No. _____

In The
Supreme Court of the United States

ROBERT H. WRIGHT, JR.,

Petitioner,

v.

SPECIAL AGENT JERALD WATSON,

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

CRAIG T. JONES
CRAIG T. JONES, P.C.
Post Office Box 129
Washington, Georgia 30673
(706) 678-2364
craigthomasjones@outlook.com
Counsel for Petitioner

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COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

1. Is a malicious prosecution claim under the Fourth Amendment and *Manuel v. City of Joliet*, 137 S. Ct. 9112 (2017) the proper civil remedy for an "overcharge" prosecution where a suspect is lawfully arrested for a trivial misdemeanor but is also subjected to piled-on felony charges in an attempt to pressure him into a guilty plea and financial settlement of a civil forfeiture action in which the proceeds go to the arresting agency, when both the felony prosecution and civil forfeiture are based on the knowingly false statements of a police investigator?

2. Does a Fourth Amendment malicious prosecution claim arise when a police investigator knowingly overcharges a rural property owner with felony drug manufacturing to leverage an abusive civil forfeiture proceeding – which requires a seizure of at least four ounces of marijuana from the suspect's property – when there is only probable cause to charge him with constructive possession of less than one-third of an ounce of marijuana found on the property and there is no probable cause that he has anything to do with an inconspicuous patch of marijuana plants growing outside his fence on a neighbor's land, thereby causing great damage to his reputation and resulting in his termination as treasurer of a large corporation which has employed him for 35 years?

PARTIES TO THE PROCEEDINGS

Petitioner, Robert H. Wright, Jr., was the appellant in the court below. Respondent, S/A Jerald Watson, was the appellee in the court below.

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Petitioner, a corporate executive whose career was ended by false accusations that he was a marijuana grower, filed a lawsuit against police officers for various constitutional violations under 42 U.S.C. §1983. At the pleadings stage, the trial court dismissed Petitioner's Fourth Amendment malicious prosecution claim against all officers except Respondent, and at the close of discovery, granted summary judgment to Respondent on that claim as well. (App. 7). The case proceeded to trial against Respondent and another officer on a Fourth Amendment unlawful search claim, which ended in a verdict for the defendants. Petitioner then appealed the grant of summary judgment on the malicious prosecution claim, which was now a final order subject to direct appeal, to the Eleventh Circuit. The Court of Appeals affirmed the trial court order granting summary judgment to Respondent on the Fourth Amendment malicious prosecution claim. (App. 1). Petitioner filed a petition for rehearing *en banc* which was denied. (App. 57).

JURISDICTION

The decision of the Court of Appeals denying the petition for rehearing was issued on August 24, 2018. This Court has jurisdiction under 28 U.S.C. §1254(1). This petition is timely filed under 28 U.S.C. §2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV:

"The right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing 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 . . . 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. . . .

STATEMENT OF THE CASE

On June 27, 2013, members of the Columbus (Georgia) Metro Narcotics Task Force and the Governor's Task Force for Drug Suppression conducted aerial surveillance of property in rural Harris County, Georgia looking for marijuana crops. State troopers conducted the aerial surveillance from a helicopter, assisted by a ground team of officers from a multi-jurisdiction drug task force. The helicopter team

spotted a sizeable marijuana crop on property adjacent to the ten-acre tract where Petitioner Robert Wright lived with his wife, Lisa Wright, which had been gifted to her by her family. The marijuana crop was not on property owned by either Mr. or Mrs. Wright. After the helicopter crew reported the sighting to the ground team, investigator Jerald Watson and other officers responded to the scene.

The officers determined that the Wrights' house was the closest residence to the marijuana crop. Mr. Wright was not at home, but Mrs. Wright was. The officers asked her for permission to search the house. She declined. It was decided that Watson would apply for a search warrant since he was a Harris County deputy sheriff who was familiar with the local magistrate, while the other officers remained at the Wrights' property to secure the scene.

Watson told the magistrate that the officers had found a marijuana crop on land adjacent to the Wright property. In his affidavit for the search warrant, Watson falsely stated that the officers had seen several small marijuana plants growing on the Wright property, and based upon that false statement, the magistrate issued the search warrant. But when Watson returned to the property with the warrant, the marijuana plants allegedly seen growing inside the Wrights' fence were nowhere to be found. However, while executing the search warrant, officers did locate small amounts of marijuana and remnants of marijuana cigarettes among the personal effects of Mrs. Wright scattered throughout the ten-acre tract. The total amount

recovered from multiple locations around the yard and surrounding woods was 8.9 grams, or less than one-third of an ounce. For simple possession of marijuana to rise to the level of a felony, Georgia law requires possession of a full ounce, which is approximately 28 grams. Four ounces must be seized from the suspect's property before a civil forfeiture action can be filed.

Any possession by Mr. Wright was constructive at best because the only evidence tying him to the marijuana is that he was one of the people who lived there. Not only did his wife live there, but her deceased son's gravesite was on the property and was periodically visited by friends paying their respects. Other visitors included contractors doing work on the Wright home, one of whom coincidentally stopped by to pick up a check that afternoon while the search was in progress. Mr. Wright was usually away on business, and most of his time on the property was spent sleeping at night. It was a stretch to assume that traces of burnt marijuana found anywhere on the property were in Mr. Wright's possession, but giving the officers the benefit of the doubt, there was arguable probable cause to believe that at a misdemeanor offense of marijuana possession had been committed by a resident on the property.

Based on that search, Watson arrested both Mr. and Mrs. Wright – not only for misdemeanor possession of marijuana but also for the felony of manufacturing marijuana. In addition to taking the Wrights to jail, the officers seized vehicles, firearms, computers, and other items of personal property that belonged to Mr. Wright, contending that these items were

instrumentalities used in the manufacture and sale of illegal drugs. Upon arrival at the jail, Watson swore out arrest warrants charging both Mr. and Mrs. Wright with felony manufacture of marijuana and misdemeanor possession of marijuana and drug related objects. Watson also reported the seizure to the District Attorney, who filed a civil forfeiture action against the Wrights and their property. While the Wrights were released that night on their own recognizance, Mr. Wright was deprived of the possession of his property during the time that the civil forfeiture action was pending, as well as for several months thereafter.

Reasonable jurors could find that investigator Jerald Watson violated the Fourth Amendment by commencing and aiding a malicious prosecution against Robert Wright for felony drug manufacture charges that any reasonable officer would know were not supported by probable cause – irrespective of whether the search that led to the Wright's arrest and prosecution was legal – because the evidence found during the search was insufficient to establish probable cause for the felony prosecution and resulting civil forfeiture action.

The felony overcharge that is the subject of Mr. Wright's petition was based on the following false statements that were either knowingly made by Investigator Watson or relied upon by him with reckless disregard for the truth:

- In order to apply for the warrant, Watson prepared and signed a sworn "affadavit"

[sic] that falsely stated that "The Georgia State Patrol was flying over the residence located at 525 R.D. Brown Road" and that the "troopers observed several containers near a small building that appeared to have marijuana growing in them." In fact, the troopers had only seen some vegetation that they could not identify from the air and asked the ground crew to "check it" out. Jurors could infer that this embellishment was done deliberately to mislead the magistrate, who would rely on the false statement to not only issue a search warrant but to ultimately issue an arrest warrant.

- Watson's affidavit went on to falsely state that after the troopers spotted the plants in the Wright yard, "the ground team located approximately six (6) marijuana plants near a shed, and then they left to check on a larger grow near the property line of the residence and when they returned to [sic] the six plants had been removed." But the fact that the alleged plants were not confiscated, photographed, or secured – combined with the fact that they were not there later and Mr. Wright's insistence that, to his knowledge, they were *never* there – authorizes the inference there were no marijuana plants growing near the shed or anywhere else on the Wright property. Moreover, the statement that there was a "larger grow *near the property line* of the residence" implies that the marijuana

> crop next door was actually on the Wrights' property rather than outside the Wrights' fence.
>
> • Watson subsequently prepared a written report falsely stating that other officers had located eight (8) to ten (10) plants growing on the Wright property in plastic cups, and then claiming that those plants were removed when he returned to execute the search warrant. This was a slightly different take on the false statements previously made to get the search warrant, and it went into the investigation file that was used to commence the felony prosecution against Mr. Wright.

According to Watson and the testimony of other officers, no effort was made to determine who owned the neighboring property where the marijuana grow had been spotted from the air before searching the Wright property. That was still the case weeks later, when Watson filed a "report of seizure" with the District Attorney which falsely stated that the plants were on the Wrights' land. That was the basis for the filing of the civil forfeiture action which, under Georgia law, required seizure of at least four ounces of marijuana on the suspect's property. At best, it was reckless disregard for the truth for Watson to set civil forfeiture proceedings into motion without checking the land title; at worst, it was an attempt to deceive the District Attorney just as he had already deceived the magistrate.

A jury could find that it was not reasonable to assume that the marijuana grow was on the Wright

property, which had a black chain-link fence all the way around it, since the officers could have easily determined ownership of the land by logging onto the county tax commissioner's website from a portable computer, calling from a mobile phone, or using a widely available app which provides property ownership information based on GPS coordinates. Since the Wrights did not own the property where the marijuana was growing, there was nothing to connect Mr. Wright to the pot field next door. As the trial court had previously noted at the pleadings stage, the alleged similarity between plastic Solo® cups, dog crates and potting soil on the two properties was not enough to connect Mr. Wright to the marijuana grow so as to establish probable cause for a felony drug manufacture charge – especially given the widespread use of those products and the fact that only so many stores in the area sell them, meaning that anyone in the area who purchased such items would likely have the same brands. In the words of the trial court,

> [I]t is doubtful that the presence of common items like potting soil, dog crates, and Solo cups at both locations supports a finding of probable cause. Plenty of homeowners in Middle Georgia purchase potting soil for innocent purposes every day; those who have or have had dogs often use wire crates; and the Solo cup is so ubiquitous that it is the subject of a popular country music song. Defendants do not contend that there was anything special or unique about these ordinary, innocuous items such that the presence of the items at

> both locations "allow a conclusion that there is a fair probability of finding contraband or evidence at" the Wright property. And, if the allegations in Wright's Complaint are taken as true . . . , Defendants themselves did not believe that what they saw at the Wright property gave rise to probable cause because they thought they had to strengthen their allegations by lying about seeing marijuana seedlings.

(Order on motions to dismiss, 8/13/15, Doc. 35 at 14-15).

In the absence of any evidence that Mr. Wright had knowledge of or involvement in the cultivation, manufacture, or distribution of the marijuana crop on his neighbor's land – and the only probable cause for *any* crime being that 8.9 grams of burnt marijuana was found on land where he lived which was also occupied and frequented by others – investigator Watson set into motion a felony drug prosecution that was kept hanging over Wright's head for fifteen months, causing him to be terminated from his job and to lose approximately $4 million in salary and benefits.

All charges against Mr. Wright were ultimately dismissed, but not until after the damage was done. Mrs. Wright – who is not a party to this case – pled guilty to possession of marijuana and paid a $20,000 settlement (which went to the drug task force that Watson was part of) to compromise the forfeiture action and avoid the risk of losing her family property (which was worth twenty times that) and her son's

grave in the civil forfeiture action. In the parlance of Hollywood, it was a shakedown – and a perfect example of why public interest groups as diverse as the Heritage Foundation and Cato Institute have condemned the civil forfeiture process for giving law enforcement a financial incentive to cut corners and violate the constitutional rights of property owners. *See, e.g.*, Heritage Foundation, "Law Enforcement's Dependence on Civil Asset Forfeiture in Texas and Georgia," http://report.heritage.org/ib4181; Institute for Justice, "Policing for Profit," https://ij.org/report/policing-for-profit/; Cato Institute, "Clarence Thomas is Skeptical of Civil Asset Forfeiture," www.cato.org/blog/clarence-thomas-signals-skepticism-civil-asset-forfeiture.

REASONS FOR GRANTING THE PETITION

This Court recently made clear that the Fourth Amendment is the source of the right to be free from arbitrary and malicious prosecution, and that for purposes of determining the elements of a Fourth Amendment malicious prosecution claim, the federal courts should look to the elements of the corresponding state law tort. *Manuel v. City of Joliet*, 137 S. Ct. 911 (2017). But *Manuel* leaves open more questions than it answers, as evidenced by Justice Alito's thoughtful occurrence questioning why malice should be required at all when the Fourth Amendment standard is one of objective reasonableness. Justice Gorsuch raised the same issue when he was on the Court of Appeals. *Cordova v. City of Albuquerque*, 816 F.3d 645 (10th Cir. 2016)

(concurrence). Moreover, it is not clear that a malicious prosecution action lies where there is probable cause for one crime – thereby making the initial Fourth Amendment seizure a reasonable one – but no probable cause for other crimes charged which may be far more serious and injurious to the accused. By the same token, *Manuel* does not provide guidance on whether a favorable termination requirement under state law should be applied to malicious prosecution under the Fourth Amendment since prosecution for any crime without probable cause is objectively unreasonable whether it results in a favorable adjudication on the merits or not. That being the case, *Manuel* also invites reconsideration of *Heck v. Humphrey*, 512 U.S. 477 (1994), at least with regard to the favorable termination requirement. 512 U.S. at 484 ("One element that must be alleged and proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused."). Since the elements of malicious prosecution vary from state to state and therefore circuit to circuit, the Court needs to clarify the extent to which state tort law informs the elements of a Fourth Amendment malicious prosecution claim, if at all.

In Georgia, a "criminal prosecution which is carried on maliciously and without probable cause and which causes damage to the person prosecuted shall give him a cause of action" for malicious prosecution. O.C.G.A. §51-7-40; *Atlantic Zayre, Inc. v. Meeks*, 194 Ga. App. 267, 390 S.E.2d 398 (1990). Additionally, the "prosecution, whatever its extent," must be

"terminated in favor of the plaintiff." *Barber v. H & H Muller Enterprises, Inc.*, 197 Ga. App. 126, 128, 397 S.E.2d 563, 564 (1990). Some Georgia cases do draw a distinction between the probable cause element of a malicious prosecution case and that of a case for false imprisonment or false arrest, but others have trouble distinguishing the elements of those common law torts and thus provide little guidance to the federal courts. *See generally Ferrell v. Mikula*, 295 Ga. App. 326, 329, 672 S.E.2d 7, 10 (2008). Under the line of cases relied on by Petitioner, the determination of probable cause for a malicious prosecution claim is based *upon the particular offense that was prosecuted*, as opposed to whether there was probable cause to charge the plaintiff with any offense at all. *Reid v. Waste Industries USA, Inc.*, 345 Ga. App. 236, 812 S.E.2d 582 (2018); *see also Booker v. Eddins*, 183 Ga. App. 449, 451, 359 S.E.2d 211 (1987).

Under that standard, "Wright must show that no reasonable officer in the same circumstances and possessing the same knowledge as Watson could have believed *that probable cause existed to arrest Wright for felony manufacture of marijuana*." (App. 5-6) (emphasis added). But while the court below did articulate the standard urged by Petitioner, its decision was not consistent with that standard. In another recent case, the same Court of Appeals recognized that there are differences between probable cause in federal and state malicious prosecution cases because "federal law, not state law, governs the resolution of §1983 claims." *Blue v. Lopez*, 901 F.3d 1352, 1358 (11th Cir. 2018) (declining to follow a Georgia Supreme Court ruling that the

denial of a motion for directed verdict in the underlying criminal case does not serve as conclusive evidence of probable cause in a subsequent civil action for malicious prosecution); c*ompare Monroe v. Sigler*, 256 Ga. 759, 353 S.E.2d 23 (1987). "Georgia law's presumption disfavoring all malicious prosecution claims – no matter how meritorious – runs contrary to the remedial purpose of §1983 and the Fourth Amendment." *Blue*, 901 F.3d at 1360. Given the blurred lines between state and federal law in this area, *Manuel* needs to be revisited so that the Fourth Amendment means the same thing in all 50 states.

> As we have previously noted, a Fourth Amendment malicious prosecution claim under §1983 remains a federal constitutional claim, and its elements and whether they are met ultimately are controlled by federal law. So although courts historically have looked to the common law for guidance as to the constituent elements of the claim, when malicious prosecution is brought as a federal constitutional tort, the outcome of the case does not hinge on state law, but federal law, and does not differ depending on the tort law of a particular state. Indeed, with respect to the very issue we consider here, we have cited with approval the Second Circuit's statement that the "federal law of probable cause – not state law – should determine whether a plaintiff has raised a genuine issue of material fact with respect to a §1983 malicious prosecution claim."

Id. at 1358-59 (citations and punctuation omitted) (quoting *Green v. Montgomery*, 219 F.3d 52, 60 n.2 (2d Cir. 2000)).

Clearly more direction is needed on when Fourth Amendment malicious prosecution claims are guided by state law and when they are not. In line with Justice Alito's observation in *Manuel* that the common law element of malice itself is inconsistent with the objective reasonableness requirement of the Fourth Amendment, the reasonableness of a prosecution can be determined without regard to whether the prosecution was brought with bad intentions. The same thing can be said for the element of favorable termination, because the objective reasonableness of a given prosecution can be evaluated independently of whether the outcome was a dismissal, a nolo plea, or anything else short of an adjudicated exoneration. Outcome and motive may be relevant facts but should not establish as a matter of law whether the protections of the Fourth Amendment apply, and particularly not on a state-by-state basis. The Fourth Amendment should mean the same thing in every state and circuit.

Just as the Fourth Amendment is not dependent on state law to determine whether an investigatory stop or detention is objectively reasonable, it also does not look to state law to determine whether an arrest is based upon probable cause. Why should state law determine the elements of a Fourth Amendment claim for malicious prosecution? The elements of a Fourth Amendment claim should be the same whether the conduct at issue is wrongful arrest, incarceration, or

prosecution. The only variable is the stage of the process at which the alleged violation occurred, and whether there was probable cause to arrest, incarcerate, or initiate a prosecution based on the facts and circumstances known or knowable at that stage.

For instance, where a Fourth Amendment claim is based upon whether there is reasonable articulable suspicion to make an investigatory stop, the question is whether the officer's suspicion is reasonable based on the information available at the time of the stop. When the claim is for wrongful arrest, the issue is whether there was probable cause at the time of the arrest to suspect that any crime had been committed. But when the claim is based on an unreasonable prosecution for a specific crime, the issue is whether there is probable cause to initiate and continue a prosecution for the specific offense charged, because if there is not, the prosecution should proceed no further even if the arrest that initiated it was lawful. By providing the same objective standard for each stage, the Fourth Amendment inquiry requires nothing more than a determination of whether probable cause existed or continued to exist at that stage.

In this case, Mr. Wright suffered great financial harm because a trivial misdemeanor – constructive possession of trace amounts of a controlled substance that is legal in many states and rarely prosecuted in the others – was unreasonably magnified into a felony prosecution that was based on nothing and led nowhere. The fact that there was probable cause to arrest him for misdemeanor possession is not what ended his

35-year career as a corporate executive and caused him to take an early retirement that cost him millions of dollars in lost income. Rather, it was the fact that misdemeanor allegations were overcharged as a felony and leveraged into a civil forfeiture action initiated by the same overzealous officer who had arrested him. Not only was the evidence seized insufficient to establish a felony, but it was far below the four-ounce threshold for a civil asset forfeiture under Georgia law. The significance of that fact is that it was the publication of the legal notice for the civil forfeiture action that led to the discovery of the pending felony prosecution by Mr. Wright's employer and led to his termination, which reasonable jurors could infer would not have happened had he merely been charged with possession of the 8.9 grams of burnt marijuana remnants found scattered throughout the ten-acre tract where he lived. As a corporate officer responsible for handling millions of dollars of company money, the fact that he was the subject of pending felony drug manufacture charges punishable by many years in prison made him an unacceptable risk to the company and its shareholders, while the possession of less than one-third of an ounce of marijuana – were it to result in an arrest at all – would have been a petty misdemeanor that would have never caught his employer's attention.

Even if there were arguable probable cause to make an arrest for actual or constructive possession for a misdemeanor quantity of marijuana, that would only preclude a claim for an unlawful arrest or detention since there was probable cause to charge him with

something. Probable cause for a misdemeanor arrest should *not* preclude a claim for malicious prosecution where it is the felony overcharge that is objectively unreasonable and causes the compensable injury. While that is the rule under Georgia law, that should not be the determining factor. Elements of a state law tort should not dictate the requirements of a claim for a prosecution without probable cause under the Fourth Amendment.

Consider this simple hypothetical: A man driving a blue truck is stopped for speeding by the police. Five minutes earlier, a blue truck was seen leaving the scene of a robbery in which a store clerk was shot and killed. The officers search the truck and find a pistol in the glove compartment, but it is not the same caliber of gun used in the robbery/murder. Nonetheless, they arrest the driver of the blue truck and charge him with murder and armed robbery, even though the only evidence they have is that he has the same color truck and the same color skin as the suspect they are looking for. For more than a year, capital charges are hanging over his head until the district attorney realizes the police have no case and dismisses the charges. Does this wrongly accused man have a case for false arrest? No, he does not, because the arrest was supported by probable cause for speeding, which the officers had the authority to arrest him for even if they charged him with something completely different. But he should have a case for malicious prosecution because there was no probable cause to charge him with what he was actually charged, and the fact that the arrest was lawful

because he was speeding has no bearing on the legality of the prosecution, which was initiated by the police without probable cause for the crime that is the subject of the prosecution.

That is sensible public policy because it encourages police to make arrests when they have probable cause but discourages them from piling on specious charges to force a plea or other concession. It allows the police to avoid liability for arrests made in good faith but holds them accountable for abuses of their authority such as embellishment or outright fabrication of evidence. If the police make a lawful arrest but later realize that all of the charges they have filed are not supported by probable cause, they can rectify the situation by taking immediate steps to have the charges dropped or reduced and avoid liability for malicious prosecution, yet the arrest itself would still be valid as long as it were supported by arguable probable cause to charge the suspect with something.

Even where there is arguable probable cause, an officer still has a duty under the Fourth Amendment to conduct a reasonable investigation of known or readily available facts before filing criminal charges. *Cozzi v. City of Birmingham*, 892 F.3d 1288 (11th Cir. 2018). In *Cozzi*, the Eleventh Circuit held that there was no qualified immunity for "electing not to obtain easily discoverable facts" before making an arrest. *Id.* at 1297 (citing *Kingsland v. City of Miami*, 382 F.3d 1220, 1229 (11th Cir. 2004); *Carter v. Butts County*, 821 F.3d 1310, 1321 (11th Cir. 2016); and *Skop v. City of Atlanta*, 485 F.3d 1130, 1143-44 (11th Cir. 2007)).

Applying *Cozzi* to the case at bar, investigator Watson filed felony drug manufacture charges against Mr. Wright based solely on the fact that a misdemeanor amount of burnt marijuana remnants were found on the fenced property where he lived with his wife, and a substantial marijuana crop was growing outside the fence on a neighbor's property. It was an "easily discoverable fact" that the property where the marijuana crop was found did not belong to Mr. or Mrs. Wright, yet a civil forfeiture action was filed seven weeks after the arrest based on the false assertion that more than four ounces of marijuana was found on the Wrights' own property. That civil forfeiture action was the causal link between Mr. Wright's arrest and the end of his executive career.

Cozzi is also relevant to Respondent's assertion that the similarity between common gardening items found on the Wright's property and the location of the marijuana grow established probable cause that Mr. Wright was personally responsible for the marijuana crop next door. Such similarities "are quintessential examples of innocent and easily observable facts," beyond which "law enforcement had no information connecting Cozzi [or Mr. Wright] to the crimes" with which they were charged. *Cozzi, id.* at 12-13.

There was no indictment, or other intervening act by the prosecutor, to cut off the chain of causation between the filing of the charges by Watson and the eventual dismissal by the prosecutor, and any failure of the prosecutor to dismiss the charges sooner can be attributed to reliance upon the false statements by

Watson and others that were contained the warrant applications, police reports, and report of seizure submitted by Watson. As the Eleventh Circuit held in *Barts v. Joyner*, 865 F.2d 1187, 1195 (11th Cir. 1989), "intervening acts of the prosecutor, grand jury, judge and jury . . . each break the chain of causation unless plaintiff can show that these intervening acts were the result of deception or undue pressure by the defendant policemen." Reasonable jurors could find that there were no such intervening acts in this case, but if there were, they "were the result of deception or undue pressure by the defendant policemen." *Id.*

In addition to differences in the tort law of all 50 states, there are splits of authority between and within the federal circuits. One line of cases essentially holds that if there is probable cause to arrest, there is probable cause to prosecute for any charges brought as a result of that arrest. *See, e.g.*, *Wright v. City of Philadelphia*, 409 F.3d 595 (3d Cir. 2005) (once an officer has probable cause to arrest for one offense, all possible malicious prosecution claims related to that arrest must also fail); *Penn v. Harris*, 296 F.3d 573, 576-77 (7th Cir. 2002) ("even if probable cause did not exist for the crime charged [battery], proof of probable cause to arrest the plaintiff on a closely related charge [disorderly conduct] is also a defense to a state law claim of malicious prosecution"); *Remeneski v. Klinakis*, 222 Ga. App. 12, 473 S.E.2d 223 (1996) (probable cause determination for one charge in criminal case establishes probable cause for all other charges arising from same transaction in a subsequent malicious prosecution action).

The other line of authority, and the one relied on by Petitioner, holds that Fourth Amendment wrongful prosecution claim can be brought where an accused is lawfully arrested with probable cause for one offense but is also overcharged with more serious crimes for which there is no probable cause. *Compare Posr v. Dougherty*, 944 F.2d 91 (2d Cir. 1991) (trial court erred when it instructed the jury on malicious prosecution because a finding of probable cause for arrest on one charge against plaintiff did not preclude liability for malicious prosecution on the other charges); *Johnson v. Knorr*, 477 F.3d 75 (3d Cir. 2007) (finding of probable cause to arrest probationer on one charge, without finding that there was also probable cause on the other charges, did not defeat malicious prosecution claim on the remaining charges); *Mott v. Mayer*, 524 Fed. Appx. 179 (2013) (district court improperly focused its analysis on whether officers had probable cause to arrest in general, rather than asking specifically whether officers had probable cause to arrest suspect for specific crimes with which he was later charged); *Holmes v. Village of Hoffman Estates*, 511 F.3d 673 (7th Cir. 2007) (probable cause to believe an individual committed one crime, and even his conviction of that crime, does not foreclose a malicious prosecution claim for additionally prosecuting the individual on a separate charge).

While the court below paid lip service to the distinctions between probable cause at different stages of the proceedings, it proceeded to blur those distinctions by commenting that "Wright's malicious prosecution claim faces an uphill battle. A jury already determined

that Watson did not violate Wright's Fourth Amendment rights in procuring the search warrant." (App. 5). Since those are two different stages of the criminal process, involving different facts and circumstances at different points in time, why should a failure to prevail at one stage have any influence on the other?

Certiorari should be granted for the following reasons:

- the need for clarification of the Court's decision in *Manuel v. City of Joliet*, including a fresh evaluation of the issues raised by Justice Alito's concurring opinion;
- the need for a uniform standard to evaluate wrongful prosecution claims under the Fourth Amendment which does not vary from state to state and which is governed by the constitutional principle of objective reasonableness rather than the subjective elements of vestigial tort law;
- the need for a probable cause standard that is tailored to the facts and circumstances known at each stage of the criminal process, because probable cause at the prosecutorial stage is based upon a different set of facts at a different point in time than probable cause at the investigatory or arrest stages, irrespective of arcane state law distinctions between false imprisonment, false arrest, and malicious prosecution which should have no bearing on the objective reasonableness of an

arrest, detention, or prosecution under the Fourth Amendment;

- to resolve the split in authority on whether overcharge cases – where there is probable cause for a trivial offense but no probable cause for a felony prosecution which in turn causes great harm to the accused – are actionable as malicious prosecution claims under the Fourth Amendment; and
- the opportunity for the Court to weigh in on abuses of the civil asset forfeiture process which could lead to meaningful legislative reform.

CONCLUSION

This Court should grant the writ, reverse the judgment below, and remand the case for trial on Petitioner's Fourth Amendment malicious prosecution claim.

Respectfully submitted,

CRAIG T. JONES
CRAIG T. JONES, P.C.
Post Office Box 129
Washington, Georgia 30673
(706) 678-2364
craigthomasjones@outlook.com
Counsel for Petitioner

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