No. 19-1099

IN THE

Supreme Court of the United States

CITY OF BAKERSFIELD, AARON STRINGER,

Petitioners,

v.

LESLIE LARAY CRAWFORD,

Respondent.

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

BRIEF IN OPPOSITION

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June 11, 2020

QUESTION PRESENTED

In determining whether a police officer used reasonable force, may the testimony of a person with knowledge of the characteristic behavior and appearance of the victim, but not present on the scene, be admitted solely to help the jury visualize what was actually seen by the officer at the time of the incident?

RELATED PROCEEDINGS

Respondent is unaware of any related proceedings.

CORPORATE DISCLOSURE STATEMENT

Respondent does not have any parent entities and does not issue stock.

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INTRODUCTION

The Ninth Circuit decided an evidentiary question. It did so in a manner fully consistent with, and mindful of, the rule that the reasonableness of the police officer's conduct must be judged solely based on what the police officer actually knew and observed on the scene, in light of his training and the standards of conduct expected of him. Petitioners' effort to characterize the decision below as an attack on that rule is flatly inconsistent with the Court of Appeals' opinion. The Court of Appeals simply held that under the circumstances of this case – particularly in view of Petitioners' own closing arguments at trial – certain evidence concerning the conduct and appearance of Michael Dozer, the man shot and killed by the City of Bakersfield police officer, would help inform the jury about what the officer actually observed on the scene. In shooting Mr. Dozer within a minute of arriving at the scene, did the police officer see a dangerous and out-of-control young man crazed by PCP, or someone who was mentally ill?

The question that Petitioners tender – whether "evidence of prior incidents which indicate that an individual may be mentally ill could be introduced for the purpose of determining whether an officer used excessive force and/or was negligent even though neither the officer nor his department had any prior knowledge of such incidents" – is not presented by this case, at least not in the sense that the question suggests a departure from the established substantive standards for judging police officer conduct. The Court of Appeals acknowledged that the conduct of the officer must be judged

exclusively based on what was observable on the scene.

Petitioners' own arguments to the jury reflected the understanding that *non-contemporaneous* evidence of Mr. Dozer's condition and behavior, as observed by others, could help the jury draw appropriate conclusions about his appearance and conduct at the scene. In other words, if Mr. Dozer was mentally ill, and characteristically and habitually behaved in a certain manner indicating his condition, that would be relevant (but of course not at all determinative) to how he appeared at the scene of the incident. In closing argument, Petitioners themselves forcefully and repeatedly injected the *absence of non-contemporaneous evidence* of Mr. Dozer's mental illness into the case: "Have you heard any evidence from any psychologist, psychiatrist, anyone that said Dozer had any mental illness at all? You haven't heard any evidence on that. That's just [the lawyer's] speculation." In light of Petitioners' own arguments to the jury, the Ninth Circuit could hardly have reached any other conclusion but that the trial court erred in disallowing Respondent's testimony addressed to that subject.

Although Petitioners suggest that this case involves the standards to be applied in judging the conduct of a police officer confronting an individual who may well be mentally ill, their question presented does not address those issues. They do not here challenge the fact that a police officer is supposed to respond to an individual displaying signs of mental illness in a manner that takes that illness into account.

STATEMENT

Respondent, Leslie Crawford, brought this case after her son, Michael Dozer, was shot and killed by a City of Bakersfield police officer, Officer Aaron Stringer. At the time of the shooting, Mr. Dozer was behaving erratically, in a manner that was characterized on the one hand as consistent with someone on PCP, and on the other, as consistent with someone with a mental illness. At trial, the District Court excluded testimony from Ms. Crawford about her observations of Mr. Dozer's erratic behavior on previous occasions, which was here offered to help inform the jury about what Officer Stringer witnessed when he encountered Mr. Dozer. The Ninth Circuit overturned that decision and found that Ms. Crawford's testimony was relevant to whether Mr. Dozer "would have appeared to be mentally ill" to Officer Stringer – a concededly relevant consideration.

A. Relevant District Court Proceedings

On November 6, 2014, Ms. Crawford filed this action against Petitioners in the United States District Court for the Eastern District of California, raising federal constitutional claims under 42 U.S.C. § 1983 and state law claims under California negligence and battery law. A central issue in the case was, of course, Mr. Dozer's conduct and appearance to the police officer on the scene. If he was simply menacing and hostile, or on PCP, one set of responses was likely called for; if he were apparently mentally ill, another response would have been appropriate. There was limited eyewitness testimony.

Before trial, Petitioners moved *in limine* to exclude evidence of Mr. Dozer's mental illness, including testimony from Ms. Crawford about her observations of Mr. Dozer's behavior on prior occasions. Pet. App. 41a. Ms. Crawford opposed the motion, responding that such evidence would be relevant because "his behavior on the afternoon in question was consistent with behavior that properly trained police officers would associate with some form of a mental illness." ER215.[1]

The District Court found that evidence of mental illness was relevant – a point not challenged in the Petition – stating that:

> Unlike Decedent's prior criminal history, which would not be evident from the observations made by Defendant Stringer in interacting with Decedent, it was evident to Defendant Stringer that Decedent was angry and acting in an aggressive manner. Whether this was due to being under the influence of a drug such as PCP or because Decedent was suffering from mental illness is relevant to determining whether the force used in this instance was reasonable.

Pet. App. 42a-43a.

While recognizing that non-contemporaneous evidence concerning Mr. Dozer's mental illness could be relevant to the question of Mr. Dozer's appearance at the time of the incident, the District Court nonetheless granted Petitioners' motion with

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[1] Appellant's Excerpts of Records in the Ninth Circuit Court of Appeals filing.

respect to Ms. Crawford's testimony because it was that of a lay witness. *Id.* at 45a-46a. The trial judge concluded that lay witness testimony could not be presented unless it involved "her observations on the date of the incident." *Id.* at 45a.

The trial court did, of course, permit expert testimony "regarding indicators of mental illness and the training officers receive." *Id.* A police practices expert testified that Mr. Dozer's behavior would have led a reasonable officer to believe that Mr. Dozer was "either mentally ill or experiencing a mental crisis," and he explained that officers are trained to recognize "what mental illness looks like'" and deal with a mentally ill person by "calm[ing] them down" and "get[ting] them handcuffed, with the least amount of force possible." *Id.* at 9a-10a. Petitioners' expert witness similarly testified that officers are trained to recognize signs of mental illness and respond accordingly. *Id.* at 10a-11a. Officer Stringer himself testified that he received specific training about confronting an individual believed to be mentally ill. ER053, 061-064. *See also* Pet. App. 9a.

Despite being aware of the exclusion of testimony about Mr. Dozer's exhibited signs of mental illness, Petitioners' counsel argued in closing that the jury should reach a verdict against Ms. Crawford because she did not introduce evidence of mental illness:

> In this court of law, the Plaintiffs have the burden of proof. They have to prove the case. Have you heard any evidence from any psychologist, psychiatrist, anyone that said Mr. Dozer had any mental illness at all? You haven't heard any evidence on that. That's just

> [Plaintiff's counsel's] speculation. He wants you to accept that Mr. Dozer was mentally ill and that somehow means that he's to be treated differently. There's been no evidence that he was mentally ill, no evidence at all.

Id. at 14a. And further:

> And, again, on this issue of mental illness, no evidence of that at all. Zero. If this really was a case about how we treated or responded to a mentally ill person, you would have seen a medical doctor, a psychiatrist, a psychologist come in and tell you that they've either diagnosed Mr. Dozer or that there was evidence of that. You're being asked to speculate on that, and . . . when you're asked to speculate, the Plaintiffs aren't carrying their burden by proving their case by a preponderance of the evidence.

Id. at 14a-15a.

On October 20, 2016, the jury returned a verdict in favor of Petitioners, and the District Court entered its judgment based on that verdict. ER003-006; *see also* Pet. App. 15a.[2]

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[2] Petitioners' brief omits some key facts about the interaction between Mr. Dozer and Officer Springer. Pursuant to Supreme Court Rule 15, Respondent addresses the key omissions here, as they provide the background against which the relevance and prejudicial impact of the excluded evidence must be considered. *See* Sup. Ct. R. 15. Mr. Dozer was about five feet five inches tall – shorter and lighter than Officer Stringer, who was about five feet eleven inches and 170 pounds. ER119. Officer Stringer testified that when he first approached Mr. Dozer, he did not think that Mr. Dozer was actively committing any crime while pacing around the area near the minimart.

(continued...)

B. Court of Appeals Proceedings

Ms. Crawford appealed, specifically citing the decision to exclude Ms. Crawford's testimony. On December 16, 2019, the Ninth Circuit held that the District Court "abused its discretion" by excluding Ms. Crawford's testimony. Pet. App. 19a.

The Ninth Circuit found that Ms. Crawford's testimony should have been admitted because

> whether Dozer was *in fact* mentally ill that day is relevant to whether he would have *appeared* to be mentally ill, and thus to whether Stringer knew or should have known that Dozer was mentally ill; after all, the existence of some underlying fact tends to make it more likely that a person knew or should have known that fact.

Id. at 19a-20a. As to the District Court's rationale for excluding the evidence – because it was lay testimony concerning a psychiatric condition – the Ninth Circuit held that Ms. Crawford was competent to testify to her own lay observations. *Id.* at 20a-21a. The Ninth Circuit found that the exclusion of Ms. Crawford's testimony was prejudicial, emphasizing that Petitioners had specifically argued to the jury that they should infer that Mr. Dozer did not appear mentally ill on the scene because no one had testified about any mental illness on Mr. Dozer's

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(continued...)

Pet. App. 7a, ER81. Within one minute of Officer Stringer's arrival on the scene, Officer Stringer shot and killed Mr. Dozer. Pet. App. 8a, ER77. As noted by the Ninth Circuit, the eye witnesses provided varying accounts of the lead-up to the shooting. Pet. App. 8a-9a.

part. *Id.* at 22a-24a. The Ninth Circuit ordered a new trial consistent with its decision. *Id.* at 25a.

REASONS FOR DENYING THE PETITION

I. THE QUESTION PRESENTED DOES NOT MERIT REVIEW.

The evidentiary issue presented to, and decided by, the Court of Appeals, was described in the introduction to its opinion.

> Crawford appeals, contending that the district court abused its discretion in excluding as irrelevant her testimony about her percipient observations of Dozer's past behavior, which she offered to prove that Stringer should have recognized that Dozer was exhibiting signs of mental illness at the time of their encounter and therefore that the shooting was unreasonable.

Pet. App. 4a.

In holding that, in the circumstances of this case, those observations were relevant to the question of Mr. Dozer's conduct as it appeared to the police officer at that time, the Court of Appeals fully understood this Court's directions on how the conduct of a police officer is to be judged, and applied it to the evidentiary question in a manner consistent with those standards. The Court of Appeals' decision is not in conflict with the decision of any other court, including this Court, and presents no issue of exceptional importance warranting this Court's review.

A. This Case Presents an Evidentiary Question That Was Decided In A Manner Consistent With This Court's Precedents.

Petitioners premise their request for certiorari on the argument that the Ninth Circuit departed substantively from the principles set forth in *Graham v. Connor*, 490 U.S. 386 (1989), but that characterization of the Ninth Circuit's opinion is incorrect. The Ninth Circuit ruled on a specific evidentiary question in light of the accepted standards for judging a police officer's conduct set forth by this Court in *Graham*. It held that the excluded testimony was relevant because it would help the jury visualize the facts and circumstances that Officer Stringer encountered at the time of the shooting, specifically, whether Mr. Dozer "would have *appeared* to be mentally ill" to Officer Stringer. Pet. App. 19a. It was material because of the limited testimony in the record on the point, and because Petitioners themselves had purported to focus on the *absence* of non-contemporaneous evidence supporting the assertion that Mr. Dozer was mentally ill. *Id.* at 22a-24a. It further held that while Ms. Crawford, as a lay witness, might not have been able to offer a diagnosis of Mr. Dozer, she was "competent to testify about her own observations of and experiences with Dozer." *Id.* at 21a.

In making the evidentiary determination that Ms. Crawford's testimony should have been admitted at trial, the Ninth Circuit applied this Court's precedent. Petitioners' assertion that the Ninth Circuit decided the appeal in "complete contravention to the parameters that have been

defined by the likes of *Graham v. Connor*" simply disregards the Ninth Circuit's analysis.[3] Pet. ii.

Graham establishes the substantive standard for deciding Fourth Amendment excessive force claims. The question is "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." 490 U.S. at 397. Various courts have set forth relevant standards to consider in answering this question. And Petitioners agree that "[t]hese factors all track the spirit and intent of this Court's holding in *Graham v. Connor*." Pet. 16. One such factor is "whether it *should have been apparent* to the officer[s] that the person [he] [she] [they] used force against was emotionally

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[3] Petitioners cite a number of cases to support the claim that the Ninth Circuit has "long held that evidence an officer had no knowledge of is not admissible in determining whether the use of force was reasonable under the Fourth Amendment." Pet. 17. Respondent agrees that the Ninth Circuit has consistently applied the analysis required under *Graham* and has confined its analyses in excessive force cases to the "facts and circumstances" confronted by the officer at the time. However, none of the cases that Petitioners reference are inconsistent with the Ninth Circuit's holding here. For instance, in *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d 1052 (9th Cir. 2003), where the victim of excessive police force was "hallucinating and in an agitated state" at the time of the encounter, the court said that "a detainee's mental illness must be reflected in any assessment of the government's interest in the use of force." *Id.* at 1054, 1058. In *Ruvalcaba v. City of Los Angeles*, 64 F.3d 1323 (9th Cir. 1995), which involved a struggle between police officers and a vehicle passenger during a traffic stop, the Ninth Circuit confirmed that the officers could testify about facts known to them before the encounter regarding the passenger's criminal history, because those were relevant to establish the "facts and circumstances" known to the officers at the time. *Id.* at 1328.

disturbed." Ninth Cir. Model Civil Jury Instr. 9.25 (emphasis added). *See also* Pet. ii, 15-16.

The Ninth Circuit applied this standard in finding that Ms. Crawford's excluded testimony was relevant. Pet. App. 17a-19a. Specifically, the Ninth Circuit considered whether the excluded testimony was relevant to "the facts and circumstances" that confronted Officer Stringer at the shooting, including whether it "should have been apparent" to Officer Stringer that Mr. Dozer was mentally disturbed. *Id.* The Ninth Circuit found that the District Court abused its discretion in excluding Ms. Crawford's testimony because the testimony was relevant "to whether [Mr. Dozer] would have *appeared* to be mentally ill, and thus to whether Stringer knew or should have known that Dozer was mentally ill." *Id.* at 19a. There is nothing novel in that view: Evidence of Mr. Dozer's characteristic behaviors would provide some evidence of his conduct at the time of the event in question. *See* Fed. R. Evid. 406.

Petitioners incorrectly suggest that the Ninth Circuit's decision allows the admission of evidence "completely unknown" to a police officer and would require courts to admit other facts that the officer had "no knowledge of," such as gang affiliation and drug use. Pet. 3, 17-18. The Ninth Circuit's decision does nothing of the sort. The District Court and Ninth Circuit each concluded that evidence of mental illness was relevant for the very reason that Officer Stringer *knew* that Mr. Dozer was acting erratically, and was trained to recognize certain behaviors as being a sign of mental illness. Petitioners' question does not challenge the basic proposition that non-contemporaneous evidence of characteristic behaviors can, on occasion, be

probative of behavior at the time of the event in question.

Petitioners' suggestions of a circuit conflict are similarly ill-conceived. They are primarily premised on the erroneous notion that the Ninth Circuit was departing from the substantive principles set forth in *Graham*. But, as shown above, there was no such departure. Petitioners do not offer up any contrary case from any circuit on the evidentiary issue that the Ninth Circuit actually addressed and decided.[4] And it is highly unlikely that there would be such a case. It is difficult to imagine that any circuit would adopt a rule that non-contemporaneous evidence of habitual conduct can be admissible, except in an

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[4] Of the three cases that Petitioners mention in which other courts have excluded evidence of mental illness, none suggest that the individual was exhibiting signs of mental illness at the time of the altercation. *See Wallace v. Mulholland*, 957 F.2d 333 (7th Cir. 1992); *Rascon v. Hardiman*, 803 F.2d 269 (7th Cir. 1986); *Colter v. Reyes*, No. 15-cv-3214 (ENV) (SMG), 2017 WL 2876308 (E.D.N.Y. July 5, 2017). In *Rascon*, the court even noted that it found the particular testimony at issue had little probative value because "there was other substantial evidence admitted with respect to [the victim's] mental and emotional health." 803 F.2d at 278. In the last case that Petitioners reference to allege a circuit split, *Sherrod v. Berry*, 856 F.2d 802 (7th Cir. 1988), the Seventh Circuit excluded evidence that the decedent was unarmed at the time of the incident because the officer never claimed that he saw a weapon, and therefore the existence of a weapon was not relevant as to how the officer responded. *Id.* at 805-07. The court clarified that such evidence would have been "material and admissible" if the officer had testified that he saw an object or weapon. *Id.* at 806-07. Here, Officer Stringer acknowledged Mr. Dozer's erratic behavior and testified that he thought it may have been caused by PCP. Thus, the precise nature of the decedent's erratic behavior was very much at issue.

officer-involved excessive force case. And by their nature, the circumstances under which such evidence will be held admissible is highly fact-specific. Here, the outcome was highly influenced, for example, by the manner in which Petitioners themselves argued to the jury in closing about the ostensible absence of such evidence – which had been excluded by the District Court ruling.

B. The Ninth Circuit Did Not Address The Applicable Standards For Officer Encounters With Mentally Ill Individuals.

To try to lend significance to their Petition, Petitioners observe that this Court has not addressed whether a special standard of relevance should be applied in excessive force cases involving encounters with mentally ill individuals, which Petitioners imply would lead to special standards for police officer's conduct when encountering mentally ill individuals. *See* Pet. 23. But the Ninth Circuit did not create any exceptions to existing precedent relating to admissible evidence. Nor do Petitioners present any question concerning standards for encounters with mentally ill individuals, and the intricacies of such standards were not examined by – or at issue in – the Court of Appeals' decision. Indeed, witnesses introduced by both parties at trial acknowledged that officers are trained to recognize signs of mental illness and handle encounters with mentally ill individuals with particular standards of care. Pet. App. 9a-10a. The Ninth Circuit's decision was focused on the admissibility of lay witness testimony, consistent with precedent, and the court did not address the applicable standard of care for encounters with mentally ill individuals.

II. THE DECISION BELOW RESTS ON ESTABLISHED PRINCIPLES AND WAS CORRECTLY DECIDED.

The Ninth Circuit was correct in finding that the District Court should have allowed Ms. Crawford to testify as to her observations of Mr. Dozer. Ms. Crawford's testimony was relevant to the extent that it would have allowed the jury to understand what Officer Stringer did in fact see in the moments before the shooting. And the materiality of the error in excluding the evidence was highlighted by the fact that Petitioners themselves repeatedly referred in closing to the absence of non-contemporaneous evidence of Mr. Dozer's mental illness as confirming that he was not displaying signs of mental illness when Officer Stringer encountered him.

That non-eyewitness evidence of conduct or condition may, on occasion, be relevant and material in connection with determining conduct or condition at a particular time is easy to illustrate from law school examples. One can imagine a situation in which the officer and witnesses testify at trial as to the voice of the shooting victim and substantially vary in their accounts of the voice. When faced with this range of evidence, the jury could benefit from lay witness testimony from someone who had seen and heard the victim numerous times and could testify about his voice, even if this witness was not present at the shooting.

Or, there may be a dispute in a case about whether the shooting victim was brandishing a gun. The police officer claims the shooting victim had a gun. A witness says he saw no gun and plaintiff argues at trial that the officer "planted" the gun. It would undoubtedly be relevant and admissible if

numerous lay witnesses were able to testify that the victim always carried a gun and habitually pulled out the gun when feeling threatened.

Thus, there is no dispute that such evidence can be relevant. There is certainly little basis for some special rule that such evidence, concededly relevant in many circumstances, must be excluded in a case involving a claim of excessive force.

Here, Officer Stringer and eyewitnesses provided varying accounts as to how Mr. Dozer was acting in the moments directly preceding the shooting, although all witnesses acknowledged that he was acting strangely or erratically. The jury, which was not at the scene of the shooting, would have been better able to judge the conduct and circumstances that Officer Stringer faced if it had heard Ms. Crawford's testimony about Mr. Dozer's customary conduct.

Thus, the testimony was relevant. It was certainly material to the issues in dispute – in large measure because of Petitioners' own arguments to the jury emphasizing the point. It was competent because the testimony was to be limited to Ms. Crawford's own observations. And while it is clear that the testimony would only be admissible for a limited purpose, both the trial court and the appeals court understood that limited purpose – and were clearly in a position to properly instruct the jury concerning the limited purpose for which those observations could be admitted.

CONCLUSION

The petition for a writ of certiorari should be denied.

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