Cir. 1988) (pretrial detainees entitled to no less protection than the Eighth Amendment protections afforded to sentenced inmates); *Kost v. Kozakiewicz*, 1 F.3d 176,

[1] Despite having used excessive force against Turner and being disciplined for doing so, the DOC assigned Kraft to train other correctional officers on appropriate use of force. (Taylor Tr. 80:1-5.)

188 n. 10 (3d Cir. 1993). Pre-trial detainees may not be punished in any way. *Youngberg v. Romeo*, 457 U.S. 307, 321-22 (1982) (they are "entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.")

In *Kingsley v. Hendrickson*, 576 U.S. 389 (2015), the Supreme Court considered the standard that should be applied to claims that prison officials used excessive force against pretrial detainees in violation of the Fourteenth Amendment's Due Process clause. There, the officers argued that the standard should be whether they were subjectively aware that their use of force was unreasonable. The detainee argued that the officers' state of mind about whether their use of force was excessive was irrelevant because the proper standard was an objective standard only. *Id*. at 393-394. The Court granted *certiorari* to review the dispute because the circuits had split on whether the standard was subjective or objective. *Id.* at 395.

The Court explained there are two separate state-of-mind questions involved in excessive force claims. *First*, did the officer intend to use force in respect to his state-of-mind "with respect to his physical acts – i.e., his state of mind with respect to the bringing about of certain physical consequences in the world." *Id.* at 395. That was not in dispute in the *Kingsley* case and is not in dispute in this case. *Second*, what is "the defendant's state of mind with respect to the proper interpretation of the force (a series of events in the world) that the defendant deliberately (not accidentally or negligently) used." *Id*. at 396. As to that second state of mind, the Court held that the officer's own interpretation of whether the force was needed was irrelevant and need not be considered.

Instead, the court needs to apply an objective standard. *Id*. at 396-397 ("[i]t is respect to this question that we hold that courts must use an objective standard. . . . a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable.") The

Court held that "if the use of force is deliberate – i.e., purposeful or knowing – the pretrial detainee's claim may proceed." *Id*. at 396.[2]

The Court explained that a "court (judge or jury) cannot apply this standard mechanically." *Id*. at 397. Citing to *Graham v. Connor*, 400 U.S. 386, 396 (1989) and *Bell v. Wolfish*, 441 U.S. 520, 540, 547 (1979), the Court set forth a list of factors that it did not consider to be "exclusive": (1) relationship between need for force and amount of force used, (2) any effort made by officer to avoid or temper the amount of force used, (3) severity of the security problem prompting the use of force, (4) whether plaintiff actively resisting, and (5) extent of plaintiff's injury. But the Court cautioned "[w]e mention these factors only to illustrate the type of objective circumstances potentially relevant to a determination of excessive force." *Id*. at 397.

The "extent of injury" factor should be given limited weight and cannot be used as a proxy for the 'extent of force' factor. *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010) ("[i]njury and force . . . are imperfectly correlated, and it is the latter that ultimately counts.") *See also Hudson v. McMillian*, 503 U.S. 1, 4 (1992) (use of excessive force may be unconstitutional even if the inmate does not suffer severe injury). The Third Circuit has repeatedly cautioned against relying too heavily on the lack of, or limited extent of, plaintiff's injury as a factor, holding that "there is no fixed minimum quantum of injury that a prisoner must provide that he suffered through objective or independent evidence in order to state a claim for . . . excessive force." *Brooks v. Kyler*, 204 F.3d 102, 104 (3d Cir. 2000). *See also Smith v. Mensinger*, 293 F.3d 641, 649 (3d Cir. 2002) (*de minimis* injuries do not necessarily establish *de minimis* force); *Robinson v. Danberg*, 673 Fed.Appx. 205,

[2] The *Kingsley* holding "abrogated the portion of *Fuentes* [*v. Wagner*, 206 F.3d 335 (3d Cir. 2000)] that applied the Eighth Amendment's malicious-and-sadistic standard to pretrial detainees." *Jacobs v. Cumberland County*, 8 F.4th 187, 194 n.5 (3d Cir. 2021).

210 (3d Cir. 2016) (minor injuries suffice); *Aruanno v. Maurice*, 790 Fed.Appx. 431, 434 (3d Cir. October 30, 2019).

B. The Indisputable Facts Prove Objectively That CO Kraft Used Excessive Force Against Turner.

Here, the indisputable facts prove that CO Kraft used pepper spray against Kraft despite the utter lack of any threat from Turner. Specifically, as shown in the contemporaneous video, pretrial detainee Turner was calmly handing in paperwork when CO Kraft walked up to him from behind and pepper sprayed him directly in the face. *See* Statement of Facts ("SOF") at ¶ 6. CO Kraft did so despite having been trained to de-escalate any situations and to refrain from using pepper spray at a distance of less than three feet due to the dangers of hydraulic needling. SOF at ¶ 2-3.

After the incident, CO Kraft filed a false disciplinary report against Turner, which led him to being transferred. SOF ¶ 7. The DOC investigated the incident and found that Kraft had lied on his incident report: "[v]ideo evidence of the incident does not support the officers report." SOF ¶ 8.

DOC Internal Affairs investigator Clark who looked into the incident after Turner filed his lawsuit admitted during his deposition that CO Kraft used excessive force against Turner:

> Q. And so you – you found that there had been an excessive use of force?
>
> A. Yes; in this instance.
>
> Q. Okay. And the – the excessive use of force was by Corporal Kraft.
>
> A. That's correct.

SOF ¶ 10.

Likewise, the present DOC Commissioner admitted that CO Kraft used excessive force against Turner:

Q. And Kraft is now - it - it was determined by the Department of Corrections that Kraft had used excessive force; right?

A. Correct.

Q. And he was disciplined for that.

A. Correct.

SOF ¶ 11.

CO Kraft admitted during his deposition that he was disciplined for using excessive force against Turner and had previously been disciplined for his treatment of another inmate. SOF ¶ 9.

Using pepper spray against a pretrial detainee who does not pose any form of threat has been held to be objectively unreasonable by the Third Circuit. *Spada v. Houghton*, 2024 WL 4784382 (3d Cir. November 14, 2024). And the DOC itself has deemed CO Kirk Neal's use of force to be excessive. *See Clark v. Clabaughh*, 20 F.3d 1290, 1294-95 (3d Cir. 1994) (police report may be admissible if offered ***against*** members of the department that prepared it). These indisputable facts would prevent any reasonable jury from accepting whatever story CO Kraft concocts in his Opposition to this motion.

CONCLUSION

Turner respectfully requests that this Court grant partial summary judgment against CO Kraft for his use of excessive force. This case falls into the narrow category of cases governed by *Scott v. Harris*, 550 U.S. 372, 380 (2007), which recognizes that even in fact-intensive cases, summary judgment may be granted if one party's story is "blatantly contradicted by the record, so that no reasonable jury could believe it . . .." *Id*. Here, CO Kraft used pepper spray against Turner despite the utter lack of any threat from Turner. And he did so at a distance that maximized the harm to Turner. Such abusive misconduct is objectively unreasonable and clearly violates the law.

Youngberg v. Romeo, 457 U.S. 307, 321-22 (1982); *Spada v. Houghton*, 2024 WL 4784382 (3d Cir. November 14, 2024).

/s/Daniel A. Griffith
Daniel A. Griffith, Esq. (ID # 4209)
Whiteford, Taylor & Preston LLC
Courthouse Square
600 North King Street, Suite 300
Wilmington, DE 19801-3700
Telephone: (302) 353-4144
Email: dgriffith@wtplaw.com
Attorneys for Plaintiffs

Dated: May 30, 2025