

No. 19-1359

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

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MICHELLE DAWN MURPHY,

*Petitioner,*

v.

CITY OF TULSA, a municipal corporation,

*Respondent.*

—◆—  
**On Petition For Writ Of *Certiorari*  
To The United States Court Of Appeals  
For The Tenth Circuit**

—◆—  
**BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI**

—◆—  
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**COUNTERSTATEMENT OF  
QUESTION PRESENTED**

Whether the decision of the Tenth Circuit in affirming the trial court's grant of summary judgment in favor of the Defendant/Appellee, City of Tulsa, is violative of the party presentation principle, as has been defined by this Court, given the briefing and record presented to both the trial and Circuit courts clearly included arguments based on the fatal deficiencies in the briefing and exhibits of Plaintiff upon which the Tenth Circuit relied.

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**CONSTITUTIONAL PROVISIONS INVOLVED****U.S. Const. Amend. V**

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

**U.S. Const. Amend. XIV § 1**

“All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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; nor deny to any person within its jurisdiction the equal protection of the laws.”

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**STATEMENT OF THE CASE**

The Petitioner, Michelle Dawn Murphy (“Murphy”), was convicted of the first-degree murder of her three-month-old son, Travis Wood, in November 1995

and sentenced to life without parole. (Pet. App. 31a). The murder investigation was conducted by Tulsa Police Department (TPD) Detective Mike Cook, who obtained a statement from Murphy, wherein she admitted to causing the fatal injury to the child. *Id.*

On May 30, 2014, the State confessed Murphy's application for post-conviction relief for the *sole reason* that the State Prosecutor improperly argued the blood evidence to the jury at trial. As a result, a Tulsa County District Court vacated Murphy's judgment and sentence. Contrary to Murphy's assertions, she was not exonerated by DNA or other means and no one else was ever arrested for the murder.

The finding that Murphy met the requirements for a *prima facie* case of "actual innocence" is only a gate-keeping function required under Oklahoma law as a "predicate to a tort claim" against the State of Oklahoma. See *Courtney v. State*, 2013 OK 64, 307 P.3d 337.

The City disputes Murphy's one-sided version of events as set forth in the Statement of the Case in her Petition for *Certiorari* to this Court and specifically denies any assertion that Detective Cook coerced Murphy's statement. In its order, the trial court detailed eight (8) pages of undisputed facts regarding the TPD's investigation into the murder of Travis Wood, the statement of Michelle Murphy, the subsequent proceedings, and TPD's policies, procedures, and training. (Pet. App. 79a-86a). The City incorporates by reference the trial court's findings of undisputed facts herein.

On December 15, 2015, Murphy filed a First Amended Complaint against the City of Tulsa, pursuant to 42 U.S.C. § 1983, alleging that her Fifth and Fourteenth Amendment constitutional rights were violated by Detective Cook for conducting a “reckless investigation.” Murphy also alleged that Detective Cook coerced a false confession from her and presented it at trial. Lastly, she alleged an unconstitutional City policy or custom was the moving force behind these alleged constitutional violations.

After the completion of discovery, the City of Tulsa filed a Motion for Summary Judgment. Murphy filed a response, which included over 1,000 pages of exhibits that were not referred to with particularity in her brief, were not properly labeled, and were in many instances incomplete and confusing. The City of Tulsa filed a motion to strike these exhibits. In an Order dated August 29, 2017, the court granted this motion finding the exhibits violated the local civil rules as well as Federal Rule of Civil Procedure 56(c)(1) when Murphy “frequently failed to refer with particularity to those portions of the record upon which she relies.” (Pet. App. 33a). Murphy’s brief also referenced missing exhibits, including exhibits with missing testimony, and did not identify which individual was speaking when including testimony. *Id.*

The trial court allowed Murphy time to correct these deficiencies in her brief and exhibits, noting that Tenth Circuit case law and Federal Rule of Civil Procedure 56 requires the party responding to a motion for summary judgment to “ensure that the factual



dispute is portrayed with particularity, without . . . depending on the trial court to conduct its own search of the record.” Trial Court’s Order at page 34, *quoting Cross v. Home Depot*, 390 F.3d 1283, 1290 (10th Cir. 2004) (internal citation omitted). (Pet. App. 34a).

Due to a change in counsel, the court granted Murphy additional extensions to file an amended response brief to correct the issues with her voluminous exhibits. The amended response included over 1,500 pages of exhibits and failed to correct several of the deficiencies previously identified by the trial court. (Pet. App. 35a). Most notably, Murphy again failed to “refer with particularity’ to those portions of the record on which she relies.” (Pet. App. 35a).

The trial court entered summary judgment against Murphy and in favor of the City. The problems associated with Murphy’s improper exhibits were addressed by the trial court throughout its Order. (Pet. App. 31a-70a). Murphy then filed a Motion To Alter Or Amend the district court’s ruling, which the court granted in part and denied in part. (Pet. App. 131a). In its Order, the court denied Murphy’s request to reconsider its ruling on the issue of whether the City had a policy which allowed officers to use threats, specifically finding that “Murphy did not include page 31 of [Former TPD Chief Ron] Palmer’s deposition testimony in her response” and that it was Murphy’s burden to “come forward with admissible evidence to demonstrate a genuine issue of material fact.” (Pet. App. 128-129a). The district court allowed very limited additional briefing (a sur-reply by Murphy) of no more than

5 pages “addressing exhibits 2 through 7 appended to the City’s amended reply” related to the failure to train claim. (Pet. App. 131a).

After this additional briefing, the district court issued an amended opinion and order that included much of the same language from its original order, including the numerous issues with Murphy’s unorganized and improperly cited exhibits. (Pet. App. 71a-116a). Murphy then appealed to the Tenth Circuit.

The Tenth Circuit affirmed the district court’s grant of summary judgment in favor of the City. In affirming the trial court, the Tenth Circuit determined that the Petitioner failed to establish liability under **any** of the five potential sources of municipal liability under *Monell v. New York City Dept. of Social Svcs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

Throughout its opinion and order, like the trial court, the Tenth Circuit addressed the 1,540 pages of exhibits Murphy presented with her amended response to the City’s summary judgment motion.

One of the arguments Murphy made on appeal was that the trial court failed to appropriately consider, or give due weight to, one question and answer from former Tulsa Police Chief Ron Palmer’s deposition. Murphy contends she established that a final decision maker allowed threats to be used in interrogations. However, in its Order on the Motion To Alter Or Amend its Judgment, the trial court noted that the testimony belatedly argued by Murphy was not provided to it in Murphy’s summary judgment response

and therefore wasn't properly before the court for its consideration. (Pet. App. 128-129a). The trial court found no support for Murphy's argument in the record when looking at the portions of Palmer's testimony in context along with TPD's policies and procedures. (Pet. App. 56a-62a).

In addressing Palmer's testimony on appeal, the Circuit Court, like the district court in the Order on the Motion to Alter and Amend Judgment, found that Murphy failed to properly present the district court with the pertinent part of Chief Palmer's testimony such that the court could have only found it "by wading directionless through 1,540 pages of exhibits." (Pet. App. 12a).

The Circuit Court's Order further noted that the documents were so convoluted and confusing that "Murphy's own attorneys had not realized that the pertinent page was in the record." (Pet. App. 11a). While the City's exhibits included the page with the former police chief's answer to the question at issue, the page included by the City omitted the question and "the text of the City's brief did not point to the testimony or its significance." (Pet. App. 11a, n. 9). Thus, the court found that the presence of the answer in the City's exhibits would "not have alerted the district court to the pertinent part of the former police chief's testimony." (Pet. App. 11a, n. 9).

The Circuit Court also concluded that the documents and testimony presented, including the City's policies and training materials, failed to establish that

the City's written policies implied that the police could threaten civilians. It further found that Murphy failed to show that the City's training was deliberately indifferent, such that the City could incur any liability for failing to train its officers.

Based on the arguments and record presented to the district court and to the Circuit Court, the Tenth Circuit affirmed the district court's grant of summary judgment for the City. Murphy filed a Petition for Rehearing, which was denied. (Pet. App. 123a). She now seeks *certiorari* review from this court.



**REASON TO DENY THE PETITION  
FOR WRIT OF *CERTIORARI***

**The Tenth Circuit Did Not Violate The Principle Of Party Presentation.**

Murphy's entire basis for *certiorari* review revolves around her assertion that the Tenth Circuit's finding that she failed to properly present the testimony of former Chief Ron Palmer for the district court's consideration violated the "party presentation principle" as set forth most recently in *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020). However, a review of this court's holding in *Sineneng-Smith*, as well as other cases that have addressed the party presentation principle, clearly establishes that the Tenth Circuit did not abuse its discretion or enter an Order that "conflicts with relevant decisions of this Court." S. Ct. R. 10.

This court has made clear that “in our adversarial system of adjudication, we follow the principle of party presentation.” *Sineneng-Smith*, 140 S. Ct. at 1579, *citing Greenlaw v. United States*, 554 U.S. 237, 243, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008). “[I]n both civil and criminal cases in the first instance on appeal . . . , we rely on the parties to frame the issues for decision and assign the courts the role of neutral arbiter of matter the parties present.” *Id.*

This court has recognized, however, that “the party presentation principle rule is supple, not ironclad.” *Sineneng-Smith*, 140 S. Ct. at 1579 (internal citations omitted). “There are no doubt circumstances in which a modest initiating role for a court is appropriate.” *Id.*

In this case, the Tenth Circuit did not stray from the parties’ presentation of the issues before it. The issues, as framed by both parties, were simple – 1) whether the district court was correct in granting summary judgment to the City based on the record before it, and 2) whether a material issue of fact was presented which would defeat summary judgment for the City on any of the five (5) ways to impose liability against a municipality under *Monell*.

Murphy does not contend that the Tenth Circuit’s decision strayed from these issues such that it radically transformed the case into completely different subject matter. Instead, Murphy argues that, even staying within the boundaries of the issues presented, the Tenth Circuit should have been limited even more strictly to only considering the specific *arguments*

made by counsel. This goes beyond what the party presentation principle requires and finds no support in this court's case law.

In this case, the Tenth Circuit never strayed from the issues framed by the parties. Within those issues, counsel presented various arguments. While the party presentation principle generally requires that the Circuit Court not stray from the issues as presented by the parties, it does not go so far as to limit the court to only review those narrow arguments presented by counsel.

The Tenth Circuit reviews a grant of summary judgment *de novo* and applies “the same legal standard used by the district court under Fed. R. Civ. P. 56(c),” looking to determine if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Timmons v. White*, 314 F.3d 1229, 1232 (10th Cir. 2003) (internal citations omitted): “If there is no genuine issue of material fact, then the reviewing court must determine if the district court correctly applied the law.” *Id.*

This court may also review grants of summary judgment *de novo* “without relying on the lower courts’ understanding.” *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 466, 112 S. Ct. 2072, 2082, 119 L. Ed. 2d 265 (1992); see also *United States v. Winstar Corp.*, 518 U.S. 839, 860, 116 S. Ct. 2432, 2448, 135 L. Ed. 2d 964 (1996).

Murphy's attempt to stretch the party presentation principle to strictly limit an appellate court to not only the issues as framed by the parties, but also down to the exact arguments made by counsel in their briefs and oral arguments, directly conflicts with the court's authority to review the record *de novo*.

A review of this court's case law on the party presentation principle, including those cases relied on by Murphy, supports the conclusion that this court's intent was to prevent a Circuit Court from straying from the larger issues presented, such that it wholly transforms the case before it.

For example, in *Greenlaw, supra*, the Eighth Circuit was asked to determine the issue of whether Greenlaw's criminal sentence relating to drug and firearm offenses was too high. 554 U.S. at 242-243. The Eighth Circuit did not believe his sentence to be too high, but then decided to stray from the issue before it and, on its own, take up the separate issue of whether his sentence was instead too low. *Id.*

Since the Government did not appeal, the issue of whether the sentence was too low was never properly before the Court. This court determined that the Eighth Circuit violated the party presentation principle by straying from the issue that was presented by the parties and essentially *radically changing what the focus of the case was before it*. *Greenlaw*, 554 U.S. 237.

Similarly, in *Sineneng-Smith*, Ms. Sineneng-Smith operated an immigration consulting firm and was

eventually indicted for multiple felony counts of encouraging or inducing an alien to “come to, enter, or reside in the United States, knowing or in reckless disregard of the fact” that doing so is in violation of the law. 140 S. Ct. at 1577. She was convicted and appealed to the Ninth Circuit arguing that the provisions of the act under which she was convicted did not cover her conduct. She asserted that because of her rights under the First Amendment, the statute under which she was charged could not be applied to her conduct. Thus, the specific issue as framed by the parties in *Sineneng-Smith* was whether the statute applied to her conduct.

The Ninth Circuit named three *amici* and invited them to brief the issues now framed by the court of whether the statute was overbroad under the First Amendment. After a review of the *amici*’s arguments, the Ninth Circuit held that the statute was unconstitutionally overbroad.

In *Sineneng-Smith*, this Court noted that “a court is not hidebound by counsel’s precise arguments, but the Ninth Circuit’s radical transformation of this case goes well beyond the pale.” *Id.* at 1581-1582 (emphasis added). This Court held that the Ninth Circuit’s *abandonment of the issue as framed by the parties constituted a “takeover” of the appeal without justification.* *Id.* (emphasis added).

Murphy has not identified any cases from this court that would support her overly strict interpretation of the party presentation principle. To the contrary, this court in *Sineneng-Smith* stated that a court



is not strictly limited to “counsel’s precise arguments.”  
*Id.*

As set forth herein, cases in which this court has accepted *certiorari* and found a violation of the party presentation principle have been in situations where the courts have strayed so far from the issues presented by the parties as to constitute a “takeover” or a radical transformation of the appeal. That is not what happened in this case.

The Tenth Circuit stayed well within the issue as framed by the parties in this case – whether the district court appropriately granted summary judgment to the City on the issue of municipal liability. The problems with Murphy’s jumbled and mislabeled exhibits were well represented throughout the City’s briefs and the trial court’s order. The trial court made clear that many exhibits were not properly referenced by Murphy and that her brief and exhibits did not comply with Fed. R. Civ. P. 56. (Pet. App. 71a-116a).

In fact, the trial court identified this very issue on which the Tenth Circuit affirmed in its Order granting in part and denying in part the Motion to Alter or Amend Judgment. In that Order, the trial court denied Murphy’s request to reconsider its Order about the arguments related to Palmer as the final policymaker finding that “Murphy did not include page 31 of Palmer’s deposition testimony in her response” – one of the pages Murphy now classifies as “crucial deposition testimony.” (Pet. App. 129a).

The trial court noted that it was Murphy's burden in a response to summary judgment to "come forward with admissible evidence to demonstrate a genuine issue of material fact." *Id.* It was, therefore, not a radical transformation of the issue in this case for the Circuit Court, after its *de novo* review, to come to a similar conclusion as the trial court and address the problems created by Murphy's improper exhibits and failure to properly present information and evidence to the district court.

Further, although Murphy wants to focus this court's attention on this one part of the Tenth Circuit's decision, a review of the entire Opinion and Order reveals that the Circuit Court reviewed the trial court's findings on all five potential aspects of *Monell* liability and engaged in a detailed discussion of the evidence as it related to the City's training of officers and written policies and procedures. (Pet. App. 1a-30a).

"Review on a writ of *certiorari* is not a matter of right, but of judicial discretion." S. Ct. R. 10. "A petition for a writ of *certiorari* will be granted only for compelling reasons." *Id.* Murphy has failed to identify a compelling reason for this Court to review the Tenth Circuit's decision in this case.

For these reasons, Petitioner's claims do not warrant *certiorari* review by this Court.



**CONCLUSION**

Murphy has failed to establish that the Tenth Circuit Court of Appeals “has decided an important federal question in a way that conflicts with relevant decisions of this Court” or provide any other compelling reasons that would warrant *certiorari* review by this Court. S. Ct. R. 10.

The Petition for Writ of *Certiorari* should be denied.

Respectfully submitted,

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