

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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CEDRICK THOMAS,

*Petitioner,*

v.

JEFFREY COZZI,

*Respondent.*

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

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

1. Whether, in light of *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018), the Eleventh Circuit Court of Appeals erred by affirming the denial of probable cause concerning Detective Thomas?
2. Whether, in light of *District of Columbia v. Wesby*, 138 S. Ct. 577 (2018), the Eleventh Circuit Court of Appeals erred by affirming the denial of qualified immunity concerning Detective Thomas?

## **PARTIES TO THE PROCEEDING**

Petitioner, Detective Cedrick Thomas was a defendant in the district court and the appellant before the Eleventh Circuit. Jeffrey Cozzi was the plaintiff in the district court and the appellee before the Eleventh Circuit.

Defendants Detective George Montgomery, Birmingham Police officers Johnny Jones and Christopher Lampley were granted summary judgment by the district court which was not challenged by the plaintiff. The City of Birmingham was granted summary judgment by the district court which was not appealed by the plaintiff. Consequently, George Montgomery, Johnny Jones, Christopher Lampley and the City of Birmingham are not parties to this petition.

No corporations are involved in this proceeding.

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## **PETITION FOR CERTIORARI**

Petitioner Cedrick Thomas respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

### **INTRODUCTION**

This case involves a claim of false arrest under 42 U.S.C. § 1983. Detective Cedrick Thomas was a police officer for the City of Birmingham, Alabama conducting an investigation of a robbery at a Walgreens pharmacy. Detective George Montgomery was a police officer for the City of Birmingham, Alabama conducting an investigation of a robbery at a Rite Aid pharmacy which occurred one day after the Walgreens pharmacy robbery. Both incidents were captured on the store security-video cameras, and both showed a perpetrator demanding the same kind of narcotic drugs, wearing the same kind of mask, and using the same language to effectuate the robbery. In both robberies, the perpetrator threatened to detonate explosives and told the store clerks that he had been a bomb specialist in Afghanistan. Thomas and Montgomery believed the robberies were committed by the same person.

An anonymous caller telephoned the Crimestoppers number and said the man in the television report bore a strong resemblance to Jeffrey James Cozzi of Centerpoint, Alabama. Also, a separate confidential informant contacted a deputy sheriff at the Jefferson County Sheriff's Office, Deputy Brasher, who in turn contacted the Birmingham Police Department. Information received from the confidential informant was communicated to Detective Montgomery, who then

provided the information to Detective Thomas. The informant told the deputy that they recognized the perpetrator from the robbery videos as Jeffery Cozzi, a white male who lived at 1735 6th Street NW in Birmingham. The informant said they recognized Cozzi from his distinctive walking style, his hat and shoes, and because the mask worn by the robber was similar to masks Cozzi wore in his line of work as a car painter. Cozzi had worked as a car painter in the past, but had not worked at that job for at least seven months at the time of the robberies. The informant also said that Cozzi had an addiction to narcotics and identified Cozzi's vehicle as a purple Toyota Tacoma pickup truck. A search warrant was obtained to search Cozzi's residence.

Thomas had the following information before him at the time of Cozzi's arrest: (1) Thomas had the above stated information wherein he had been given information from two separate informants that Cozzi was the man pictured in the surveillance video shown on television. The tipster was corroborated by the confidential informant.

(2) The information was sufficiently detailed to lead a reasonable officer to believe that the informant knew Cozzi. The address and vehicle description were accurate, and Cozzi's appearance roughly aligned with the witness descriptions.

(3) When the search was conducted, a plastic bag containing 32 loose pills was found at 1442 mt. (2:42 p.m.) from the night stand in the north east bedroom (Cozzi's bedroom). The robbery suspect had obtained six pills in a plastic bag from one of the pharmacy robberies. Detective Thomas took Cozzi into custody.

Cozzi was eventually released from custody and no charges were brought against him.

### **OPINIONS BELOW**

On August 12, 2016, United States Magistrate Judge T. Michael Putnam, after considering the pleadings, evidence and arguments set forth by both parties issued a Report and Recommendation to grant all Defendants summary judgment as to all of Cozzi's claims. The United States Magistrate's Report and Recommendation is reproduced in the appendix to this petition as (Appendix D at App. 37-73.)

On February 22, 2017, Chief United States District Court Judge Karon Owen Bowdre issued a Memorandum Opinion and Order granting summary judgment to Defendant City of Birmingham as to Cozzi's claims against the City for violation of the American with Disabilities Act or the Rehabilitation Act. The court also agreed with the magistrate judge as to Defendants Montgomery, Jones and Lampley. The court further agreed with the magistrate judge as to Cozzi's claims against Thomas concerning Cozzi's claims for unlawful search of Cozzi's home under § 1983 and excessive force under § 1983. The court denied Detective Thomas' assertion of qualified immunity as to Cozzi's claim of false arrest under § 1983. The United States District Court Opinion is reproduced in the appendix to this petition as (Appendix C at App. 21-36.)

On March 3, 2017, Detective Thomas filed a Notice of Appeal to the Eleventh Circuit Court of Appeals.

The Eleventh Circuit Court of Appeals Opinion affirming the United States District Court Opinion was

issued on June 19, 2018 and is reproduced in the appendix to this petition as (Appendix A at App. 1-17.)

### **JURISDICTION**

The Eleventh Circuit Court of Appeals entered its decision and final judgment in this case on June 19, 2018. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Respondent brought the underlying action pursuant to 42 U.S.C. § 1983, which states, in pertinent part:

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 . . . .

Respondent alleges that Petitioner violated his rights under the Fourth Amendment of the United States Constitution, which states:

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.

### **STATEMENT OF THE CASE**

Cozzi's claims arise from an investigation of two pharmacy robberies conducted by the Birmingham Police Department. (App. 3) At all relevant times, Detective Cedrick Thomas was a police officer working for the City of Birmingham, and was acting within the line and scope of his employment. (*Id.*)

A Walgreens Pharmacy was robbed on May 15, 2013, and a Rite Aid Pharmacy was robbed the following day. (*Id.*) Thomas was assigned to investigate the Walgreens robbery, while Detective Montgomery was assigned to investigate the Rite Aid robbery. (App. 3, 41-42) Both incidents were captured on the store security-video cameras, and both showed a perpetrator demanding the same kind of narcotic drugs, wearing the same kind of mask, and using the same language to effectuate the robbery. (App. 4, 42) In both robberies, the perpetrator threatened to detonate explosives and told the store clerks that he had been a bomb specialist in Afghanistan. (*Id.*) Thomas and Montgomery believed the robberies were committed by the same person. (App. 3, 42)

Video from one of the robberies was shown on local television as part of the "Crimestoppers" program. (App. 4, 43) The Crimestoppers program generated two responses. (*Id.*) An anonymous caller telephoned the Crimestoppers number and said the man in the television report bore a strong resemblance to Jeffrey James Cozzi of Centerpoint. (*Id.*) Also, a separate confidential informant contacted a deputy sheriff at the

Jefferson County Sheriff's Office, Deputy Brasher, who in turn contacted the Birmingham Police Department. (*Id.*) Information received from the confidential informant was communicated to Montgomery, who then provided the information to Thomas. (*Id.*) The informant told the deputy that they recognized the perpetrator from the robbery videos as Jeffery Cozzi, a white male who lived at 1735 6th Street NW in Birmingham. (*Id.*) The informant said they recognized Cozzi from his distinctive walking style, his hat and shoes, and because the mask worn by the robber was similar to masks Cozzi wore in his line of work as a car painter. (*Id.*) Cozzi had worked as a car painter in the past, (*Id.*) but had not worked at that job for at least seven months at the time of the robberies. (App. 43) The informant also said that Cozzi had an addiction to narcotics and identified Cozzi's vehicle as a purple Toyota Tacoma pickup truck. (App. 4, 43-44)

On May 18, 2013, Birmingham Police Officer John Osborn went to the address given by the informant for Cozzi, and saw a purple pickup truck parked in the driveway. (App. 4, 44) On May 20, 2013, Thomas obtained a search warrant for the address given by the informant. (*Id.*) A neutral magistrate, Jefferson County Circuit Judge Teresa Pulliam, issued the search warrant after finding that there existed probable cause to issue the search warrant for the address associated with Cozzi. (App. 44) Thomas was present during the execution of the search warrant at Cozzi's residence, and at Cozzi's subsequent detention. (App. 5, 46)

The search warrant was executed after Cozzi and his then-girlfriend, Kara Antonoff, pulled up to the

residence in his truck. (App. 5, 44) Cozzi admits that he worked as a car painter until seven months before the arrest and was working as a barber at the time of the arrest. (App. 45)

As a result of the search of the house and car, officers collected a pair of gray tennis shoes, two locked safes, and a plastic bag containing 32 small pills. (App. 45-46) They also found a .357 Magnum handgun in the truck, for which Cozzi had a concealed-carry permit. (App. 45-46)

During the search, Thomas talked to other people at the residence, including Antonoff; another resident of the house that was searched, Michael Thompson; and Thompson's girlfriend at the time, Myleah Tidwell. (App. 6, 46) Thompson told Thomas during the search that the photograph Thomas showed him of the robber was not Cozzi. (App. 5, 46) The other person at the scene, Myleah Tidwell, is now deceased. (App. 46) Thomas testified that he was told by the "other girl" at the search scene that Cozzi had a drug dependency. (App. 46)

Upon completion of the search, Detective Thomas arrested the plaintiff and transported him to the Birmingham police headquarters for questioning. (App. 6, 46) Cozzi was questioned and released the next day. (App. 6, 48).

On August 12, 2016, United States Magistrate Judge T. Michael Putnam, after considering the pleadings, evidence and arguments set forth by both parties issued a Report and Recommendation to grant all Defendants summary judgment as to all of Cozzi's claims. (Appendix D at App. 37-73.) The Report recommended that Defendants' motion for summary judgment as to unlawful search of Cozzi's home under § 1983, excessive force under § 1983 and false arrest under § 1983 as to all Defendants be granted. (*Id.*) The Recommendation was that Thomas be granted qualified immunity as to all claims of Cozzi. (*Id.*) The Report recommended that Defendants Officer George Montgomery, Officer Johnny Jones and Officer Christopher Lampley be granted summary judgment because Cozzi had abandoned his claims of unlawful search, excessive force and false arrest under §1983. (*Id.*) The Report also granted the City summary judgment as to Cozzi's American with Disabilities Act or the Rehabilitation Act. (*Id.*)

On February 22, 2017, Chief United States District Court Judge Karon Owen Bowdre issued a Memorandum Opinion and Order granting summary judgment to Defendant City of Birmingham as to Cozzi's claims against the City for violation of the American with Disabilities Act or the Rehabilitation Act. (Appendix C at App. 21-36.) The court also agreed with the magistrate judge as to Defendants Montgomery, Jones and Lampley. (*Id.*) The court further agreed with the magistrate judge as to Cozzi's claims against Thomas concerning Cozzi's claims for unlawful search of Cozzi's home under § 1983 and excessive force under § 1983. (*Id.*) The court denied



Officer Thomas' assertion of qualified immunity as to Cozzi's claim of false arrest under § 1983. (*Id.*)

On March 3, 2017, Detective Thomas filed a Notice of Appeal. On June 19, 2018, the Eleventh Circuit Court of Appeals issued its Opinion affirming the United States District Court Opinion. (Appendix A at App. 1-17.)

### **REASONS FOR GRANTING THE PETITION**

Petitioner respectfully request that certification be granted as the Eleventh Circuit's decision is in direct contravention of the clear precedent of this Court, and undermines the very intent and purpose of the probable cause standard and the doctrine of qualified immunity, thus warranting the exercise of this Court's discretionary power.

#### **I. IN LIGHT OF *DISTRICT OF COLUMBIA V. WESBY*, 138 S. CT. 577 (2018), THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED BY AFFIRMING THE DENIAL OF PROBABLE CAUSE CONCERNING DETECTIVE THOMAS.**

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Because arrests are “seizures” of “persons,” they must be reasonable under the circumstances. See *Payton v. New York*, 445 U.S. 573, 585, 100 S. Ct. 1371, 63 L.Ed.2d 639 (1980). A warrantless arrest is reasonable if the officer has probable cause to believe that the suspect committed a crime in the officer's presence. *Atwater v. Lago Vista*, 532 U.S. 318, 354, 121 S. Ct. 1536, 149 L.Ed.2d 549 (2001).

This Court has set out the standard for determining probable cause as follows.

“To determine whether an officer had probable cause for an arrest, “we examine the events leading up to the arrest, and then decide ‘whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to’ probable cause.” *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S.Ct. 795, 157 L.Ed.2d 769 (2003) (quoting *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)). Because probable cause “deals with probabilities and depends on the totality of the circumstances,” 540 U.S., at 371, 124 S.Ct. 795, it is “a fluid concept” that is “not readily, or even usefully, reduced to a neat set of legal rules,” *Illinois v. Gates*, 462 U.S. 213, 232, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). It “requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Id.*, at 243–244, n. 13, 103 S.Ct. 2317 (1983). Probable cause “is not a high bar.” *Kaley v. United States*, 571 U.S. —, —, 134 S.Ct. 1090, 1103, 188 L.Ed.2d 46 (2014).” *D.C. v. Wesby*, 138 S. Ct. 577, 585–86, 199 L. Ed. 2d 453 (2018).

Thomas had the following information before him at the time of Cozzi’s detention and arrest: (1) Thomas had been given information from two separate informants that Cozzi was the man pictured in the surveillance video shown on television. The tipster was corroborated by the confidential informant. Although that confidential informant was not known to Thomas,

they were known to Jefferson County Sheriff's Deputy Brasher, who relayed the informant's information to Thomas. Thomas was justified in making an assumption that, if the confidential informant had been used by Deputy Brasher, the informant at some point had been deemed to be credible by a fellow law enforcement officer. Courts have noted that it would "unduly hamper" officers if they were not permitted to "act on the assumption" that fellow officers are providing them with reliable information. *Whiteley v. Warden, Wyo. State Penitentiary*, 501 U.S. 560, 568 (1971).

(2) The information was sufficiently detailed to lead a reasonable officer to believe that the informant knew Cozzi. The address and vehicle description were accurate, and Cozzi's appearance roughly aligned with the witness descriptions.

(3) When the search was conducted, a plastic bag containing 32 loose pills was found at the residence at 1442 (2:42 p.m.) from the night stand in the north east bedroom (Cozzi's bedroom). The robbery suspect had obtained six pills in a plastic bag and two pill bottles from the Walgreen pharmacy. Because the pills were loose in a plastic bag, Detective Thomas could be reasonably suspicious that they were not lawfully prescribed to Cozzi.

The fact that two *separate* anonymous sources (one of whom had a history of working as an informant for a sheriff's deputy) pointed to Cozzi as the robber pictured in the surveillance video, which was then lent support by the fact that pills were found during the search, was sufficient for a reasonable police office to believe there was enough evidence to make an arrest.

At minimum, Officer Thomas had arguable probable cause to detain and arrest Cozzi.

Under Eleventh Circuit precedent, “[a]ctual probable cause is not necessary for an arrest to be objectively reasonable. Indeed, it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that probable cause is present, and in such cases those officials should not be held personally liable.” *Von Stein v. Brescher*, 904 F.2d 572, 579 (11th Cir. 1990).

Viewing these circumstances as a whole, a reasonable officer could conclude that there was probable cause to detain and arrest Cozzi under the totality of the circumstances. Even if Detective Thomas was mistaken as to probable cause he should not be held personally liable. This Court has held “[e]ven assuming the officers lacked actual probable cause to arrest ... the officers are entitled to qualified immunity because they “reasonably but mistakenly conclude[d] that probable cause [wa]s present.” *Id.* at 591 quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034. Therefore, the Eleventh Circuit erred in determining that Detective Thomas did not have probable cause.

While the Eleventh Circuit alludes to *Wesby* it considers the evidence in isolation in direct contradiction to *Wesby*. See *Wesby* at 588. The Eleventh Circuit “engaged in an excessively technical dissection of the factors supporting probable cause.” *Id.* The Eleventh Circuit failed to consider that the “total of the circumstances” requires courts to consider “the whole picture.” *Wesby* at 588 quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690

(1981). This Court has made it clear that “the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation. See *United States v. Arvizu*, 534 U.S. 266, 277–278, 122 S. Ct. 744, 151 L.Ed.2d 740 (2002). Instead of considering the facts as a whole, the [Eleventh Circuit] took them one by one.” *D.C. v. Wesby*, 138 S. Ct. 577, 588, 199 L. Ed. 2d 453 (2018).

Also, the Eleventh Circuit mistakenly believed that it could dismiss outright any circumstances that were “susceptible of innocent explanation.” *D.C. v. Wesby*, 138 S. Ct. 577, 588, 199 L. Ed. 2d 453 (2018) quoting *United States v. Arvizu*, 534 U.S. 266, 277–278, 122 S. Ct. 744 (2002). For example, the Eleventh Circuit brushed aside the pills found in the plastic bag in Cozzi’s bedroom as “common” ignoring the fact that Detective Thomas was investigating a robbery of a pharmacy where pills were taken in a plastic bag. Probable cause does not require officers to rule out a suspect’s innocent explanation for suspicious facts. *Wesby*, at 138 S. Ct. 588.

“As we have explained, ‘the relevant inquiry is not whether particular conduct is ‘innocent’ or ‘guilty,’ but the degree of suspicion that attaches to particular types of noncriminal acts.’” *Gates*, 462 U.S., at 244, n. 13, 103 S.Ct. 2317. Thus, the panel majority should have asked whether a reasonable officer could conclude—considering all of the surrounding circumstances, including the plausibility of the explanation itself—that there was a “substantial chance of criminal activity.”” *D.C. v. Wesby*, 138 S. Ct. 577, 588, 199 L. Ed. 2d 453 (2018).

The totality of the circumstances certainly suggests Detective Thomas had probable cause to believe Cozzi was involved in the criminal activity he was investigating. Probable cause “requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.” *Illinois v. Gates*, at 243–244, n.13, 103 S. Ct. 2317 (1983). Viewing these circumstances as a whole, a reasonable officer could conclude that there was probable cause to detain and arrest Cozzi under the totality of the circumstances. Therefore, the Eleventh Circuit erred in determining that Detective Thomas did not have probable cause. Accordingly, the petition should be granted in order to review and correct the error by the Eleventh Circuit.

**II. IN LIGHT OF *DISTRICT OF COLUMBIA V. WESBY*, 138 S. CT. 577 (2018), THE ELEVENTH CIRCUIT COURT OF APPEALS ERRED BY AFFIRMING THE DENIAL OF QUALIFIED IMMUNITY CONCERNING DETECTIVE THOMAS.**

This Court’s conclusion that Detective Thomas had probable cause to detain and arrest Cozzi is sufficient to resolve this case. But where, as here, the Court of Appeals erred on both the merits of the constitutional claim and the question of qualified immunity, this Court has held “we have discretion to correct its errors at each step.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 735, 131 S. Ct. 2074, 179 L.Ed.2d 1149 (2011); *see, e.g., Plumhoff v. Rickard*, 572 U.S. —, 134 S. Ct. 2012, 188 L.Ed.2d 1056 (2014). Petitioner Thomas respectfully request this Honorable Court exercise its discretion here because the Eleventh Circuit’s analysis,

if followed elsewhere, would “undermine the values qualified immunity seeks to promote.” *al-Kidd, supra*, at 735, 131 S. Ct. 2074. See also, *D.C. v. Wesby*, 138 S. Ct. 577, 589, 199 L. Ed. 2d 453 (2018).

The Eleventh Circuit asserts that if an officer makes an arrest without arguable probable cause he or she is not entitled to qualified immunity. (App. 16). This assertion directly contradicts this Court’s recent holding in *D.C. v. Wesby*, 138 S. Ct. at 591. This Court held “[e]ven assuming the officers lacked actual probable cause to arrest ... the officers are entitled to qualified immunity because they “reasonably but mistakenly conclude[d] that probable cause [wa]s present.” *Id.* at 591 quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034.

This Court continues “to stress that lower courts “should think hard, and then think hard again,” before addressing both qualified immunity and the merits of an underlying constitutional claim.” *Wesby*, 138 S. Ct. 577, 589, 199 L. Ed. 2d 453 (2018) quoting *Camreta v. Greene*, 563 U.S. 692, 707, 131 S. Ct. 2020, 179 L.Ed.2d 1118 (2011).

This Court’s precedents concerning the doctrine of qualified immunity state:

“officers are entitled to qualified immunity under § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was “clearly established at the time.” *Reichle v. Howards*, 566 U.S. 658, 664, 132 S.Ct. 2088, 182 L.Ed.2d 985 (2012). “Clearly established” means that, at the time of the officer’s conduct, the law was “

‘sufficiently clear’ that every ‘reasonable official would understand that what he is doing’ “ is unlawful. *al-Kidd, supra*, at 741, 131 S.Ct. 2074 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)). In other words, existing law must have placed the constitutionality of the officer’s conduct “beyond debate.” *al-Kidd, supra*, at 741, 131 S.Ct. 2074. This demanding standard protects “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986).

To be clearly established, a legal principle must have a sufficiently clear foundation in then-existing precedent. The rule must be “settled law,” *Hunter v. Bryant*, 502 U.S. 224, 228, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (per curiam ), which means it is dictated by “controlling authority” or “a robust ‘consensus of cases of persuasive authority,’” *al-Kidd, supra*, at 741–742, 131 S.Ct. 2074 (quoting *Wilson v. Layne*, 526 U.S. 603, 617, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999)). It is not enough that the rule is suggested by then-existing precedent. The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply. See *Reichle*, 566 U.S., at 666, 132 S.Ct. 2088. Otherwise, the rule is not one that “every reasonable official” would know. *Id.*, at 664, 132 S.Ct. 2088. *D.C. v. Wesby*, 138 S. Ct. 577, 589–90, 199 L. Ed. 2d 453 (2018).



This Court has stressed the need to “identify a case where an officer acting under similar circumstances ... was held to have violated the Fourth Amendment.” *White v. Pauly*, 580 U.S. \_\_\_, \_\_\_, 137 S. Ct. 548, 552, 196 L. Ed.2d 463 (2017) (*per curiam*). While there does not have to be “a case directly on point,” existing precedent must place the lawfulness of the particular arrest “beyond debate.” *Wesby*, at 138 S. Ct. 590 quoting *al-Kidd, supra*, at 741, 131 S. Ct. 2074.

The Eleventh Circuit places great weight on Cozzi’s roommate Michael Thompson who claimed, based on photographs shown to Thompson of the perpetrator at the crime scene, that the person in the photographs was not Cozzi. There is no clearly established precedent that requires a police officer to disregard evidence of a criminality because a suspect’s friend offers a different explanation. See, e.g., *Borgman v. Kedley*, 646 F.3d 518, 524 (8th Cir. 2011) (“[An officer] need not rely on an explanation given by the suspect”); *Cox v. Hainey*, 391 F.3d 25, 32, n. 2 (1st Cir. 2004) (“A reasonable police officer is not required to credit a suspect’s story”); *Marx v. Gumbinner*, 905 F.2d 1503, 1507, n.6 (11th Cir. 1990) (“[Officers] are not required to forego arresting [a suspect] based on initially discovered facts showing probable cause simply because [the suspect] offered a different explanation”); *Criss v. Kent*, 867 F.2d 259, 263 (6th Cir. 1988) (“A policeman ... is under no obligation to give any credence to a suspect’s story ...”). *D.C. v. Wesby*, 138 S. Ct. 577, 592, 199 L. Ed. 2d 453 (2018). Under the circumstances of the case at bar, it cannot be said that existing law was “ ‘sufficiently clear’ that every ‘reasonable official would understand that what he is doing’ “ is unlawful. *al-Kidd, supra*, at 741, 131 S. Ct.

2074 (quoting *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 97 L.Ed.2d 523 (1987)).

Thomas had been given information from two separate informants that Cozzi was the man pictured in the surveillance video shown on television. The tipster was corroborated by the confidential informant. Although that confidential informant was not known to Thomas, they were known to Jefferson County Sheriff's Deputy Brasher, who relayed the informant's information to Thomas. Thomas was justified in making an assumption that, if the confidential informant had been used by Deputy Brasher, the informant at some point had been deemed to be credible by a fellow law enforcement officer. Courts have noted that it would "unduly hamper" officers if they were not permitted to "act on the assumption" that fellow officers are providing them with reliable information. *Whiteley v. Warden, Wyo. State Penitentiary*, 501 U.S. 560, 568 (1971).

The information was sufficiently detailed to lead a reasonable officer to believe that the informant knew Cozzi. The address and vehicle description were accurate, and Cozzi's appearance roughly aligned with the witness descriptions.

When the search was conducted, a plastic bag containing 32 loose pills was found at the residence at 1442 (2:42 p.m.) from the night stand in the north east bedroom. The robbery suspect had obtained six pills in a plastic bag and two pill bottles from the Walgreen pharmacy. Detective Thomas was investigating a robbery of a pharmacy where pills were taken in a plastic bag. Because the pills were loose in a plastic

bag, Detective Thomas could be reasonably suspicious that they were not lawfully prescribed to Cozzi.

The fact that two *separate* anonymous sources (one of whom had a history of working as an informant for a sheriff's deputy) pointed to Cozzi as the robber pictured in the surveillance video, which was then lent support by the fact that pills were found during the search, was sufficient for a reasonable police office to believe there was enough evidence to make an arrest.

For these reasons, a reasonable officer, looking at the entire legal landscape at the time of the arrest, could have interpreted the law as permitting the arrest here. Properly viewed from the perspective of a reasonable officer confronted with the particular facts and circumstances facing Detective Thomas, his actions were objectively reasonable and did not violate Cozzi's statutory or constitutional rights. The Eleventh Circuit erred in determining otherwise. Accordingly, the petition should be granted in order to review and correct the error of the Eleventh Circuit.

**CONCLUSION**

For the foregoing reasons, the Petitioner respectfully request that the Court grant this petition.

Respectfully Submitted,

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