2/5/19

No. 18-1063

In the
Supreme Court of the United States

JOHN COTTAM,
Petitioner

v.

DOUGLAS PELTON,
Respondent

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The
Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED:

This case highlights the significant extent of protection of law enforcement officers engaged in criminal activities against innocent citizens.

If left stand, the rulings of the lower courts will not only entrench, but greatly expand an already pervasive culture of corruption: One so deep that police themselves are the ones who coined the term "testilying".

1. The well documented criminal fabrication of a felony charge of eluding (car chase) against an innocent citizen has been protected at all levels of law enforcement in the State of Florida. This protection, in this case, so far, extends fully to the Eleventh Circuit. The question here is: Whether items of evidence showing a law enforcement official fabricated multiple components of a felony charge against a citizen are "material" in terms of rule 56 relative to a false arrest complaint, and if so, does this preclude summary judgment per Federal rule 56.

2. Whether the presence, or not, of any actual "probable cause" in a fabrication case is a factual matter, requiring understanding of the totality of the case, and therefore a function of the trier of facts (jury), not the Federal Judge.

QUESTIONS PRESENTED – Continued

3. Whether the presence of any minor "arrestable offense" (such as speeding) though not acted upon by an Officer, is a sufficient to purge the taint of an illegal fabrication of a separate felony charge.

An illustrative example: A police officer approaches a panhandler. The officer does not arrest the man for panhandling (though he can), but instead fabricates a felony cocaine dealing charge, gets caught lying about and planting the cocaine, and the case is dropped. The man, after being jailed, enduring great expense and anguish, brings a false arrest claim in Federal court. Even though the person "could have been arrested" for panhandling, is that fabrication of the separate felony considered a false arrest under Constitution or federal laws? In other words, can an officer arrest a person for any fabricated charge (as long as the person "could have been arrested" for a minor charge (but was not)), without any liability in Federal court even when the fabrication of the felony is proven or claimed?

4. Whether deliberate fabrication of a felony charge by an officer, and subsequent jailing (deprivation of liberty) of the innocent citizen (for *any* amount of time, even one night), and suffering a long, unsuccessful prosecutorial process due to the fabrication, constitutes a malicious prosecution under the Fourth Amendment, Fourteenth Amendment, or Section 1983.

PARTIES TO THE PROCEEDING:

All parties to the proceeding are named in the caption of the case as recited on the cover page.

CORPORATE DISCLOSURE

There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

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RULES/ STATUTES:

Jurisdiction and Procedural History

This case was brought under 42 USC § 1983, the Fourth Amendment and Florida tort law. The Courts below have jurisdiction pursuant to 28 U.S.C. § 1331 and 1343. The Supreme Court has jurisdiction over Lower courts under USC Title 28. Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

Cottam (Petitioner) filed suit against Pelton and others on /2016. The Operative complaint was filed 9/12/2016. Pelton filed a motion to dismiss which the DC denied on 1/12/2017, dismissing counts against all defendants except Pelton in his personal capacity. Leaving: False Arrest (Count I), malicious prosecution (II), intentional and negligent infliction of emotional distress (Counts IV and V). Pelton filed for summary judgment 10/27/2017, with Cottam filing to oppose. The DC's filed judgment 12/8/2017(Oral hearing denied).

Cottam filed appeal 1/8/2018. The Eleventh Circuit refused hearing en banc 9/6/2018, affirmed on 9/10/2018 (per curiam, unpublished), also refusing oral arguments.

Constitutional and Statutory Provisions

The Fourth Amendment provides: "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the place to be searched, and the persons or things to be seized."

The case is brought also under 42 U.S.C. Section 1983.

STATEMENT OF THE CASE

The Lower Courts have stood prevailing law, precedent, and rules on their head. They purposely denied obvious issues of dispute, engaged in extreme bias, and in doing so, completely ignored one of the most important rules of the Federal courts – rule 56, all while using false legal precedent.

"Supporting" law enforcement is necessary in any "free" society. However, it is imperative we do not support "lying" officers. Too many times, officers' "stories" are proven lies, and far too often States are derelict in prosecuting, even when the evidence is clear. Such is this case.

Anyone who believes citizens should be free as possible from corruption of law enforcement should carefully read the disturbing story that follows. If, however, the reader agrees with protecting lying officers, then no further true reading is necessary.

As disturbing as this story is, what is also disturbing is how the Lower courts protected Pelton's activity. In protecting Pelton, the Courts below ignored clear rules and well established law. They: 1. Ignored Rule 56's intent. There is clear evidence of multiple lies by Pelton, yet the courts below in not one instance gave deference to Cottam as they, by their own rule, are mandated, 2. Weighed in on Pelton's credibility, when they had irrefutable documentation of him lying, therefore claiming that everyone else in the case was lying, even eye witness,

and Pelton's own colleagues, 3. Refused oral arguments, 4. Showed extreme bias, 5. Used false legal precedent (**from an Eleventh Circuit case**), as a major reason for denying jury trial, 6. Used "sovereign immunity" improperly (and in a case in which Pelton was removed in his official capacity), 7. Completely ignored eye-witness testimony (as well as Pelton's own police colleagues and their own documentation), and 8. Acted as trier of facts (a function of the jury) with respect to "probable cause", without considering the totality of the case.

This case has very important implications nationally, including the role of the Federal Courts in protecting thousands of innocent citizens against criminally corrupt Law Enforcement. This also raises the question of why the Federal Courts have apparently taken a shocking position of "supporting" law enforcement officers who have been caught red handed in crimes.

Factual Background

Pelton, (Officer, Wildwood Police), after stopping Cottam for speeding, and knowing Cottam was not eluding (but Pelton being angered significantly over Cottam crossing paved railroad tracks that had a "No Trespassing" sign), fabricated a felony eluding charge against Cottam.

After an angry tirade: "What the fuck are you doing on the tracks? Can't you see the fucking sign!? What kind of fucking idiot are you!? What kind of fucking drugs are you on !! " etc., Pelton realized he had a predatorial opportunity to engage in criminal behavior, exclaimed: "I know what I'm gonna do with you, you're getting an eluding charge!". Cottam was

incredulous and stated he wasn't eluding. Pelton responded: "That's the way it's gettin' written up!". Cottam spent the night in jail and several months-long prosecutorial process.

Pelton, needing to paint a picture of a **true** car chase, presented numerous documented fabrications in charging documents and deposition (criminal) (App'x D,E). His story was refuted entirely by copious evidence and witnesses, including Pelton's own pictures, deposition, colleague (Smalt), call log (CAD report), call supervisor (Tanner), call audio, physical conditions, and eyewitness (Sarah Akay).

Cottam refused plea bargain. The SA was present for all depositions and documentation showing Pelton fabricated every major component of the eluding case, resulting in abandonment of the case. However, rather than charging Pelton with perjury, etc., the SA remanded to a lower court as Reckless Driving. Cottam refused to settle and filed a motion to dismiss. **The SA answered with a demurer**. The judge naturally threw the case out.

Cottam attempted to bring Pelton to justice, but the Wildwood Police, FDLE, and SA's office refused to engage in anything close to a normal investigation. Consistent with complete obstruction of justice, they all interviewed not one person when "investigating".

The copious evidence Cottam brings precludes summary judgment based on Rule 56(a), substantiating claims of false arrest, malicious prosecution, and intentional infliction of emotional distress.

Reasons for Granting the Petition:

I. The Courts Below Failed To Consider Facts In The Light Most Favorable To Cottam,Presenting Opinions Inconsistent With Supreme Court And Multiple Circuits' Precedents

There are over a dozen genuine issues of dispute. As per rule 56(a), "no disputed genuine issue of material fact", **any** genuine issue precludes summary judgment. Therefore, one must first determine the relevant facts.

> "**The first step** in assessing the constitutionality of Scott's actions **is to determine the relevant facts**. As this case was decided on summary judgment, there have not been factual findings by a judge or jury, and respondent's version of events (unsurprisingly) differs substantially from Scott's version. ....courts are required to view the facts and draw reasonable inferences "in the light most favorable to the party opposing...." *United States v. Diebold, Inc.*,

The framework for evaluating the first clause of Rule 56(a) involves six summary judgment tenets of review (SJTOR) (where the emphasized ***musts*** indicate the *lack of judicial discretion permitted*): See Appendix. All six tenets were violated.

1. **All-Issues/Facts:** All ("each/every", not just "some") factual issues ***must*** be considered/ discussed.

2. **Whole-Record:** The entire record ("whole set/totality of circumstances", not just a "subset"), ***must*** be considered.

3. **In-Context:** All issues ***must*** be considered in holistic relationship; **patterns may emerge**.

4. **Nonmovant-Trumps-Movant:** Tenets 1–3 ***must*** be interpreted in the light most favorable to nonmovant.

5. **All-Inferences:** All reasonable/justifiable/logical/legal inferences from tenets 1–3 ***must*** be interpreted favorably to nonmovant.

6. **Light-Burden:** For tenets 4–5, nonmovant bears the undemanding requirement of production only of favorable facts (and law)—i.e., *de minimus* proof/persuasion. ***All*** **fact/credibility-finding** ***must*** **be reserved for the jury at trial,** ***none*** **for the judge at summary judgment.**

In a recent Supreme Court case upholding qualified immunity: "Police officers are entitled to qualified immunity **unless existing precedent squarely governs the specific facts at issue**," *Kisela v. Hughes*, 138 S. Ct. — (2018)(per curiam). Our history is replete with precedent agreeing fabrication of charges is unconstitutional. The instant case, being one of fabrication, therefore does not allow for qualified immunity based on the facts in evidence.

"The party opposing a properly supported motion for summary judgment may not rest upon the mere allegations or denials of [his] pleadings, but rather must set forth specific facts showing there is a genuine issue for trial." *Bouchat v. Baltimore Ravens Football Club, Inc.*,346 F.3d 514, 525 (4th Cir. 2003) (quoting Fed. R. Civ. P. 56(e)).

Cottam presented many such specific facts (with clear documentation). They have simply been ignored.

ON-THE-RECORD EVIDENCE RAISES IMPORTANT QUESTIONS CONFLICTING WITH RELEVANT DECISIONS OF THIS COURT

Abbreviating most (not all) evidence shows (as opposed to the DC deeming "scant"), it is copious and robust, raising numerous issues of dispute of material facts:

Pelton Fabricated Every Major Component Of The Eluding Charge:

A. Fabricated: "Another Officer Came From The Opposite Direction And He Stopped Then."

(*See Pelton Deposition excerpts Appp'x Pg. 36*):

"Q. And did he [Cottam] at some ...time stop his vehicle?

A. "***There was another patrol officer coming from the opposite direction... And yes he stopped then.***"

See his Depo App'x Pg. 36, 37, and 38 to understand Pelton's position (not mentioned in Pelton's charging document).

Pelton claimed this scenario (another car blocking Cottam's path) also in his Response to Cottam's Request For Admissions (RFA) *and* in Interrogatories (Appendix Pg. 33,34).

Just one example of this (RFA's item 45):

"45. The officer in the car that got in front of Plaintiff filed a report regarding this act of heading the Plaintiff off (hereafter referred to as "this act").

RESPONSE: "Denied. Sgt. Pelton prepared the arrest report. ...Sgt. Pelton does not know why Plaintiff decided to stop ...or how far Plaintiff was willing to go to elude law enforcement, and therefore cannot speculate as to whether Plaintiff stopped **due to approaching law enforcement vehicles**."

Pelton's charging document made no mention of another car(s) "approaching" while Cottam was in motion. Why not?

Officer Smalt (the ***first to arrive*** from the opposite direction **well after Cottam was stopped**) stated (*Smalt Depo App'x Pg.41*): "Officer Pelton ...already had him out of the car." "He [Cottam] was already stopped". And App'x Pg.42: "I just showed up to make sure it was OK."

The evidence shows no reason for Cottam to stop except immediately upon seeing Pelton's lights when Pelton eventually caught up to him. **There were no "approaching" vehicles. This is the exact opposite of "eluding", and Pelton's claims.**

B. Fabricated Cottam "Made An Extremely Abrupt, Reckless Turn,.."

In Pelton's deposition (App'x Pg.39) he states: "He [Cottam] was accelerating... to the point **where**

he made his extremely abrupt, reckless turn onto Oxford St."

This "reckless turn" was ***physically impossible*** due to four material facts: i. Cottam's car is a large car (Lexus LS460), ii. the turn at Oxford St from SR 301 is a tight, right angle turn, iii. the pavement was wet (it was *raining*) and iv. Cottam's tires were almost bald (changed three months later).

Cottam knew he had to take the corner ***Slower*** than normal, and did so.

C. Fabricated He Was "... Calling Out A Vehicle Was Not Stopping".

It is standard for an officer to be on the radio in such an emergency. Pelton claimed in Deposition (App'x Pg. 37): "*I was calling it out*", and: "I was calling out a vehicle was not stopping."

Cottam knew this was a lie: Pelton exclaimed, after his tirade: "I know what I'm gonna to do with you, you're gettin' an eluding charge!".

From Ms. Tanner's depo (asked if any call was made *before* Cottam's car was stopped) (App'x Pg.47): "No there is nothing listed...", and if Pelton asked for assistance "No it's not listed." And: "From this record ...this was a traffic stop" **[not eluding]**.

And in Smalt's deposition (App'x Pg. 42: "..I just showed up to make sure it was OK." (no lights and siren).

Pelton claims his and Officer Smalt's testimony do not conflict, when they do in multiple ways. Pelton claimed Smalt's testimony agreed with his version of the "call", but seeing Smalt's *actions*, documented in his deposition, this is simply not true. Clearly, Smalt

responded to **some** call, **but not an emergency active eluder call**; it was to the call **after the stop** (See CAD report – **The call Cottam was stopped came in close to a minute after the stop: at 4:24pm**). Pelton did not mention this ***very important*** "..calling out" on his charging document (*See Original Charge documents App'x E*).

The CAD Report, audio, Officer Smalt's and call supervisor's (Ms. Tanner) deposition all prove **there was no "calling out" a car was "not stopping".**

D. Fabricated He Had His Siren On.

An officer would naturally have their siren on with an eluder. Pelton was forced to claim this; Fl. statute 316.1935 Subsection (2) **requires** "lights **and** siren". It would make no sense to "chase" someone at high speed without a siren on.

Pelton referenced lights **and** siren in his charging document Pg. 1: "...I initiated a traffic stop by activating... lights **and siren**...", and in deposition (criminal) App'x Pg 35:

"Q. And when it passed you....

Q. *Did you turn your lights **and siren** on?*

A. ***I did.***"

From Officer Smalt's deposition regarding hearing a siren: "I can't say that I did. If they're on the radio you can hear them..."

The call audio shows **there was no siren**. Eyewitness testimony shows there was **no siren.** The SA also charged Cottam with 316.1935 Subsection (1) – **no siren**.

E. Fabricated He Saw Cottam Looking In His Rear View Mirror

Pelton stated in deposition and charging document he saw Cottam looking at him in the rear view mirror. Pelton now admits he couldn't see Cottam looking in his rear view mirror. The eluding charge requires proof the eluder made a **willful decision** to run. Since Pelton and Wildwood police refuse to provide video from him (denying he had a camera, when he did), this was the only "proof" Pelton could bring to this requirement. Pelton even took a picture of Cottam's car, showing a rear shade: You cannot even make out Cottam's rear head rests.

From Pelton's deposition (App'x Pg. 36): "... he was looking in his mirror ...looking at the vehicle with the lights and siren."

Pelton stated he saw this from 100 feet at high speed (he claims Cottam "accelerated" **for a mile** starting from 67 MPH). Cottam says he was slowing down almost the entire time. Pelton's own pictures, nature of Cottam's car, **and eyewitness soundly refute Pelton's claims**.

Pelton has changed his original story from "rear view mirror" to "side" mirror. Cottam only saw Pelton in his side mirror at the time of the stop on the tracks, when Pelton pulled to the left. Optically, it is ***impossible*** to see someone looking in their side mirror. You can prove this yourself, even when stopped, at close distances.

F. Pelton's Claim "Cottam's Path Was Unreasonable" Is Obviously Untrue.

Cottam's path was exactly the opposite: it was the shortest path home. Also, why would an officer supposedly chasing an eluder discuss/question their path?

Cottam needed to get to the I-75. The shortest distance to I-75 through Wildwood is via roads intersecting U.S. 301. Cottam missed his turn going home on the 301 (noted by the DC in Undisputed Facts). When stopped, Cottam was heading directly toward the I-75 on the shortest path. Anyone familiar with the area (like Pelton) would know this. The situation was of someone who knew exactly where they were. Again, why would Pelton ask this, **before "deciding" to give an eluding charge**?

G. Fabricated Cottam Told Him He Was Lost".

This was an attempt to paint a picture Cottam was blindly "running". Cottam informed Pelton he knew exactly where he was and was going toward the I-75 (confirmed by Pelton's charging doc.). Cottam never said he was lost.

In his charging document: "I asked Cottam if he knew how to return to... where he missed his turn, ...he stated he was able to ...". Why would an officer claiming someone is eluding ask this?

Rather than detail most other issues in dispute, some (not all) are listed below. The evidence documenting each can be seen in Cottam's response to Pelton's motion.

H. Fabricated He "Never Lost Sight Of.." Cottam.

I. Fabricated Cottam "Accelerated" Away From Him. Refuted by eye witness, mathematics.

J. Fabricated There Was Not Any Other Traffic On The Road. Refuted by eye witness.

K. Fabricated He Didn't have To Pass Any Cars. Refuted by eye witness.

L. Fabricated Cottam "Disregarded The Posted Signs..". Refuted by Pelton's own pictures.

Obviously, there are ***numerous*** genuine issues of material fact in dispute, precluding summary judgment.

II. The Courts below Did Not Follow Rule 56 In Spirit Or Application.

The standard of review in summary judgment is clear: The courts *must*: "view the facts in the light most favorable to the non-moving party and draw all reasonable inferences in its favor."

Given the multiple documented issues in (I) above, the Courts below did not apply rule 56 properly. **In truth, it was applied in reverse; The facts were taken in the light most favorable to Pelton**. "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences ... drawn in his favor." *Anderson v. Liberty Lobby, Inc.*, 477 U. S. 242, 255 (1986).

Per Rule 56(a), summary judgment can be based *only* on the court's finding that, **both**: 1. there exists **no** *disputed genuine* issue of *material* fact; **and** 2. in applying law to the *undisputed facts*, one party is *clearly* entitled by law to judgment.

"In ...summary judgment motion, a court must view the evidence in the light most favorable to the non-moving party and give that party the benefit of all reasonable inferences that can be drawn from the evidence." *Burton, 707 F.3d at 425.*

"If the record reflects the existence of any genuine issue of material fact, **or the possibility of any issue, or if the record raises even the slightest doubt that an issue might exist, summary judgment is improper.**" *Snyder v. Cheezem Dev. Corp.*, 373 So.2d 719, 720 (Fla.2d 1979).

The evidence, when taken in the light most favorable to Cottam, clearly documents criminal acts violating constitutional rights, and a jury could quite easily reasonably conclude Pelton fabricated a felony.

III. The Lower Courts Showed Significant Bias toward Pelton and Against Cottam.

The DC stated: ":...it sees scant evidence that the officer here lied. Because he could have charged Cottam with several offenses – including fleeing and eluding – on the facts Cottam admits, there was no reason for Pelton to lie.".

Yet, as shown above, and inexplicably not discussed by the Lower Courts, there is copious, irrefutable evidence **in the Courts' hands that Pelton *did* lie**.

Their opinions belie the evidence, improperly assess credibility, and are therefore extremely biased. Issues of such "lies" are a function of the jury.

The DC weighing in on the credibility of Pelton should have been enough for the Eleventh Circuit to see the bias permeating this case. They refused oral arguments. There is nothing Cottam "admits" in any "undisputed" facts allowing fabricating an eluding charge. The relevance and truth of the "undisputed" facts is disputed as well.

These statements are significantly troubling since Cottam clearly indicated in various documents that Pelton blew up in anger for Cottam crossing railroad tracks that had **one** (small/obscured) "no trespassing" sign. To claim Pelton had "no reason ...to lie" is one of many instances where the DC showed extreme bias, refusing to take the facts in the most favorable light of Cottam.

"Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge..." *Matsushita Electric v Zenith Radio Corp* 475 U.S. 574 (1986).

"At the summary judgment stage ..., courts *do not* "weigh the evidence **or make credibility determinations**," but, instead, leave that task to the fact-finder at ...trial." *Petruzzi's IGA Supermarkets v. Darling-Delaware Co.*, 998 F.2d 1224, 1230 (3d Cir. 1993).

If the question is close enough **to leave any room for reasonable doubt** as to how the evidence might weigh in the balance, summary judgment must be denied. *That* sort of "weighing" is reserved solely for juries.

Since the moving party must clear rule 56's first hurdle, it is astonishing not one of multiple issues presented by Cottam (with clear documentation), and

eyewitness testimony (affidavit presented) were considered in a light most favorable to Cottam, **or even discussed**.

Of over twelve disputed issues, for which there is ample documentation, *only one* (the siren) was even given *any* discussion, and this not anywhere near in the light most favorable to Cottam. In discussing the siren, along with other issues, the DC dismissed it as "immaterial", and yet it is a requirement of the eluding statute, **and would be on in a "true" car chase**, therefore cannot be "immaterial".

In avoiding discussing the other (A-L) issues above, the Courts either completely overlooked the evidence, or missed it; by "accident"?

Any honest reader cannot conclude these issues were missed "by accident" since the DC concluded on Pg. 15: "*While there* ***is a dispute*** *about certain facts*- whether Pelton had his siren on... whether Pelton called over the radios..., whether Pelton observed Cottam look at him his... mirror, **et cetera- those facts are immaterial**."

In other words, the DC admitted disputes of numerous "certain facts", but arbitrarily dismissed these as "immaterial". This is a glaring error.

In a fabrication case, **all such issues are "material"**. "Probable cause" cannot simply be taken in light of "speeding" or taking a shortcut crossing railroad tracks that had one obscured sign.

The DC on Pg. 14 stated: "After that, Cottam ***boasts*** ...the charge ....was dismissed even though, "I never saw a judge..., never saw a jury..., never said one word...."

Cottam *never "boasted"* about this. The DC's claim shows extreme bias **against** Cottam. Cottam's statement clarifies that, given the description of a "perfect" eluding case (which Pelton described), *why (and how)* was such a "perfect" case abandoned? Also, why did the SA charge Cottam with 316.1935 subsection (1) of the eluding statute– **not requiring a siren** - (not subsection(2) per Pelton)? What did the SA know? **Why did they file a demurer**?; to get the judge to do their dirty work. Why is there so much evidence refuting all of Pelton's "story" except the speeding and crossing tracks?

The case was abandoned for obvious reasons: The SA sat there when Pelton said: "Another ...officer came from the other direction ..and.. he stopped then." The SA sat there as his own colleague (Smalt) refuted this: "He [Cottam]was... already out of his car". The SA sat there as Pelton said: "I was calling it out", and sat there as the CAD log showed, and call supervisor Tanner testified, no: "It is not listed", and: "This was [just] a traffic stop". The SA witnessed Smalt testify he arrived: "...just to make sure everything was OK." – no emergency, no lights and siren (**no call for an active eluder**). The SA sat there when Pelton said he: "...had ..[his] siren on". The SA sat there with the call audio - **no siren**, and the SA himself charged Cottam with subsection (1) of the statute – **no siren**.

The SA sat there as Pelton claimed: "...saw him [Cottam] looking in his rear view mirror..". The SA had Pelton's pictures showing you couldn't even make out Cottam's rear head rests. The SA sat there as Pelton claimed Cottam made "...an extremely abrupt, reckless turn....." and sat there knowing

Cottam drove a large car on wet pavement at a sharp turn. The SA was **forced** to abandon the case on these lies (Cottam refused plea bargain), **and he hadn't even heard from eyewitness Sarah Akay or Cottam**.

The law is clear the court **must also**: "...draw all justifiable inferences in its [non movant's] favor." "Justifiable inferences" include Pelton's fabrication of his "eluding" story. Clearly **these facts *are* very "material"; Pelton's fabrication is probative of his lack of probable cause.**

The DC even used as reference: *Hoffman v Allied corp (Pg. 4,5)*: "A dispute of material fact is genuine **and summary judgment is inappropriate if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.**" and *Warior Tombighee Transp. v. MV Nan Fang*: "**If factual issues are present, the court must deny the motion**..." These cases support Cottam, disallowing the DC's own order.

The DC stated (Pg. 9): "The Court concludes **there is a disputed issue of material fact** ...whether Pelton had arguable probable cause to arrest Cottam under § 316.1935(2)." They then illogically stated that Cottam could have been arrested under 316.1935(1) (not requiring a siren). This alone, admitted by the DC, is sufficient to rule for Cottam under Rule 56.

The DC then stated: " It is possible that Pelton had his siren activated at some point during the pursuit after he passed Akay [eyewitness] but before Cottam observed Pelton. And this could have been ...when Pelton was not transmitting over the radio. If that was the case, Pelton would have had probable

cause under subsection (2) because Florida law does not require Pelton to have had his siren activated for the entirety of the pursuit."

This argument (**put forth not by Pelton but by the DC, with zero evidence**), contradicts Pelton's own story that he had his siren on from the start (for speeding?). This is shocking. They presented unbelievably biased, new, illogical "possibilities" in Pelton's defense, which are **refuted not only by Cottam, but by the Call Audio, eyewitness, Officer Smalt's testimony, and Pelton's own claims**. The evidence shows he never turned his siren on (then off), nor made any call of an active "eluder" as claimed.

The DC erroneously, with significant bias, deemed the siren issue "immaterial" since Cottam "could have" been charged with subsection (1) (not requiring a siren). The DC took this absurd, illogical position, which is **not supported by the evidence or Pelton's own statements**. This shows complete lack of understanding of the totality of the case. Why did he lie?; because he had to: What police officer would engage in a supposed high speed chase without that siren? The point is moot since Pelton claims his siren was on the entire time; **all evidence shows it wasn't, ever**.

They also stated, under "undisputed facts" Pg. 2, that: "Cottam did not see Pelton pursuing him on U.S. 301.". Therefore this is a material fact in an eluding case, *one* question being: "*Why* did Cottam not see Pelton?". The answers all point to issues to be determined by a jury, including the fact Pelton was so far behind Cottam (by eyewitness account) right from the start.

Furthermore, the DC never even discussed eyewitness' (Sarah Akay) account Pelton was so far behind Cottam that Pelton was never even close to being directly behind Cottam as Cottam turned at Oxford St., or her account that he lied about several other things, including: he never lost sight of Cottam; Cottam accelerated away from him; there was no other traffic on the road, etc.. **Pelton never knew there was an eye witness**.

From Sarah Akay's affidavit: "I have seen Officer Pelton's deposition ...where officer Pelton claimed various things that are impossible. One example is ...Pelton said that he was approximately 100 feet behind Dr. Cottam when Officer Pelton was at Cleveland Ave. This is impossible even with a major exaggeration, since Dr. Cottam was so far ahead of me and Officer Pelton was right beside me at Lion St. when Dr. Cottam was already beyond Cleveland Ave. So ...Officer Pelton was more than 1800 feet behind Dr. Cottam when Officer Pelton was at Lion St."

Sarah Akay and Cottam had discussed the survey Cottam commissioned showing the distance between Lion St. and Cleveland Ave. is 1800 ft.. This matter of logistics/mathematics of the path was not discussed by the Lower Courts at all, and would have become clear if oral hearings were granted.

Conveniently avoiding questions of disputed issues of material fact by arbitrarily deeming them "immaterial" is a clear abuse of discretion. In a fabrication case, evidence of fabrication is precisely what is "material", as it is probative of lack of probable cause.

The DC also said, in referencing *Hammett v Paulding*: "***Because of the required balancing of interests***, the Court concludes *many of the issues*

Cottam spends so much time arguing ***are immaterial***". This argument is disturbing to say the least.

"Concluding" an innocent citizen's complaints of criminal activity, **because** they are against an officer, are deemed "immaterial", to "balance interests", is frightening. There is a difference between frivolous suits and one having copious evidence. To claim some "fear" of opening floodgates of suits against "good police" is far-fetched, and not a sound basis for denying well documented claims.

If the facts (which a reasonable reader can see raise ***numerous*** disputed issues of material fact), were taken in the light most favorable to Cottam, Pelton's summary judgment motion completely fails on the first part of Rule 56(a). The resolution of disputes over facts or the inferences to be drawn is a jury function. Since, by law, these facts ***must be taken in the light most favorable to Cottam***, and ***were not***, the orders of the Courts below granting Pelton's motion for summary judgment must be reversed.

"A dispute about a material fact is genuine and **summary judgment is inappropriate if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.**" *Anderson, 477 U.S. at 248; Hoffman v Allied Corp.*, 912 F. 2d 1379, 1383 (11th Cir. 1990).

From the U.S. Supreme Court: See *Tolan v. Cotton*, 713 F.3d 299, 303 (5th Cir. 2013). "This Court explaining ...the Fifth Circuit "failed to view the evidence at summary judgment in the light most favorable to Tolan with respect to the central facts.." 134 S.Ct.,1865. These facts included disputes regarding officer's claims the area was "dimly lit,"

Tolan's mother was "very agitated," Tolan was "verbally threatening," and that Tolan was "moving to intervene." *Id.* at 1866–67. This Court explained... the "**opinion below reflects a clear misapprehension of summary judgment standards in light of our precedents.**" *Id.* As the Court reminded the Fifth Circuit, "genuine disputes are generally resolved by juries in our adversarial system." *Id."*

Therefore, per this Court, "material" facts can be as simple as whether a room was "dimly lit", or that someone was "verbally threatening", or "very agitated", etc.. This makes the Lower Courts rulings inconsistent with this Court.

"The trial court must grant the motion ***unless*** **the nonmovant produces more than a scintilla of evidence raising a genuine issue of material fact**..." *Flameout Design & Fabrication,* 994 S.W.2d. 1999.

Clearly Cottam has produced **much more** than a "mere scintilla" of evidence. The motion, by law, rule, and precedent, should not have been granted.

IV. The Lower Courts Improperly used "Probable Cause" and "Qualified Immunity"

Besides Pelton's motion failing the first part of Rule 56(a), Pelton cannot prevail on the second part without significant conclusory bias. It is important to dispel this improperly used notion of qualified immunity under even "arguable" probable cause given the facts in evidence. Allowing such an "excuse" clearly doesn't take into consideration the totality of this case.

"...those charged with upholding the law are prohibited from deliberately fabricating evidence and **framing individuals for crimes**..." *Limone v. Condon,* 372 F.3d 39, 45 (1st Cir.2004). As the Court of Appeals for the First Circuit said: "**we are unsure what due process entails if not protection against deliberate framing under color of official sanction**." *Id.*

To claim even "arguable" probable cause is purposely denying the evidence, joining a criminal in his behavior. When one takes the evidence in the light most favorable to Cottam, as in any case **where fabrication is the core argument (and documented), claims of "probable cause", in any form, simply evaporate**. This is not merely a matter of law (which there is ample precedent), but common sense.

"In conducting de novo review of the district court's disposition of ...summary judgment ...based on qualified immunity, **we are required to resolve all issues of material fact in favor of the plaintiff**." See, e.g., *Sheth v. Webster,* 145 F.3d 1231, 1236 (11th Cir.1998). "We then answer the legal question of whether the defendant [is] entitled to qualified immunity **under that version of the facts.**" *Thornton v. City of Macon,* 132 F.3d 1395, 1397 (11th Cir.1998). "

See Reedy v. Evanson, 615 F.3d 197, 223 (3d Cir.2010) ("The burden of establishing entitlement to qualified immunity is on [the defendant-movant].")

"Qualified immunity is an affirmative defense and the burden is on the defendant-official to establish it on a motion for summary judgment.". *Bailey v. Pataki, 708 F.3d 391, 404 (2d Cir.2013)*

The DC (Pg.7), and 11th Circuit (Pg.2) stated: "...Pelton was acting within the scope of his discretionary authority when he stopped and arrested Cottam."

This significantly biased conclusion is inconsistent with the evidence; true **only for the speeding stop; not the arrest for the fabricated eluding.** Nobody (unless completely corrupt), can say an officer, fabricating a felony after they catch someone with their "pants down" (speeding, etc.), and **framing them for a felony** is "acting within their discretionary authority". **There is no legal precedent where an officer, committing crimes, is acting "within discretionary authority".**

"**Falsification of evidence**, like other "bad-faith conduct," can be "**probative of a lack of probable cause**." *Peterson v. Bernardi,* 719 F. Supp. 2d 419, 428 (D.N.J.2010). This basic concept was ignored; Why?

"Qualified immunity attaches when an official's conduct **does not violate clearly established statutory or constitutional rights of which a reasonable person would have known**." *White* v. *Pauly*, 580 U. S. And: "In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law." *Id*

Any "reasonable person" knows fabrication violates the law and constitutional rights. Qualified immunity therefore does not apply here.

All cases cited by the DC, including *Kingsland, Lee v Ferraro, Santana v Maimi-Dade, Celotex, Fernandez,* and *Saucier,* **confer no "qualified" or "sovereign" immunity in a fabrication case.** In fact they are all exceedingly clear in the caveats of knowledge by the offending officer of the prevailing

law and violating constitutional rights, completely supporting Cottam's position.

"First, we reaffirm what has been apparent for decades to all reasonable police officers: a police officer who fabricates evidence ...violates ...constitutional right **to due process of law. Second, we reinstate Halsey's malicious prosecution claim,..."** ***Halsey v. Pfeiffer 750 F.3d 273 (2014).*** And: "...**no sensible concept of ordered liberty is consistent with law enforcement cooking up its own evidence."***Id.*

And: "The presence *vel non* of **probable cause was a jury question that the District Court could not resolve on motions for summary judgment**." *Id.*

"This Circuit has prescribed a two-part analysis for the defense of qualified immunity.

> 1. First, defendants must show ...<u>they were acting in the scope of their discretionary authority</u> at the time... If defendants meet that burden, then plaintiff must show ...defendants violated clearly established law... *Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1991)."

Pelton does NOT meet the burden cited; fabrication cannot be considered "within the scope of discretionary authority". Violation of established law is clear as well.

> 2 . "In ....a motion for summary judgment, this second issue ...has two subparts: first, whether the applicable law was clearly established at the time...; and second, whether a genuine issue of fact must be resolved to determine if the ...official's conduct violated clearly established law."*Id.*

Cottam's case easily meets both subparts above.

Under Cottam's version of the irrefutably documented facts, allowing "qualified" immunity is blatantly in error.

V. The Lower Courts Are Improperly Using False Legal Precedent, Requiring Review

The DC cited **false reference**: *Reid v. Henry Cty., Ga.*, 568 F. App'x 745, 749 (**11th Cir. 2014**) (holding, "As long as probable cause existed to arrest ...for **any** offense, the arrest and detention are valid even if probable cause was *lacking* as to some offenses, **or even all announced charges**.").

This is absurd. This quotation, taken from *Reid,* is actually quoted in *Reid,* from *Lee v. Ferraro*, 284 F.3d 1188, 1196 (11th Cir. 2002). In other words, **the judge(s) in *Reid* made no such direct statement.**

However, **no such statement can be seen in *Lee v. Ferraro*.** Therefore, this (obviously flawed) **false legal precedent was cited with no true reference**. In other words, **a huge part of the Lower Courts' argument relied on false citing of absurd 11th Circuit legal precedent.**

The Eleventh circuit even referenced this again (Pg.4): "Importantly, an arrest is lawful so long as there is probable cause to support an arrest for *any* offense, even if probable cause does not exist for the offense announced at the time of the arrest. *Id.*"

The implications of the cases referenced are therefore nowhere near what the DC stated.

In fact, in *Lee*, the court specifically allowed summary judgment for the officer on *one* of the claims, **but denied it on another**. So, as opposed to what is implied in the Lower Courts' orders (that *Reid* allows summary judgment against *any innocent citizen* who has charges brought **even without probable cause**), these cases completely agree with Cottam's position.

From *Lee*: "Once summary judgment is granted in Ferraro's favor on the wrongful arrest claim, Lee's claim that the officer used excessive force **must be analyzed independently**." *Id*

The wrongful arrest claim by Lee was one for Lee honking her horn, which was resolved in the officer's favor. However, the court in *Lee* clearly stated the ***separate issue of an alleged crime*** [excessive force] related to the same stop "***must be analyzed independently***". This is in complete contradiction to the Lower Courts' claim in the instant case.

The court in *Lee* concluded (by common sense), having probable cause to arrest someone for **any** offense **is not carte blanche** for an officer to engage in crimes (excessive force in *Lee*). In the instant case the crime was ***fabrication*** of the eluding, subsequent perjury, malicious prosecution, etc..

From *Lee*: "In light of the Supreme Court's decision in *Atwater*, the district court's denial of summary judgment on Lee's wrongful arrest claim must be reversed [since the Supreme Court ruled that even minor infractions (like honking a horn unnecessarily), may be "arrestable"]. **However, Ferraro [arresting officer] is not entitled to summary judgment on the basis of qualified immunity on the... claim alleging excessive force...**"

The DC stated (applying the false precedent) Pg. 11: "...the Court concludes even Cottam's version of the facts shows Pelton had probable cause to arrest Cottam for *an* offense. And that is enough to entitle Pelton to qualified immunity.... So Pelton is entitled to summary judgment on this claim."

Obviously, this conclusion is frightening on its face, even without false reference. To uphold such a claim would set precedent that any innocent citizen can be handed *any* fabricated felony, and the perpetrating officer is protected by the Federal Courts, ***even when the fabrication is proven***, as long as the person is engaged in *any* minor but "arrestable" offense, even honking their horn.

Will it be lost on a law Clerk that this False precedent was an Eleventh Circuit case, and in upholding the DC's order, the Eleventh Circuit is perpetuating their own false precedent? Will the reader even research this easily proven claim? We need to support *honest* law enforcement. However, we need to strike down **lying** law enforcement.

Cases the DC cited: *Wilkerson, Reid, and Lee* were not fabrication cases, and do not attribute **any** favor to Pelton with respect to fabrication claims here.

In claiming "arguable" probable cause, the Lower courts ignored the totality of the case, with evidence showing multiple components fabricated.

This is not about what Cottam possibly *could* have been charged with; it is about the criminal act of fabrication of a felony.

> From *Halsey*: "As the Supreme Court has explained, section 1983 was intended "to deter state actors from using the badge of their authority to deprive individuals of their federally

guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, *161, 112 S.Ct. 1827, 1830, 118 L.Ed.2d 504 (1992).* **A rule of law foreclosing civil recovery against police officers who fabricate evidence, so long as they have other proof justifying the institution of the criminal proceedings against a defendant, would not follow the statute's command or serve its purpose.**"*Id.*

"The failure to apply the law correctly ...is always an abuse of discretion." *Koon v. United States*, 518 U.S. 81, 100 (1996) "A district court by definition abuses its discretion when it makes an error of law." *Id*

Will it be lost on the reader the Eleventh Circuit chose not to publish their opinion, essentially stating this case has little precedential value?

How convenient: A case, with important implications in corrupt law enforcement cases, possessing astonishing bias, gutting of rule 56, refusal to let a jury try the facts, and perpetuating corruption of Law Enforcement nationwide, is "unimportant"?

How convenient this "unimportant" case is where the Lower Courts used the Eleventh Circuit's own **astonishing and false precedent**: If you are caught speeding (or any "arrestable" offense - speeding is "arrestable" in Florida) *any* law enforcement officer can charge you with **Any** crime, **get caught fabricating** it, and since you "could have" been arrested for anything extremely minor, the disastrous effects of the criminally fabricated

felony is "OK" in the Federal Courts' eyes? Not per well settled law and common sense.

VI. Malicious Prosecution Criteria Are Not Well Defined In Fabrication Cases, Requiring Review

The vast majority of the circuits have upheld this Court's Fourth Amendment jurisprudence and rule in *Gerstein*. These courts have held that a Fourth Amendment malicious prosecution claim will exist both when an individual is first seized before legal process (*Pitt,* 491 F 3d at 510-12) and after legal process (*Hernandez-Cuevas*, 723 F. 3d at 99-100).

The DC listed three issues why Cottam fails a malicious prosecution claim:

1. That Pelton had "probable cause" (Pg. 13) and "the presence of probable cause defeats a claim of malicious prosecution." *Black v. Wigington,* 811 F.3d 1259, 1267 (11th Cir. 2016.)" (Pg. 12)

This **significantly disputed** contention of "probable cause" again simply does not apply in a malicious prosecution claim when fabrication is shown. "Probable cause" is disproven here by the documented facts (to be tried by a jury).

2. The DC stated (Pg 13): "Cottam cannot prove damages resulting from the allegedly malicious prosecution.".

Again, the DC alluded to "probable cause", illogically stating Cottam "could have" been prosecuted under the statute's subsection (1) (not requiring a siren).

The DC wrote (Pg. 13): "This is not the traditional case where charges were fabricated and the plaintiff could not have been prosecuted for an offense of the same magnitude but-for the fabrication."

So, the DC not only admitted the "possibility" of a fabrication, but showed astonishing bias towards Pelton.

Saying Pelton could have charged Cottam with Subsection (1) is entirely false given the totality/logic of the case. As shown earlier, Pelton was forced to claim his siren was on (just as he was forced to claim he was making a call, etc.) since it would be illogical to not have it on, and not be calling on the radio.

From *Halsey*: "Here, by entering summary judgment on the malicious prosecution claim, the District Court ..., held that a reasonable jury could not conclude that the appellees lacked probable cause to charge Halsey even without the confession. **We disagree with that conclusion."**

All one has to do in the instant case is replace "Halsey" with "Cottam" and replace "confession" with "fabrication of the siren and other things" in the quotation above.

From *Halsey*: "When falsified evidence is used as a basis to initiate ...prosecution..., the defendant has been injured regardless of whether the totality of the evidence, **excluding the fabricated evidence**, would have given the state actor a probable cause defense in a malicious prosecution action that a defendant later brought against him."

3. The DC said: "The ...evidence shows Cottam was not "seized" in violation of his Fourth Amendment rights..." (Pg. 14)

This is untrue. "...Fourth Amendment seizure [occurs] ...when there is a governmental termination of freedom of movement through means intentionally applied." *Brower v. County of Inyo,* 489 U.S. 593, 596-597, 109 S.Ct. 1378, 103 L.Ed.2d 628 1989)"

> "To prevail on a Fourth Amendment malicious prosecution claim under section 1983, a plaintiff must establish that: (1) the defendant initiated a criminal proceeding; (2) the criminal proceeding ended in [the plaintiff's] favor; (3) the defendant initiated the proceeding without probable cause; (4) the defendant acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. *Johnson v Knorr,* 477 F.3d at 82; *see also Rose v. Bartle,* 871 F.2d 331, 349 (3d Cir.1989)."

Cottam was taken to jail (freedom terminated) and endured several months of defending a fabricated felony. He was maliciously prosecuted per all elements above.

Since *Kingsland*, the 11th circuit has ruled "seizure" does not require lengthy incarceration. In such a case the court deemed a person (Vaughan) was "seized" from a gunshot: "Having concluded that Vaughan was subjected to a seizure...", *Vaughan v. Cox,* 343 F. 3d 1323 - Court of Appeals, 11th Cir.2003.

The Fourth Amendment forbids detention without probable cause. See *Bailey v. United States, U.S., 133 S.Ct. 1031, 1037 (2013).* And this protection against unlawful seizures extends until trial.

"The guarantee of due process of law, by contrast, is not so limited as it protects defendants during an entire criminal proceeding through and after trial." *Pierce v. Gilchrist,* 359 F.3d 1279, 1285–86 (10th Cir.2004).

Any restraint on a person's liberty by a person of authority is a seizure, and in fabrication cases this is clearly unconstitutional.

From *Halsey*: "Courts should exercise caution before granting ...summary judgment in a malicious prosecution case when there is a question of whether there was probable cause for initiation of the criminal proceeding because, "generally, **the existence of probable cause is a factual issue**." *Groman v. Twp. of Manalapan,* 47 F.3d 628, 635 (3d Cir.1995)."

The application of "seizure" should be applied in a fabrication case such that **any** jail time is a violation of Constitutional rights. If not, then *any* immoral actors can at *any* time arrest anyone with no repercussions, since States' law enforcement/judicial apparatus routinely denies citizens recourse against lying police, as happened in this, and thousands of other cases.

VII. The DC Wrongly Ruled Pelton Not Liable For Emotional Distress

The DC said (Pg. 6) (With the Eleventh Circuit sanctioning, Pg. 8): "...while Cottam may have been distressed by Pelton's actions, the actions were not so outrageous as to allow Cottam to pursue an intentional or negligent infliction of emotional distress..".

So, even though Dr. Cottam was jailed, and forced to defend himself for 7 months against a **fabricated felony** that may have ruined his entire career, (other innocent citizens may have gone to jail for years due to a predatorial fabrication), the DC believes that documented criminal acts are: "not so outrageous"?

The DC (Pg. 16) and Eleventh Circuit (Pgs. 7-8) stated: "...no government agent.. shall be liable for acts ...**unless the government agent "acted in bad faith or with malicious purpose.. or exhibiting wanton and willful disregard of human rights..."**"

This is precisely what Cottam alleges, **with proof**. The issues are for a jury to decide.

The DC (Pg. 15) and Eleventh Circuit (pg. 8) stated Cottam was required to show... *Pelton's actions were* "So outrageous in character and so extreme in degree as to go *beyond all possible bounds of decency" Von Stein v Brescher,* 904 F.2d 572, 584 (11th Cir.1990)."

No moral person could state criminal acts by an Officer (which ***must*** be assumed if the facts are taken in the light most favorable to Cottam) is anything less than: "...beyond all possible bounds of decency".

The eleventh Circuit (Pg.9) stated: Pelton's "...conduct was not malicious or in bad faith; accordingly, he is entitled to immunity." This again is an incredibly biased conclusion not fitting the evidence.

Cottam does not appeal the Lower Courts' finding on Negligent infliction of emotional distress.

Summary of Lower Courts' errors:

1. The Courts below did not follow rule 56 in spirit or application. They not only refused to take (or even discuss) the evidence in the light most favorable to Cottam; they reversed the basic review for Summary Judgment in accepting the evidence in the light most favorable to Pelton.

Cottam produced abundant evidence showing Pelton fabricated a felony, violating constitutional rights in false arrest, etc.. The evidence is overwhelming, with no special deference needed to understand the fabrication. This evidence was almost completely ignored by the DC. Inexplicably, the DC deemed this evidence "scant".

In improperly acting as a bench trial judge, the DC dismissed Cottam's well substantiated claims as though the evidence didn't exist, including key issues raised by all witnesses, including eye witness. The Courts below by law, fact, rule, and precedent had the duty to allow a jury to hear the evidence.

2. The Courts Below showed stunning bias toward Pelton, and against Cottam. They weighed in on Pelton's credibility (in his favor), and denied oral hearings as did the Eleventh Circuit. Why have oral hearings been denied?; nobody wants to "hear" the truth.

3. In refusing to acknowledge copious evidence documenting criminal acts, the Courts below improperly used "arguable probable cause" to excuse

Pelton's fabrication crimes under "qualified immunity".

4. The Courts below used false legal precedent (Eleventh Circuit case) as a major pillar of their reasoning.

5. The Lower Courts used inapplicable "probable cause" among other things, in its denial of malicious prosecution and intentional infliction of emotional distress.

CONCLUSION

The DC made decisions in violation of Rule 56, legal precedent, and the facts in evidence. The 11th Circuit joined in on these major errors.

The bias shown is astonishing. The Lower Courts literally launched Pelton over the high bar of the first part of Rule 56(a) by arbitrarily claiming irrefutable evidence presented by Cottam (corroborated by eyewitness, Pelton's own colleagues, and all documentation), is "immaterial". They attributed "arguable" probable cause to Pelton against all evidence. They took the facts in the light most favorable to Pelton, when the only claims of his that were true was that Cottam was speeding and crossing railroad tracks.

The law regarding fabrication is settled and stable. Given the numerous facts in dispute, the decisions below are clearly in error.

If the Supreme Court is to deny this appeal, they will be sanctioning new, immoral, incredibly dangerous precedent allowing the use of false, absurd legal precedent in granting immunity. The Courts are well aware of the self-protection within the

States by local Law Enforcement at all levels, leaving citizens with the Federal Courts as the only recourse.

Perpetrators of crime under the Color of Law and "arguable" probable cause, given a huge variety of circumstances, will be free to fabricate felonies, **knowing even *if* they get caught in their crimes (as in this case), they are protected by the Federal courts.** This is untenable in a just society.

From *Halsey*: "...**no sensible concept of ordered liberty is consistent with law enforcement cooking up its own evidence.**"

And: "We emphatically reject the notion that due process of law permits the police to frame suspects. Indeed, we think it self-evident that "**a police officer's fabrication and forwarding ...false evidence works an unacceptable `corruption of the truth-seeking function of the trial process.'**" *Id.* (quoting, *inter alia, United States v. Agurs,* 427 U.S. 97, 104, 96 S.Ct. 2392, 2397, 49 L.Ed.2d 342 (1976))."

Denying this appeal would also set precedent that the Courts' own Rule 56 is simply window dressing; The most biased Court's refusal to allow a jury to hear Plaintiff's evidence (by arbitrarily deeming it "immaterial") is acceptable, and taking the movant's claims in the light most favorable to them is acceptable. This will occur in cases when innocent persons are arrested on *any* fabricated charge, even if irrefutable proof of the fabrication is shown, so long as the person was engaged in ***any*** other *"arrestable" act*, even speeding.

Protecting lying officers is *not* "supporting" law enforcement or "balancing interests".

The DC, in claiming Pelton had no reason to lie, claims essentially (against all evidence and therefore with extreme bias), that besides Cottam, Pelton's own documentation, his own colleagues and eyewitness are lying, and simple physical conditions and mathematics do not apply.

The Eleventh Circuit upheld the DC's order with no discussion of the material facts either, and repeated their own false legal precedent, even when their astonishing error was explained in the appeal to them.

The only way to remedy this, violations of the Constitution and rule 56, is for this Court to reverse the Lower Courts' decisions; telling Lower Courts that "arguable" probable cause does not apply in obvious police fabrication cases, blatant bias corrupts the judicial process, using false legal precedent is an abuse of discretion, fabrication of a criminal charge is by definition a malicious prosecution, and when clear evidence of police crimes is presented, ignoring rule 56 is abusive. Failure to do so would sanction this ongoing criminal behavior by Law Enforcement, the Lower Courts' conduct and embolden other predatorial officers and the Federal Courts to do the same.

How many people have to be injured, abused, and even shot before the Federal Courts start to acknowledge the depth of the problem of police brutality in the US, and these Courts' role in perpetuating these injustices.

Have the Federal Courts become complicit in cases of lying Law enforcement? Ignoring these cases, and the extreme bias against *Pro se* applicants, is exacerbating the situation.

Cottam requests the case be remanded for proper jury trial.

Respectfully submitted,

Date: February 5, 2019

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