

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**

REPLY BRIEF OF PETITIONER

TIMOTHY J. BUCKLEY III
COUNSEL FOR PETITIONER
BUCKLEY CHRISTOPHER, P.C.
2970 CLAIRMONT ROAD NE
SUITE 650
ATLANTA, GA 30329
(404) 974-4570
TBUCKLEY@BCHLAWPC.COM

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REPLY BRIEF OF PETITIONER

Respondent's reply brief belies with brevity the dangerous and inconsistent risk of allowing the ruling below to stand. The Eleventh Circuit found that 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—rather than properly ending the inquiry for purposes of qualified immunity—found an issue as to whether Petitioner performed an adequate additional 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)). Therefore, the issue is not whether there was probable cause but whether Petitioner is stripped of qualified immunity due to an alleged failure to continue to investigate.

Respondent focuses his brief on the issue of initial probable cause, not continued investigation. (Respondent Brief in Opposition ["BIO"] at 1-2, 5, 7, 8). Respondent also does not offer any opposition to the exceptional importance of the presented question. Finally, Respondent's only defense of the purported correctness of the decision below relies upon a misstatement of the issues before this Court.

As Petitioner explains herein, Respondent provides no basis for this Court to deny the petition or not to reverse the Eleventh Circuit's decision summarily.

A. 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.

In support of the petition, Petitioner noted three circuits which are in conflict with the Eleventh Circuit's requirement that Petitioner continue his investigation. Respondent did not address that issue, instead focusing on minute factual discrepancies between the circuit holdings regarding the initial establishment of probable cause. This argument misses the mark and the circuit conflict remains unaddressed by Respondent.

For example, the Tenth Circuit, in *Beard v. City of Northglenn, Colo.*, 24 F.3d 110, 116 (1994), held that the officer's failure to investigate "more thoroughly" by seeking the source of handwriting samples did not vitiate the officer's immunity. In addressing the case, Respondent simply states that "[the victim] did in fact do an investigation beyond the victim." Not only is this an error, it is off point. In *Beard*, the Court held that after the initial investigation, the officer had no duty to investigate further. In the case *sub judice*, the Eleventh Circuit found that Petitioner had that exact duty lest he lose qualified immunity. Hence, there is a conflict.

B. THE COURT OF APPEALS' DECISION IS INCORRECT

Respondent argues that "[t]his case is not about the degree of thoroughness that an officer must make

[sic] before he makes an arrest because petitioner arrested [Respondent] without making a minimal effort to establish the facts.” (BIO.9). Respondent is absolutely correct—this is not a case about the required thoroughness of an initial investigation because that has long been established by the Eleventh Circuit. *Rankin v. Evans*, 133 F.3d 1425, 1441 (11th Cir. 1998) (officers are generally entitled to rely on victim’s criminal complaint). This appeal concerns the improper imposition by the Eleventh Circuit of a secondary investigation duty despite the establishment of probable cause. The ruling and the purported expansion of the Eleventh Circuit’s ruling in *Kingsland* are contrary to precedent set by this Court and in contradiction to several other circuits. *Baker v. McCollan*, 443 U.S. 137, 145 (1979).

C. THE LAW WAS NOT CLEARLY ESTABLISHED

In addition and alternatively, should this Court allow the ruling below concerning the duty to perform an additional investigation to stand, 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. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (“[T]o 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.”) Accordingly, Petitioner’s qualified immunity should have prevented Respondent from proceeding. This argument is likewise unaddressed by Respondent.



CONCLUSION

Based on the foregoing and those stated in the original petition, 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,

TIMOTHY J. BUCKLEY III
COUNSEL FOR PETITIONER
BUCKLEY CHRISTOPHER, P.C.
2970 CLAIRMONT ROAD NE
SUITE 650
ATLANTA, GA 30329
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