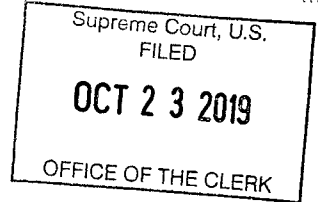


No. 19-7319

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Thomas Waters — PETITIONER
(Your Name)

vs.

John Stewart et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

4th cir court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Waters
(Your Name)

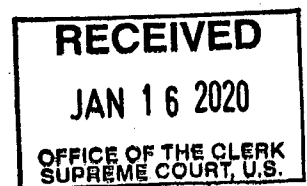
P.O. Box 2099
(Address)

Pollock, LA 71467
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1.) Did the district court and the 4th cir error by granting summary judgment after first ruling that the record before the court reflects that factual claims sufficient to create genuine issues of material facts as to the "quantity" of force used by the officers, as well as the "circumstances" under which the force was used. "see" exhibit A. Being that the record before the court never "changed" with respect to these 2 issues. These 2 genuine issues of material facts still exist did the lower court make an "clear" error?
- 2.) Did the district court and 4th cir error by granting summary judgment based off of 2 DVD audio that is not apart of the record in this civil 51983 case?
- 3.) Did the district court and 4th cir error by granting summary judgment, without ever reviewing or addressing the nature and quality of the intrusion upon my 4th amendment rights?
- 4.) Did the district court and 4th cir error by not ever reviewing the governments interest in the need to use force, and was a error made when the court incorrectly ruled that it was my version of events that I was tossed because I reached for my back pocket?



LIST OF PARTIES

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

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

John Stewart - Lake city police

Mark Strickland - Lake city police

Antony Backhuss - Lake city police

Judy Cooper - Lake city police

ATF Agent Alan C. Townsend

John Doe #1 EMS worker

John Doe #2 EMS worker

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A-B to the petition and is

- ☐ reported at unknown; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 8-26-19.

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

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10-1-19, and a copy of the order denying rehearing appears at Appendix D.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

[] For cases from **state courts**:

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

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

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th amendment excessive force violation

§ 1983 if constitutional right has been violated, this right is clearly established, and the people that violated this constitutional right acted under color of state law...

STATEMENT OF THE CASE

This proceeding is a pro se civil action pursuant to 42 U.S.C. § 1983. This case was brought in 2015 after my arrest on 3-12-15. The district court judge in docket # 184-Appendix A, declined to adopt the report and recommendation of the magistrate as to my excessive force claims, ruling that viewing the evidence in the light most favorable to the plaintiff, the record before the court nevertheless contains competing factual claims sufficient to create genuine issues of material fact as to the "quantity" of force used by the officers, as well as the "circumstances" under which the force was used. "see" exhibit A12, Pages 8, 9 of docket # 184. However the court allowed the defendants to file a supplemental summary judgment motion requesting a DVD that was used at my trial. After sending in this document and rehashing the same issues from its first summary judgment motion, The Magistrate entered or issued another "R and R" requesting that the defendants summary judgment motion be granted. "see" docket # 228. The district court judge in docket # 238-Appendix B, granted the defendant's summary judgment motion, but in footnote 15 declined to adopt the magistrate's recommendation to the extent that the magistrate weighed evidence and made credibility determinations at the summary judgment stage in violation of 4th cir precedent "see" Jacobs v. N.C. Admin Office of Court 780 F.3d 562... I feel like the district court judge also erred by weighing evidence and making credibility determinations because as stated also in footnote # 15 docket # 238, the judge stated that based on the dash cam audio "itself" the court is not adopting plaintiff's version of facts for purposes of ruling on the motion for summary judgment... I feel like a error was made because as stated in docket # 184 exhibit A12, summary judgment was not granted on the excessive force claims because the record before the court contained competing factual claims sufficient to create genuine issues of material fact as to the "quantity" of force used as well as the "circumstances" under which the force was used. An error was made because the record before the court never "changed" with respect to the "quantity" of force used or the "circumstances" under which the force was used. Thus summary judgment should not have been granted. The district court

Question Presented #2.) Did the district court and 4th cir error by granting the defendant's summary judgment motion after first ruling that the record before the court reflects that factual claims sufficient to create genuine issues of material facts as to the "Quantity" of force used by the officers as well as the "circumstances" under which the force was used. "see" exhibit A, being that the record before the court never "changed" with respect to these 2 issues. These genuine issues of material facts still exist, thus both lower courts erred by granting summary judgment because the supreme court's requirement is that there be "No" genuine issues of material facts for summary judgment to be granted. "see" Anderson 477 U.S. 242. . .

Factual Background... The Plaintiff Thomas Waters brought this civil 31983 action asserting excessive force, unlawful seizure, and civil conspiracy, in relation to my arrest on 3-12-15. My version of facts is located in my verified complaint docket #1. The defendant's version of facts are located in it's summary judgment motion. As the district court judge states in it's order granting summary judgment motion docket #238, the parties disagree as to certain facts about the tasing and handcuffing. "see" page #5 docket #238... my exhibit B, is the incident report done by Ofc. Strickland on 3-12-15, in which he claims that the Lake City Police got on Anonymous tip that 2 black men was fighting and one had a gun. In this report as well as my exhibit C, the affidavit of Mark Strickland. This defendant claims that once he and Ofc. Stewart arrived he saw me stick the gun into my back pocket after I walked behind a house. Once the officers made contact with me I put my hands up at first, then reached for my back pocket where a gun was. I was told the gun was removed and I was arrested... I would like to respectfully address the "circumstances" under which the force was used first. As stated in my exhibit A, the record before the court contained factual claims sufficient to create genuine issues of material facts as to the "circumstances" under which the force was used. The 4th amendment prohibition against unreasonable seizures bars the use of excessive force on free citizens, whether it be in the course of an arrest, investigatory stop, or other seizure. "see" Graham v. Connor 490 U.S. 386. The excessive force that was used in this seizure was the use of a max taser. "see" exhibit D, use of force

form. Federal appeals courts have deemed the use of tasers excessive when misused. "see" *Carver v. City of Wood Cross* 625 F.3d 661, ruling that the use of tasers unquestionably seizes the victim in an abrupt and violent manner... In addition, the actions of tasing a person that ~~does~~ does not pose a threat and who was given no warning is unreasonable. "see" *Casey v. City of Federal Heights* 509 F.3d 1278... The use of a taser in dart mode constitutes an intermediate, significant level of force that must be justified by the governmental interest involved. "see" *Bryan v. MacPherson* 630 F.3d 805... Excessive force violation of the 4th amendment was shown because reflected tasing goes beyond complete physical capitulation and was grossly disproportionate to any threat posed unreasonable under all the circumstances. "see" *Oliver v. Fiorino* 586 F.3d 898... Turning to the "circumstances" under which the force was used. The court must apply an objective reasonableness standard in determining whether an officer has used excessive force when seizing a free citizen. "see" *E.W. v. T.W. v. Dolgos* 884 F.3d 172. This objective inquiry is based on the totality of the circumstances, and it requires an examination of the officer's actions in light of the facts and circumstances confronting him, without regard to his underlying intent or motivation, subjective motives, intent, and propensities are irrelevant. "see" *Dolgos* 884 F.3d 172. The court must give careful attention to the facts and circumstances to each particular case. The 4th cir and district court erred by not fully reviewing the disputed facts and circumstances surrounding my claims. As stated in *Smith v. Ray* 781 F.3d 95 and *Tennessee v. Garner* 471 U.S. 1, evaluating the reasonableness of the officers actions requires a careful balancing of the nature and quality of the intrusion on the individual's 4th amendment interests against the countervailing governmental interests at stake. As I pointed out to the 4th cir in my opening / internal brief. "see" Appendix As well as to the district court in my summary judgment opposition "see" docket # 168. This most honorable court pointed out in a unanimous decision *Florida v. J.L.* 529 U.S. 266 that an anonymous tip that a black man is carrying a gun, was held to be without more insufficient under the federal constitution's 4th amendment to justify a police officers stop and frisk of that person. The officers did not see the firearm and the accused made no threatening or otherwise unusual movements. Apart from the tip the officers had no reason to suspect any illegal conduct... In my case the 911 call was truly anon.

ymous because it was not recorded, no witness ever came forward claiming they made the cell, and the district court that took the 911 call never gave any statements or affidavits about the true contents of this 911 call. The 4th cir has followed this established precedent in U.S. v. Bumper 705 F.3d 168. If the phone call is truly anonymous, the informant has not placed his/her credibility at risk and can live with impunity. The reviewing court cannot judge the credibility of the informant and the risk of fabrication becomes unacceptable. Also see U.S. v. Reeves 573 F.3d 123. Where the 4th cir ruled when the police rely on an anonymous tip to support reasonable suspicion, the tip must be accompanied by some corroborative elements that establish its reliability. My case is in context with the above listed cases that has all ready addressed this "Anonymous" 911 call issue. Being that the phone call was not recorded "see" docket # 115 discovery request # 23. Where the defendants claim "No records at the cell was maintained when the dispatch system was dismantled". As the 4th circuit explained in U.S. v. Brown 401 F.3d 588, the anonymous tip alone did not provide adequate suspicion because the tip contained no information predicated future acts by which the officer could corroborate the substance of the tip. The 4th cir next ruled that such a "Terry" stop based on a anonymous 911 call was illegal and violated the 4th amendment. Next moving to the disputed issues that the district court and 4th cir never addressed. Officer Clark claimed that the officers after getting this anonymous 911 call they saw me stick a gun into my pocket after I walked behind a house. "see" exhibit 1. This issue is clearly in dispute and I entered the court evidence that supported my claims that the police never saw me stick any thing into my pocket, thus the police never had a reason to stop me and attack me. At the summary judgment stage, the moving party must demonstrate the absence of a genuine issue of material fact. Once the moving party has met his burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show that there is a genuine issue for trial. Summary judgment is not warranted unless, from the totality of the evidence, including pleadings, depositions, answers to interrogatories, and affidavits, the court believes "No" genuine issue of material fact exists for trial and the moving party is entitled to judgment as a matter of law. "see" Celotex corp. v. Catrett 477 U.S. 317. As the non-moving party I've come forward with evidence to show that genuine issues of material fact exists for trial in this case. With respect to the disputed issue of the police witness me stick a gun into my pocket, after getting a anonymous 911 call that

2 black men was fighting and one had a gun? my exhibit E-1, 2, 3, pages 81, 82, 83, trial transcript makes it clear to the courts that the officers deliberately fabricated this account, his incident report, and later civil affidavit exhibit 5B, C-123 about seeing me stick the gun into my pocket. my exhibit E, page #81 of Strickland's-cross has defendant Strickland clearly stating when asked @15- Did you ever see him stick the gun into his pocket? Strickland's reply @17- Was I did not. my exhibit E, page #82 of Strickland's-cross has him stating that he and defendant "Stewart" collaborated on the incident report @ 21 and 22. my exhibit E, page #83 of Strickland's-cross has him clearly stating that he put the information about seeing me stick the gun into his pocket into his report because defendant "Stewart" told him to. This is evidence that both defendants intentionally and intelligently fabricated this story about seeing me stick a gun into my pocket to create the reasonable suspicion to make the stop and make the 911 call have credibility. As stated in Scott v. Harris 550 U.S. 372, when opposing parties tell 2 different stories one of which is so blatantly contradicted by the record, that no reasonable jury could believe it, a court should not adopt that version of facts for the purposes ruling on a summary judgment motion. Such is the case here no reasonable jury would believe that the defendants saw me stick a gun into my pocket, when I have the evidence by way of the defendants own testimony many exhibits E-1-3, which states that they never saw me stick anything into my pocket. And he made this story up because another officer told him to. As stated in Fed. Rule. Civil. Pro 56(c)(3). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by (A) citing to particular parts of the materials in the record, (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact. I've made my showing offering admissible evidence that establishes a genuine dispute as to did the defendants witness me stick a gun into my pocket? A dispute of material fact is genuine if sufficient evidence favoring the non-moving party exists for the trier of fact to return a verdict for that party. "See" Seastrunk v. U.S. 25 F. Supp 2d 812. The district court or 4th cir never addressed this disputed issue. The district court in it's first order docket #184 only states that the record before the court reflect factual claims sufficient to create genuine issues of material facts as to the "circumstances" under which the force was used. In it's last order docket # 238, the court didn't conduct a de novo review of this issue in which I made specific objections to, the court rejected my objected

Cizims and granted summary judgment without ever addressing, how the record before the court had "changed" with respect to the "circumstances" under which the force was used. under 28 U.S.C. § 636 (b) (1), and Fed. Rule. civil. Pro. 72(b), the Judge re-committed my case back to the magistrate Judge with instructions for the defendants to turn over this dash cam DVD. "see" docket #184. There was no new evidence on the DVD or any other document sent in by the defendants that changed the record before the court. Thus a dispute of facts still exist and summary judgment is not appropriate in this civil case... The 4th cir and the district court also never addressed the disputed issue of "Did the police actually witness me reach for my back pocket where a gun was?" The defendants claims after getting this anonymous 911 call, when they made contact with me I put my hands up at first then reached for my back pocket where a gun was "see" exhibit D use of force form, exhibit B incident report, exhibit C Affidavit of Strickland. This is also viewed as the "circumstances" under which the force was used. The DVD didn't change this disputed fact. This question or genuine issue of material fact is still in dispute. The magistrate Judge clearly states in my exhibit F page #9 docket #172, that while a dispute of facts exists as to whether Plaintiff "reached" for his gun when the defendants first approached him and whether he voluntarily got on the ground at their command... This disputed fact should have stopped summary judgment, and my case should have been sent to a Jury. I would also like to clarify for the record that it is "NOT" a undisputed fact that Ofc. Stewart observed a gun in my possession... my exhibit E 1,2,3, put this material fact in dispute, because Ofc. Strickland made it clear that the information about someone seeing me stick the gun into my pocket came from Ofc. Stewart. Ofc. Strickland also claims that Stewart yelled out "Gun" to let him know he saw a gun on me. I requested that the court review the DVD dash cam audio. This false information about Stewart yelling out "Gun" is not on this DVD audio thus it never took place and it is not a undisputed fact that Stewart saw me with a gun. The district court and the 4th cir never addressed this issue. My exhibit G page 4-5 docket #228 the magistrate Judge states that after reviewing the DVD audio the defendants assert that Plaintiff put his hands up at first but then moved his right hand down next to the pocket where the gun was located... The Plaintiff

asserts that he never reached for his gun and "points" to the video, in which you can hear Stewart say to Plaintiff, "If you'd reached for it you'd be dead"... This is evidence on the record that puts this genuine issue of material fact in dispute. The 4th cir never said any thing about reviewing the DVD audio. Viewing the evidence in the light most favorable to me, the totality of the evidence shows the existence of disputes over material facts that would affect the outcome of my case under applicable law. "see" Anderson 477 U.S. 248. With respect to this issue of did the police witness me reach for the gun in my back pocket? I offered the lower courts evidence in which one of the defendants is on audio saying "If you'd reached for it." Such a statement indicates that I never reached for anything. Thus the defendants version of facts that I reached for a gun is so blatantly contradicted by the record that no reasonable jury could believe it, and the district court and 4th cir erred by adopting this version of facts for the purposes of ruling on summary judgment in my case. "see" Scott 550 U.S. 372. The circumstances under which the force was used did not change after the defendants sent in there supplemental summary judgment motion. Viewing all the evidence in the light most favorable to me under Florida v. J.L. 529 U.S. 266, the anonymous 911 call was insufficient under the 4th amendment to justify a stop and frisk by the officers. My exhibit E 1, 2, 3, is evidence that puts in dispute the material fact of did the police see me stick the gun into my pocket? My exhibit E said the police didn't see this... next exhibit G clearly puts the issue of material fact in dispute with respect to, did the police see me reach for my back pocket where a gun was? My exhibit G makes the answer to that question a NO as well. Thus summary judgment shouldn't have been granted because the requirement is that there be no genuine issues of material facts in dispute "see" Anderson 477 U.S. 242. Under the circumstances listed on the record, if the police never saw me stick a gun into my pocket, and never saw me reach for a gun, what reason did the police have to use force on me? I never tried to flee from the officers and I was standing in my yard at my house. "see" docket #15 rental lease agreement. The officers never truly had a reason to use force, and the "circumstances" under which the force was used didn't change after the 2nd summary judgment was filed. Thus, summary judgment should not have been granted... Next turning to the "Quantity" of force used by the officers, this question of material fact

is also in dispute. My exhibit A, has the district court Judge ruling that the record before the court reflects actual claims sufficient to create genuine issues of material facts as to the "quantity" of force used by the officers. Once again the record before the court never "charged" with respect to this quantity of force issue. My exhibit D points out the reason the police felt the need to use force was because I reached for my back pocket where a gun was. Also see exhibits B and C. All documents claim that I was tased because I reached for the gun. My exhibit L Page #48 of Strickland's direct, clearly has the defendant stating that he aimed and shot me with the taser in the front torso, and that I was actually on the ground when he shot me with the taser. Yet O.C. Stewart claims in my exhibit M Page #42 of Stewart's direct that I was tased then "fell" to the ground. In my verified complaint docket #1, based on my personal knowledge of what took place on 3-12-15, I was tased 4 times facing away from the officers, once in the back of my right hand, once in the back of my left hand, and once in the back. I was again shot in the back of my right leg when I got to the jail. See docket #1-pictures, docket #15-pictures, and exhibit N 1-5. As the non-moving party under Fed. Rule. Civil. Pro 56(c)(1), I've met my burden of coming forward with admissible evidence beyond the allegations contained in my pleadings that shows that there is a genuine issue for trial, and the record before the court shows the presence of genuine disputes over material facts. The defendants offer no evidence supporting the amount of force the officers actually used. Under "Scott" 550 U.S. 372, when both parties tell 2 different stories the court should not adopt the story that is so blatantly contradicted by the record that no reasonable jury could believe it. In my excessive force case, the defendants claim I was only shot one time with the taser from the front of my body. See exhibit L. I offered the court evidence by way of the actual pictures of my taser burns, to show I was never tased from the front of my body. I was tased from the back of my body facing away from the police. I also offered evidence to show the defendants version of facts are contradicting each other. My exhibit M, has O.C. Stewart claiming I was tased then fell to the ground, while my exhibit L, has Strickland claiming I was all ready

on the ground when he shot me with the taser. Yet my exhibit N 1-5, are pictures showing I was tased facing away from the officers. Thus the defendants version of facts of only tasing me once from the front of my body. "see" exhibit L, is so blatantly contradicted by the evidence on the record "see" exhibit N-1-5, that no reasonable jury would believe it under "Scott" 550 U.S. 377. The district court and 4th cir erred by adopting the defendants version of facts that is clearly contradicted by the evidence on the record. The judge in docket #184, ruled that the record before the court reflects that factual claims sufficient to create genuine issues of material facts as to the "quantity" of force used. "see" exhibit A, in it's next ruling the judge only states that "Based on the DVD cash cam audio itself" he was not adopting my version of facts. "see" footnote #15 docket #238. This order list no information or de novo review information addressing the contents of what was on the DVD audio, that made my version of facts unacceptable. This footnote #15 ruling also does not address what is on the DVD audio that changed the record before the court with respect to the "quantity" of force used by the officers. This genuine issue of material fact still exists. "see" exhibit A. Thus, the 4th cir erred by affirming for the reasons set out in docket #'s 184-238, because these 2 ruling are in conflict with each other. Docket #184 is a ruling in my favor and docket #238 is a ruling in the defendants favor. The 4th cir also never said any thing about reviewing the DVD audio or whats on the DVD audio that supports the district courts ruling to grant summary judgment... I would like to respectfully ask this most honorable court to grant this petition for writ of certiorari to correct this erroneous judgment made by both lower courts. My case is clearly a rogue opinion that is in conflict with a number of other §1983 civil cases that has all ready dealt with this same issue. The Zoroastrian Ctr Wash D.C. v. Rustom Guir Found of N.Y. 822 F.3d 739 court ruled that where the determination of what actually happened depends on an assessment of the credibility of the respective witness, this assessment is a disputed issue of facts that cannot be resolved on summary judgment. My case is in conflict with this ruling because it is clearly a dispute about what actually happened like did the police see me stick the gun into my pocket? Did the police see me reach for my pocket where a gun was? Did the police only shoot me with the taser once from the front or 4 times from the back of my body? All of these assessments depends on the credibility of the witnesses

in this case. Thus this assessment is a disputed issue of facts that cannot be resolved on summary judgment. My civil case should have been sent to a jury... My case also is in conflict with civil cases like *Ghazzouli v. Ann Arundel County* 659 Fed. Appx 731, where the 4th cir ruled that the photographs of "Ghazzouli's" injuries are consistent with his account of the incident, thus we conclude that if a jury were to credit "Ghazzouli's" version of events it could reasonably return a verdict in his favor... My case is no different from either of these 2 civil cases. If a jury was to credit my version of events that I was tased 4 times not one time "see" exhibit N-1-5, and that the police never saw me stick the gun into my pocket "see" exhibit E, and never saw me reach for the gun "see" exhibit F a reasonable jury could return a verdict in my favor. Other federal courts have ruled that because excessive force inquiry nearly always requires a jury to sift through disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that summary judgment or judgment as a matter of law in excessive force cases should only be granted sparingly. "see" *Santos v. Gates* 287 F.3d 846, *Smith v. City of Hemet* 394 F.3d 689... one district court ruled in *Myers v. Taylor* 2015 U.S. Dist. Lexis 162791, that the evidence presented established that disputed questions of material facts exist as to the Plaintiff's excessive force claims, like why exactly did the police feel the need to use force? Whether the Plaintiff was reasonably given an adequate opportunity to comply before force was used? Was the Plaintiff actively resisting arrest?.. The same evidence was presented in my case yet summary judgment was still granted. Thus, my case is in conflict with all of the listed §1783 cases listed in this writ. As stated in "Smith" 394 F.3d 689, it is necessary to assess the quantum of force used in a arrest. The 3 factors articulated in "Graham" and other factors bearing on the reasonableness of a particular application of force, are not to be considered in a vacuum but only in relation to the amount of force used to effect a particular seizure... This is an analysis the district court and 4th cir never explicitly undertook. "see" *Chew v. Gates* 27 F.3d 1441... Most federal courts agree that the most important "Graham" factor is was the suspect an immediate threat to the safety of the officers or others. "see" *Matkos v. Agorano* 661 F.3d 433, *Waterman v. Patton* 393 F.3d 47, "Smith" 394 F.3d 689, and "Bryon" 630 F.3d 805. The "Waterman" 393 F.3d 47, court ruled that the police

was not entitled to summary judgment as a matter of law on the underlying excessive force claims because a reasonable jury could conclude that a perception by the officers that the Plaintiff posed a threat of serious physical harm to them would have been unreasonable ... The same would have been true in my case. The defendants' claims in both of their summary judgment motions that all 3 "Graham" factors favors them because I reached for the gun. "see" docket #'s 140 and 206, the defendants claim that the 2nd "Graham" prong favors them, and the Plaintiff was an immediate threat to the safety of the defendants, and the attempted use of force by Waters/Plaintiff in going for the gun demonstrates this danger ... This very issue of did I reach for the gun is in dispute in this case, thus summary judgment shouldn't have been granted. As my exhibit F made it clear that a "dispute of facts exist as to whether the Plaintiff reached for his gun or not." Also my exhibit G points out the information on the dash cam DVD has etc. Stewart yelling "If You'd reached for it." which indicates that I did not reach for anything. Thus, just like the "Waterman" 393 F.3d 47 case, the officers are not entitled to summary judgment on the merits of underlying excessive force claims because a reasonable jury could conclude that a perception by the officers that the Plaintiff posed a threat of serious physical harm to them by reaching for a gun would have been unreasonable, no reasonable jury would believe I reached for a gun when I have a DVD which has etc. Stewart yelling if You'd reached for it. ... As the "Mattos" 661 F.3d 433 court pointed out a simple statement by the officers that they feared for their life or safety is not enough, there must be objective factors to justify such a concern ... The defendants in my case offer no objective factors that supports it's claims that they felt threatened because I reached for the gun. This also puts my case in conflict with the "Mattos" 661 F.3d 433 case. The "Waterman" 393 F.3d 47 court also made it clear that force justified at the beginning of an encounter is not justified even seconds later if the justification for the initial force has been eliminated ... The defendants' justification for using force was that I reached for a gun, "see" exhibit B, C, and D. This initial justification was eliminated when I offered evidence by way of the dash cam audio, in which etc. Stewart yelled "If You'd reached for it." Thus, the defendants never truly had any reason to use force on me. I never reached for the gun. The anonymous 911 call didn't give the police a reason to stop me and attack me under "J.L." 529 U.S. 266, the police also never saw me stick the gun into my back pocket like they

reported they saw. "see" exhibit B and E. my exhibit G makes it clear I never reached for the gun. viewing all of this evidence in the light most favorable to me, it is clear I was never a threat to the defendants and I never gave the police any reason to use force on me. This also puts my case in conflict with §1983 civil cases like *Cassey-v- city of Federal Heights* 509 F.3d 1278, which ruled that a police that tased a person who appeared to pose no threat and was given no warning or chance to comply with the officers demands violated the 4th amendment... my case is also in conflict with the *Cottonough-v- woods cross city* 625 F.3d 661 case which ruled that it violated a persons 4th amendment rights when a officer used a taser on a woman suspected of domestic violence, when she merely walked into her house before the officer gave any type of verbal commands, warnings, or announced the reason for his presence... Being that the record before the court still reflects that factual claims sufficient to create genuine issues of material facts as to the "quantity" of force used by the officers as well as the "circumstances" under which the force was used. "see" exhibit A 1-2. I would like to respectfully ask that this writ of certiorari be granted to protect my 4th amendment rights. Also the disputed questions in this case should have been sent to a jury, because in a §1983 civil case the requirement is that there be "No" genuine issues of material facts in dispute for summary judgment to be granted. "see" *Anderson* 477 U.S. 242. The district court and the 4th cir never states how or when did the record before the court "changed" with respect to the "quantity" of force used or the "circumstances" under which the force was used. Thus, these genuine issues of material facts still exist and are still in dispute and summary judgment shouldn't have been granted in this case...

Question Presented #2.) Did the district court and 4th cir error by granting summary judgment based off of a "DVD" audio that is not a part of the record in this civil §1983 case...

The district court in its order granting summary judgment docket # 238 footnote 15, ruled that due to the dash cam audio it self, the court was not adopting the 15th version of facts, under "Scott" 550 U.S. 380. This is an erroneous judgment because the judge never states what parts of the DVD made my version of facts so utterly discrepant by the record, that no reasonable jury could believe it. This judgment is also erroneous because, the judge never states what's on the DVD that "changed" the factual claims he ruled that was part of the record "see" docket # 184 exhibit A, that created genuine issues of material facts as to the "quantity" of force used as well as the "circumstances" under which the force was used. The 4th circuit erred by not reviewing the DVD itself or not returning the case back to the district court to have them show what's on the DVD that charged the "circumstances" under which the force was used or the "quantity" of force the officers used. The record before the court indicates that the dash cam audio from the officers patrol vehicle, does not visually depict the defendants' interactions with the plaintiff, but the recording provides some audio of the events at the scene. "see" docket # 238 footnote # 10, footnote # 10, also states where the court denied my motion to have the DVD transcripted "see" docket # 218, 223. The magistrate judge in my exhibit G, clearly states that the DVD is very faint and difficult to hear, and the DVD does not make some of my technical assertions any more or less clear, with respect to did the defendant yell out "gun" to alert the defendant that he saw me with a gun. I am the only person who actually seen a copy of the DVD transcript that was used of my trial "see" exhibit H, I also have a copy of this DVD and this assertion that it is undisputed that defendant saw me with a gun is false, of course, stick. This is claiming that defendant yelled out gun to alert him he saw a gun on me. This never took place and this information is not on the DVD audio. Thus it is not undisputed fact that defendant saw me with a gun. This issue should have been sent to a jury. The DVD itself along with my exhibit E 1, 2, 3, puts this issue of did the police see me with the gun before attacking me in dispute. My exhibit E, has of course, specified clearly stating that he never saw me stick the gun into my pocket, and the only reason he put this false information in his report "see" exhibit B, was because of course, defendant told him to. Thus the court is making credibility determinations in stating that it is undisputed that defendant saw me with a gun. It is no evidence on the record that supports this version of events. This version of events is clearly blatantly

can be dictated by the record and also this interpretation is not on the DVD recording. G.C. Stewart never yelled out "Gun" to alert strickland he saw me with a gun. The magistrate judge also pointed out in my exhibit G, that the defendants asserts that plaintiff put his hands up at first, but then moves his right hand down to the pocket where the gun was located. After reviewing the DVD, the judge states that the plaintiff asserts that he never reached for any thing and points to the DVD, in which "Stewart" said to plaintiff "If you'd reached for it you'd be dead." Dash cam time stamp 3:15. Thus it is undisputed that Stewart said this, which would put the most important "Graham" factor at issue the suspect in immediate threat to the officers or others? Just like the "Waterman" 393 F.3d 47, case the officers are not entitled to summary judgment as a matter of law on the excessive force claims because a reasonable jury could conclude that a perception by the officers that the plaintiff posed a threat of serious physical harm to them would have been unreasonable. In my case a reasonable jury would surely find that the perception by the officers that I was a threat to them because I reached for the gun is without question. Unreasonable, and in dispute, when I have audio that has one of the officers yelling "If you'd reached for it". The defendants claim in their summary judgment motion that the and "Graham" prong favors them because the danger to the officers and the community was serious and evident, and the attempted use of deadly force by "waters" in going for the gun demonstrates this danger... yet the record reflects that a dispute of facts exists as to whether plaintiff reached for the gun when the defendants first approached him or whether plaintiff voluntarily got on the ground at there comment. "see" exhibit F, pg #9 docket #172. Thus, it is the DVD itself that blatantly contradicted the defendants version of facts that I was a threat because I reached for the gun. No reasonable jury would believe this when the DVD audio has Stewart saying "If you'd reached for it".

The DVD supports my excessive force claims, moreover, the true contents of this DVD is not a part of the record in this civil case. Footnote #10 dockett # 238 clearly shows my efforts to have a copy of this DVD transcribed, Footnote #10 also shows that a 1 page transcript currently was use in my criminal trial. "see" Waters v. U.S. 697 F. App'x 761, case # 4:15-cr-00158-BHH dockett # 113 exhibit 1.1st. In docket # 41 the magistrate judge ruled that I should get a copy of this transcript from the clerk, when I sent the district court the transcript or the money for the transcript that was used at my trial, I was told it was not available. "see" exhibit I, my next exhibit I is an order from the 4th cir docket # 47 appeal # 16-4214 in which the 4th cir granted my pro-se motion to compel the government to turn over this transcript that was used at my trial, after to compel the government to turn over this transcript that was used at my trial, I is unable to provide exhibit I. Thus if would be an error to grant the defendants summary judgment or not adopt my version of facts based on the DVD itself, when the true contents of the DVD is unknown, and is not a part of the record in this civil case, moreover my exhibit I has the government, my trial counsel, and trial judge all agreeing that the DVD audio is a transcript to hear that's why a transcript was needed in the first place. Footnote #10 also made it clear that the DVD is very faint and difficult to hear is what the magistrate judge stated. "see" footnote #10 dockett # 238 and thus, the district court judge made an error by making credibility determinations and weighing evidence by stating that he himself had correctly listened to the dash cam audio by playing it at a loud volume and using head phones, "see" footnote #10 dockett # 238. Then footnote #15, the judge ruled that, based on the dash cam audio itself he was not adopting my version of facts. This is not only an error due to the fact that the court weighed evidence and made credibility determinations, it is also an error due to the fact that the district court never states what's on the DVD audio that forced

him not to adopt my version of facts. This information should have been listed in docket # 238, it is not. The district court judge also never made it clear or pointed out what is on the DVD audio that "changed" the facts when viewing the evidence in the light most favorable to me. The record reflects sufficient factual claims that creates genuine issues of material facts as to the "quantity" of force used or the "circumstances" under which the force was used. "see" exhibit A. The district court thus made an erroneous ruling by granting summary judgment based off of an audio who's contents are not a part of the record in this case. Without a transcript of this DVD the true contents of it is in dispute... my exhibit G, made it clear that it is the DVD itself that puts the issue of did I reach for the gun in dispute. With that being said this ~~civil~~ civil case should have been sent to a jury. Summary judgment should not have been granted in an excessive force civil case based off of a DVD audio that does not visually depict the interactions between the plaintiff and the defendants "see" Footnote #10. Once again the district court never states what parts of the DVD audio changed the "quantity" of force used or the "circumstances" under which the force was used. These genuine issues of material facts are still in dispute, thus summary judgment shouldn't be granted in this case. Summary judgment is only appropriate when "no" genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. "see" Fed. Rule. Civil. Pro 56(c2). The requirement is that there be no genuine issues of material fact in dispute. "see" Anderson v. Liberty Lobby, INC 477 U.S. 242. The record before the court never changed with respect to the "quantity" of force used or the "circumstances" under which the force was used. Thus as stated in rule 54(b) of the Fed. Rule. Civil. Pro district courts may revisit earlier rulings in the same case. Such a discretion is not limitless however, and is subjected to the caveat that where litigants have once battled for the court's decision, they should neither

required to, nor without good reason be permitted to battle for it again. "See" v.s. Toh-
acco Coal Inc. v. Big S. Wholesale at 489 F.3d 236, which also pointed out that

when revisiting a earlier ruling in the same case. "Such is the issue here see docket
#184 then 238"... when a court decides upon a rule of law "see" docket #184 also explains
A. that decision should continue to govern the "same issues" in subsequent stages in
the same case. Thus, courts may revise an interlocutory order under the same circumst-
ances in which it may depart from the law of the case. Such is the case when 2.) A sub-
sequent trial producing substantially different evidence... The judge made no new showing
of evidence in my case. The DVD audio is the only new evidence, but the judge does not
make it clear what's on this DVD that changed the "quantity" of force used or the "cir-
cumstances" under which the force was used... so there is no substantially different
evidence on record... 2.) A change in applicable law... The judge does not claim such a
change in law has been made... 3.) clear error causing manifest injustice... The district

court judge made none of these showings, in it's new ruling over ruling it's earlier judy-
ment which was the record before the court contained actual claims sufficient to create
genuine issues of material facts as to the "quantity" of force used as well as the "cir-
cumstances under which the force was used. The district court judge clearly made an
error by making credibility determinations and weighing evidence, by granting sum-
mary judgment based on a DVD audio "see" footnote #15 docket #238, who's contents are
not part of the record and the magistrate judge clearly points out in my explanation of
4-5, that the defendants submitted a copy of the dash cam video from Strickland's vehicle
"NONE" of the events it issue "In this action" take place within the view of the cam-
era. The camera does, however capture audio of the incident, although at times it
is very faint and difficult to hear, and portions of the video do have credible
to the factual assertions of "both" plaintiffs and defendants... The district court 2150

made it clear that it took judicial notice of the court's record from my criminal case under Fed. Rule. Evid. 201(c)(1)(2). "See" footnote #5 docket #238. My exhibit #1, clearly has the government "Attorney Bethel" my trial counsel "Attorney Nettles" and my trial judge all agreeing that the "DVD" is difficult to hear and a transcript was made to aid the jury in hearing parts of the video/audio. That's 4 federal lawyers all agreeing that the DVD is difficult to hear. So it is without question the district court judge weighed evidence and made credibility determinations in footnote #10 docket #238. as well as footnote #15. The judge claims that after reviewing the DVD, the court was not adopting my version of facts. The court however does not state what part of the DVD he was using to make this ruling. The judge also never states how, when, or what part of the DVD audio changed the "quantity" of force used or the "circumstances" under which the force was used. These genuine issues of material facts still exist... other factual disputes are also still in existence and summary judgment is not appropriate in this §1983 case. The DVD is not actually a part of the record in this case. The court of appeals did not take notice of this fact. The true contents of this DVD audio has not been made available for any court to review. As stated in "Anderson" 477 U.S. 248, a fact is material if proof of its existence or nonexistence would affect the disposition of the case under applicable law. In my case there is no proof of the existence of the contents of the DVD audio. Thus, this DVD shouldn't be allowed to affect the disposition of my case. Based on the listed Supreme court and 4th cir established precedent, I would like to respectfully ask this most honorable court to grant this petition for a writ of certiorari to prevent a manifest, or in justice and protect my constitutional rights under the 4th amendment. The district court's ruling is not only erroneous, it is also in conflict with a number of other Supreme court and federal appeals court decisions, that has also decided on the questions involved... Summary judgment should not be granted in this §1983 civil case because it is the judge in my case that made credibility determinations and weighed evidence also the

District court Judge never points to any part of the DVD audio, that changed the "quantity" of force that the officers used or the "circumstances" under which the force was used...

Questions Presented #3 Did the district court err 4th cir error by never reviewing or addressing the nature and quality of the intrusion upon my 4th amendment rights?

under "Graham" 490 U.S. 386, 4th amendment excessive force analysis requires balancing the nature and quality of the intrusion on a person's liberty with the countervailing governmental interests at stake to determine whether the use of force was objectively reasonable under the circumstances. "see" Graham 490 U.S. 386 also "Smith" 394 F.3d 689 and "Chew" 27 F.3d 1432. Such an analysis was never taken or reviewed in my case. Viewing the evidence in the light most favorable to me with respect to the nature and quality of the intrusion upon my 4th amendment rights. It is without question I had a standing expectation of privacy, because I was standing in my yard at my house when the police attacked me. "see" docket #15 and exhibit 10. The evidence established on the record shows that the police fabricated documents and made false reports about seeing me stick a gun into my pocket and seeing me reach for my back pocket where a gun was. The defendant's made these false statements in this civil case as well "see" exhibit C, affidavit of Strickland. Also under "J.L." 529 U.S. 272 the Supreme court made it clear that the police cannot use anonymous 911 calls as probable cause to make a stop. In my case the police got an anonymous 911 call that 2 black people was fighting and one had a gun. The Supreme court ruled in New York v. Class 106 S.Ct 960 that the 4th amendment protections are triggered when the state intrudes

into an area in which there is a constitutionally protected reasonable expectation of privacy. This court also held in *Payton v. New York* 100 S.Ct 1371, that the right to be secure in ones home from warrantless and forcible intrusion in the absence of exigent circumstances is clearly established. In this civil case the police has made no showing of exigent circumstances. In exhibit B, the defendants claim they saw me stick the gun into my pocket. My exhibit E, has Ofc. Strickland stating that he never saw me stick anything into my back pocket, and he made this story up because Ofc. Stewart told him to. . . Next the defendants claim I reached for my back pocket where a gun was then I was tased. "See" exhibit B-a My exhibit G has the magistrate judge clearly pointing to the time stamp on the DVD audio in which Ofc. Stewart can be heard yelling out if you'd reached for it. Viewing this evidence in the light most favorable to me, shows that no exigent circumstances exist to give the police the right to forcible intrusion upon my 4th amendment rights. My exhibit E, and G shows that the police never saw me stick a gun into my pocket and never saw me reach for my back pocket where a gun was. So in light of all the relevant circumstances facing the officers, If I didn't try to flee from the police, didn't reach for a gun in my back pocket, and the police didn't witness me ~~stick~~ ^{stick} the gun into my pocket, the officers use of force can't be viewed as being reasonable. All claims of the use of excessive force during an investigatory stop or other seizures are governed by the 4th amendment's objective reasonableness standard. The Supreme court ruled in *Tennessee v. Garner* 471 U.S. 1 that the test for excessive force in the arrest context requires, balancing the nature and quality of the intrusion on the individual's 4th amendment interests against the importance of the government's interests alleged to justify the intrusion. . . The standard for measuring reasonableness of force is wholly objective. The objective reasonableness test requires care-

Full attention to the circumstances of a particular case, including the severity of the crime... In this case the evidence shows that the 911 caller was only reporting seeing a gun. This 911 caller was not reporting a crime or reporting that the person with the gun was a felon and had committed some type of crime with the gun. Under *Rehoff v. U.S.*, 139 S.Ct. 2191 having a gun could be innocent conduct. The 4th Cir also ruled *U.S. v. Black* 707 F.3d 531, that when a state authorizes the open display of firearms public possession of a gun is no longer suspicious in a way that would authorize a "Terry" stop. The 4th Cir next explained that such a justification would eviscerate 4th amendment protections for lawfully armed individuals in those states... Thus in my case the anonymous 911 caller did not report a crime, and didn't give the officers justification to make the stop. I was standing in my yard at my house and *Off. Stewart* clearly states in my exhibit , that he didn't have to tell me to stop that I was just standing there. And he immediately pulled his gun on me and told me to get on the ground because I had something in my pocket that could have been a gun. At this point when the officers pulled a gun on me and told me to get on the ground, my 4th amendment rights was violated. I had not committed any type of crime, I did not try to flee from the police, and the defendants make no showing of exigent circumstances to support it's use of force. The Supreme Court has established that not every police, citizen contact rises to the level of a seizure, only when a officer by means of physical force or show of authority has in some way restrained the liberty of a citizen to walk away does a seizure occur. "see" *U.S. v. Mendenhall* 100 S.Ct. 1870. In determining whether there has been a show of authority courts ~~we~~ must examine all the surrounding circumstances to determine whether a reasonable innocent person would feel that he was not at liberty to ignore the police and go about his business. "see" *Florida v. Bostick* 111 S.Ct. 2382. Relevant circumstances includes whether the officers displayed a weapon or was in uniform. "see" *Mendenhall* 100 S.Ct. 1870. Whenever an officers restrains the

Freedom of a person to walk away he has seized that person. If a person was seized the court next moves to consider whether the seizure was justified by reasonable suspicion. "see" *U.S. v. Griffin* 589 F.3d 148. My case is in conflict with all of these other federal cases that has addressed this issue already. The police only claims that my suspicious activity was that they saw me stick the gun into my pocket and saw me reach for that pocket where the gun was. I offered evidence that puts both of these claims in dispute. My exhibit G, shows that the police never witnessed me reach~~ed~~ for the gun. And my exhibit E, shows the police never witnessed me stick the gun into my pocket. Thus using the objective reasonableness test and paying careful attention to the circumstances of my case, including the severity of the crime at hand. The crime of me being a felon with a gun wasn't committed until after the police attacked me. Also under "Rehitt" 139 S.Ct 2200, a person must know of his status and know he belonged to the relevant category of persons barred from possessing a firearm. The government never made this showing in my case. And once again the detainees in it's summary judgment motion, ~~that~~ ^{from} the first "Graham" factor favors them because Stewart saw the gun in Waters's back pocket, ordered him to put his hands up and only used force when he saw Waters reach for the gun. The possession of a gun by a felon with a violent criminal history is severe. The district court and the 4th cir. erred by not reviewing the record to determine whether a need for force outweighed the plaintiff's 4th amendment rights. "see" *Wilson v. Prince George's city* 893 F.3d 213. viewing the evidence in the light most favorable to me, it is clear that I had a constitutionally protected reasonable expectation of privacy, because I was in my yard at my house "see" exhibit K. This anonymous 911 caller was not reporting a crime, and under "J.L." this call did not give the police the reasonable suspicion needed to make an investigatory stop. "see" *J.L.* 529 U.S. 266. The police did not see me stick the gun into my pocket, did not see me reach for the gun, and did not see me

flee from them. Thus the officers need to use force didn't outweigh my 4th amendment rights. These officers restrained my liberty to walk away by pulling a gun on me and forcing me to get on the ground. Once I got on the ground the officers still attacked me with the taser by shooting me in the back, the back of my right hand, and the back left hand. Summary judgment shouldn't have been granted in this case because reflected tasing goes beyond complete physical capitulation and is grossly disproportionate to any threat posed and unreasonable under all the circumstances. "See" Oliver 586 F.3d 898. The district court or the 4th never established or addressed the nature and quality of the officers intrusion upon my 4th amendment rights. Thus I would like to respectfully ask this most honorable court to grant this petition for writ of certiorari. My case is in conflict with a number of other cases listed in this petition. Like the defendants claim that my criminal record was also a reason the police had a right to stop me, which puts my case in conflict with cases like U.S. v. Foster 634 F.3d 246, which ruled that a prior criminal record is not standing alone, sufficient to create reasonable suspicion. Also U.S. v. Powell 666 F.3d 188 ruled that a person's arrest history in and of itself is insufficient to support reasonable suspicion. U.S. v. Loughrin 438 F.3d 1245 pointed out that if the law were otherwise any person with any sort of criminal record or even worse, a person with arrests but no convictions could be subjected to an investigative stop by a law enforcement officer at any time without the need for any other justification at all. To find reasonable suspicion in such a case would violate a basic precept that law enforcement not disturb a free person's liberty solely because of a criminal record. Under the 4th amendment our society does not allow police officers to round up the usual suspects... The district court or the 4th cir never addressed this issue nor did either court review the nature and quality of the intrusion upon my 4th amendment rights... Thus my case is a rogue opinion that follows no supreme court or other federal appeals courts rulings or precedent. Reviewing the nature and quality of the intrusion upon ones 4th amendment right is a clearly established precedent

under "Graham" 490 U.S. 396, which ruled that the analysis in excessive force claims also requires balancing the nature and quality of the intrusion on a person's liberty with the countervailing governmental interests at stake to determine whether the use of force was objectively reasonable under the circumstances. . . The district court and the 4th cir never explicitly undercut this analysis. Reviewing the evidence in the light most favorable to me it is clear that the officers need to use force did not outweigh my 4th amendment rights.

I was standing in my yard at my house, thus I clearly had a reasonable standing expectation of privacy "see" exhibit 1C, rental lease agreement. under "J.L." 529 U.S. 266 the anonymous tip the police got that a black man was carrying a gun is insufficient under the 4th amendment to justify a stop and frisk of that person. The evidence on the record shows that there is a dispute as to did the police witness me stick the gun into my pocket. exhibit B, has the police claiming they saw me stick the gun into my pocket, my exhibit E, puts this issue in dispute, because it has Ctr. Strickland saying that he never saw this and he only put this false information in his report because Ctr. Stewart told him to. There is also a factual dispute as to the most important "Graham" factor, was I an immediate threat to the officers? The defendants claim in there summary judgment motion that the 2nd "Graham" factor favors them because the danger to the officers and the community was serious and evident, and the attempted use of deadly force by waters in going for the gun demonstrates this danger. my exhibit G, has the magistrate judge pointing out that Ctr. Strickland and Stewart are on a dash cam video DVD that was sent to the court. On that DVD at time stamp 3:10-3:17 Ctr. Stewart Yells You got that gun, and you don't wanna get on the ground "If you reached for it" You'd be dead! This shows that I never reached for any thing thus I was never a threat to the officers, because the Police

also never saw me stick the gun into my pocket. The intrusion upon my 4th amendment rights was violated when Ofc. Stewart immediately pulled his gun on me and told me to get on the ground. At that point I had not committed any type of crime, and a seizure occurred because after the police pulled a gun on me in my yard at my house, he restrained my liberty as a free citizen to walk away. "See" Mendenhall 100 S.Ct 1870. As stated in U.S. v. JENKINS: 160 F.3d 164, A valid stop does not automatically entitle the police to conduct a frisk or protective pat down of outer clothing for weapons, because a frisk is a serious intrusion upon the sanctity of a person. "See" TERRY 392 U.S. 17. Also the U.S. v. ROBINSON 846 F.3d 694 court held that the officers may have had a good reason to suspect that he was carrying a gun, but they lacked the objective facts indicating that he was also dangerous, as to justify a frisk for weapons. Since an officer must reasonably suspect that the person being frisked is "BOTH" armed and dangerous. Being that the police in my case made note of these showings just like the 4th cir held in "Brown" 401 F.3d 588 my initial encounter with the police was a "TERRY" stop. The 4th cir explained that the anonymous tip alone did not provide adequate suspicion because the tip contained no information predicting future acts by which the officers could corroborate the substance of the tip, thus the "TERRY" stop was illegal and violated the 4th amendment. . . Summary Judgment should not have been granted in this case based on the conflict my case has with the above listed federal cases that has all ready addressed this issue. Both the district court and 4th cir never reviewed or addressed the nature and quality of the intrusion upon my 4th amendment rights. . . This error of not reviewing the nature and quality of the intrusion upon my 4th amendment rights is an reversible error. The Supreme court ruled that this is a requirement under "Graham" 490 U.S. 396 Thus I would like to respectfully ask that this writ of certiorari be granted.

Question Presented #4: Did the district court and 4th cir error by granting summary judgment without ever reviewing the governments interest in the need to use force. Also was a error made by both lower courts in incorrectly ruling that it is my version of events that I was tased 4 times because I reached for my back pocket where a gun was?

The district court in granting the defendants summary judgment motion never addressed the officers interest in the need to use force. Viewing the evidence in the light most favorable to me, it is clear that I never gave the police a reason to attack me. The police never saw me stick the gun into my back pocket after getting this anonymous 911 call. "see" exhibit E. The police also never witness me reach for my back pocket where a gun was like they claimed they did. "see" exhibit G, and exhibit F. Yet force was still used and the district court never assessed the quantum of force used in relation to the amount of force used to effect the seizure that took place. In reviewing the last "Graham" factor the defendants once again take the stance of waters actively resisted arrest at several points. When the officers encountered him he refused to follow directives and reached for the gun. My exhibit F, has the magistrate judge clearly stating that a dispute exist as to did I reach for the gun or not. I also sent in a docket from the state solicitor's office that shows that I was charged with 2 counts of resisting arrest on 3-12-15 and requested to go to trial. Both of these charges was dismissed. "see" exhibit J. docket # , the defendants offer no other evidence to support it's claims that I resisted arrest. The lower courts also never explained at what point was

I actually placed under arrest. If I'm standing in my yard at my house and I know nothing of a fight or a anonymous 911 call about a gun, how can me not putting my hands up at first when the police pulled guns on me and told me to get on the ground constitute active resistance? At the time OTC Stewart pulled his gun on me and told me to get on the ground. I had not committed any type of crime. As stated in "Mendenhall" 100 S.Ct 1870, when when officers has in some way restrained the liberty of a citizen to walk away a seizure has occurred. The officers in my case had no reason to pull a gun on me because I was just standing there. As the magistrate points out in my exhibit G, A witness at the incident testified during the suppression hearing that I was just standing there trying to figure out what was going on. Thus me not getting on the ground when the police first asked me to is not actively resisting arrest, because I was in my yard at my house and I didn't commit any type of crime. The DVD audio also made it clear that the police never asked to search me or told me I was under arrest or read me any of my rights. As stated in "Bryson" 630 F.3d 805, Not all non-compliance constitutes active resistance supporting a substantial use of force. The district court or the 4th cir never addressed this issue the district court overlooked the fact that the defendants claimed I actively resisted because I wouldn't get on the ground and reached for the gun. I wasn't under arrest at the time the police asked me to get on the ground and the evidence on the record shows I never reached for the gun. Also the district court erred by making credibility determinations and weighing evidence in ruling that I posed an immediate threat to the safety of the officers in light of the fact that I illegally had a hand gun and met the description of a suspect who had just assaulted someone. This is clearly an error because there is no evidence on the record that I assaulted any body the 911 call wasn't recorded so no one knows what was told to the dispatcher

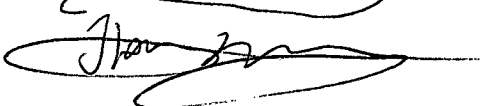
I was never charged with assaulting any body, and the police didn't know any thing about a gun until after they attacked me. Thus the officers never truly had a reason to use force on me. As stated in "Estate of Armstrong v. Vill of Pinehurst 810 F.3d 892 4th cir precedent makes it clear that each taser deployment constitutes a use of force and tasers are proportional force only when deployed in response to a situation in which a reasonable officer would perceive some immediate danger that could be mitigated by using the taser...

In my case the only danger the defendants claimed I was to them was that I reached for the gun and they had to use force. The district court clearly erred by incorrectly ruling that it is my version of facts regarding the factual issue of whether plaintiff was tased because I reached for the gun. "see" page #12 docket #238. The court ruled that this version of events is so utterly discredited by the record that no reasonable jury could believe it. If the court feels like this version of events is so blatantly contradicted by the record, so that no reasonable could believe it. Then summary judgment shouldn't have been granted to the defendants because it is in fact the defendants who claim that I was tased because I reached for the gun. "see" exhibit A, incident report, exhibit D, use of force, exhibit C, Affidavit of Mark Strickland, and exhibit G, where the Magistrate Judge clearly points out, that the "Defendants assert" that plaintiff put his hands up at first but then moved his right hand down next to the pocket where the gun was located... The "Plaintiff asserts" that he never reached for his gun and points to the video, in which you can hear Stewart say to plaintiff "If you'd reached for it you'd be dead"... so viewing this evidence in the light most favorable to me the police never had any reason to attack me with the tasers. There was no government interest in the need to use force because. The police never saw me stick the gun into my pocket, never saw me reach for my pocket where the gun was

I never tried to flee from the officers. I was standing in my yard at my house when the police jumped out and pulled guns on me and told me to get on the ground. The fact that I didn't immediately get on the ground did not constitute active resistance supporting a substantial use of force under "Bryan" 630 F.3d 805. As stated in "Smith" 394 F.3d 689 if the evidence, reviewed in the light most favorable to the plaintiff, could support a finding of excessive force then the defendants are not entitled to summary judgment, because the excessive force inquiry nearly always requires a jury to sift through disputed factual contentions, and draw inferences therefrom. We have held on many occasions that summary judgment in excessive force cases should be granted. Springer, 410 F.3d 1131, 1134. Also see Santos v. Gates 287 F.3d 846. ... Being that my civil case still has a number of disputed factual claims at issue summary judgment should not have been granted in this case. The record before the court clearly shows that it is the defendants version of events that I was seized because I reached for the gun, not the plaintiff's, like the judge ruled. Thus if the court feels like this version of events is so blatantly contradicted by the record that no reasonable jury would believe it. Then under "Scott" 550 U.S. 372 the court shouldn't have adopted these version of events, and summary judgment should not have been granted. Granting summary judgment in my case puts my case in conflict with all of the Supreme court and other federal courts precedent listed in this petition. I would like to respectfully ask that this petition for writ of certiorari be granted, because this decision to grant the defendants summary judgment motion when it is without question disputed factual claims at issue, has so far departed from the accepted and usual course of judicial proceedings, that it calls for an exercise of this most honorable court's supervisory power. The defendant's version of events are so blatantly contradicted by the

record that no reasonable could believe it's claims. Starting with the
policeing claiming they saw me stick the gun into my pocket. "see" exhibit C
no reasonable jury could believe this when my exhibit E, has the police stating
he made this story up because another officer told him to put this false infor-
mation in his report... NO reasonable jury would believe that Z was a threat
to the officers because Z reached for a gun like the police reported Z did
"see" exhibit C, when I have the evidence on DVD-2010 that has one
of the officers yelling "If you'd reached for it" "see" exhibit 2nd exhibit
in which the judge states that a dispute of fact exists as to whether
plaintiff reached for the gun... NO reasonable jury would believe that the
police only tased me one time in the front torso "see" exhibit, when I
have the evidence that shows Z was tased 4 times from the back of my
body facing away from the police. "see" exhibit. The officers even tell
a contradicting stories about when Z was tased. Ofc. Stewart claims that
I was tased and fell to the ground "see" exhibit, while ~~the~~ the ~~officer~~
officer that tased me claimed Z was all ready on the ground when he shot
me with the tased "see" exhibit. It is not up to the district court to
make credibility determinations and view or take the defendants side. When
one police claim Z was tased and fell to the ground, and another police claims
Z was all ready on the ground when he tased me. And Z claim I was face
down on the ground when the police tased me this case should have went
to a jury. As stated in "Zorostrian" 822 F.2d 739 where the determination of
what actually happened depends on the assessment of the credibility of the
respective witnesses, this assessment is a disputed issue of facts that cannot

be resolved on summary judgment. Also the police are claiming I was only tased once "see" exhibit , I offer evidence that supports my claim that I was tased 4 times. As stated in "Estate of Armstrong" 810 F.3d 892 "EACH" taser deployment constitutes a use of force. The district court and 4th cir never addressed which taser deployment was reasonable. As stated in "Ghazzzoui" 659 Fed.Appx 731, the 4th cir ruled that photographs of "Ghazzzoui's" injuries are consistent with his account of the incident, thus the court concluded that if a jury were to credit "Ghazzzoui's" version of events it could reasonably return a verdict in his favor. The same would be true in my case, which puts my case in conflict with the other Federal §1983 cases that has all ready addressed this issue, just like the Mottos 661 F.3d 433 court ruled because the police tased someone 3 times in less than 1 minute, inflicting extreme pain. A reasonable fact finder could conclude that taken and viewing the evidence in the light most favorable to the plaintiff find that the police use of force was unreasonable and constitutionally excessive. . . I would like to respectfully ask that this honorable court grant this petition for writ of certiorari and return this civil case back to the appeals court because this decision clearly departs from the accepted and usual course of judicial proceedings in §1983 civil cases when it comes to excessive force claims and reviewing the nature and quality of the intrusion upon ones 4th amendment rights. . .

Respectfully,
Thomas Waters


12-31-19