No. 18-_____

In the Supreme Court of the United States

TREY BEAM,

Petitioner,

–v–

ROBERT ABERCROMBIE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Before the Court is a question concerning erosion of the qualified immunity doctrine. In *Baker v. McCollan*, 443 U.S. 137, 145 (1979) this Court determined that "Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person." The Eleventh Circuit has created a narrow holding that under "unique and exceptional" circumstances an officer may lose qualified immunity by willfully failing to perform an adequate investigation. *Kingsland v. City of Miami*, 382 F.3d 1220, 1228-1233 (11th Cir. 2004). The Eleventh Circuit found the circumstances in *Kingsland* to be "unique and exceptional" because of allegations that the officers manufactured evidence to establish probable cause. *Id.* The Eleventh Circuit has in the present case expanded its holding to include a requirement of additional investigation even after the threshold in *McCollan* is met and even in circumstances where manufactured evidence is not alleged.

The question presented here is:

Whether an officer may lose qualified immunity based upon the allegation of "willful" failure to investigate even when the officer has established at least arguable probable cause of a misdemeanor crime through the statement of the putative victim.

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PETITION FOR WRIT OF CERTIORARI

Trey Beam petitions for a writ of certiorari to review the judgment of the United States Court of Appels for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit opinion affirming in part and reversing in part is not yet reported but is available at 2018 WL 1341535 and is produced in the Appendix at pages 1a-21a. The United States District Court decision granting summary judgment to Trey Beam is not reported but is available at 2017 WL 6381705 and is produced in the Appendix at pages 22a-41a.

JURISDICTION

The judgment of the court of appeal was entered on March 15, 2018. (App.1a). A petition for rehearing was denied on May 16, 2018. (App.42a-43a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

- U.S. Const. amend. IV

  The 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.

- 42 U.S.C. § 1983

  Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

- O.C.G.A. § 16-5-20

  (a) A person commits the offense of simple assault when he or she either: (1) Attempts to commit a violent injury to the person of another; or (2) Commits an act which places another in reasonable apprehension of immediately receiving a violent injury. (b) Except as provided in subsections (c) through (h) of this Code section, a person who commits the offense of simple assault shall be guilty of a misdemeanor . . . .

STATEMENT

A. Facts Giving Rise to This Case[1]

On December 10, 2014, Priscilla Nixon (hereinafter "Ms. Nixon") was a customer at a store owned by Robert Abercrombie (hereinafter "Respondent"). (App.23a). Ms. Nixon called 911 to report that Respondent had assaulted her. *Id.* Three other individuals were inside the store at the time of the incident: Laura Bryant (Respondent's sister and part-time employee), Anthony Diamond (Respondent's employee), and another customer. (App.5a).

Petitioner Deputy Trey Beam (hereinafter "Petitioner") responded to a "fight call" and arrived on scene. (App.2a-3a). Ms. Nixon told Petitioner that Respondent had thrown a document at her and struck

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[1] Because this matter arises out of a motion for summary judgment, facts are viewed in light most favorable to the non-movant. *See e.g.*, *Plumhoff v. Rickard*, 134 S.Ct. 2012, 2017 (2014).

her and that she feared for her safety. (App.3a). Ms. Nixon's fiance, Clinton Whitfield (hereinafter "Mr. Whitfield"), was present for the incident between Ms. Nixon and Respondent and told Petitioner that Respondent pushed a document into Ms. Nixon's face. (App.5a). Ms. Bryant, Respondent, and the other customer were in the lobby when Petitioner arrived. (App.3a). During Petitioner's interview of Ms. Nixon and Mr. Whitfield, Respondent left the front counter to find keys in the back of the store. *Id.* Petitioner went to the back of the store to find Respondent. *Id.*

While Petitioner was in the back of the store with Respondent, Deputy Charles Dixon (hereinafter "Deputy Dixon") arrived on scene. Petitioner placed Respondent in handcuffs and put him in the back of his patrol car. (App.24a). Deputy Dixon remained inside the store. (App.4a). Bryant went outside to ask Petitioner why Respondent was being arrested. (App. 24a). Petitioner briefly spoke with Bryant, but did not question her regarding the events. (App.4a). While on the scene, Petitioner did not speak with Diamond or the other customer in the lobby regarding the incident. (App.5a).

Petitioner swore out a warrant for Respondent's arrest for misdemeanor simple assault (O.C.G.A. § 16-5-20), which the magistrate judge granted. (App. 24a-25a). The charges were subsequently dismissed. (App.25a).

B. Proceedings in the District Court

Respondent filed a complaint alleging false arrest, false imprisonment, and malicious prosecution under federal and state law. (App.26a-27a). Petitioner filed

a motion for summary judgement as to all claims and on August 2, 2017, the District Court granted Petitioner's motion for summary judgment. (App.22a-41a). Respondent appealed to the Eleventh Circuit. (App.1a-21a).

C. Proceedings in the Appellate Court

On March 15, 2018, the Eleventh Circuit affirmed the District Court's grant of summary judgment as to all claims except for Respondent's claim of false arrest. (App.1a-21a). The Eleventh Circuit found that under O.C.G.A. § 16-5-20, Petitioner had at least arguable probable cause to arrest Respondent based on the statement of Ms. Nixon. (App.11a) (citing *Daniels v. State*, 681 S.E.2d 642 (Ga. Ct. App. 2009)). However, the Eleventh Circuit then found an issue as to whether Petitioner performed an adequate investigation and reversed the District Court's grant of qualified immunity. (App.16a) (citing *Kingsland v City of Miami*, 382 F.3d 1220 (11th Cir. 2004)).

Petitioner timely filed a petition for rehearing en banc, which was denied on May 16, 2018. (App.42a-43a).

REASONS FOR GRANTING THE PETITION

A writ may be granted if it is shown (1) that a U.S. Court of Appeals decision is in conflict with another U.S. Court of Appeals decision; (2) a state's supreme court has ruled on a federal question in a way that conflicts either with another state's supreme court or with a U.S. Court of Appeals; or (3) a U.S. Court of Appeals has decided an important question

of federal law that has not been, but should be, settled by the U.S. Supreme Court. Supreme Court R. 10.

In this matter, the decision of the Eleventh Circuit creates a conflict with long standing precedent of this Court and other U.S. Courts of Appeals regarding the level of investigation which is required by an officer before an arrest is made after establishing at least arguable probable cause. Further, this case presents an important question of law that has not yet been decided by the U.S. Supreme Court. Finally, the decision of the Eleventh Circuit is incorrect under present case law.

I. OTHER CIRCUITS ARE IN CONFLICT OVER WHETHER AN OFFICER MUST CONTINUE HIS INVESTIGATION AFTER ESTABLISHING PROBABLE CAUSE OR ARGUABLE PROBABLE CAUSE

The decision of the Eleventh Circuit creates two conflicts between circuits by requiring an officer to continue to investigate even after establishing arguable probable cause.

The Eleventh Circuit determined that Petitioner had established at least arguable probable cause to arrest Respondent after speaking with the alleged victim, Ms. Nixon. (App.11a). However, the Eleventh Circuit then found that because a jury may find that Petitioner failed to continue his investigation, he was not entitled to qualified immunity. (App.14a). In the First, Sixth, and Seventh Circuit, an officer is not required to continue to investigate after establishing probable cause. *See Acosta v. Ames Department Stores, Inc.*, 386 F.3d 5, 11 (1st Cir. 2004) ("an officer normally may terminate her investigation when she accumulates

facts that demonstrate sufficient probable cause"); *Mustafa v. City of Chicago*, 442 F.3d 544, 548 (7th Cir. 2006) ("police officers have no duty to investigate extenuating circumstances or search for exculpatory evidence once probable cause has been established via the accusation of a credible witness") (citing *Anderer v. Jones*, 385 F.3d 1043, 1049 (7th Cir. 2004)); *Boykin v. Van Buren Tp.*, 479 F.3d 444, 449 (6th Cir. 2007) ("once an officer establishes probable cause there is no continuing obligation further to investigate"); *see also Lincoln v. Hanshaw*, 375 Fed. Appx. 185, 190 (3d Cir. 2010) ("officers had no further constitutional duty to continue their investigation in an attempt to unearth potentially exculpatory evidence undermining the probable cause determination").

The Eleventh Circuit's holding imposes a burden upon officers to investigate all possibly exculpatory information, regardless of whether they have established probable cause. This burden is in conflict with the findings of not only other circuits but of this Court. *Baker v. McCollan*, 443 U.S. 137, 145 (1979) ("Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person").

II. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE

The Eleventh Circuit determined that Petitioner's actions may have shown a willful disregard for exculpatory evidence because Respondent and Bryant alleged Petitioner told them to "shut up" when they asked why Respondent was being arrested. (App.15a). Effectively, the Eleventh Circuit has created a separate cause of action for an allegedly "willful" failure to

fully investigate before making an arrest, even when the putative victim's statement establishes arguable probable cause.

This Court has never ruled that a separate burden on law enforcement or a related cause of action exists for a "willful" failure to fully investigate under the Fourth Amendment. Rather, this Court has determined that where an officer has probable cause, no Fourth Amendment violation has occurred. *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 1872, 104 L.Ed.2d 443 (U.S. 1989) ("The Fourth Amendment is not violated by an arrest based on probable cause"). This matter presents a unique circumstance in that both the district court and the Eleventh Circuit found Petitioner had at least arguable probable cause to arrest Respondent based on the statement of the putative victim. However, the Eleventh Circuit imposed a new burden and found that Petitioner lost his qualified immunity by failing to further investigate.

Should the questions raised in this petition give reason for this Court to establish a cause of action for "willful" failure to fully investigate, the facts set forth here would, nonetheless, still not support such a claim. In *Graham*, this Court held that the severity of the crime is a factor in determining whether excessive force was used in the context of an arrest or an investigatory stop of a free citizen. 490 U.S. at 396. Since *Graham* establishes generally that more force is appropriate for a more serious offense and less force is appropriate for a less serious one, it follows that a more exhaustive investigation may at times be appropriate for a more serious offense; but, as here, a

less exhaustive investigation is appropriate to establish probable cause for a less serious offense.

III. THE COURT OF APPEALS' DECISION IS INCORRECT

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). "Even law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (quoting *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S.Ct. 3034, 3040, 97 L.Ed.2d 523 (1987)). Qualified immunity "[w]hen properly applied, protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). A court is to look at the circumstances from the perspective of a reasonable officer at the scene. *Graham*, 490 U.S. at 396 (emphasis added).

Even though the Eleventh Circuit found that Petitioner established at least arguable probable cause, the court then determined that Ms. Nixon's version of events required a more extensive investigation because Bryant and Diamond were confused by Respondent's arrest and Mr. Whitfield's statement did not exactly match Ms. Nixon's statement. (App.14a). In making this finding, the Eleventh Circuit failed to properly view the evidence from the standpoint of a reasonable officer on the scene. *Kingsley v. Hendrickson*, 135 S.Ct. 2466, 2473, 192 L.Ed.es2d 416 (2015)

("A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight") (emphasis added). This Court has stated:

> the court should ask whether the [officers] acted reasonably under settled law in the circumstances, not whether another reasonable, or more reasonable, interpretation of the events can be constructed . . . years after the fact.

Hunter, 502 U.S. at 228.

Petitioner was responding to the aftermath of what he initially understood as a fight. (App.2a-3a). Diamond was around the corner in the back of the store at the time that Petitioner entered. (App.24a). Ms. Nixon told Petitioner that Respondent had assaulted her. (App.3a). As Petitioner was talking to Ms. Nixon, Respondent walked to the back of the store and around the corner. *Id.* Petitioner then went to the back of the store to find Respondent. *Id.* Because of the layout of the store, Petitioner could have reasonably believed that the employees were confused because they did not witness the events.

With regard to the statement by the witness, Mr. Whitfield, the court determined the statement "did not fully support Nixon's version of events" merely because he used different words to describe the same events, *i.e.* stating Respondent was "difficult" and "raise[d] his voice" instead of "irate" or "angry" as described by Ms. Nixon, or indicating that Respondent "pushed" the invoice in Ms. Nixon's face instead of "threw" it in her face. (App.16a). The statements of

the victim and the witness are clearly similar enough that a reasonable officer could have determined that Mr. Whitfield witnessed the same events from a differing viewpoint.

As noted by the Seventh Circuit, even where a witness/victim's statement is inconsistent, "officers were under no constitutional obligation to exclude every possibility that she was not telling the truth, unless the inconsistencies were such that a reasonable officer would become suspicious." *Beauchamp v. City of Noblesville, Ind.*, 320 F.3d 733, 744-745 (7th Cir. 2003); *see also Provience v. City of Detroit*, 529 Fed. Appx. 661 (6th Cir. 2013) ("an eyewitness's statement does not need to be consistent with all other available evidence. Even an admittedly 'vague and inconsistent' account, can provide 'ample probable cause'") (internal citations omitted) (citing *Ahlers v. Schebil*, 188 F.3d 365, 368-371 (6th Cir. 1999). Indeed, in Georgia, where an alleged offense is a misdemeanor, the requirements of corroboration are low. *Heatherly v. State*, 785 S.E. 2d 431, 432 (Ga. App. 2016), *cert. granted* (Nov. 2, 2016), *aff'd*, 801 S.E.2d 827 (Ga. 2017) (holding that numerous decisions have held that corroboration of an accomplice is not necessary to sustain a misdemeanor conviction). Because Mr. Whitfield's statement was similar to that of Ms. Nixon's and the confusion of Respondent's employees would not cause a reasonable officer to doubt Ms. Nixon's statement, Petitioner should have retained his qualified immunity.

In addition and alternatively, the case law in the Eleventh Circuit was not clearly established as to the level of investigation an officer must perform after establishing at least arguable probable cause by speak-

ing with a complaining witness. The Eleventh Circuit relied upon its prior decision in *Kingsland* to make its decision. (App.16a). However, as noted above, the facts in *Kingsland* were significantly distinguishable from the instant matter and not sufficient to put Petitioner on notice that he may be violating Respondent's constitutional rights. *Kingsland*, 382 F.3d at 1228-1233. As this Court has previously noted, in dealing with whether a law is clearly established, "the test of 'clearly established' law cannot apply at a high level of generality; instead, to deny qualified immunity, 'the right the official is alleged to have violated must have been 'clearly established' in a more particularized, and hence more relevant, sense.'" *Anderson v. Creighton*, 483 U.S. 635, 640 (1987); *see also*, *White v. Pauly*, 137 S.Ct. 548, 552 (2017) ("the clearly established law must be 'particularized' to the facts of the case"). Because no case law exists in this Court, the Eleventh Circuit, or in the Georgia Supreme Court stating that an officer must continue to investigate after establishing at least arguable probable cause, the law was not clearly established.

However, the law has been clearly established in the Eleventh Circuit that an officer may rely on a victim's statement to make an arrest. *Rankin v. Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998) ("Generally, an officer is entitled to rely on a victim's criminal complaint as support for probable cause"); *see also*, *Arnold Rogers v. City of Orlando, Florida*, 660 Fed. Appx. 819, 826 (11th Cir. 2016) ("officers generally may rely on a victim's report to support probable cause"). In *Rankin*, the Eleventh Circuit found that even though a child victim's statements were inconsistent, the officer was entitled to reasonably rely upon the statement

in making an arrest. *Rankin*, 133 F.3d at 1440-1443. Similarly, in the Second, Sixth, and Seventh Circuits, an officer is permitted to rely on the statement of a complaining witness to establish probable cause to arrest. *See e.g.*, *Curley v. Vill. of Suffern*, 268 F.3d 65, 70 (2d Cir. 2001) ("When information is received from a putative victim or an eyewitness, probable cause exists unless the circumstances raise doubt as to the person's veracity"); *Beauchamp*, 320 F.3d at 743 ("The complaint of a single witness or putative victim alone generally is sufficient to establish probable cause to arrest . . . "); *Ahlers v. Schebil*, 188 F.3d 365 (1999) (determining officers are entitled to rely upon the statement of a witness even if somewhat inconsistent); *see also*, *Beard v. City of Northglenn, Colo.*, 24 F.3d 110 (10th Cir. 1994) ("The failure to investigate a matter fully, to 'exhaust every possible lead, interview all potential witnesses, and accumulate overwhelming corroborative evidence' rarely suggests a knowing or reckless disregard for the truth") (quoting *U.S. v. Dale*, 991 F.2d 819, 844 (D.C. Cir. 1993)).

In the case *sub judice*, the Eleventh Circuit found that after speaking with the victim, Ms. Nixon, Petitioner had arguable probable cause to arrest Respondent for simple assault. (App.11a) (citing *Daniels v. State*, 681 S.E.2d 642 (Ga. Ct. App. 2009)). Because Petitioner had at least arguable probable cause to arrest Respondent and the circumstances were not such that a reasonable officer would be required to question Ms. Nixon's statement, the Eleventh Circuit erred in denying Petitioner qualified immunity.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. The Court may wish to consider summary reversal of the decision of the Eleventh Circuit Court of Appeals to deny Petitioner qualified immunity.

Respectfully submitted,

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