No. 20-1771

IN THE

Supreme Court of the United States

CHARLES SIMONSON,

Petitioner,

v.

BOROUGH OF TAYLOR AND WILLIAM ROCHE,

Respondents.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the Third Circuit correctly concluded that probable cause is based on the totality of the circumstances known to police at the time of a warrantless felony arrest.

2. Whether there is any compelling reason to grant the Petition where the Third Circuit's opinion is fully consistent with this Court's jurisprudence and where there is no "circuit split" as alleged by Petitioner.

LIST OF PARTIES

Respondents are Borough of Taylor and William Roche.

CORPORATE DISCLOSURE STATEMENT

The Borough of Taylor is a political subdivision in the Commonwealth of Pennsylvania. The Borough has no parent corporation or corporate stock.

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INTRODUCTION

There are no compelling reasons to grant the Petition for Writ of Certiorari. *See* Sup. Ct. R. 10. There is no conflict between the Third Circuit's decision and this Court's well-established jurisprudence, *see Beck v. Ohio*, 379 U.S. 89 (1964), finding probable cause present when the facts and circumstances within a police officer's knowledge, and of which he/she had reasonably trustworthy information, were sufficient to warrant a prudent man in believing that the suspect had committed a crime. Petitioner's arguments in support of overturning the Third Circuit's decision misstate and misapply case law analyzing the "probable cause" standard.

Petitioner's question presented is murky, at best. He appears to take issue with the District Court's decision granting summary judgment, generally, but narrowly describes the issue in his Petition as follows: *Whether the court of appeals erred when it did not require independent corroboration of an estranged-divorcing wife's allegations that her husband attempted to kill her before making a warrantless, non-judicial approved arrest when the allegations were five (5) days old*? (Pet. at i-ii). However, the issue argued throughout the Petition appears to go beyond the subject of "independent corroboration" and calls seemingly for an enhancement of the "totality of the circumstances" standard. *Id.*

The matter before the Court is not appropriate for review since there is no compelling reason to grant the Petition where there is no circuit split regarding probable cause determinations. *See* Sup. Ct. R. 10. Accordingly, Respondents respectfully request this Court deny the Petition for Writ of Certiorari.

COUNTERSTATEMENT OF THE CASE

I. Relevant Facts

Loretta Simonson reported to her doctor that her husband, Charles Simonson, threatened, and tried, to kill her. Loretta Simonson told her doctor that her husband fired a shotgun at her while she slept. When police arrived at the Simonson residence for a welfare check, Mrs. Simonson was hesitant to open the door because "he [her husband] might come back." Mrs. Simonson eventually showed officers her bedroom, and explained how Charles Simonson shot at her and left in the middle of the night in his car with the shotgun and said he would kill her and her doctor. Physical evidence in the bedroom was consistent with Mrs. Simonson's claims. Mrs. Simonson thereafter provided a written statement outlining the near-deadly altercation to law enforcement officers. The Lackawanna County District Attorney's office approved the filing of felony charges, and Mr. Simonson was arrested for attempted murder, among other crimes, on November 7, 2018. After further investigation the following day, officers questioned the credibility of Mrs. Simonson. Thereafter, Mrs. Simonson recanted her first statement and Charles Simonson was promptly released from prison.

Mr. Simonson subsequently sued both Taylor Borough and William Roche under both federal and state laws for, *inter alia*, malicious prosecution and unlawful seizure. Mr. Simonson's Petition before the Court is limited to Respondent's probable cause determination founded in the Fourth Amendment of the Constitution of the United States.

II. Procedural History

Charles Simonson commenced his civil action by filing a Complaint on December 28, 2018.[1] Borough of Taylor and William Roche, filed an Answer to the Complaint on February 22, 2019. Respondents filed a Third-Party Complaint seeking to join Loretta Simonson as an additional defendant on May 30, 2019. Also on May 30, 2019, Petitioner filed an Amended Complaint. The Amended Complaint contained eight (8) counts: Count One: Unlawful Search and Seizure, Violation of the Fourth and Fourteenth Amendments against Defendant Roche; Count Two: Malicious Prosecution, Violation of Fourth Amendment and State Law against Defendant Roche; Count Three: False Arrest/False Imprisonment, Violation of Fourth Amendment and State Law against Defendant Roche; Count Four: Stigma – Plus Violation of Due Process against all Defendants; Count Five: False Light and Defamation against all Defendants; Count Six: Assault and Battery against Defendant Roche; Count Seven: Violation of Plaintiff's Constitutional Rights, Inadequate Supervision/Training against Defendant Borough of Taylor; and Count Eight: Unlawful Search and Seizure, Violation of the Fourth and Fourteenth Amendments against all Defendants. Respondents filed an Answer with Affirmative Defenses to the Amended Complaint on June 13, 2019.

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1. An action the District Court later referred to as "patently frivolous." (App. B- 2) ("Despite the unfortunate circumstances that befell the plaintiff, his multi-count complaint against the defendants, in light of the undisputed facts, is patently frivolous. It is extremely difficult to comprehend how an experienced attorney could file a case such as this, in good faith.").

On June 4, 2019, Petitioner filed a Motion to Strike the Third-Party Complaint. By Order dated December 10, 2019, the District Court granted Petitioner's Motion to Strike and dismissed Loretta Simonson as a third-party Defendant.

Respondents thereafter filed a Motion for Summary Judgment and Statement of Material Facts on December 16, 2019. By Order and Memorandum dated March 30, 2020, the District Court granted, in part, Respondent's Motion for Summary Judgment with respect to Petitioner's federal claims in Counts I – IV and VII- VIII in his Amended Complaint. *Simonson v. Borough of Taylor*, 2020 WL 1505572 (M.D. Pa. Mar. 30, 2020). (*See* App. B).[2] Accordingly, the District Court entered judgment in favor of Respondents and against Petitioner on those claims. The District Court then dismissed, without prejudice, Petitioner's state law claims in Counts II, III, V, and VI of the Amended Complaint pursuant to 28 U.S.C. § 1367(c)(3). (App. B-1-38).

Petitioner subsequently appealed to the United States Court of Appeals for the Third Circuit, arguing, in part, that the District Court incorrectly granted summary judgment. In the Notice of Appeal (amended), Petitioner put forth his appeal as follows:

> Notice is hereby given that Plaintiff, Charles Simonson, in the above named case, hereby appeals to the United States Court of Appeals for the Third Circuit from the granting of

2. The Appendix references are to the Appendices to Simonson's Petition for Writ of Certiorari.

> summary judgment to Defendants on March 30, 2020, on Plaintiff's claims including but not limited to, false arrest, illegal search and seizure, due process and all claims when the arresting officer did not have any knowledge of Plaintiff's alleged criminal behavior in the false charge of attempted murder and $850,000.00 bond that he could not meet, so his liberty was deprived when he was jailed and the arresting officer admitted that he said so "we meet again" when he arrested Plaintiff for a crime he did not commit.

Because probable cause supported Petitioner's warrantless, felony arrest, the Third Circuit affirmed the decision of the District Court. (A-1-11); *Simonson v. Borough of Taylor*, 839 Fed. App'x 735 (3d Cir. 2020). Petitioner filed a Petition for Rehearing on January 7, 2021. By Order dated January 22, 2021, the Third Circuit denied Petitioner's request for *en banc* and panel rehearing. (C-1-2).

REASONS FOR DENYING THE PETITION

Petitioner argues that the Court should grant his Petition because "[t]he decision below shows a circuit conflict over the question presented that warrants this Court's review." (Pet. at 11). Petitioner suggests that this case is appropriate for review by the Court because it will provide "a perfect opportunity for this Court to resolve the question presented and provide law enforcement with guidance on probable cause." (Pet. at 11). However, in both respects, Petitioner is incorrect. First, there is no circuit conflict. Secondly, the Court has provided law enforcement

with guidance on probable cause determinations for decades. The decisions of the United States District Court for the Middle District of Pennsylvania and the Court of Appeals for the Third Circuit correctly applied the "probable cause" standard.

I. There is No Important Question to Consider: This Court has Consistently Reaffirmed the Probable Cause Standard to be Applied by Police Officers when Conducting a Warrantless Felony Arrest, Including the Need for Independent Corroboration.

The Fourth Amendment protects "against unreasonable searches and seizures" of (among other things) the person. *Virginia v. Moore*, 553 U.S. 164, 168 (2008). "In a long line of cases, we have said that when an officer has probable cause to believe a person committed even a minor crime in his presence, the balancing of private and public interests is not in doubt. The arrest is constitutionally reasonable." *Virginia*, 553 U.S. at 171 (*citing Atwater v. Lago Vista*, 532 U.S. 318, 354 (2001); *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004); *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975); *Brinegar v. United States*, 338 U.S. 160, 164, 170, 175–176 (1949)). Probable cause exists if, "at the moment the arrest was made[,] . . . the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense." *Wright v. City of Philadelphia*, 409 F.3d 595, 602 (3d Cir. 2005) (alterations in original) (*quoting Beck v. Ohio*, 379 U.S. 89, 91 (1964)). Probable cause "does not require that the officer have evidence sufficient to prove guilt beyond a reasonable doubt," *Zimmerman v. Corbett*,

873 F.3d 414, 418 (3d Cir. 2017) (*quoting Orsatti v. New Jersey State Police*, 71 F.3d 480, 483 (3d Cir. 1995)), or "that officers correctly resolve conflicting evidence or that their determinations of credibility, were, in retrospect, accurate." *Dempsey v. Bucknell Univ.*, 834 F.3d 457, 467 (3d Cir. 2016) (citation omitted). This standard "depends on the totality of the circumstances." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citations omitted). The evidence necessary to support a finding of probable cause is less than what would be necessary to support a conviction. *See Illinois v. Gates*, 462 U.S. 213, 235 (1983). "For probable cause to exist, there must be probable cause for all elements of the crime." *See United States v. Joseph*, 730 F.3d 336, 342 (3d Cir. 2013).

In determining whether there is probable cause for an arrest the officer is entitled to consider any information known to him that a reasonably prudent man might regard as reliable. *McKibben v. Schmotzer*, 700 A.2d 484, 492 (Pa. 1997) (defining "probable cause" as "a reasonable ground or suspicion supported by circumstances sufficient to warrant an ordinarily prudent man in the same situation in believing that the party is guilty of the offense"). Probable cause "requires more than mere suspicion[.]" *Orsatti*, 71 F.3d at 482.

Petitioner asserts that there is a circuit conflict over the nebulous question presented. More specifically, Petitioner takes issue with the opinion of the Third Circuit holding, as he characterizes it, "that probable cause can be based solely on the statements of a victim and an alleged 1 ½ hour investigation that failed to include interviewing any witnesses or assessing the credibility and reliability of the victim-complainant since the arresting officer never

spoke to the victim-complainant." (Pet. at 11). In support of this purported conflict, Petitioner selects cases from the Seventh and Ninth Circuits allegedly applying a different quantum of evidence necessary for establishing probable cause. (Pet. at 11). However, the holdings in both cases do not support an alleged circuit split. In fact, the cited cases actually show uniformity across the country on the issue of probable cause determinations. Probable cause is a fact-specific determination. In analyzing whether probable cause existed for an arrest, courts look at the "totality-of-the-circumstances." *Illinois v. Gates*, 462 U.S. 213, 230 (1983).

In *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912 (9th Cir. 2001), a bus passenger was arrested following an altercation with both the bus driver and local law enforcement officers. The driver allegedly made a false criminal report for battery, a misdemeanor offense. *Id.* at 918, 924. "In *Allen v. City of Portland*, 73 F.3d 232, 236 (9th Cir.1995), we held that 'in order to satisfy the requirements of the Fourth Amendment,' a warrantless misdemeanor arrest 'must be supported by probable cause to believe that the arrestee has committed a crime.'" *Arpin*, 261 F.3d at 924. "'Probable cause exists when, at the time of arrest, the agents know reasonably trustworthy information sufficient to warrant a prudent person in believing that the accused had committed or was committing an offense.'" *Id.* at 924-25 (*citing Allen*, 73 F.3d at 237). "In establishing probable cause, officers may not solely rely on the claim of a citizen witness that he was a victim of a crime, but must independently investigate the basis of the witness' knowledge or interview other witnesses." *Id.* at 925 (*citing Fuller v. M.G. Jewelry*, 950 F.2d 1437, 1444 (9th Cir.1991)).

The key distinction between *Simsonson* and *Arpin* is the severity of the alleged crime, *i.e.* felony aggravated assault and misdemeanor assault, respectively. Mr. Simonson was arrested and charged with Criminal Attempt–Homicide, Aggravated Assault, Discharge of a Firearm into Occupied Structure, Possession of Weapon, Make Repairs/Sell/Etc Offensive Weapon, Terroristic Threats with Intent to Terrorize Another, Recklessly Endangering Another Person, and Simple Assault. *Commonwealth v. Charles Simonson*, MJ-45101-Cr-0000426-2018. Mr. Simonson was arrested without a warrant pursuant to Pennsylvania law. 18 Pa. Cons. Stat. § 2711(a) ("A police officer shall have the same right of arrest without a warrant as in a felony whenever he has probable cause to believe the defendant has violated section 2504 (relating to involuntary manslaughter), 2701 (relating to simple assault), 2702(a)(3), (4) and (5) (relating to aggravated assault), 2705 (relating to recklessly endangering another person), 2706 (relating to terroristic threats), 2709.1 (relating to stalking) or 2718 (relating to strangulation) against a family or household member although the offense did not take place in the presence of the police officer. A police officer may not arrest a person pursuant to this section without first observing recent physical injury to the victim or other corroborative evidence.").

The victim-complainant, Loretta Simonson, told her doctor that Mr. Simonson, her estranged husband, attempted to shoot her. Based on this information, the Taylor Borough Police Department went to her home to conduct a welfare check. Loretta initially denied that a shooting occurred, but then told the police that Simonson had entered the home several days earlier, shouted "die

b****," fired at her head with a shotgun, ran outside, threw the gun into his car, and drove away. Loretta explained that the bullet struck the wall above the bed and pellets struck her head. The officers observed an apparent bullet hole in the bedroom wall and an injury to Loretta's nose. (App. A-2). At the police station, Loretta prepared a written statement detailing the event. In addition, a trauma psychologist interviewed Loretta and told law enforcement that Loretta showed signs of being a domestic violence victim. The Police Chief assigned Sergeant Roche to present these facts to the First Assistant District Attorney, who approved charging Simonson with the aforementioned crimes. (App. A- 2-3; *see also* App. B- 6-12). Contrary to Petitioner's assertion that there was no effort on the part of police to obtain independent, corroborating evidence, the above shows a significant undertaking by police. There was, as both the District Court and Court of Appeals concluded, sufficient evidence beyond only Mrs. Simonson's statements that supported a finding of probable cause.

In contrast, *Arpin* involved the warrantless arrest of an individual for misdemeanor offenses allegedly perpetrated outside the presence of law enforcement. *Arpin*, 261 F.3d at 920 ("A warrantless arrest by a peace officer for a misdemeanor is lawful only if the officer has reasonable cause to believe the misdemeanor was committed in the officer's presence."). Relying on *Johanson v. Dept. of Motor Vehicles*, 36 Cal.App.4th 1209, 1216, 43 Cal.Rptr.2d 42, 46 (1995) and the California Penal Code, Section 836(a), the Ninth Circuit determined that officers could not lawfully arrest Arpin since they lacked probable cause. *Arpin*, 261 F.3d at 920 ("The undisputed facts filed by the parties indicate that Officers Stone and

Barnes arrived after the alleged battery occurred. The officers could therefore not lawfully arrest Arpin for the [misdemeanor] battery.").

The factual distinctions between *Arpin* and *Simonson* are glaring but the law is applied evenly. Without probable cause, an arrest is unconstitutional. Since *Arpin* involved the improper warrantless arrest of an individual for misdemeanor offenses, that holding is of no consequence for determining the existence of probable as it relates to Mr. Simsonson. Petitioner's reliance on *Arpin* is, without doubt, misplaced.

Petitioner also relies on a decision from the Seventh Circuit, *BeVier v. Hucal*, 806 F.2d 123 (7th Cir. 1986), to support his Petition. However, this case, too, fails to advance his cause.

The issue in *BeVier* was whether Illinois state police officer Steven Hucal had probable cause to arrest plaintiffs for child neglect and, if not, whether he had a reasonable good faith belief that probable cause existed. *BeVier*, 806 F.2d at 126. Officer Hucal arrested the plaintiffs for child neglect pursuant to Illinois Revised Statute, chapter 23, ¶ 2361, a Class A misdemeanor. The Seventh Circuit concluded that "the facts as known by [Hucal] weakly supported an inference that the children were being neglected" knowingly and/or willfully. *Id.* Although officer Hucal observed evidence that, at a minimum, inferred child neglect, he failed to adduce evidence that the BeViers knew of plaintiffs' children's predicament but failed to prevent it. *Id.* The court concluded that had Hucal asked even a "few questions" he would have known that the BeViers were not neglecting their children. *Id.*

at 127. "Under Seventh Circuit precedent [ ] probable cause is a function of information and exigency." *Id.* The totality of the circumstances including the facts available to defendant, are dispositive. *Id*. at 126 (*citing Gates*, 462 U.S. at 231–232).

"Police officers may arrest without a warrant if the information available to the officer at the time of the arrest indicates that the arrestee has committed a crime. Thus an arrest is not unconstitutional merely because the information relied upon by the officer later turns out to be wrong." *Id*. (*citing Henry v. United States*, 361 U.S. 98, 102 (1959); *McKinney v. George*, 726 F.2d 1183, 1187 (7th Cir. 1983)). "Probable cause is a fluctuating concept; its existence depends upon factual and practical considerations of everyday life." *BeVier*, 806 F.2d at 126 (*citing Illinois v. Gates*, 462 U.S. 213, 231 (1983)).

The Court in *BeVier* concluded that officer "Hucal failed to avail himself of the opportunity to elicit further facts which would have indicated that the arrest should not have been made, the arrest of plaintiffs was without the requisite probable cause." *Id.* at 128. In contrast, Roche had the benefit of significant evidence in his possession supporting a finding of probable cause: Mrs. Simonson prepared a written, signed statement detailing the event; Mrs. Simonson showed officers physical evidence of shotgun spray in the wall above her bed; Mrs. Simonson displayed physical signs of being struck by shotgun pellets; a trauma psychologist interviewed Mrs. Simonson and told law enforcement that Mrs. Simonson showed signs of being a domestic violence victim. (App. A- 2). The totality of evidence known to police at the time of Mr. Simonson's arrest supports a finding of

probable cause and corroborated her statements to law enforcement. (*See* App. A- 9, n. 7) ("In any event, there is probable cause for all the charges. As discussed above, based on Loretta's statements and their observations, the officers had evidence that Simonson attempted to cause serious harm to Loretta by firing a shotgun toward her, *see* 18 Pa. Cons. Stat. §§ 901(a) (criminal attempt), 2701(a)(1) (simple assault), 2705 (recklessly endangering another person); the bullet struck the bedroom wall, *see id.* § 2707.1(a) (discharge of a firearm into an occupied structure); Simonson possessed a shotgun and intended to use it to injure Loretta, *see id.* §§ 907(b) (possession of a firearm with intent to employ it criminally), 908(a) (prohibited use of offensive weapons by making repairs to, selling, using, or possessing an offensive weapon); and Simonson threatened Loretta by pointing a shotgun at her and saying, "die b****," App. 149; *see* 18 Pa. Cons. Stat. § 2706(a)(1) (commission of a crime of violence with intent to terrorize another)."); (*see also* App. B- 27-28) ("The information defendants had when they arrested and charged plaintiff on November 7, 2018, as detailed above, was well beyond sufficient to warrant a reasonable person to believe that plaintiff committed the charged offenses by firing his shotgun at Loretta on November 2, 2018 while she was in her bedroom.").

II. There is no Circuit Conflict

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and further provides that "no Warrants shall issue, but upon probable cause." *Fla. v. White*, 526 U.S. 559, 563 (1999) (*citing* U.S. Const., Amdt. 4).

Throughout the country, courts have steadily applied this Court's pronouncement that the arrest of a person must be based on probable cause and that probable cause itself is based on the totality of the circumstances and facts known to law enforcement at the time of the arrest. To suggest, as Petitioner does, that there is a circuit split mischaracterizes well-established jurisprudence.

Courts utilize the "totality of the circumstances" analysis routinely when determining probable cause for a warrantless arrest. *Robinson v. Cook*, 706 F.3d 25, 33 (1st Cir. 2013) ("A warrantless arrest is permissible under the Fourth Amendment where there is probable cause, *i.e.*, where reasonably trustworthy facts and circumstances would enable a reasonably prudent person to believe that the arrestee has committed a crime (even if it differs from the one named by police during the arrest or booking) (*citing Devenpeck v. Alford*, 543 U.S. 146, 152–54 (2004)); *United States v. Delossantos*, 536 F.3d 155, 158 (2d Cir. 2008) ("A warrantless arrest is unreasonable under the Fourth Amendment unless the arresting officer has probable cause to believe a crime has been or is being committed…. Probable cause exists where the arresting officer has knowledge or reasonably trustworthy information of facts and circumstances that are sufficient to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing a crime.") (quotation marks omitted); *United States v. Laville*, 480 F.3d 187, 194 (3d Cir. 2007) ("… probable cause [is] determined with reference to the facts and circumstances within the officer's knowledge at the time of the investigative stop or arrest."); *Orem v. Gillmore*, 813 F. App'x 90, 92 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1386 (2021) ("Probable cause is not a

high bar, and it must be assessed objectively based on a totality of the circumstances, including common-sense conclusions about human behavior." (*citing United States v. Jones*, 952 F.3d 153, 158 (4th Cir. 2020); *United States v. Wadley*, 59 F.3d 510, 512 (5th Cir. 1995) ("Probable cause for a warrantless arrest exists when the totality of facts and circumstances within a police officer's knowledge at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense."); *Barton v. Martin*, 949 F.3d 938, 950–51 (6th Cir. 2020) ("An officer has probable cause 'when, at the moment the officer seeks the arrest, 'the facts and circumstances within [the officer's] knowledge and of which [he] had reasonably trustworthy information [are] sufficient to warrant a prudent man in believing that the [plaintiff] had committed or was committing an offense.'" (*citing Wesley v. Campbell*, 779 F.3d 421, 429 (6th Cir. 2015) (*quoting Beck v. Ohio*, 379 U.S. 89, 91 (1964))); *United States v. Gilbert*, 45 F.3d 1163, 1166 (7th Cir. 1995) ("In order to make an arrest without a warrant, the police must have probable cause, under the totality of the circumstances, to reasonably believe that a particular individual has committed a crime."); *Thurairajah v. City of Fort Smith, Arkansas*, 925 F.3d 979, 983 (8th Cir. 2019) ("An officer possesses probable cause to effectuate a warrantless arrest "when the totality of the circumstances at the time of the arrest 'are sufficient to lead a reasonable person to believe that the defendant has committed or is committing an offense."); *United States v. Struckman*, 603 F.3d 731, 739 (9th Cir. 2010) ("There is probable cause for a warrantless arrest and a search incident to that arrest if, under the totality of the facts and circumstances known to the arresting officer, a prudent person would have concluded that there was a fair probability that the

suspect had committed a crime.") (*citing United States v. Gonzales*, 749 F.2d 1329, 1337 (9th Cir. 1984)); *United States v. Cruz*, 977 F.3d 998, 1004 (10th Cir. 2020), *cert. denied*, No. 20-7423, 2021 WL 1241017 (U.S. Apr. 5, 2021) ("To determine whether there was probable cause for Mr. Cruz's arrest, we look to see 'whether at that moment the facts and circumstances within [the officer's] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent [officer] in believing that the [defendant] had committed or was committing an offense.'" (*quoting Beck v. Ohio*, 379 U.S. 89, 91 (1964)); *Kingsland v. City of Miami*, 382 F.3d 1220, 1226 (11th Cir. 2004) ("Probable cause to arrest exists when an arrest is objectively reasonable based on the totality of the circumstances.").

Contrary to Petitioner's suggestion, as shown above, there is a clearly followed rule of law applicable to warrantless arrests in the United States of America. To wit, the arrest of an individual, warrantless or otherwise, must be based on probable cause. Probable cause is based on the totality of the circumstances and the facts within the officer's knowledge thereby convincing him or her that a crime was committed and that the suspect likely committed the crime. While the rule is generally clear, the application of the rule requires a fact-specific inquiry into each and every arrest analysis. Many times probable cause is apparent to even the most disinterested, objective observer. Other times, probable cause requires a more thorough analysis. In the case before this Court, probable cause was glaringly apparent.

In this matter, Petitioner is challenging the District Court's determination that probable cause existed at

the time of his arrest. Petitioner argues that the victim had a motive to lie to gain an advantage in the divorce proceedings. (Pet. at 15). Petitioner invites this Court to resolve a non-existent circuit conflict "and ensure citizens are not falsely arrested based on the sole word of an estranged-divorcing spouse, who has motive to lie, and in this case did in fact make a false statement." (Pet. at 15). However, this assertion overlooks an abundance of facts and knowledge known to Officer Roche at the time of the arrest. Petitioner is asking the Court to overturn the "totality of the circumstances" rule in favor of a nondescript rule that probable cause can not exist if an estranged spouse accuses the other spouse of illegal conduct. Putting aside the unworkable scenario that would create for law enforcement, the proposed rule flies contrary to the broader instruction that officers should base probable cause on *all* the facts and circumstances within their knowledge at the time of an arrest. *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004).

A probable cause inquiry is "fluid." *Florida v. Harris*, 568 U.S. 237, 244 (2013). However, to have any weight in the probable cause inquiry, statements of a victim, similar to those of an informant, must be particularized and bear some indicia of reliability or corroboration to support probable cause. *Massachusetts v. Upton*, 466 U.S. 727, 734 (1984) (*per curiam*). Even so, in "the absence of circumstances that would raise a reasonably prudent officer's antennae, there is no requirement that the officer corroborate every aspect of every complaint with extrinsic information. The uncorroborated testimony of a victim or other percipient witness, standing alone, ordinarily can support a finding of probable cause." *Acosta v. Ames Dep't Stores, Inc.*, 386 F.3d 5, 10 (1st Cir. 2004).

As both the District Court and Court of Appeals determined, there was ample evidence beyond only Mrs. Simonson's statement to police supporting probable cause. Even assuming that Mrs. Simsonson's statement was the spark that started the investigation, there was additional corroborating evidence to support probable cause, *e.g.*, Mrs. Simsonson's physical injuries and bullet holes in the bedroom wall. The totality of the circumstances test is well-supported by generations of common sense application. Petitioner's request that this Court overturn the decisions of the lower courts should not be entertained.

CONCLUSION

For all of the foregoing reasons, the Petition for *writ of certiorari* in this case should be denied.

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