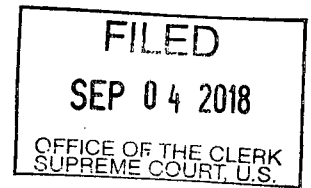


No. 18-6908



IN THE
SUPREME COURT OF THE UNITED STATES

LIVINGSTON MANNERS – PETITIONER

vs.

RONALD CANNELLA, individually,
KARRIE SABILLON, individually, and the
CITY OF HOLLYWOOD, FLORIDA – RESPONDENT(S)

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

Livingston Manners
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QUESTION(S) PRESENTED

Is there a violation of the fourth amendment where the arrest of a civilian stems from an illegal traffic stop – a traffic stop without either probable cause to believe that a traffic violation has occurred or justified by specific articulable facts sufficient to give rise to a reasonable suspicion of criminal conduct – where the officer’s activation of his emergency lights led to the purported crime of fleeing and eluding said illegal traffic stop in violation of Florida Statutes § 316.1935? The purported crime of fleeing and eluding in violation of Florida Statutes § 316.1935 is what gave the arresting officer arguable and actual probable cause for the civilian’s arrest, entitling the arresting officer to qualified immunity.

Can a civilian defend himself from a law enforcement officer’s excessive use of force during an arrest in violation of 42 U.S.C. § 1983?

LIST OF PARTIES

- ☒ [x] All parties appear in the caption of the case on the cover page.
- ☐ [] All parties do not appear in the caption of the case on the cover page. A list of parties to the proceeding in the court whose judgment is the subject of this is as follows:

There is no parent or publicly held company owning 10% or more of any corporation's stock.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION OF WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States Court of Appeals appears as at Appendix A to the petition and is

☒ reported at 891 F.3d 959 (11th Cir. 2018); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States District Court appears at Appendix D to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.¹

¹ Appendix B and Appendix C are the District Court's December 15, 2016, Order on Motion for Reconsideration, and the District Court's October 25, 2016, Final Judgment.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided the case was June 4, 2018.

☒ No petition for rehearing was filed in my case.

☐ A timely petition was denied by the United States Court of Appeals on the following date: ____, and a copy of the order denying rehearing appears at Appendix ____.

☐ An extension of time to file a petition for writ of certiorari was granted to and including ____ (date) on ____ (date) in Application No. ____.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Fourth Amendment

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 – Civil action for deprivation of rights

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.

STATEMENT OF THE CASE

Course of Proceedings and Disposition in the District court

Petitioner, Livingston Manners (“Manners”) filed suit against Respondents, RONALD CANNELLA (“Officer Cannella”), KARRIE SABILLON (“Officer Sabillon”), PAUL SCHEEL (“Officer Scheel”) and the CITY OF HOLLYWOOD, FLORIDA (the “City”). The basis of the lawsuit stemmed from an illegal traffic stop that occurred on June 24, 2014.² Manners was arrested without either arguable or actual probable cause, subjected to unnecessary, unwarranted and excessive use of force, and was maliciously prosecuted. The illegal arrest and excessive force were captured by a surveillance camera at a Chevron gas located on the corner of Pembroke Road and 26th Avenue in Hallandale Beach, Florida. Manners filed claims for false arrest under state law against the City, excessive use of force in violation of 42 U.S.C. § 1983 (“§ 1983”) against Officers Cannella and Sabillon, and malicious prosecution in violation of § 1983 against Officer Cannella.

At the close of discovery, on September 6, 2016, Officers Cannella and Sabillon moved for summary judgment as to all claims against them. The City moved for summary judgment on September 16, 2016. Manners timely responded to the summary judgment motions, and Officers Cannella and Sabillon, and the City, filed replies in support of their summary judgment motions. Within less than 24 hours after receiving the City’s reply, on October 25, 2016, the District Court entered its Order on Motions for Summary Judgment, granting the defendants’ summary

² Claims against Officer Scheel were dismissed via stipulation by the parties.

judgment motions. Also on October 25, 2016, the District Court entered Final Judgment.

Subsequently, in an attempt to afford the District Court an opportunity to reconsider its rulings based on clear errors and/or manifest injustice identified by Manners, on November 21, 2016, Manners timely filed Plaintiff's Amended Motion for Reconsideration. Officers Cannella and Sabillon, as well as the City, filed responses opposing Plaintiff's Amended Motion for Reconsideration. Manner timely filed his Reply. On December 15, 2016, the District Court entered an Order denying Plaintiff's Amended Motion for Reconsideration. On January 5, 2017, Plaintiff's Notice of Appeal was timely filed.

Course of Proceedings and Disposition in the Court of Appeals

Manners filed his Initial Brief on May 7, 2017. Officers Cannella and Sabillon and the City filed their Appellee Brief on July 21, 2017. Manners' Reply Brief was filed on August 17, 2017. On October 19, 2017, the Court of Appeals determined that oral argument would be necessary in the case. On January 17, 2018, the Court of Appeals directed the parties to file supplemental briefs to add address "[w]hether there was probable cause or arguable probable cause to arrest Manners for violating Florida Statute § 316.1935(1) for fleeing or eluding a law enforcement officer." The parties filed their supplemental briefs on January 24, 2018. Oral argument took place before the Court of Appeals on or about February 2, 2018. On June 4, 2018, the Court of Appeals issued an opinion affirming the District Court's ruling. On

September 4, 2018, Manners now files his Petition for Writ of Certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Statement of the Facts

Manners was a permanent part-time employee working for Federal Express ("FedEx") location on Copans Road in Pompano Beach, Florida, handling packages and unloading trucks. Manners' shift was from 3:30 a.m. through 9:00 a.m. Manners' normal routine before going to FedEx was to pick-up his friend, Sylvester Peets ("Peets"), drive to the Chevron gas station on the corner of Pembroke Road and 26th Avenue, and at the Chevron gas station, purchase snacks. Peets, who also worked for FedEx, lived at 2534 Plunkett Street, Hollywood, Florida 33020.

On June 24, 2014, Manners left his house at approximately 2:30 a.m. and drove to Peets' house to pick up Peets for work. When Manners arrived, he parked his vehicle half in the swale and half in the road. Manners sat in his truck with the engine idling and the headlights on. Peets usually waited outside for Manners, but on June 24, 2014, Peets was not waiting outside. Manners contacted Peets telephonically, and learned that Peets would not be going to work that morning because his child was ill and there was no one else there to care for said child. Peets did not advise Manners in advance that he (Peets) was not going to work that day.

At that time of the morning, there were no other cars or people on the street. Manners noticed Officer Cannella driving up the street, recognizing that he was a law enforcement officer driving a police vehicle. Manners was concerned when seeing Officer Cannella because Officer Cannella drifted his vehicle over towards Manners'

vehicle while driving by, trying to look inside of Manners' vehicle. At this point, Manners felt that he be harassed by Officer Cannella. Officer Cannella continued to drive towards the stop sign on the corner of Plunkett Street and 26th Avenue and, after arriving at the stop sign, continued driving in the same direction on Plunkett Street, crossing over 26th Avenue.

Manners also drove in the same westbound direction on Plunkett Street, and after about one and a half minutes, when Manners reached the intersection of Plunkett Street and 26th Avenue, Manners came to a complete stop at the stop sign. Manners made the left turn onto 26th Avenue, traveling south, after making a complete stop and the stop sign. While traveling south on 26th Avenue, Manners looked in his rear-view mirror, and saw Officer Cannella making a U-turn on Plunkett Street, and immediately make a right turn, traveling towards Manners from behind. In order to avoid a driving-while-Black situation where Officer Cannella might think that something was in Manners' car, as a precaution, Manners lowered all of his vehicle's windows. Manners drove about three blocks before Officer Cannella activated his emergency lights. When Officer Cannella activated his emergency lights and siren, Manners was approaching the traffic light on the corner of 26th Avenue and Pembroke Road. Manners stopped his vehicle less than 0.1 miles from the point where Officer Cannella's emergency lights had been activated, stopping his vehicle at the Chevron gas station on the corner of 26th Avenue and Pembroke Road. Manners' state of mind at the time was that he feared for his life. The lighting conditions of the residential neighborhood where Peets lived was dark

at that time of morning. Because Manners always goes to the Chevron gas station on the corner of 26th Avenue and Pembroke Road, and because Manners knows that said Chevron gas station was well lit and under video surveillance, Manners stops his vehicle so that parked directly in front of the video surveillance camera.

At no point did Manners drive at a high rate of speed; Manners was driving at no more than 25 miles per hour. At no point did Manners abruptly leave after seeing Officer Cannella. At no point did Manners attempt to flee from or elude Officer Cannella. The road was dark, and Manners feared for his life. Manners stopped his vehicle approximately 0.1 miles after seeing Officer Cannella's emergency lights activated, stopping his vehicle at the Chevron gas station on the corner of 26th Avenue and Pembroke Road.

Officer Cannella parked his police vehicle behind Manners' vehicle, exited his police vehicle, and walked up to the driver's door of Manners' vehicle. Manners was the only occupant in Manners' vehicle; Manners was sitting in the driver's seat. Officer Cannella asked Manners to produce his driver's license, and questioned Manners to why was he in the area. Manners produced his driver's license and work badge, and told Officer Cannella that he (Manners) was in the area to pick-up Peets for work at FedEx, but learned after arriving to Peets' house that Peets was not going to work because his daughter was ill. Officer Cannella then began to walk towards his police vehicle, and Manners asked Officer Cannella if there was any way that he could work quickly because he (Manners) needed to get to work. At no point had

Officer Cannella ordered or otherwise directed Manners to get back inside and remain inside his vehicle.

Without cause or reason, with Officer Cannella facing Manners, with Manners facing Officer Cannella and while Manners stood within his vehicle's open driver's door, Officer Cannella grabbed Manners' wrist and told Manners that he was under arrest. With his wrist still in Officer Cannella's hand, Manners leaned back into his vehicle because he saw Officer Cannella's punch coming towards his face. Manners did not pull his wrist away from Officer Cannella. Using the same hand, Officer Cannella did in fact punch Manners in the face – three times – while Officer Cannella was on top of Manners in the driver's seat of Manners' vehicle. At no point had Officer Cannella ordered or otherwise directed Manners to turn over with his hands to his back to be handcuffed. At no point had Officer Cannella tried to roll over Manners while punching Manners inside of Manners' vehicle.

Officer Cannella then snatched Manners out of the vehicle and forcefully slammed Manners to the ground, with Manners arms spread wide, surrendering himself to Officer Cannella, hoping that Officer Cannella would stop punching him (Manners) in the face. Manners' back to the ground and Officer Cannella on top of Manners. At no point did Manners resist Officer Cannella's or any other police officers' efforts to arrest Manners. At no point did Manners punch, kick, hit, choke or otherwise strike Officer Cannella or any other police officer. At no point did Manners make threats or threatening gestures towards Officer Cannella or anyone other police officers. Manners complied with all of Officer Cannella's commands.

Officer Cannella continued to punch Manners in the face while Manners was on the ground, punching Manners in the face at least an additional four times, even though Manners was not resisting or fighting back; Manners' arms were out to his side. Officer Cannella simultaneously and forcefully placed his knee on Manners' stomach, stifling Manners' ability to breathe, prompting Manners to yell, "I can't breathe." At no point did Officer Cannella or any other police officer instruct Manners to roll onto his stomach and place his hands behind his back.

In desperation to stop the onslaught of punches to the face from Officer Cannella, while Manners' back was still to the ground, Manners grabbed and held onto Officer Cannella's wrists. Officer Sabillon then arrived on scene and deployed her electronic control device/conducted electrical weapon/taser three times, striking Manners in the stomach area and on Manners' torso and back area. Officer Cannella also deployed his electronic control device/conducted electrical weapon/taser twice in Manners' with the probes.

After being beaten and tasered by Officers Cannella and Sabillon, Officer Cannella transported Manners to the hospital, where Manners was treated for his injuries; Officer Cannella was *not* treated while at the hospital, as he did not sustain any injuries. While Manners was being treated at the hospital, Manners could hear Officers Cannella and Sabillon outside of my hospital room corroborating their stories. After being arrested and transported to the jail, Manners learned that despite the flogging he survived, he (Manners) was arrested by Officer Cannella for

attempted murder, based on Officer Cannella's police report. Manners was housed in maximum security because of those charges. Manners was jailed for four days.

Because Manners went to that gas station every day before work, Manners knew that there was a surveillance camera in plain view. Manners wanted the video-recording retrieved because, while he thought he was arrested for the stop sign, Manners learned at the jail that he was arrested for attempted murder on a police officer, and believed that the video-recording would exonerate him for that charge.

Manners believed that his life was in danger after Officer Cannella activated his emergency lights because, as a Black male coming in contact with law enforcement without anyone else present in a dark area on the side of the road and without any other cars driving down that road at that time, Manners feared for his safety and life, and especially because the City of Hollywood police officers had a reputation of hurting people. Further, because Manners is a large Black male and police officers are known for killing Black males and then claiming that they (the police officers) feared for their lives to justify the killing, the danger of coming in contact with law enforcement without anyone else present in a dark area on the side of the road at that time and without any other cars driving down that road, significantly threatened Manners' safety, as Manners thought that he might be killed, and if Manners was killed, the police officer would accuse Manners of threatening the officer's life to justify killing Manners.

Further, the threat to Manners' safety and Manners' life was real, imminent, and impending because as a Black male coming in contact with law enforcement

without anyone else present in a dark area on the side of the road and without any other cars driving down that road, Manners feared for my life, and especially because the City of Hollywood police officers have a reputation of hurting people. Manners was on a dark road, there were not any other cars driving down that road at that time, and a law enforcement officer (Officer Cannella) was stopping Manners on that dark road for no reason, as Manners had not violated any laws.

There was no way Manners could avoid the danger of significant bodily harm or death by Officer Cannella except by pulling over at the first safe, lit area, which Manners could see from where he was when Officer Cannella pulled up right behind me (less than 0.1 miles from the gas station when the police vehicle's lights were activated).

Manners drove less than 0.1 miles to the gas station from where he first saw the police lights activated on the police car driving by Officer Cannella under duress and necessity to avoid the real, imminent, and impending threat to my life. The harm Manners avoided (death) significantly outweighs the harm of driving 0.1 miles away to a safe, lit area for the traffic stop.

Manners was ultimately charged with battery on a law enforcement officer as to Officer Cannella, and resisting arrest without violence as to Officer Sabillon in the case of *State of Florida v. Livingston Manners*, Case No. 14-8703F10A, in the Seventeenth Judicial Circuit in and for Broward County, Florida. Manner went to trial and was acquitted by a jury. The traffic violation – running the stop sign – was also dismissed.

As a result of being arrested by Officer Cannella and charged with battery on a law enforcement officer as to Officer Cannella, and resisting arrest without violence as to Officer Sabillon, Manners' cousin and Manners' wife borrowed a total of \$30,000 to pay for his attorney's fees for the criminal case of State of Florida v. Livingston Manners, Case No. 14-8703F10A, in the Seventeenth Judicial Circuit in and for Broward County, Florida. Manners is obligated to repay his cousin and his wife the money they borrowed for Manners' attorney's fees with interest.

Also as a result of the arrest and being beat-up and tasered by Officer Cannella and Officer Sabillon, Manners suffered a swollen and sore face, and Manners was in pain (after being repeatedly punched by Officer Cannella in the face). Manners also sustained permanent shoulder and arm injuries, and experienced significant pain from being tasered. Manners also has nightmares, see the event repeatedly in his mind, and continues to experience depression, restlessness and mental trauma. Manners also lost his job with FedEx.

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REASONS FOR GRANTING THE PETITION

The decision of which review is sought involves issues of importance to the public. The first reason is whether contemporaneous conduct to an illegal traffic stop in violation of the Fourth Amendment can be used in a civil proceeding to support a law enforcement officer being entitled to qualified immunity. The second reason involves identification and clarification of the rights of civilians who are subjected to excessive use of force used by law enforcement, specifically, whether a civilian can defend themselves from excessive force employed by law enforcement. With the latter decision, the United States Court of Appeals for the Eleventh Circuit has decided an important federal question in the decision sought for review in a way that conflicts with a decision by the Florida Supreme Court.

The United States Supreme Court has made it clear that “the *sole* purpose of the exclusionary rule is to deter misconduct by law enforcement.” *See Davis v. United States*, 564 U.S. 229, 246 (2011). The well-established exclusionary rule also provides that evidence obtained in violation of the Fourth Amendment is inadmissible in a criminal proceeding against the victim of an illegal search and seizure. *See Weeks v. United States*, 232 U.S. 383 (1961). However, what has not been addressed by the United States Supreme Court is whether the exclusionary rule applies in a civil suit against law enforcement officers. *See Black v. Wigington*, 811 F.3d 1259, 1267-68 (11th Cir. 2016)(“The Supreme Court has never held that the benefits of the exclusionary rule outweigh its costs in a civil case.”).

Joining the Second and Fifth Circuits, the Eleventh Circuit held that the exclusionary rule did not apply in civil lawsuits against police officers. *See Black*, 811 F.3d at 1268; *see also Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir. 1999); *see also Wren v. Towe*, 130 F.3d 1154, 1158 (5th Cir. 1997). The Sixth Circuit, however, affirmed a district court's denial of qualified immunity in a civil case under § 1983 by applying the exclusionary rule first articulated in the case of *Franks v. Delaware*, 438 U.S. 154 (1978), which precluded an officer from relying on a judicial determination of probable cause based on said officer knowingly making false statements and omissions to the judge to procure a search warrant. *See McCullum v. Geelhood*, 2018 U.S. App. LEXIS 21688 (6th Cir. August 6, 2018). In fact, the Sixth Circuit concluded that an officer's qualified immunity defense in a civil rights case can be set aside if the officer's warrant affidavit contained false statements or omissions that were made either deliberately or with reckless disregard for the truth, and that the false statement or omission was material to the finding of probable cause. *See McCullum*, 2018 U.S. App. LEXIS 21688, at 13-14.

In the case at issue, viewing the evidence in a light most favorable to the non-movant under FED. R. CIV. P. 56, Officer Cannella made an illegal traffic stop, as Manners made a complete stop at the stop sign before making the left turn onto 26th Avenue. After Officer Cannella activated the emergency lights of his police vehicle, Manners stopped his vehicle less than 0.1 miles from the point where Officer Cannella's emergency lights had been activated, stopping his vehicle at the Chevron gas station on the corner of 26th Avenue and Pembroke Road, where there was a

surveillance camera. Manners was arrested for attempted murder, based on Officer Cannella's police report, but ultimately charged with battery on a law enforcement officer as to Officer Cannella, and resisting arrest without violence as to Officer Sabillon in the case of *State of Florida v. Livingston Manners*, Case No. 14-8703F10A, in the Seventeenth Judicial Circuit in and for Broward County, Florida, based on the surveillance video-recording. Manners was acquitted, and then initiated a civil case in the United States District Court for the Southern District of Florida with claims of false arrest under state law against the City, excessive use of force in violation of § 1983 against Officers Cannella and Sabillon, and malicious prosecution in violation of § 1983 against Officer Cannella. The District Court granted qualified immunity for the arrest, concluding that Officers Cannella had probable cause to arrest Manners for fleeing and eluding the illegal traffic stop in violation of Florida Statutes § 316.1935.

Manners contends that, based on the non-movant's version of the facts, the traffic stop was illegal. Officer Cannella cannot use Manners' contemporaneous stopping of his vehicle in response to the illegal traffic stop to establish arguable or actual probable cause to be entitled to qualified immunity. Officer Cannella would be denied qualified immunity as to Manners' false arrest and malicious prosecution claims based on the illegal traffic stop; the Eleventh Circuit reached that conclusion. Since the purported violation of Florida Statutes § 316.1935 by fleeing and eluding the illegal traffic stop is intertwined, inseparable and contemporaneous with said

illegal traffic stop, Officer Cannella should also be denied the benefit of qualified immunity for said purported fleeing and eluding violation.

As to Manners' excessive force claims, the Court of Appeals' decision is tantamount to holding that civilians cannot defend themselves against unlawful, excessive force used by law enforcement during an arrest. That decision conflicts with the Florida Supreme Court opinion of *State v. Holley*, 480 So. 2d 94, 95 (Fla. 1985), which expressly held that civilians "may resist the use of excessive force in making the arrest."

Other Florida state and federal courts have interpreted *Holley*, coupled with Florida Statutes §§ 776.012 and 776.051, to permit civilians to defend themselves with force against excessive use of force employed by law enforcement. *See Ivester v. State*, 398 So. 2d 926, 930 (Fla. 1st DCA 1981) ("The effect of reading [Sections 776.012 and 776.051, Florida Statutes] *in pari materia* is to permit an individual to defend himself against unlawful or excessive force, even when being arrested."); *see also Bauchman v. State*, 881 So. 2d 95, 96 (Fla. 1st DCA 2004); *see also Caldwell v. State*, 803 So. 2d 839, 840 (Fla. 2d DCA 2001); *see also Wright v. State*, 705 So. 2d 102, 104 (Fla. 4th DCA 1998); *see also O'Hara v. State*, 642 So. 2d 592, 594 (Fla. 4th DCA 1994) (defendant charged with resisting officer without violence was entitled to jury instruction on resisting unlawful arrest without violence and justifiable use of non-deadly force); *see also McPhee v. State*, 616 So. 2d 483, 484 (Fla. 4th DCA 1993) (defendant charged with resisting arrest was entitled to jury instruction that if an officer uses excessive force to make an arrest, a person is justified in the use of

reasonable force to defend himself); *see also Jackson v. State*, 463 So. 2d 372, 374 (Fla. 5th DCA 1985)(defendant charged with battery of an officer and resisting arrest with violence was entitled to jury instruction that it is lawful to defend oneself against unlawful or excessive force, even when being arrested); *see also Dyer v. Lee*, 488 F.3d 876, 879 (11th Cir. 2007); *see also Jackson v. City of Miami*, 2011 U.S. Dist. LEXIS 163191, at *5 (S.D. Fla. January 21, 2011).

In this case, Manners defended himself from the excessive force employed by Officers Cannella and Sabillon. He defended himself *without* actually punching, kicking or otherwise striking them. Instead, Manners defended himself by protecting himself from injury. Manners defended him by grabbing Officer Cannella's wrists to stop the onslaught of punches to his head and face, wrapping his legs around Officer Cannella's waist to prevent Officer Cannella from kicking or stomping him, and extending his arms into Officer Cannella's chest to prevent being head-butted. Defending oneself from excessive force used by law enforcement is permitted under Florida law, and is significantly different from resisting a lawful or illegal arrest.

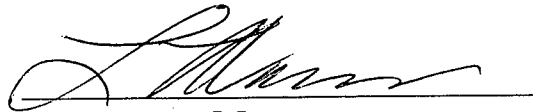
The trial and appellate court failed to view the evidence in a light most favorable to the non-movant pursuant to FED. R. CIV. P. 56, and instead, mistakenly saw Manners' defending himself from further injury as resisting arrest, thereby justifying Officer Cannella's and Sabillon's use of force.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: November 26, 2018.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Livingston Manners', written over a horizontal line.

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