No. 18-8377

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Walter Delaney Booker,Jr.(Shabazzallah)-PETITIONER

vs.

Sgt. S. Johnson,et al -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Walter Delaney Booker,Jr.(Shabazzallah)
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P.O. Box 16482
Chesapeake,Virginia 23328

QUESTION(S) PRESENTED

WHETHER THE OFFICERS HAD REASONABLE SUSPICION TO SEIZE MR. BOOKER SHABAZZALLAH?

WHETHER THE OFFICERS HAD PROBABLE CAUSE TO CONVERT SEIZURE INTO AN ARREST OF MR. BOOKER SHABAZZALLAH AND TRANSPORT HIM TO THE POLICE STATION FOR MURDER INVESTIGATIVE DETENTION?

WHETHER THE COURTS IMPROPERLY WEIGHED EVIDENCE AND RESOLVED DISPUTED ISSUES IN FAVOR OF MOVING PARTY IN HOLDING THAT POLICE OFFICERS ACTIONS DID NOT VIOLATE CLEARLY ESTABLISHED LAW?

WHETHER MR. BOOKER SHABAZZALLAH STATED A 42 U.S.C.§ 1983CLAIM UNDER THE FOURTH AMENDMENT AGAINST DETECTIVE LUCK AND DETECTIVE KEOUGH?

WHETHER DETECTIVE LUCK"S AND SGT. JOHNSON"S STATEMENT WERE ADMISSIBLE EVIDENCE FOR SUMMARY JUDGMENT DISPOSITION IN CONFLICT WITH SARTOR V ARKANSAS NATURAL GAS CORP. 321 U.S. 620 (1944)?

WHETHER AN UNSWORN STATEMENT OF A DEFENDANT IN A 1983COMPLAINT ATTACHED AS AN EXHIBIT TO PLAINTIFFS PLEADING TO SUPPORT THE PLAINTIFF'S ALLEGATION UNDER FED.R.C.P. 10(c),THAT THE OFFICER MADE THE STATEMENT,BUT NOT THE TRUTH OF THE STATEMENT,BE USED BY THE COURT SUA SPONTE TO DISMISS A CLAIM AND/OR ESTABLISH REASONABLE SUSPICION UNDER THE FOURTH AMENDMENT?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

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

DEFENDANTS/RESPONDENTS

E.Stovall,Tec.

John Doe,Ofc.

R. Bagnell,Tec.

M. Luck, Det.

T. Keough,Det.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays Bismillahir Rahman nir Raheem that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____;or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____

[ ] has been designated for publication but is not yet reported;or

[ ] is unpublished.

[ ] For cases from state courts

The opinionof the highest state court to review the merits appears at Appendix _____to the petition and is

[ ] reported_____;or

[ ] has been designated for publication but is not yet reported ;or

[ ] is unpublished.

The opinion of the_____court appears at Appendix_____ to the petition and is

[ ] reported at_____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 2,2018.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing 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 the petition for a writ of certiorari was granted to and including_____ on_____. in application No._____

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

[ ] For cases from state courts

The date on which the highest state court decided my case was _____ _____. A copy of that decision appears at Appendix_____.

[ ] A timely petition for rehearing was thereafter denied thereafter denied on the following date:_____,and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including_____on _____ in Application No._____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a)

CONSTITUTIONAL 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 .....

FOURTEENTH AMENDMENT- All persons.....No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States,nor shall any state deprive any person of life,liberty or property,without due process of law.....

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,suit in equity or other proper proceeding for redress.....

Prison Litigation Reform Act 28 U.S.C. 1915 A

STATEMENT OF THE CASE

This case involves a civil suit under the Civil Rights Act 42 U.S.C. § 1983 for violations of the Fourth Amendment and related state law claims against six police officers of the Portsmouth Police Department in Portsmouth, Virginia brought by petitioner who was seized then arrested for murder investigative purposes because he approached an officer at the back door of the duplex residence,that was not closed off from access to the general public and inquired about the status of individuals in the residence,which was after he was notified a shooting had occurred. The Fourth Circuit Court of Appeals affirmed the district court's holding that there was reasonable suspicion to seize and probable cause to arrest petitioner because he may have been involved in the homicide and the officers were qualified immune.

Facts alleged in complaint and declaration in opposition to summary judgment.

Mr. Booker Shabazzallah alleged in a declaration under penalty of perjury and in the complaint that on the evening of June 13,2008,after he left work about between 5:00 p.m. and 6:00 p.m.,he stopped by his mothers house,where he resided, to change clothes,because he had plans to go out to dinner and the Broadway Nightclub with a Felicia Jones to promote an All-White Masquarade at the Khedive Temple in Chesapeake,Virginia for July 3-4,2008. See(Dkt.50 ¶ 4). After leaving the nightclub he and Felicia stopped at IHOP for breakfast,however when he was seated to order and before the waitress could take his order,his cell phone rang and the caller stated that a shooting had occurred at a home in Portsmouth, Virginia. Id at(¶ 5-6). Plaintiff received this call between 1:30 a.m. and 2:30 a.m. and was made aware during the phone call that a party was going on when an altercation and shooting occurred. Id. Petitioner was never at the party on 2320 Randolph Street,however he was made aware that there were individuals he was acquainted with at the party and he became concerned. Id at(¶ 8). Petitioner did not know the victims personally nor through any third party,but knew

Natisha and othe individuals who attended the party. Id. at(¶ 9-10). Plaintiff was not engaged in any narcotics transactions at the party nor with any of the victims. Id at(¶ 11). Petitioner left IHOP with Felicia and was driven to Randolph Street via Des Moines Avenue by Felicia and there was no officers on the North side of the unit beside 2320,which was 2322 and anothe apartment complex was located. Id at(¶ 12-13). See also(Exhibit E,Att.#4,pg.1). Petitioner exited the vehicle in the adjacent apartment complex parking lot and proceeded to the duplex from the North side. Id at(¶ 14). There was no crime scene tape at the back of the duplex from the North side,closing off access to the back grassway. Id at(¶ 15). Petitioner calmly and politely walked to the officer who was standing on the small porch at the back of the residence. Id at(¶16). Petitioner never touched the back door and never attempted to go around nor through the unknown officer. Id at(¶ 17). Petitioner never jumped over a fence,a hedge nor crossed a police line and was never given a verbal warning. Id at(¶ 18). Plaintiff was not armed,never breached nor attempted to breach the crime scene. Id at(¶ 19-20). Petitioner approached the unknown officer and asked was the owner of the house available and was everything okay. Id at(¶ 21). Petitioner identified himself as an acquaintance of individuals who were at the party and of the owner of the house,when the officer asked him to identify himself. Id at (¶ 22). Petitioner committed no offense in front of the unknown officer. Id at (¶ 23). The unknown officer never stated to Sgt. Johnson in my presence that I jumped over a fence,hedge or crossed a line nor made any type of radio communication to anyone. Id at(¶ 24). The unknown officer refused to give petitioner any information,so he stated he would be on his way. Id at (¶ 25). The unknown officer said no,you come with me and escorted petitioner to Randolph Street against his will by grabbing him,to where Sgt. Johnson was located. Id at(¶ 26). Sgt. Johnson stated to the officer,Oh that's Mr. Booker,put him in a car,(Dkt.1, Exhibit A),and was then placed in the patrol car by the unknown officer on

Sgt. Johnson's orders who was standing about 15 feet away. Id at(¶ 28). About (30) minutes later,the unknown officer returned and stated ,they said you need to be in handcuffs and pulled petitioner out of the patrol car,placed handcuffs on him behind his back and placed him back in the patrol car. Id at(¶ 29). A D. Elliott was also placed in the same patrol car about (30) minutes later in handcuffs. Id at(¶ 30). D.Elliott's son was in the home when the shooting occurred. Id. About forty-five minutes to an hour later,officer Stovall performed a primer residue test on petitioner and D. Elliott who was susequently released from handcuffs after the test was applied and petitioner was placed back in the patrol car handcuffed by E.Stovall and the unknown officer.Id at(¶ 31). See also (Dkt. 1, Exhibit B and E,Att.# 4 pg. 2). Petitioner was never an occupant of the party or residence,before,during nor after the incident and committed no offense in front of Sgt. Johnson nor Detective Luck. Id at(¶ 32-33). Petitioner was not patted down to determine if he was armed at ant time and did not possess any contraband. Id at(¶ 34). Petitioner was then transported to a police/detective station and handcuffed to a wall,for about another 1½ to 2 hours. Id at(¶ 35). The consent to search the residence was for a homicide that occurred in the front room of the house by the front door,(Dkt. 50, Exhibit E,Att. # 3 and Att. # 4 pg. 2),and was given consent to search at 03:50 hrs, (Exhibit E,Att.# 3) in which the later discovery of contraband was about between 04:30 hrs and 05:30 hrs.,(Dkt. 1,Exhibit B and Dkt.50 Exhibit E, Att. # 4,pg.2-3). Id at(¶ 37). Petitioner was arrested and detained for more than three hours before any alleged contraband was discovered in Natisha's bedroom. Id at(¶ 38). Stovall did not begin searching nor Bagnell and Johnson until after the primer residue test was done,(Dkt. 1,Exhibit B),and petitioner was transported to the police station. Id at(¶39). After the wait in the locked room,detective Luck came in and instructed the officer to remove the handcuffs,then locked the door and left. Id at(¶ 40). Luck later returned with a water bottle and stated he was going to question petitioner soon. Id. About 07:30 hrs.,petitioner

was escorted to anothe room,where he was questioned by Luck and Keough. Id at (¶ 41). Petitioner did not know why he was being detained and after being forcibly detained for at least six hours,Luck stated petitioner was free to leave,but he had questions for him,in which Luck never approached the door to allow petitioner to leave and petitioner did not feel free to leave after being forcibly apprehended against his will and taken to the police station. Id at (¶'s 42-45). Luck and Keough asked petitioner,did he know anything about the homicide,guns or drugs,petitioner stated no. Id at(¶ 46). Petitioner stated he received a call about a shooting at 2320 Randolph Street and came because he knew people who were in attendance at the party. Id at(¶ 47). Keough and Luck asked petitioner if he knew Natisha and petitioner stated yes and never stated he resided or stayed with Natisha. Id at(¶ 48-49). Both detectives stated to petitioner needed to help them find who committed these shootings and told petitioner to provide them with his social security #,address and name. Id at (¶ 50-51). Petitioner was not advised of rights nor miranda,was never told he was being investigated for a homicide,shootings,drugs nor firearm offenses, and neither was charged with any offenses that day and was released after detainment and arrest and dropped back off at the scene of the crime. Id at (¶ 52-55). Sgt. Johnson and Luck conspired and colluded in their affidavits in an attempt to justify their illegal actions,to slander petitioner and from the initial events,the officers intended to fabricate evidence against petitioner and frame petitioner in a homicide investigation and narcotics. Id at(¶56-57). There was never any allegation that petitioner scaled a barbed wire fence,then jumped over it and a hedge to attempt to enter a back door,in any of the officers unsworn statements,probable cause summary in a subsequent prosecution nor record of subsequent case. Id at(¶ 58) and see (Exhibit E,Dkt. 50). Petitioner could not jump over the fence alleged ,because it appeared to be constructed in a way that would have injured him in the process and an officer would have stopped him. Id at(¶ 59) and see(Dkt.50,Exhibit E,Att.# 2). The photographs are

from the crime scene taken by investigators on June 14,2008 and is an depiction of the surrounding area in(Exhibit E). Id at(¶ 60). There was no porch at the back of the duplex running the length of the duplex,nor was a hedge running the distance of the duplex at the back. Id at(¶ 61) and see(Exhibit E,Att.# 2 and Att.# 4 pg.2). Petitioner did not come over a rear fence and hedge of the residence and attempt to enter a back door of the residence where the homicide occurred in the front of the residence,nor did petitioner attempt or intend to obstruct justice. Id at(¶ 62-63). Petitioner was seized, arrested and placed in a patrol car hours before consent to search was given and any search of the premises commenced. Id at(¶ 64) and see (Exhibit E,Att.# 3 and Att. #4 pg 2-3). Detective Luck did not recognize petitioner to be involved in narcotics crimes nor Johnson.Id at(¶ 65). The leasee of the duplex told officers she owned a firearm,that was behind her bed,which Bagnell recovered. Id at(¶ 66) and see (Dkt. 50,Exhibit E,Att.# 4 pg.2 and Att.# 5).

Allgations of defendants Johnson and dismissed defendant Luck on motion for summary judgment.

The defendants submitted the affidavits of two of the officers,which stated Sgt. Johnson responded to a shooting call at 2320 Randolph Street in the City of Portsmouth,when the call came in at roughly 2:40 a.m. on June 14,2008 and he arrived before 2:44 a.m. when the scene had been secured for medical personnel. See (Dkt.40,Att.# 1,Johnson's affidavit,¶ 7 & 9). Johnson further alleged their were numerous police officers and police vehicles present at the scene with flashing lights and that once he entered he directed that the residence be cleared of people and separate witnesses for the detectives who would be invesigating the homicide and when noticing a back door to the residence,he directed officers to secure it. Id at(¶ 12-13). Johnson then alleged he received communication from a police officer located at the back of the residence that a person had come over the rear fence and hedge and that person was attempting

to enter the back door of the residence where the homicide occurred and he directed that officer to detain that subject and place him in a police car. Id at(¶ 14). Then upon seeing petitioner he recognized him as Walter Booker.Id at (¶ 15). Johnson stated it was highly unusual and suspicious for an individual to attempt to enter a crime scene from the rear door and this action aroused his suspicion that petitioner may have been involved in the shooting in some manner or some other crime and he directed petitioner be detained until detectives arrived. Id at(¶ 16). Johnson further stated he wanted investigators to interview plaintiff based upon his attempted entry into the crime scene,the potential that his entry into the crime scene was to obstruct justice and to allow detectives to assess what involvement he may have had in the shooting. Id at(¶ 17). Johnson later turned control of the investigation to Luck and Sgt. Goldman and proceeded to search the residence and found drugs and drug paraphernalia. Id at(¶ 19).

Detective Luck stated he responded to a shooting call at 2320 Randolph Street in the City of Portsmouth. See (Dkt. 40,Att. # 2,Luck's affidavit,¶ 8). Luck then obtained permission to search the premises.Id at(¶ 8). He learned that a person had come over the rear fence and hedge of the residence and that person had attempted to enter the back door of the residence where the homicide occurred and he recognized the person as Walter Booker,which struck him as unusual and suspicious for an individual to attempt to enter a crime scene from the rear door,particularly a homicide when,there is not a family connection between the person and the deceased and Luck was concerned that petitioner may have been involved in the shooting in some manner or some other crime. Id at(¶ 10-11). Then upon learning that petitioner was detained by officers,he believed he was acting lawfully in detaining petitioner in order to interview him based upon his attempted entry into the crime scene,the potential that his entry into the crime scene was to obstruct justice and to allow detectives to assess what involvement he may have had in the shooting. Id at(¶ 12). Luck had petitioner

transported to the detective bureau for an interview.Id at(¶ 14).

District Court Rulings/Memorandum Opinions.

On June 25,2015,the lower court ruled when determining whether a complaint states a claim,a court may consider exhibits attached to the complaint and if there are dis crepancies between the plaintiff's allegations and an exhibit,the exhibit prevails,citing United States ex. rel. Constructors,Inc v Gulf Ins. Co., 313 F.Supp. 2d 593,596(E.D. Va.2004). See(Appx. F ,pg.4-5). The court ruled Stovall's reasonable suspicion of plaintiff's involvement in the crime justified the limited detention of plaintiff for the purpose of investigating criminal activity. Id. at(pg.5). When the defendants detained plaintiff June 14,2008,he was not officially under arrest and plaintiff alleges that he was detained for nearly two hours in a police car,followed by approximately six hours at the police station and as such a detention is not justifiable by mere reasonable suspicion and must be supported by probable cause. Id at(pg.6),plaintiff's claim that he was detained in violation of the Fourth Amendment requires further factual development. Id. In addition,plaintiff alleges that the defendants violated his Fourth Amendment rights on September 3,2008 by swabbing his mouth for DNA. Id. At that time,plaintiff was in custody pursuant to an indictment and subsequent arrest. Id. The defendants thus had probable cause to conduct their interrogation and investigation. Id. However,plaintiff's argument that the swabbing of his mouth violated the Fourth Amendment also requires additional factual development. Id. Plaintiff's Fifth Amendment claims must therefore be dismissed and because plaintiff's only allegation against defendants Luck and Keough pertain to their failure to provide plaintiff with miranda warnings,these defendants must be dismissed from the instant action. Id at(pg.7). See (footnote 2).

On May 25,2016,the court issued an order disposing of discovery request and held that at present,efforts are ongoing to effect service of the complaint upon two of the three defendants remaining in the lawsuit and the court find that

it is premature to allow discovery before the complaint has been served on all defendanst and the court will reconsider this issue upon motion at a later and more appropriate time. See(Appx. D)

On May 25,2016,because it appeared that officer R. Bagnell and officer E. Stovall are longer employed at the Portsmouth Police Department and the waiver of service have been returned unexecuted with notation,"unable to forward",to aid the court in effecting service,the Office of the Attorney General will be asked to provide the last known forwarding adress for Bagnell and Stovall. See (Appx. E). After the requested information concerning these defendants is received,the court will forward notices of lawsuit and request waiver of service of summons to defendants at the address supplied by the attorney general and in the event.....,if court is not able to effect defendants will be dismissed from the instant action without prejudice.See (Appx. E ,pg.2).

On September 8,2017,the court ruled that because Sgt. Johnson was the only remaining defendant and was not involved in plaintiff's September 9,2008 arrest, for purposes of this opinion plaintiff's Fifth and Sixth Amendment claims will be considered dismissed. See(Appx. C ,pg.1,footnote 2).

The court ruled that plaintiff's reply to the defendants rebuttal brief in support of their motion for summary judgment would not be considered because it was a sur-reply. Id at(pg.2). See footnote 4. The court went on to hold that according to Johnson,he received information that a police officer witnessed plaintiff "attempting to enter the rear of the residence after scaling a fence that was part of the marked scene barricade and in his experience it was highly unusual for a person to attempt to enter a crime scene,particularly from the back door through a barricaded area and therefore probable cause existed to support the belief that Booker had committed or was committing a crime,more specifically Johnson's actions gave rise to probable cause that plaintiff had

violated Va Code 18.2-414.2,was attempting to obstruct justice by tampering with evidence or otherwise involved in the murder. See(Appx.C at pg. 8).

The court concluded that when the unknown officer instructed plaintiff to follow him the information available to the officer provided more than an inchoate and unparticularized suspicion or hunch that plaintiff may have been involved in the murder. Id at(pg. 12). First,when plaintiff approached the residence and inquired into the condition of the individuals inside he did so from the rear,he did not call Portsmouth Police Department,flag down any one of a number of officers who were on the scene or attempt to approach an officer at the front door. Id. Second,when the officer inquired into plaintiff's identity,plaintiff responded cryptically that he was an acquaintance of individuals who were attending the party and the owner. Id. Third,when the officer failed to answer plaintiff's questions to plaintiff's satisfaction and despite plaintiff's stated concern for those in the residence,plaintiff simply stated he would be on his way. Id. Finally the incident occurred around 3:00 a.m. an odd time for an acquaintance to appear at a crime scene and attempt to inject himself into an active investigation. Id. Although plaintiff's actions at the scene of the murder investigation,in isolation,may seem anodyne,when taken together" they warranted further investigation,especially in light of the government's interests in solving the murder and preventing further crime. Id. Therefore it was reasonable to direct plaintiff to Johnson for further investigation. Id.at (pg.13).

Plaintiff's encounter first began to resemble an arrest when Johnson instructed the unknown officer to put plaintiff in a car. At that time,Johnson had probable cause to believe plaintiff may have been involved in the murder, a felony,for several reasons. First Johnson was aware of all the information discussed above at the time he instructed the unknown officer to place plaintiff in a car. Second,Johnson received a communication from a police officer located

at the back of the residence that a person had come over the rear fence and hedge and that person was attempting to enter the back door of the residence. Id. Third, Johnson had known the victim to be involved in the sale of narcotics an finally,Johnson had known plaintiff to be involved in narcotics related activities. Id. Therefore Johnson had probable cause to believe that plaintiff was involved in the murder and further detain him. Id. When the $5000.00 dollars in cash, papers belonging to plaintiff,caplets containing a substance believed to be heroin.....were discovered a short time later,there were additional grounds for detaining plaintiff. Id. at(pg.13-14). Accordingly,defendants are entitled to summary judgment on plaintiff's Fourth Amendment claim against Johnson. Id.

On Qualified Immunity,the court held it cannot be said that Johnson's decision to search was unlawful beyond debate in light of existing law. Id. At the time Johnson instructed the unknown officer to place plaintiff in a police car,which in legal effect amounted to an arrest,Johnson possessed a sufficient quantum of information to conclude that plaintiff may have been involved in the murder. Id. Based on the circumstances of this case,Johnson is entitled to qualified immunity, Id,for placing plaintiff under arrest after the unknown officer escorted plaintiff from the back door to Johnson's position on the street. Id. Because dfendants motion for summary judgment will be granted and plaintiff's constitutional claims will be dismissed with prejudice,subject matter jurisdiction over plaintiff's state law claims does not exist,and they will be dismissed.Id.

In addition,plaintiff's motion for discovery will be denied as moot because defendant is entitled to summary judgment as a matter of law.Id.

Fourth Circuit Court of Appeals Ruling.

We have reviewed the record and find no reversible error. Accordingly,we affirm for reasons stated by the district court.Booker v Johnson,No.1:14cv-00833 (E.D. Va. June 25,2015; Sept. 8,2017). See (Appx. A).

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT ON IMPORTANT ISSUES AFFECTING FEDERAL CIVIL RIGHTS,PROTECTIONS AND PROVISIONS OF THE CONSTITUTION

A. The Decision Below Affirms Summary Judgment on Qualified Immunity,Resolving Disputed Issues of Material Facts in Favor of the Moving Party and Therefore Conflicts With Tolan v Cotton,134 S.Ct. 1861,188 L.Ed 2d 895 (2014) Anderson v. Liberty Lobby Inc.,477 U.S. 242,106 S.Ct. 2505 (1986), Celotex v. Catrett,477 U.S. 317,106 S.Ct. 2548 (1986),United States v Diebold,Inc. 369 U.S. 654,655,82 S.Ct. 993, 8 L.Ed. 2d 176 (1962),Brosseau v. Haugen, 543 U.S. 194,195,125 S.Ct. 596 (2004) and Adickes v. S. Hikress & Co.,398 U.S. 144,157,90 S.Ct. 1598 (1970).

The record clearly shows that there were genuine issues of material facts in dispute before the court that affected important civil rights under the Constitution. The lower courts not only credited the moving party's version of events that were not based on their personal knowledge,but also inferred and created a set of circumstances that were never presented and were not before the court for resolution.

In holding that the officers actions did not violate the Fourth Amendment nor clearly established law,the lower courts failed grossly to view the evidence at summary judgment in light most favorable to Mr. Booker Shabazzallah with the central facts of this case. See(Statement of Case,Facts alleged in Complaint and Declaration in opposition to summary judgment at pg.5-10 and at Dkt. 50),by failing to credit petitioner's evidence that contradicted and disputed all of it's key factual conclusions. The courts improperly weighed the evidence and resolved disputed issues in favor of the moving party.

First,the court relied on it's view,that when plaintiff approached the residence and inquired into the conditions of the individuals inside he did so

from the rear. See (Appx. C,pg.12 of Memorandum Opinion). He did not call the Portsmouth Police Department,flag down any one of a number of officers who were on the scene or attempt to approach an officer at the front door. The court made up this assessment which was not offerred by petitioner nor the respondents. Further the court's view was when the officer inquired into plaintiff's identity plaintiff responded cryptically that he was an acquaintance of individuals who were attending the party and the owner. Id. Then when the officer failed to answer plaintiff's questions to plaintiff's satifaction,and despite plaintiff's stated concern for those in the residence plaintiff simply stated he would be on his way and the incident occurred around 3:00 a.m. an odd time for an acquaintance to appear at a crime sceneand attempt to inject himself into an active investigation. Id. at(pg. 13). Although plaintiff's actions at the scene of the murder investigation in isolation,may seem anodyne,when taken together they warranted further investigation, especially in light of the governments interests in solving the murder and preventing further crime. Therefore it was not unreasonable for the unknown officer to direct plaintiff to Johnson for further investigation. Id.

This view by the court is devoid of any evidentiary support in the record and simply not supported,which is hard to determine how the court came to such conclusions because it did not take plaintiff's version of events as true and the reasons he gave leading up to his encounter with the officers,and this is even though nothing in the record disputes why Mr. Booker Shabazzallah came to the scene. See (Dkt. 1,¶'s 10-14,Dkt. 50,¶'s 4-12 and Statement of the Case pg. 5-6).

Second,it is clear that plaintiff disputed the allegations alleged by Sgt. Johnson,however the court accepted those version of events from Johnson as true and resolved genuine issues of material facts about what actually transpired, which was up to the jury to decide,especially since there were credibility issues

and petitioner presented documents supporting his version of events and how the affidavits of Johnson and Luck could not be trusted and were based on collusion. See(Dkt. 50,¶'s 56,57 & 71) and (State of Case pg. 8)

The court further viewed the motin from Johnson's and Luck's version of events and first began to resemble an arrest when Johnson instructed the unknown officer to put plaintiff in a car. See (Appx. C at pg.13). At that time,Johnson had probable cause to believe plaintiff may have been involved in the murder, a felony for several reasons.Id. Johnson was aware of all the information discussed above at the time he instructed the unknown officer to place plaintiff in the car. Id. Johnson received a communication from a police officer located at the back of the residence that a person had come over the rear fence and hedge and that person was attempting to enter the back door of the residence.Id. Johnson had known the victim to be involved in narcotics(there was no evidence establishing this allegation),and finally Johnson had known plaintiff to be in involved in narcotics related activities. Id. Therefore Johnson had probable cause to believe that plaintiff was involved in the murder and to further detain him. Id. When drug paraphernalia,5,000 dollars in cash, papers belonging to plaintiff,(an allegation never established by evidence in the court),and caplets containing a substance believed to be heroin,there were additional grounds for detaining plaintiff. Id. Here it cannot be said that Johnson's decision to search was unlawful" beyond debate" in light of existing law. See (Appx.C at pg. 15). At the time Johnson instructed the unknown officer to place plaintiff in a police car,which in legal effect amounted to an arrest, Johnson possessed a sufficient quantum of information,discussed above to conclude that plaintiff may have been involved in the murder and JOhnson is entitled to qualified immunity for placing plaintiff under arrest after the unknown officer escorted plaintiff from the back door to Johnson's position on the street.

Third,petitioner's sworn sworn declaration,complaint and exhibits,materially dispute evry statement of Sgt. Johnson,Detective Luck and the Unknown Officer' alleged assertions,by the above persons,who has never been identified nor a statement submitted by him. See (Statement of Case,Facts alleged by Mr. Booker Shabazzallah,that were stated in sworn complaint and declaration, pg.5-9).

Considered together,these facts lead to the inescapable conclusion that the court below credited the evidence to party seeking summary judgment and failed to acknowledge key evidence offerred by the petitioner who opposed the motion.

More importantly,Mr. Booker Shabazzallah's recollection,documentary evidence and allegations made his facts believable by any juror weighing the evidence.

On the other hand,Johnson and Luck presented statements based on the alleged perceptions of another officer who never submitted a statement on the night of the events nor has been identified.

This is the reason that genuine disputes are generally resolved by juries By weighing the evidence and reaching factual inferences contrary to petitioner's competent and believable evidence,the court grossly neglected to adhere to fundamental principle that at summary judgment stage,reasonable inferences should be drawn in favor of the nonmoving party.

Applying that principle here,the court should have acknowledged and cred petitioner's evidence with regard to him approaching the duplex from the North Side on Des Moines Avenue,where no crime scene tape closed off the back of the duplex,he did not jump a fence nor a hedge at the back door,especially since the photographs depicted no hege and petitioner would have been prevented from jumping a purposely constructed fence to prevent such acts from taking place and also considering there was a guard dog on the other side of the fence. Being out at 3:00 a.m. does not create a possibility of guilt. A reasonable officer would have stopped him before doing such act. He did not attempt to enter a secure crime scene at the back door surrounded by police officers to destroy

evidence. The unknown officer never radioed nor communicated to Johnson that petitioner never jumped a fence and hedge,because Mr. Booker Shabazzallah was in a position to see and hear all of his actions.Plus the unknown officer gave petitioner a command and also grabbed him and that Johnson instructed the officer to place him in a car,then in handcuffs for no legitimate reason. See (Statement of Case) pg. 6-7).

All of the facts presented by petitioner at the initial seizure would be believed unlawful by an impaneled jury.

Further,when he was transported to the police station for questioning on murder and drugs,the police had no probable cause to suspect Mr. Booker Shabazzallah as being involved in a murder and to further handcuff him to a wall before questioning. Against this backdrop,summary judgment should have been denied on plaintiff's facts and opposing motion.

Lastly ,based on the facts of petitioner,a person can legally approach officers outside of a crime scene and ask questions about the status of individuals inside,especially since there were neber any facts presented by the unknown offficer nor any officer that petitioner was not armed nor that he needed to be disarmed,was not belligerent,did not physically attempt to go around nor through an officer, which substantiate his opposition to summary jufgment disputing the claims of Sgt. Johnson Luck that petitioner might have tried to enter a residence that was secured to destrioy evidence. Evidence that was not discovered until (3) hours after the seizure and arrest of petitioner's person. See(Statement of Case pg. 7 and Dkt. 50 ¶'s37-39).

This Court held in Johnson v United States,333 U.S. 10,13--15,68 S.Ct. 367,368,an arrest is not justified by what the subsequent search discloses.

The lower court grossly moved away from this Court's precedent that the must view the factual evidence and all justifiable inferences drawn therefrom in the light most favorable to the nonmoving party. Anderson v. Liberty Lobby,

Inc.,477U.S. 242,255,106 S.Ct. 2505,91 L.Ed 2d 202 (1986). The Court must also draw all justifiable inferences in favor of the nonmoving party including questions of credibility and of the weight accorded to particular evidence. Masson v New Yorker Magazine Inc.,501 U.S. 496,520,111 S.Ct. 2419,115 L.Ed 2d 447 (1991).

Because there are genuine issues of material facts in dispute about what actually happened when petitioner came in contact with the officer at the back door,the movants cannot be entitled to judgment as a matter of law and the lower courts decision conflicts with this Court's precedents.

B. The Decision Below Extends this Court's Precedents for Reasonable Suspicion and Probable Cause for Seizure and Arrest Beyond What this Court Has Authorized Under The Fourth Amendment and What is a Seizure and Arrest and Therefore Conflicts With this Court's Holding's that a Person Cannot Be Seized Without Reasonable Suspicion Nor Probable Cause to Arrest and Transport to Police Station for Questioning and Investigation Without His Consent in, Kaup v Texas,538 U.S. 626,123 S.Ct. 1843(2003),Hayes v Florida ,470 U.S. 811, 84 L.Ed. 2d 705,105 S.Ct. 1643 (1985),U.S. v. Sharpe,470 U.S. 675,105 S.Ct. 1568 (1985), Dunaway v. New York,442 U.S. 260,60 L.Ed. 2d 824,99 S.Ct. 2248 (1979),etc.....

First,there is a dispute that petitioner did not commit any of these acts in the respondents version of events that were accepted by the lower courts on summary judgment and after -the-fact totality of circumstances conclusions and were not only disputed but could not provide reasonable suspicion for seizure nor probable cause for arrest to be interrogated.

There are clearly established cases from this Court which would govern the circumstances of this case,that the lower courts are in gross conflict with regarding seizure and subsequent arrest and transportation to the police station for questioning,investigation and any other reason without probable cause.

The reason that Sgt. Johnson and Detective Luck gave for detaining petitioner,then handcuffing him in a police car before transporting him to the police station and handcuffing him to a wall in a locked room before there initial questioning was because of allegations that were disputed to have never occurred,and that was an unknown officer gave them information that person had come over a hedge,a fence and attempted to enter a back door that was secure and surrounded by numerous officers and patrol cars,and this is according to their sworn affidavits),and that he may have been involved in the murder,may have wanted to obstruct justice,tamper with and destroy evidence and may have been involved in the shooting and needed to be investigated.

These disputed allegations were claimed to provide the officers with reasonable suspicion and probable cause to arrest Mr. Booker Shabazzallah for murder investigation.

Second,the officers made no claim that petitioner voluntarily accompanied them to the police car,to be locked in,handcuffed,then transported to the police station for questioning. Even if this claim had been made ,it would be belied by the record and would further undermine the court's ruling that when the officer instructed plaintiff to follow him and grabbed him,he was then seized for purposes of the Fourth Amendment. See(APPX. C at pg. 12) and(Dkt.50,¶ 26; Statement of Case pg.6).

The Fourth Amendment protects people not places. Katz v United States, 389 U.S. 347,351,88 S.Ct. 507,511,19 L.Ed. 2d 576 (1976). It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away,he has 'seized that person. Terry v. Ohio,392,U.S. 1,88 S.Ct. 1868 (1968).

So, for purposes of the Fourth Amendment,petitioner was seized. California v. Holdari D.,499 U.S. 621,627-628,111 S.Ct.1547,113 L.Ed. 2d 690 ,gave several examples of circumstances that indicate seizure.

Third, the seizure turned into a full blown arrest,see(Dkt.50 ¶ 27-55, Statement of Case pg.6-8),(Appx. F at pg.6 and Appx. C at 13 & 15),when Sgt. Johnson instructed petitioner be placed in a patrol car handcuffed to be transported to a police station,after primer residue testing,for murder investigation and questioning. This is considering that another individual who was also an innocent and concerned person, was placed in the patrol car with petitioner,handcuffed for beyond an hour,primer residue testing performed on him ,then he was released. See(Dkt. 50 ¶ 30-31) and (Appx. C at pg. 3).

The officers claimed they had probable cause to believe Mr. Booker Shabazzallah was involved in the murder and there were exigent circumstances to detain because of the disputed allegations of Johnson and Luck,that were not corroborated by the unknown officer and there were no witnesses who had nor who could testify to the disputed material facts of the above officers being committed,however in the courts view this provided probable cause for the arrest of petitioner for murder investigation and the susequent findings of additional paraphernalia in the home of another person,provided further detention.

The house was secure and petitioner was not a recent occupant,see(Appx. at pg. 4) and (Dkt. 50,¶ 4-21 & 32),so for practicable reasons even if there allegations were true,which they were not,no destruction of evidence could take place inside a secure environment which is admitted by the officers as being secure by several officers and patrol cars. See(Dkt. 40,Sgt. Johnson's affidavit ¶'s 9 & 12). Therefore no immediate exigent circumstances existed nor any remote destruction of evidence by someone outside of the duplex residence.

The alleged disputed offenses that Johnson and Luck allege that some unknown officer communicated with them is not enough to provide probable cause to arrest plaintiff for hours without any autorization. The offense,for which were alleged as justification after-the-fact is governed under Virginia law under Code of Va. 18.2-414.2(Crossing or remaining within police lines or

barricades ,which have been established pursuant to Code of Va. 15.2-1714,without proper authorization) and murder is governed by Code of Va. 18.2-30 thru -32.

This Court has recognized in Knowles v Iowa,525 U.S. 113,119 S.Ct. 484 (1998),that as for destroying evidence of other crimes unrelated to an alleged offense,the possibility that an officer would stumble onto evidence wholly unrelated to the offense initially detained seems remote. So the lower courts view that evidence of other offenses that were discovered after detainment and arrest unrelated to the disputed allegations of the initial detainment,constituted reasonable suspicion and probable cause for arrest is grossly wrong conflicting with this Court's precedents.

Even though the allegations of the officers are disputed and for the sake of determining the lawfulness of the officers actions,even if the facts were not disputed demonstrates there actions were still unlawful.

The lawfulness of these arrests by state officers for state offenses is to be determined by state law.See Ker v California, 374 U.S. 23,83 S.Ct. 1623 (1963). The state law that governed C.O.V. 18.2-414.2 provides:

> Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor.

Punishment for conviction of misdemeanor,18.2-11,provides in part:

> (c) for class 3 misdemeanor,a fine of not more than $500.

Code of Va. 19.2-74,governs issuance and service of summons in place of warrant in misdemeanor case and provides in part:

> 2. Whenever any person is detained by or is in the custody of an arresting officer for violation of.....any provision of this Code punishable as a Class 3 or Class 4 misdemeanor for which he cannot receive a jail sentence..... the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place specified. Upon giving of such person of his written promise to appear...the officer **shall forthwith release him from custody**

Code of Va. 19.2-81,governs when arrest without warrants are authorized,provided

in part:

> B. Such officers may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence
>
> F. Such officers may arrest ,without a warrant or a capias,for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

Among other persuasive points which show the actons were unlawful,the law mandated that had this offense actually occurred,it was only for brief detention to comply with the mandatory language of the statute.

Fourth,it is undisputed the officers who ordered the arrest and handcuffing for investigative purposes did not observe a misdemeanor committed in their presence and there are no facts on the record,no reasonable grounds,nor probable cause to suspect of having committed a felony not in his presence. This is taking into account that the Va. statutes are in line with federal law. An offense is committed within the presence of an officer,within the meaning of 19.2-81,when he has direct personal knowledge ,through his sight,hearing or other senses. Durant v City of Suffolk,4 Va. App. 445 ,447,358 S.E. 2d 732,733 (1987).

All that can be said ,especially with the disputed facts is that the officers did not have even a hunch to detain nor probable cause to believe petitioner was involved in the shooting and homicide in the initial encounter and during the time he spent in the patrol car and handcuffed to a wall for interrogation.

This Court's precedents respect the truth that the substance of probable cause is a reasonable ground for belief of guilt. Brinegar quoting McCarthy v. De Armit,99 Pa. 63,69,quoted with approval in Carroll opinion,267 U.S. at page 161,45 S.Ct. at page 288,69 L.Ed. 543,39 A.L.R. 790. Probable cause exists where the facts and circumstances within their(the officers) knowledge and of which they had trustworthy information(are) sufficient in themselves to warrant a man

of reasonable caution in the [338 U.S. 176] belief that an offense has been or is being committed.Brinegar,quoting Carroll v United States,267 U.S. 132,45 S.Ct. 280

The troublesome point posed by the disputed facts in this case is not even one between mere suspicion and probable cause. The line that was drawn by an act of judgment is that because the officer had prior knowledge of the victim and stated the prior record of petitioner after-the-fact and had previous run-ins with him that he was involved in the murder. The lower courts view on this disputed facts that were never corroborated creates a standard of reasonable suspicion and probable cause below those standards established by the Constitutional compact and this Court.

See Dunaway v New York,442 U.S. 200,60 L.Ed. 2d 824,99 S.Ct. 2248(1979), which held defendant was seized for Fourth Amendment purposes when he was arrested and taken to police station for questioning and seizure without probable cause violated the Fourth Amendment.

Mr. Booker Shabazzallah's case is similar to Dunaway's in which he was not questioned briefly where he was ,not even questioned at all,taken from a public street,taken to a police station,handcuffed to a wall and an interrogation room for over (6) hours before being released. Petitioner was physically restrained by the officers so there is no way he would feel free to leave. Dunaway's detention only lasted an hour.

See U.S. v Sharpe,470 U.S. 675,105 S.Ct. 1568(1985),in assessing whether a detention is too long in duration to be justified as an investigative stop,it is appropriate to examine whether the police diligently pursued means of investigation that was likely to confirm or dispel their suspicions quickly. The officers did not even question Mr. Booker Shabazzallah at the scene. Further the Court must examine whether the officers actions were justified at it's inception and the disputed facts of this case prove otherwise. Id.

Under Michigan v. Summers,452 U.S. 692,69 L.Ed 2d 340,101 S.Ct. 2587 (1981), held that a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain occupants at the premises while a proper search is conducted. In petitioner's case he was not an occupant,(Dkt. 50 ¶ 32),an undisputed fact,there was no warrant but a consent given to search the residence in reference to the homicide,see(Dkt.50 ¶ 36)and that consent was given over an hour after plaintiff was detained.Id. and a search did not commence until 2½ hours later.

See Hayes v. Florida,470 U.S. 811 ,105 S.Ct. 1643 (1985),held that where there was no probable cause to arrest,the petitioner,no consent to the journey to the police station and no prior judicial authorization for detaining him, the investigative detention at the station for fingerprinting purposes violated the petitioner's rights under the Fourth Amendment. In this case before the Court it would be an even more clear violation, because the sole purpose was not only investigative purposes,but to compel assistance in solving a crime.

Lastly,see Flippo v West Virginia ,528 U.S. 11,120 S.Ct. 7 (1999),reaffirmed and held that a homicide crime scene does not give the police unlimited powers to detain and search the premises,so the view and conclusion the lower courts rested their decision on could not support that police could seize and search petitioner and persons on the outside of a homicide crime scene on innocent behavior. See (Appx. C pg. 13)

C. Section 42 U.S.C. Liability was Improperly Denied,Excluding Officers From Fault,Whose Involvemet in the Events Gave Rise To the Civil Rights Deprivation and Therefore Conflicts With Bell Atlantic v Twombly,550 U.S. 544,127 S.Ct. 1955 (2007),Ashcroft v Iqbal,556 U.S. 662 (2009),Haines v Kerner,439 U.S.470 (1978),28 U.S.C. §1915A(b)(1),and related law.

Before the lower court's sua sponte dismissal of Detectives Luck and Keough

from the complaint,see (Appx. F pg.7,n.2),it ordered plaintiff to answer it's question of whether the complaint was within the limitations and never ordered that the complaint be amended. See (Appx. F pg.4-5) and (Appx. G),if it did not contain less than satisfactory allegations against Luck and Keough.

In dismissing both above defendants from suit the court did not construe plaintiff's complaint liberally but also failed to draw all reasonable inferences on those facts stated in petitioner's favor to apply liability and avoid dismissal.

In the court's view plaintiff on ly allegations against Luck and Keough pertain to their failure to provide plaintiff with Miranda warnings,(Appx.F pg.7 n. 2),which the court was clearly in conflict on how to construe plaintiff's pleadings for deprivation of his civil rights.

First,Mr. Booker Shabazzallah alleged in the original complaint that he was transported to police station after being handcuffed and detained in the patrol car and then handcuffed to a wall for two hours,until Det. Luck instructed the officer to remove the handcuffs,then Luck locked petitioner back in the room until he and Keough were ready to question him. See (Dkt. 1,¶ 28-31). Both detectives interrogated petitioner after he was forcibly transported to the detective station. Id. at (¶ 22-28). These facts and inferences point to the inescapable truth that petitioner was held against his will by Luck and Keough. Id at (¶'s 31-45).

Second,Luck's affidavit reveals what the facts and inferences that should have been drawn and that was Luck was also responsible for Mr. Booker Shabazzallah's detainment and custody. See(Dkt. 40,Att.# 2,¶ 12 & 14)

Third,petitioner made not only the above allegations against Luck and Keough,but also definite statements in(Count I,Dkt.1,¶ 53-58),(Count III,Dkt.1 pg.5 ¶ 71-73),(Count IV,Dkt. 1,pg 5 ¶'s 74-78),(Count V,Dkt. 1,pg.6 ¶'s 85-93) and (Count VI,Dkt.1,pg.6 ¶'s94-99),that Luck and Keough unlawfully seized

petitioner ,unlawfully arrested petitioner,falsely imprisoned petitioner, invaded the privacy of petitioner,violated his Sixth Amendment right to counsel, were negligent in their deprivations and caused emotional distress.

Fourth ,sua sponte dismissals under The Prisoner Litigation Reform Act for failure to state a claim under 28 U.S.C. §1915A are assessed the same as Rule 12(b)(6) motions to dismiss,so the facts that he presented in the initial complaint in order to survive a motion to dismiss,the plaintiff must state a plausible claim for relief that permits the court to infer more than a mere possibility of conduct based on judicial experience and commonsense. Ashcroft v. Iqbal,556 U.S. 662,679 (2009);Bell Atlantic v. Twombly,550 U.S. 544,127 S.Ct. 1955(2007). See also Neitzke v Williams,490 U.S. 319,327,109 S.Ct. 1827(1989), Rule 12(b)(6) does not countenance.....dismissals based on a judge's disbelief of a complaint's factusl allegations). In evaluating the sufficiency of a pro se complaint,the court accepts as true all well-pleaded facts and liberally construes these facts in the light most favorable to the pleader. Erickson v. Pardus,551 U.S. 89,94(2007),that will entitle him to relief. Conley v Gibson, 355 U.S. 41,45--46,78 S.Ct. 99 (1957) and Haines v. Kerner,404 U.S. 519,92 S.Ct. 594 (1972).

It is plain that when two detectives lock a person as petitioner in a room and then interrogates him to compel assistance in a homicide investigation without probable cause for a crime,the natural consequences of those acts are a violation of the Fourth Amendment and False Imprisonment.

D. The Decision Below Conflicts With Prior Decisions of this Court Holding What Constitutes Clearly Established Law Is ,When Deciding Qualified Immunity and Thereofore Conflicts With Anderson v. Creighton,483 U.S. 635 640,107 S.Ct. 3034,97 L.Ed 2d 523(1987) and other U.S. Supreme Court Precent on the Issue.

In the lower court's view,based on the facts that were disputed by petitioner and the statement of facts contained in these pleadings,the lower court granted qualified immunity,because it cannot be said that Johnson's decision to search was unlawful,(in this case seizure)"beyond debate" in light of existing law. See(Appx. C,at pg. 15). At that time Johnson instructed the unknown officer to place plaintiff in police car,which in legal effect amounted to arrest,Johnson possessed a sufficient quantum of information,discussed above,to conclude that plaintiff may have been involved in the murder.Id. Based on these circumstances of this case,Johnson is entitled to qualified immunity for placing plaintiff under arrest after the unknown officer escorted plaintiff from the back door to Johnson's position on the street. Id.

First,the facts were disputed,however Sgt. Johnson and Detective Luck clearly state that plaintiff was arrested for murder investigative purposes and to compel assistance in that investigation. See (Dkt. 40,Att.#1,¶'s 16-17 & 20) and (Dkt. 40,Att.#2,¶'s 12 & 14) and to illicit any other information.

Second,Good Faith on part of the arresting officers is not enough.See Henry v. United States,361 U.S. 98,102,80 S.Ct. 168,171,4 L.Ed. 2d 134.

Third under state law the offense that was disputed to never have occurred, C.O.V. 18.2-414.2,which is governed by C.O.V. 19.2-74 and §19.2-81,concerning arrests argued above on page 23,is compatible with federal law and gives ample notice among other clearly established law,which states a warrantless arrest is reasonable if the officer has probable cause to believe that a crime suspect committed a crime in the officers presence. Atwater v. Lago Vista,532 U.S. 318,354,121 S.Ct. 1536,149 L.Ed. 2d 549 (2001). 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 officer,amount to probable cause. Ornelas v. United States,517 U.S.690,696,116 S.Ct.1657,134 L.Ed. 2d 911 (1966).

There is a dispute of the material facts and just a claim of probable cause without information supporting a probability does not qualify as qualified immunity,especially since,when evaluating clearly established law under the Court's precedents,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 that time. Reichle v. Howards,566 U.S. 658,664,132 S.Ct. 2088,182 L.Ed 2d 985 (2012).

The lower court actually applied the clearly established law to previous order during screening and changed it's opinion for no apparent reason. See (Appx.F at pg. 5)

The precedent must be clear enough that every reasonable official would interpret it to establish the particular rule plaintiff seeks to apply. Id.at 666,132 S.Ct. 2088. In other words the constitutionality must have placed the officer's conduct beyond debate. Anderson v. Creighton,483 U.S. 635,640,107 S.Ct. 3034,97 L.Ed. 2d 523 (1987). See also al-Kidd,supra at 741,131 S.Ct. 2074.

The statutes in Virginia,Terry v. Ohio,392 U.S. 1(1968);Knowles v. Iowa, 525 U.S. 113 (1998),Carroll v United States,267 U.S. 132 ,Brinegar v. United States,338 U.S. 160 (1949),Dunaway v. New York,442 U.S. 200 (1979),Hayes v Florida, 470 U.S. 675 (1985),Michigan v. Summers,452 U.S. 692 (1981),U.S. v.Sharpe,470 U.S. 675(1985), Flippo v. West Virginia,528 U.S. 11 (1999) and numerous other case law that the lower court was to analyze placed the actions of the police beyond debate that the seizing and arrest of petitioner for transportation to the police station for investigation without probable cause was a violation of law.

E. The Decision Below Affirms the Establishment of a Defendants unsworn statement as True for Purposes of Pleading when Attached to Plaintiff's Complaint as an Exhibit Pursuant to Fed. R. C. P. Rule 10(c),even though plaintiff only

Attached Exhibit to Show the Events Took Place and Not the Truth of the Defendants Unsworn Statement and as a Result,There is a Conflict Among the Circuit Court of Appeals and Distrct Courts on the Proper Application of Attaching Exhibits to Complaints Under 10(c) and Conflicts With Jones v. City of Cincinatti,521 F.3d 555(6th Cir. 2008) and Northern Indiana Gun & Outdoor Shows,Inc. v. City of South Bend,,163 F.3d 449(7th Cir. 1998)and Pinder v Knorowski,600 F.Supp 2d 726 (E.D. Va. 2009).

In the lower courts view if there are discrepancies between the plaintiff's allegations and an exhibit,the exhibit prevails when a court may consider it pursuant to United ex rel. Constructors , Inc. v Gulf Ins Co.,313 F.Supp.2d 593 596 (E.D.2004). See (Appx. F at pg.4-5). In exhibit B attached to plaintiff's complaint,defendant Stovall states that upon her arrival at the homicide crime scene on June 14,2008,he began to collect evidence. During his search he uncovered pictures of Walter Booker.....Defendant Stovall therefore uncovered some evidence that plaintiff had some connection to the crime being investigated. Id.

The rule governing exhibits and the Circuits this reasoning conflicts with is an important reason to decide this issue because the events leading up to the seizure and search happened according to a time line that happened hours apart and E. Stovall is a she not a he. It is clear that petitioner did not attach the exhibits to prove the allegations in E.Stovall statements as true.

To take E. Stovall's untested,self-serving assertions as true and use them to dismiss plaintiff's claim or in this circumstance to establish reasonable suspicion as the district court did before a time line was established,would make little sense. See Pinder v Knorowski,600 F.Supp. 2d 726 (E.D. Va.2009), quoting Jones v. Cincinatti,521 F.3d 555 (6th Cir. 2008),which explained where a plaintiff attaches to a complaint a document containing unilateral statement made by a defendant,where a conflict exists between those statements and the plaintiff's allegations[Federal Rules of Civil Procedure]10(c) does not require

a plaintiff to adopt every word within the exhibits as true for purposes of pleading,simply because the documents were attached to the complaint to support an alleged fact. N. Ind. Gun & Outdoor Shows Inc. v City of South Bend,163 F.3 449,454-56 (7th Cir 1998). Rather ,we treat the exhibit as an allegation that the officers made the statements in the [exhibits] and we treat that allegation as true. Id.

First,It is clear that petitioner used exhibit B to support the allegation that while he was handcuffed,E.Stovall performed a primer residue test on him, when petitioner was removed from the patrol car and placed back in by E.Stovall. See(Dkt.1 ¶'s 26-27). Further it is clear petitioner used exhibit A to support the allegation that Sgt. Johnson stated to the unknown officer"thats" Mr. Booker,I know him put him in a car.See(Dkt.1 ¶ 22•.

Lastly,After Further pleadings,facts revealed that the initial seizure and arrest took place before any alleged contraband was found in the residence,which could not provide reasonable suspicion nor probable cause for the initial seizure and arrests. Seef Dkt.50,declaration in opposition to summary judgment pg.3-4 and ¶'s 36-38). Even the factsin the initial complaint when accepted as true establish that plaintiff did not have initial contact with E. Stovall,but an unknown officer. See (Dkt. 1 ¶'s 15-27.

II. THE PUBLIC IMPORTANCE AND FAR_RANGING EFFECT OF THE FOURTH AMENDMENT ISSUE IS CLEAR, BECAUSE OF THE DISREGARDING OF THE SUMMARY JUDGMENT STANDARDS AND THE EXTENSION OF REASONABLE SUSPICION AND PROBABLE CAUSE TO PETITIONER BECAUSE HE HAD A PRIOR RECORD THAT CAME TO LIGHT AFTER-THE -FACT AND AND FURTHER SANCTIONED THE POLICE OFFI CER AND IMMUNIZED HIS CONDUCT FROM FROM CLEARLY ESTABLISHED LAW,THAT ENABLES THEM TO TRANSPORT ANYONE TO THE POLICE STATION UNWILLINGLY FOR QUESTIONING AND JUST CLAIM PROBABLE CAUSE,WITHOUT ANY FACTUAL BACKING TO JUSTIFY THEIR ACTIONS .

THIS IS DETENTION BEYOND (10),(20) MINUTES ONTO BEYOND (2) HOURS,WITHOUT JUDICIAL AUTHORIZATION.

Thus this is unprecedented extension of the Fourth Amendment's reasonable suspicion and probable cause language and action. The issue was wrongly decided The decision of the lower court is clearly unreasonable. To claim as probable cause in a murder before any evidence establishing such suspicion puts innocent persons at risk of being picked up off the street especially because of their prior record,which would lead to profiling beyond what is already being allowed.

This Court's duty and obligation has always balanced the interest of the citizenry and law enforcement needs within due bounds and moderation,but has refused to extend the government's authority as broadly as was applied in this case as the lower courts did in the Fourth Amendment context.

Implicit in the Fourth Amendment's protection from unreasonable searches and seizures is its recognition of individual freedom,that safeguard has been declared to be as the very essence of constitutional liberty' the guaranty of which is as important and as imperative as are the guaranties of othr fundamental rights of the individual citizen. Ker v. State of Cali,374 U.S. 23,83 S.Ct. 1623 (1963). While the language of the Amendment is general,it forbids every search that is unreasonable,it protects all, those suspected or known as to be offenders as well as the innocent and unquestionably extends to the premises where the search was made. Ker,quoting Go-Barting Importing Co. v. United States,282 U.S. 344,357,51 S.Ct. 153,158,75 L.Ed 374 (1931)(Mr. Justice Butler there stated for the Court(t)he Amendment to be liberally construed and all owe the duty vigilance for its effective enforcement les there shall be impairment of the rights for the protection of which it was adopted.

There has to be more than a hunch and the disputed material facts,to say that probable cause for arrest and investigative detention existed for a murder by Mr. Booker Shabazzallah,which would fly in the face of all reason

and logic of what probabilities are and to extend such innocent behavior, which the court did acknowledge in(Appx. C at pg.13),were anodyne,then together extend it to probable cause for murder. If that is the case,then any and everyone everyone would and could be subject to intrusions.

Further,this Court has previously recognized ,even though lower courts have not recognized it also and that in Beck v Ohio,379 U.S.89,85 S.Ct.223,(1964), that it did not hold that officers knowledge of petitioner's physical appearance and previous record was either inadmissible or entirely irrelevant upon the issue of probable cause,but to hold that knowledge of either or both of these facts constituted probable cause would be to hold that anyone with a previous criminal record could be arrested at will.

All of this extension of the Fourth Amendment is when the officers cannot even state the source of there disputed allegations but to state an unknown officer,and the only reason Mr. Booker Shabazzallah stated unknown officer is because he was unaware of the name of that officer,it did not appear in none of his available records related to the other case connected to it and he did not identify himself in the homicide investigation of which discovery would have disclosed. See(Appx. B & D)

2. The attachment of the exhibits to petitioner's complaint or any civil rights complaint affects substantial rights to not only have his complaint construed liberally and the truth of his accusations would be for nothing, if,as the court did and determined a factual dispute before a sworn statement by the defendant was ever submitted. It is just as important to decide the difference between a contract,policy etc. and a statement that has not been tested for its truthfulness. This ruling will hinder litigants from attaching properly attached exhibits in the form of statements that are unsworn from the defendants,when it is to establish the events took place that plaintiff stated.

Where here the Court of Appeals erres on both the merits of the Constitutional claim and the question of Qualified Immunity"we have discretion to correct its errors at each step. District of Columbia v Wesby,138 S.Ct. 577 ,199 L.Ed 2d 453(2018).

This Court has discretion to correct the important errors that affected the entire judgment.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully sbmitted,

Walter Delaney Booker,Jr. Shabazzallah

Date: July 2,2018

CERTIFICATE OF MAILING

I declare under penalty of perjury pursuant to 28 U.S.C.§1746,that I placed an original petition for writ of cert. and an informa pauperis app in the institutional mailing system to mailed to Office of the Clerk,U.S.Supreme Court,1 First Street, N.E. Washington,D.C. 20543 and a copy to James A. Cales III,Esq.,6160 Kempsville Circle,Suite 341B,P.O.BOX 12525,Norfolk,Virginia 23541, on the 2nd day of July ,2018

Executed on the 2nd day of July ,2018

Signed: WALTER DELANEY BOOKER JR. Shabazzallah