

No. _____

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

—◆—
CITY OF CAMDEN,

Petitioner,

v.

ALANDA FORREST,

Respondent.

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

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
BRETT DATTO
(*Counsel of Record*)
DANIEL E. RYBECK
LILIA LONDAR
WEIR & PARTNERS LLP
20 Brace Road, Suite 200
Cherry Hill, New Jersey 08034
(856) 740-1490
brett.datto@weirpartners.com
*Attorney for Petitioner
City of Camden*

QUESTIONS PRESENTED

What, under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978), and its progeny, constitutes a pattern of similar constitutional violations by untrained and/or unsupervised employees?

What constitutes the kind of notice for which a policymaker can be held liable under *Monell's* “policy or custom” requirement?

PARTIES TO THE PROCEEDING

Petitioner and defendant/appellee below, the City of Camden, is a municipal corporation in the State of New Jersey.

Respondent Alanda Forrest is the plaintiff and was the appellant below.

RELATED CASES

- *Alanda Forrest v. Jon S. Corzine, et al.*, Civil No. 09-1555 (RBK/JS), U.S. District Court for the District of New Jersey
- *Alanda Forrest v. Kevin Parry PHM; Camden City Police Officer; Jason Stetser, PHM; Camden City Police Officer; City of Camden; City of Camden Department of Public Safety; Warren Faulk; Paula Dow; Department of the Treasury, State of New Jersey; John Does I-IV*, No. 16-4351, U.S. Court of Appeals for the Third Circuit, 2019.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
RELATED CASES.....	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVI- SIONS.....	2
STATEMENT OF THE CASE.....	2
I. Introduction	2
II. Factual Background.....	3
A. Arresting Officers	3
B. Plaintiff's Arrest	4
C. CPD Internal Affairs	4
D. District Court Rulings.....	6
III. Basis for Federal Jurisdiction	6
REASONS FOR GRANTING THE WRIT OF CER- TIORARI	6
Certiorari is Warranted as the Third Circuit De- cision Conflicts with Prior Third Circuit Deci- sions.....	6

TABLE OF CONTENTS – Continued

	Page
A. The Evidence Cited by the Panel Does Not Constitute Evidence of a Pattern of Similar Constitutional Violations	6
B. The Third Circuit Disregarded the Policymaker Notice Requirement	9
CONCLUSION	10
APPENDIX A: Opinion, United States Court of Appeals for the Third Circuit (July 10, 2019)	App. 1
APPENDIX B: Judgment, United States Court of Appeals for the Third Circuit (July 10, 2019)	App. 53
APPENDIX C: Opinion, United States District Court, District of New Jersey (October 20, 2015)	App. 55
APPENDIX D: Order Granting Summary Judgment, United States District Court, District of New Jersey (October 20, 2015)	App. 78
APPENDIX E: Order on Motions <i>In Limine</i> , United States District Court, District of New Jersey (March 15, 2016)	App. 80
APPENDIX F: Order Denying Petition for Rehearing, United States Court of Appeals for the Third Circuit (August 6, 2019)	App. 84
APPENDIX G: Transcript of Hearing, United States District Court, District of New Jersey (March 14, 2016)	App. 86

TABLE OF AUTHORITIES

	Page
CASES:	
<i>Beck v. City of Pittsburgh</i> , 89 F.3d 966 (3d Cir. 1996)	2, 7
<i>Connick v. Thompson</i> , 131 S.Ct. 1350 (2011)	7
<i>Estate of Ramos by and through</i> <i>DeJesus v. City of Lancaster</i> , 705 Fed.Appx. 79 (3d Cir. 2017).....	7
<i>Monell v. Dep’t of Soc. Servs.</i> , 436 U.S. 658 (1978)	6, 7, 8, 9, 10
<i>Wright v. City of Philadelphia</i> , 685 Fed.Appx. 142 (3d Cir. 2017).....	9, 10
CONSTITUTIONAL PROVISIONS AND STATUTES:	
U.S. CONST., amend. IV	2
28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1331	6
42 U.S.C. § 1331	6

PETITION FOR A WRIT OF CERTIORARI

Petitioner, the City of Camden, respectfully petitions for a writ of certiorari to review the opinion and order of the United States Court of Appeals for the Third Circuit, reversing the District Court's partial grant of summary judgment, and evidentiary rulings; and remanding for further proceedings consistent with the opinion.

**OPINIONS BELOW**

The decision of the United States Court of Appeals for the Third Circuit dated July 10, 2019, reversing the District Court's summary judgment and evidentiary rulings and remanding for further proceedings consistent with the opinion. The decision of the District Court dated October 20, 2015, granting, in part, petitioner's motion for summary judgment. The decision of the District Court dated March 15, 2016, granting certain motions *in limine*.

**JURISDICTION**

This Court's jurisdiction rests on 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment IV of the United States Constitution provides:

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.



STATEMENT OF THE CASE

I. Introduction

This petition addresses, as described by the Third Circuit below, what the Court deemed in *Beck v. City of Pittsburgh* “a question of considerable interest in [a] period of alleged rising brutality in major cities across the country” – what is sufficient evidence from which a jury can infer that a municipality adopted a custom of permitting its police officers to use excessive force or commit unlawful arrests? 89 F.3d 966, 967 (3d Cir. 1996).

This petition advocates that evidence relating to training or supervision must be related to the underlying cause of action, i.e., excessive force or unlawful arrest.

II. Factual Background

A. Arresting Officers

This matter is related to criminal charges that were brought against five (5) former City of Camden Police Department (“CPD”) officers: Jason Stetser, Kevin Parry, Dan Morris, Antonio Figueroa and Robert Bayard, for, *inter alia*, filing false reports, planting drugs, and stealing money. Stetser, Parry and Morris all pled guilty in New Jersey Federal District Court. As a result of said officers’ unlawful conduct, the Camden County Prosecutor’s Office (“CCPO”) dismissed almost two hundred (200) criminal convictions for matters wherein these officers were substantially involved in the underlying arrest.

Both Stetser and Parry were Police Academy trained on the use of force and arrest, search and seizure. They also received annual forty (40) hours of in-service training on, *inter alia*, the use of force and arrest, search and seizure.

Dan Morris served as a supervisor for both Stetser and Parry; Morris was a co-conspirator with Stetser and Parry. When a supervisor other than Morris supervised Stetser, Stetser conducted his illegal activity in a clandestine manner in order to not be detected.

Stetser and Parry arrested individuals on drug distribution and possession charges and planted drugs on the arrestees to support the charges. All of the individuals that Stetser and Parry planted drugs on or lied about having probable cause to arrest, were drug

dealers; the City was therefore faced with a unique circumstance of 3 officers and their Sgt. committing crimes against criminals, and acted appropriately in response to these rogue officers.

B. Plaintiff's Arrest

Neither Stetser nor Parry remembers the events surrounding Plaintiff's arrest on July 1, 2008. Parry wrote the Major Incident Report ("MIR") stemming from the arrest, which he conceded contained false statements describing what transpired. Contrary to the MIR, Parry did not witness a hand-to-hand drug transaction, however, included this false information in order to create probable cause for Plaintiff's arrest. The MIR appeared authentic and lawful to any persons who reviewed it.

Notably, Plaintiff was in fact in the possession of illegal drugs at the time of his arrest.

C. CPD Internal Affairs

After his arrest, Plaintiff complained to the CPD Internal Affairs Division ("IA") for a complaint of excessive force. Despite his complaint to IA, Plaintiff pled guilty to the crime of drug possession with the intent to distribute and served eighteen months in New Jersey State Prison.

Lieutenant John Sosinavage was the Commander of IA in 2008. He attended the Attorney General's Office for Division of Criminal Justice training on IA

practices and procedures. The Camden County Prosecutor's Office ("CCPO") is responsible for supervising the Internal Affairs departments of the municipalities in Camden County, including the CPD IA. Mark K. Chase ("A/P Chase") was an Assistant Prosecutor at the CCPO. Since 2004 A/P Chase was the Deputy Section Chief of the Special Prosecutions Unit.

If a complaint were made to IA that an officer had committed a crime, the matter would have been forwarded to the CCPO as the CCPO was the investigative body of criminal complaints, and any investigation by IA from that point on would be under the direction of the CCPO.

Prior to Plaintiff's arrest on July 1, 2008, complaints were being submitted to IA regarding Stetser and Parry, which were appropriately forwarded to the CCPO. Meetings between the CCPO and the CPD IA occurred as a result. In January 2008, the CCPO began its investigation into, *inter alia*, Stetser and Parry with the assistance of the CPD IA, and the CCPO investigation continued through the Fall of 2008.

Following the investigation by the CCPO, Parry and Stetser both pled guilty to charges of conspiring to deprive private citizens of their constitutional rights. Stetser knew the criminal acts he committed were outside the scope of his employment and against CPD policy, as well as the training he received at the Police Academy and the CPD.

In 2008, at the time of Plaintiff's arrest, the following CPD General Orders were in effect: a) 2003-001:

Internal Affairs and Discipline; b) 2003-003: Training and Career Development; and c) 2003-006: Use of Force.

D. District Court Rulings

After the close of discovery the City moved for summary judgment. The District Court granted the City's motion in part, and held that the only remaining claims were narrowed to whether Internal Affairs failed to supervise in violation of *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978) and its progeny.

III. Basis for Federal Jurisdiction in the District Court

The District Court had subject matter jurisdiction under 28 U.S.C. § 1331 because Plaintiff brought claims alleging violations of 42 U.S.C. § 1331.



REASONS FOR GRANTING THE WRIT OF CERTIORARI

Certiorari is Warranted as the Third Circuit Decision Conflicts with Prior Third Circuit Decisions

A. The Evidence Cited by the Panel Does Not Constitute Evidence of a Pattern of Similar Constitutional Violations

Ordinarily, “[a] pattern of similar constitutional violations by untrained employees” is necessary to

demonstrate deliberate indifference for purposes of failure to train” or supervise. *Connick v. Thompson*, 131 S.Ct. 1350, 1360 (2011). In *Estate of Ramos by and through DeJesus v. City of Lancaster*, the 3rd Circuit affirmed the lower court’s granting of the defendants’ motion for summary judgment on, *inter alia*, the plaintiff’s failure to train and supervise claims. 705 Fed.Appx. 79 (3d Cir. 2017). The plaintiff’s decedent was taken into police custody and fell, and struck his head as he attempted to sit down at the police station. The Third Circuit reasoned “DeJesus does not offer any evidence to show either a pattern of constitutional violations (e.g., she does not point to any prior incident resembling what happened in this case). . . .” *Id.* at 83.

In *Beck v. City of Pittsburgh* the plaintiff alleged an officer used excessive force in the process of arresting him for driving under the influence. 89 F.3d 966, 969-70 (3d. Cir. 1990). Beck produced evidence that several complaints had been filed alleging similar acts of excessive force by the officer, which the Court ruled “may have evidentiary value for a jury’s consideration [as to] whether the City and policymakers had a pattern of tacitly approving the use of excessive force.” *Id.* at 970, 973. The *Beck* Court determined this evidence was relevant because it related to the adequacy of the investigations into the officer’s conduct. *Id.* at 974.

Complaints against Stetser and Parry that are unrelated to false arrest and excessive force allegations are not evidence of a pattern of similar constitutional violations akin to those in *Beck* and *Estate of Ramos*. There is zero evidence of any deficiency in the IAD’s

investigations of Stetser and Parry. The mere accusation of a similar type of incident without a showing of a deficiency in the IAD investigation is not sufficient evidence to support a *Monell* claim.

A 2006 New Jersey Attorney General Report about performance evaluations was not related to a similar pattern of failing to investigate officers for false arrest and excessive force. There is nothing in any of the NJAG Reports about Camden having an issue with officers committing excessive force or making false arrests. Further, there is no evidence of a prior problem of a lack of progressive discipline, or the number of sergeants assigned to officers, leading to excessive force and false reports.

Chief Thomson's testimony that some officers were proactive and others were not doing police work bears no connection to an alleged history of officers committing excessive force or falsifying reports. Clearly, testimony about officers not being disciplined for being lazy is in no way relevant to Plaintiff's *Monell* claims.

While technology such as Automatic Vehicle Locators would allow for detection of Parry's and Stetser's fraudulent statements in their patrol logs and radio transmissions, liability cannot be imposed upon the City for lacking the fiscal ability to implement such technology, as financial constraint is not "custom" under *Monell*.

The Third Circuit found that the incident A/P Chase testified about concerning his referral to IA of a criminal allegation the CCPO could not substantiate

because the witness could not identify Stetser, viewed in conjunction with the fact that IA had instances in which certain complaints were missing, would lead a reasonable jury to construe as further evidence of the inadequacy of Camden's investigatory regiment. However, the record is devoid of any evidence of missing IA complaints, and as such completely unrelated to a pattern of excessive force or false arrest.

None of the aforementioned evidence is admissible to establish *Monell* liability and the Third Circuit's opinion relating to the same greatly expands upon Third Circuit jurisprudence of a pattern of similar violations.

B. The Third Circuit Disregarded the Policymaker Notice Requirement

The Third Circuit reiterated the policymaker notice requirement in *Wright v. City of Philadelphia*, 685 Fed.Appx. 142 (3d Cir. 2017). In *Wright* the plaintiff was a paraplegic who was flipped out of his wheelchair to the ground by police officers who suspected him of using drugs. He had his hands cuffed behind his back and was transported to the police station in a police van. Plaintiff brought a subsequent § 1983 action against the City of Philadelphia on a theory that the city's failure to properly train its officers had resulted in the officers' alleged violation of plaintiff's Fourth Amendment rights. This Court explained "Wright contends the City failed to train its officers on the transportation and detention of the disabled, but nothing in the record suggests a deliberately indifferent failure on the City's part. . . . There is no evidence policymakers

were on notice that a training oversight was causing officers to violate disabled individuals' rights. And there is no evidence of a pattern of untrained officers committing such violations." *Id.* at 148. Internal citations omitted.

In the case at hand the record is devoid of any evidence demonstrating any policymaker was aware Camden officers engaged in excessive force or unlawful arrest, and that supervisors failed to act when confronted with such a situation. Accordingly, there can be no *Monell* liability. The Third Circuit's decision is in contravention of the *Wright* decision.

◆

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

BRETT DATTO
(*Counsel of Record*)
DANIEL E. RYBECK
LILIA LONDAR
WEIR & PARTNERS LLP
20 Brace Road, Suite 200
Cherry Hill, New Jersey 08034
(856) 740-1490
brett.datto@weirpartners.com
Attorney for Petitioner
City of Camden

November 4, 2019