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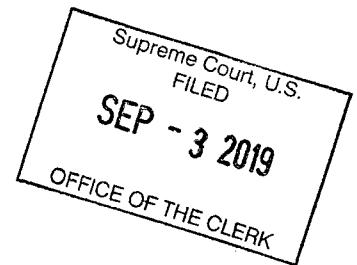
ORIGINAL

No.

IN THE
Supreme Court of the United States

WILLIAM CHARLES BURGESS

Petitioner



v.

CHUCK BOWERS JR., WESLEY G.
NORRIS, DEBBIE JENKINS, STEPHEN
A. BALLARD, GREGORY H. STANLEY,
and DAVID THOMPSON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

William Charles Burgess
3613 Dyestone Gap Road
Knoxville, TN 37931
865-230-5638

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QUESTIONS PRESENTED

1. Whether the Sixth Circuit Court improperly reversed the District Court's finding that Petitioner had an expectation of privacy in and around his business work area of his mother and father's basement thereby ignoring this Court's prior decision cited in hundreds of cases in the past.
2. Whether the Sixth Circuit Court intentionally ignored the law in favor of the police similar to what the Fifth Circuit did prior to this Court's decision in *Tolan v. Cotton*.

LIST OF PARTIES

The caption of this case contains the names of all the parties.

CORPORATE DISCLOSURE STATEMENT

No corporations are involved in this case.

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STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. section 1254(1).

While the case was pending in the U.S. District Court for the Eastern District of Tennessee, the Defendants filed an appeal to the U.S. Court of Appeals for the Sixth Circuit based on Qualified Immunity.

The Sixth Circuit rendered an Opinion on April 16, 2019.

The Plaintiff's petition for Rehearing En Banc was denied on June 5, 2019.

Ninety days from June 5, 2019 is September 3, 2019

CONSTITUTIONAL STATUTE AND U.S. CODE
INVOLVED IN THIS CASE

The 4th Amendment to the U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Title 42 U.S. Code Sec. 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

(R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub. L. 104-317, title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

STATEMENT OF THE CASE

This case was brought by the Defendant police officers on an appeal alleging Qualified Immunity. 28 U.S.C. § 1291.

In September of 2013 a Knox County, Tennessee deputy, Defendant Chuck Bowers, attempted several times to serve William Burgess with a civil summons to small claims court in Knoxville, Tennessee. Most of his attempts consisted of driving by Burgess' home without finding Burgess therein.

On September 18, 2013, Bowers, in a t-shirt and badge on his belt, parked his unmarked car, at the bottom of Mr. Burgess' long winding driveway and waited for Mr. Burgess. As Mr. Burgess drove down the driveway, Mr. Burgess saw a vehicle in the way and thought it was a utility vehicle and drove on the grass, around the vehicle. Bowers appeared and pulled a gun. Mr. Burgess became frightened and continued to drive away. From this point it is uncertain exactly what happened, however, apparently Bowers told every deputy who accompanied him after the incident that Mr. Burgess had attempted to run him over with his car. This September 18 incident was "general conversation" around the Sheriff's Department. There was discussion that Bowers attempted to get a warrant for aggravated assault, but never did. (Appendix A., Crim. Trial App. Opinion, Writ pp. 26-29)

Over a month later, on October 24th 2013, 7 or 8 Knox County deputies arrived at the home of Mr. Burgess' mother and father. Grace Burgess, the mother of William Burgess, met the officers at the back door of her residence and noticed approximately

6 police officers, a police helicopter hovering over her property and eventually, a canine police dog. The deputies believed William Burgess was in the house and claimed their purpose was to serve a civil warrant.

The group of officers came to the back door of Grace Burgess' home led by Sgt. Jenkin, an officer assigned to the civil process division of the Knox County Tennessee Sheriff's Department. Although they did not see him, the officers said they believed William Burgess was inside and they had heard Grace Burgess talking to him. They asked to enter her home. Grace Burgess refused entry. Even so, several of the officers said they were coming in. They proceeded to enter the house along with a police dog without permission or the existence of any criminal warrant or search warrant. In fact, their stated intention at the door was they wanted to serve Mr. Burgess with a civil warrant from small claims court. However, they had been instructed by Defendant Lt. Norris over the phone, that if Jenkins had probable cause to believed Mr. Burgess was inside the house, that "we needed to make that arrest for evasion of service." The officers entered past the elderly Ms. Grace Burgess, who was in tears, and began to search the house. They ultimately located William Burgess in a crawl space in the back of the basement where he had a workshop. He was hiding passively under a plastic vapor barrier.

During the search, the officers exhibited anger toward Mr. Burgess, for instance, Sergeant Debbie Jenkins yelled while within the house: "I'm going to get you, you little shit." When the officers found Mr. Burgess in the crawl space the K-9 officer instructed his dog to bite Mr. Burgess, which the dog did. Mr. Burgess tried to

keep the dog from biting him but while doing so, defendants Greg Stanley and David Thompson tased Mr. Burgess several times, which rendered him unable to move nor defend himself from the dog. The dog then tore pieces of flesh from Mr. Burgess' bicep causing sever and permanent injury.

Mr. Burgess was then arrested and taken away for preventing or obstructing service of civil process. The deputies left the original civil summons with his property at the jail.

Mr. Burgess was convicted in a jury trial on March 27, 2015, for obstructing service of process, preventing service of process, and preventing or obstructing an arrest. The Crim. Appeals Court for the Eastern Section of Tennessee reversed Mr. Burgess' conviction. (The Tennessee Court of Criminal Appeals' opinion is attached as Appendix D.)

The record reflects that, in the light most favorable to the State, the Defendant's kicking the police dog was the only time he used force in the crawl space, which was presumably to defend against the dog's complying with an order from Deputy Ballard to bite the Defendant. Because the dog was not a law enforcement officer, and no evidence was presented to suggest the Defendant used force against any of the numerous deputies involved in this case, the evidence is insufficient to support the Defendant's conviction (Tenn. Crim. App. Decision, Appendix D)

In this case, Grace Burgess claimed that the officers violated her civil rights by an unreasonable entry into her home without permission, without a warrant and without exigent circumstances.

Mr. Burgess claimed false arrest, aggravated assault, and excessive force under Tennessee law and under the Fourth Amendment. The District Court found that Mr. Burgess clearly asserted a false arrest claim under Tennessee law and an unreasonable seizure claim under federal law. (Appendix C,)

The Defendants filed multiple motions to dismiss and motions for summary judgment. After hearing and considering the motions, the District Court dismissed Mr. Burgess' state law claim of false arrest but denied the Defendant's motions to dismiss Mr. Burgess' unreasonable seizure and excessive force claims. The District Court also upheld Ms. Grace Burgess' claim of an unreasonable entry and search of her home.¹

The Respondent police officers then appealed claiming qualified immunity and the Sixth Circuit dismissed Mr. Burgess' case. (Appendix A)

Mr. Burgess asked for a rehearing En Banc and the petition was denied. (Appendix B)

¹ Ms. Grace Burgess' claim has been settled.

ARGUMENT FOR THE WRIT

Question 1

Whether the Sixth Circuit Court improperly reversed the District Court's finding that Petitioner had an expectation of privacy in and around his business work area of his mother and father's basement thereby ignoring this Court's prior decision cited in hundreds of cases in the past

This case involves William Burgess being unlawfully seized by police and a K-9 in the basement of his mother's home. The police entered without permission and without an arrest or search warrant. Both the District Court and Circuit Court ruled the police entry of the home violated the 4th Amendment rights of the mother, Ms. Burgess. Her claim has been settled. However, the Circuit court below said Mr. Burgess had no expectation of privacy in the home of his mother and father.

Judge Varlan ruled that Mr. Burgess had an expectation of privacy. The judge pointed to pictures in the record showing the workshop used by Mr. Burgess in his mother's basement. The Court pointed out that the "Defendants do not dispute Mr. Burgess worked from the residence." (Appendix C.) Mr. Burgess' wife testified at her husband's criminal trial that Mr. Burgess had an optical business and worked from his mom's basement.²

² The complete criminal trial transcript was entered as an exhibit in the summary judgment hearings and the Circuit court cited from it when quoting officer testimony.

The District Court cited *Mancusi v. DeForte*, 392 U.S. 364, 369 (1968), for the proposition that a person may have a reasonable expectation of privacy in his or her workplace. This case has been cited over one thousand (1,000) times for this very proposition. The District judge also stated:

“Even if it is his mother’s home, he had an expectation of privacy to use his workshop [Doc. 57 p. 10]; see *Minnesota v. Olson*, 495 U.S. 91, 96–98 (1990) (“Staying overnight in another’s home is a longstanding social custom that serves functions recognized as valuable by society. We stay in others’ homes when . . . we visit our parents . . . [and] we think that society recognizes that a houseguest has a legitimate expectation of privacy in his host’s home.”)

(Appendix C, P.26, District Court Memorandum and Order)

Surly if there can be an expectation of privacy in a business office, there can be one in a business workshop in a parent’s home. A family home is even more private. Mr. Burgess would expect to feel very secure and private doing business work in the basement of his family home, even more so than a sterile office building as in *Mancusi*. As this Court stated in *Mancusi*, “*DeForte* still could reasonably have expected that only those persons and their personal or business guests would enter the office.” *Mancusi v. Forte*, 392 U.S. 364, 369, 88 S.Ct. 2120, 20 L.Ed.2d 1154 (1968). The *Mancusi* case stressed a person’s feeling of privacy in the area and has a strong history with many cited authorities supporting Mr. Burgess’s legitimate expectation of privacy in his mother’s basement, where he had his business. These cases support the feeling Mr. Burgess suffered when he testified at court “Actually, at this point, I was in disbelief. They were actually in my mother’s home with a dog. And then they threatened me with—they threatened me with the dog.” [R. 61-18, Burgess Test. At Page ID #934-35}

However, the Court below stated "It will suffice to say that, after extensive research, we cannot say that such a right, if it exists, was clearly established." How can the court say that? *Mancusi* was decided in 1968. The appellate court never mentioned *Mancusi* cited by the District Court, even though it is a Supreme Court case, nor did the court try to distinguish the case. Unfortunately, this type of judicial reasoning only leaves Mr. Burgess again, in disbelief. It supports the pattern throughout this case of taking the evidence in a light most favorable to the police.

The Circuit panel did not address the pictures of Mr. Burgess' work area, not mentioning them once and they ignored the District Court's findings and ruled Mr. Burgess had no expectation of privacy, thereby dismissing his Fourth Amendment claim of unlawful seizure. The Court continuously construed this case in favor of the moving parties, favoring them on every turn, as we will see in the next section.

Although the Circuit case below is an unreported case, there was no careful analysis when the Circuit court did not find nor discuss the District Court's authority or photo evidence for denying the Defendant's motion to dismiss.

Only action by this Honorable Court can bring justice and due process to Mr. Burgess and the judicial system as a whole. This Court should make it clear to the Circuit that a business workshop area in a parent's home is a place where one would expect privacy, even if not living with parents. And, with that right to expect privacy comes protection from unreasonable seizure under the Fourth Amendment.

Question 2

Whether the Sixth Circuit Court intentionally ignored the law in favor of the police similar to what the Fifth Circuit did prior to this Court's decision in *Tolan v. Cotton*.

In *Tolan v. Cotton*, 572 U.S. 650, 134 S. Ct. 1861 (2014) (*per curiam*), the the Court noted that where the parties disagreed about the fundamental facts surrounding the shooting, it was error for the court of appeals on summary judgment to weigh the evidence and then to credit the police officer's version of the facts rather than believing the plaintiff, thereby denying him the right to have his claim for injuries decided by a jury. *Id.* at 660, 134 S. Ct. at 1866-1867.

In this case, not only did the Circuit court not follow the law as in *Tolan*, it obstructed the legal process. The circuit panel did not just get it wrong or make a mistake, they had to have known what they were doing, and did it anyway. Mr. Burgess, or any citizen for that matter, requires more from its judicial system. This case has to be heard. This Honorable Court cannot be complicit by ignoring the facts of this case, as did the 6th circuit panel. Please take the time to hear this case.

At the District Court level, the defendant police officers moved for summary judgement under qualified immunity. The district court denied their motions finding that the facts were unclear and in dispute as to the reasonable use of a police dog and multiple taser blasts to get Mr. Burgess to come out of a crawl space in his parent's home.

The Circuit court reversed and granted the police qualified immunity.

Defendant Ballard testified, "I kept watching and the canine keeps digging at the plastic and I can see the bottom of his shoe and that's when I told him to bite his ass.". [Ballard Testimony; Doc. 61, Ex. 10-12, pg. 200-01, 248, Page ID # 782-83, 830].

Furthermore, Officer Stanley testified and confirmed that Ballard told him that as soon as he saw Mr. Burgess, he told the canine to "bite his ass"³

So, according to that testimony as soon as the dog found Mr. Burgess the dog was instructed to attack.

Graham v. Connor, 490 U.S. 386 (1989) is one of the most important cases this Court has decided in analyzing excessive force claims. The District court applied it to the facts in this case. The Circuit court blatantly ignored it, as they ignored the case law in the first question above. They did not discuss it, or go through any of the *Graham* factors in this case

Other than stating Mr. Burgess was only being accused of a misdemeanor⁴, the court only discussed facts in a light most favorable to the police. *Graham* requires the court pay careful attention to the facts and circumstance of each case, including, (1) the severity of the crime at issue, (class B misdemeanor, later found to not be a crime by the Tennessee Appellate Court) (2) whether the suspect possessed an immediate threat to the safety of the officers or others, (Mr. Burgess was passive, laying still on the ground, no weapon, no threats, no furtive movements no evidence of violence) and (3) whether he was actively resisting arrest or attempting to evade

³ Apparently, "bite his ass" is the command officer Ballard uses to initiate a K-9 attack.

⁴ Hiding from civil process, not much of a misdemeanor, and later found innocent of the charge.

arrest by flight. Mr. Burgess was neither resisting nor attempting to evade. The only thing Mr. Burgess resisted was the attack dog chewing on him.⁵ All these factors are strongly in Mr. Burgess' favor.

The Circuit court said, "Having concluded that William failed to show that Ballard violated clearly established law, the court should have granted him qualified immunity. (Appendix A, p14)

The Circuit court never defined the clearly established law, but the law in this area is kind of common sense. If Mr. Burgess was not a threat, had not tried to escape or flee, was not suspected as a dangerous criminal, was passive, and non-combative, then little force should have been used to get Mr. Burgess out of his hiding place. But the Circuit court did not talk about these factors, only the factors such as low light, not coming out. Remember, the police were mad at Mr. Burgess. Bowers had told them Burgess had tried to run him over. But if that were true, why was there no warrant for aggravated assault over a month later? But that did not matter to the police, they were "going to get you, you little shit," as Defendant Jenkins yelled out into the basement. Is it any wonder Mr. Burgess was reluctant to come out of the

⁵ The Tennessee Criminal Court read the whole trial testimony when ruling Mr. Burgess committed no crime. As they had to look at the evidence in a light most favorable to the Government, they stated: "The record reflects that, in the light most favorable to the State, the Defendant's kicking the police dog was the only time he used force in the crawl space, which was presumably to defend against the dog's complying with an order from Deputy Ballard to bite the Defendant. Because the dog was not a law enforcement officer, and no evidence was presented to suggest the Defendant used force against any of the numerous deputies involved in this case, the evidence is insufficient to support the Defendant's conviction for preventing or obstructing an arrest. We reverse...."

crawl space? Should not the court have taken the amount of police presence into account in the facts?

The Circuit says the District court erred and denied Officer Ballard qualified immunity, because the District court was “not left with a clear picture of the facts in this case”⁶ and, also because William failed to show that Ballard violated clearly established law. Therefore, “the court should have granted him qualified immunity” because “Once a defendant invokes qualified immunity, the plaintiff bears the burden to show that qualified immunity is inappropriate.” Citing *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 681 (6th Cir. 2013). How does “William” bear the burden of showing qualified immunity is inappropriate? He does it by showing that there are genuine issues of material fact? The District court upheld that effort.

The deck was stacked against Mr. Burgess. The Circuit court blatantly went out of its way to destroy Mr. Burgess’ case and at the same time further damage Mr. Burgess.

While Defendant Ballard was at trial, under oath, he testified after being asked if he yelled out a warning, you better come out or my dog’s going to bite you, he answered “during the time that the incident was taking place under the floor I don’t think that I actually said that to your client.” [Ballard Testimony; Doc. 61, Ex. 12, pg. 248, Page ID # 830] Yet the panel ruled the officers gave warnings. [Sixth Circuit Opinion; Doc. 36-2, pg. 12, ¶ 3]. The panel cited from the trial transcript when it

⁶ The facts were in dispute. There were genuine issues. The kind *Graham* seeks to explore.

suited them, but not when it helped Mr. Burgess. The panel went so far as to discredit the defendant dog handler's testimony when it supported excessive force. The panel behavior is so far astray from the proper analysis that this case must be addressed.

The District Court reasoned:

If, however, he was resisting arrest and threatening officers, and he was told that he was under arrest, then the law is clear that use of a police dog would not constitute excessive force. In a situation where the law clearly establishes a totality of the circumstances test, whether the law is clearly established depends on the circumstances of a particular case. Because the facts are not clear, even adopting plaintiffs' version of events, the Court cannot determine at this time whether the law was clearly established in this case, and thus it must deny summary judgment as to Officer Ballard. (Appendix C.)

Logically, in dog attack cases many factors are present and this Circuit court must be instructed to weigh them all, not just the ones that support the police. How many more citizens will be denied justice with a court that takes the evidence in a light most favorable to the police and does not follow well established law?

As the District Court stated, "If William Burgess was not resisting arrest or threatening the officers, and they did not give him a warning that he was under arrest, then the law is clear that use of a police dog would constitute excessive force." (Appendix C, p.36) Those facts are what really happened. The Circuit court did not even take the time to assess the case under *Graham*. The reason is the Graham

factors all favored Mr. Burgess. This is further proof the Circuit panel blatantly ignored this Court's established law.

Again, the District Court made a determination that genuine issues of material fact existed and therefore the Defendants were not entitled to summary judgment. (Appendix Cp. 40) Plaintiff asserts he was tased multiple times, even while he was trying to keep the dog from ripping into his body. Once the tasers incapacitated him, the dog had an easy time tearing flesh from the Plaintiffs arm and foot. Again, the Circuit court sided with the police officer facts and reversed the District court's finding of fact, thereby denying genuine issues of fact to be tried by a jury. Below is a portion of the facts that were supplied to the Circuit panel involving the use of tasers:

Officer Stanley saw the K-9 biting Mr. Burgess and he admitted that without any warnings, he fired his taser at Mr. Burgess. [Stanley Testimony; Doc.61, Ex. 9,Pg. 169-70, Page ID #751-52]. After Officer Stanley deployed his taser the first time, he observed that the K-9 was still engaged with Mr. Burgess, and he deployed his taser the second time at Mr. Burgess without any warnings. [Id. at171-72, Page ID #753-54]. Officer Stanley stated that “[w]ell, my taser has two cartridges, so I have a second shot. And so I fired again. And it appeared that he started complying.” [Id.][emphasis added]. Officer Stanley testified that “A short time later, another officer [Officer David Thompson], from a different vantagepoint . . . used his taser . . .” on Mr. Burgess, even though Officer Stanley admitted that Mr. Burgess became compliant after his second taser deployment.

[Id.][emphasis added].

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The court below cited a case involving a non-compliant suspect to argue it was reasonable force. There was no evidence Mr. Burgess was noncompliant. If fact, Officer Ballard intentionally allowed the K-9 to continue to bite Mr. Mr. Burgess

after Officer Stanley admitted that he was tased and was complying.⁷ How does that comport with the fact that the dog dragged him out of the crawl space? Here again, the parties disagree about the fundamental facts. Again, the Circuit court gave the inferences to the moving party. Even though Officer Stanley admitted that Mr. Burgess was complying, Officer Ballard continued to allow the canine to bite Mr. Burgess, pulling him out of the crawlspace by his arms and allowing the dog to continue biting his feet, creating severe permanent disfiguration and damage. However, the panel says Burgess never rebutted the Officer's declaration that they tased him because he was attempting to fight off the dog.

The officers testified after hearing pop, pop, pop (of the taser) they heard Mr. Burgess stating "I can't move. I can't do nothing" [Stanley Testimony; Doc. 61, Ex. 11, Pg. 220-21, Page ID #802-03] That's why the dog dragged him and tore his arm open. Imagine being tased at least three times, unable to move, and being pulled out of a crawl space by four sharp canine teeth stuck in your bicep, all for hiding from a civil process server.

For a complete recitation of the facts the 6th Circuit had listing all the facts in dispute, please review Appendix E,. Petition for Re-hearing En Banc.

⁷ The Circuit court blames the dog for not getting off Mr. Burgess quickly enough when they say: "But it does not follow that Ballard violated William's clearly established constitutional rights just because there was some unspecified delay between the time he called off the dog and the time the canine reacted to his command." (Appendix A)

The bias of the court is obvious. The Circuit court again did not analyze the use of force under *Graham v. Connor*, 490 U.S. 386 (1989). If it had, the same facts would have demonstrated minimal use of force would have been the appropriate course. But, remember, they were angry with Mr. Burgess, they thought he had tried to run over one of their own officers. These officers were in no mood to be reasonable.

Applying the analysis in *Cotton* to the case here, first, taking the facts in a light most favorable to Burgess, did Ballard's conduct with the dog violate a federal right to be free from unreasonable dog attacks. Next, we must determine whether the right was clearly established. "[T]he salient question ... is whether the state of the law" at the time of an incident provided "fair warning" to Ballard "that his alleged [conduct] was unconstitutional." Id., at 741, 122 S.Ct. 2508..." *Tolan v. Cotton*, 134 S. Ct. 1861, 188 L. Ed. 2d 895, 82 USLW 3647, 82 USLW 4358 (2014). We must look at specific facts in the area of the law that apply to use of dogs to determine if the law was clearly established. The District court set out a clear federal right in the area of using an attack dog. "But under either prong, courts may not resolve genuine disputes of fact in favor of the party seeking summary judgment. Summary judgment is only appropriate if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed. Rule Civ. Proc. 56(a). In this case, the whole use of the dog should be in question. Applying *Graham*, the need for force was minimal.

However, when that many police show up at Mr. Burgess' mother's house, and they break inside without a warrant, and search the house, they are going to over react, and they did. Ballard told the dog to bite Burgess as soon as his foot was uncovered, without a warning. And when Mr. Burgess tried to get his feet away from an attack dog, they say he is trying to "stop" the dog, then they tase him until he can't move anymore, and the dog drags him by the arm.

Although this analysis is discussing Ballard and the use of his dog, it also applies to Thompson and Stanley and their use of tasers. Finally, there is the factual issue with the dog and tasers being deployed at the same time. The District court took a step by step approach, applying Graham factors, and specific case law and concluded, If William Burgess was not resisting arrest or threatening the officers, and they did not give him a warning that he was under arrest, then the law is clear that use of a police dog would constitute excessive force. If, however, he was resisting arrest and threatening officers, and he was told that he was under arrest, then the law is clear that use of a police dog would not constitute excessive force.

Does not this law also apply with equal force to the use of the tasers? The facts in a light most favorable for the non-moving party show Mr. Burgess was not resisting, not threatening the officers, was not told he was under arrest. He was passive and only suspected of committing the most minor of charges. it would be reasonable to believe using tasers and an attack dog to hurt Mr. Burgess was unreasonable. Therefore, the court made the right decision in denying summary judgment, because there were genuine issues of material fact. When the tasers and

dog were deployed at the same time, it would clearly demonstrate Mr. Burgess' rights were violated. The circuit court below credited the evidence of the party seeking summary judgment while failing to properly acknowledge key evidence offered by the party opposing that motion, it "neglected to adhere to the fundamental principle that at the summary judgment stage, reasonable inferences should be drawn in favor of the non-moving party," i.e., the plaintiff. *Tolan v. Cotton* *Id.* at _____; 134 S. Ct. 1861, 1868.(2014)

The Circuit court blatantly ignored these principals when they ignored the minor crime being investigated, the lack of resistance, the non-violent nature of Mr. Burgess, among other things and disregarding the District court who looked these litigants in the face and took the time to apply the law fairly.

Can any objective juris rule that this group of angry police, with a dog and tasers and a helicopter were justified in using this amount of force.

CONCLUSION

Two core principles apply: (1) in construing the materials adduced by the parties, both courts below were bound to draw all reasonable inferences from these materials *against* the police officers as the moving parties and *in favor* of Mr. Burgess as the non-moving party; and (2) they were also required to resolve all credibility questions *in favor* of Mr. Burgess, the non-moving party, because the role of both the district court and the court of appeals is only to determine whether there is a genuine issue of material fact for trial. *Beard v. Banks*, 548 U.S. 521, 529-530;534 (2006).

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150-151 (2000). *Anderson v. Liberty Lobby*, 477 U.S. 242, 249-255 (1986). The District court consistently followed these principals. The Circuit court did not. As *Reeves* makes clear, it cannot make credibility determinations or weigh the evidence because this is a function of a jury, not a judge. 530 U.S. at 150-151 citing *Anderson*, 477 U.S. at 255. The District Court did this by denying summary judgment and leaving the issue to the jury. The Circuit court reversed the sound reasoning of the District court and ruled the police had the facts on their side.

The unfair summary judgment analysis works a denial of petitioner's' right to a jury trial on the merits of his claims. The seventh amendment to the federal constitution provides that in suits at common law, "the right of trial by jury shall be preserved..." As the late, great Justice Scalia observed in *Blakely v. Washington*, 542 U.S. 296, 305-306 (2004), the right to a jury trial in civil cases is not a procedural formality but rather a fundamental "reservation of power in our constitutional structure," assuring the people's ultimate control of the judiciary. *Id.* citing 2 *The Complete Anti-Federalist* 315, 320 (H. Storing ed. 1981). This guaranty of a jury trial in the constitution and, the common law traditions it entrenches "do not admit the contention that facts are better discovered by judicial inquisition than by adversarial testing before a jury." *Id.* at 313 citing 3 Blackstone, *Commentaries*, at 373-374; 379-381. -Written by a true champion of the constitution.

For these reasons we ask the Court to grant this writ and right the wrong by sending the case back to the District court for trial.

Respectfully submitted,

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