NO. 20-_____

In the Supreme Court of the United States

CHRISTOPHER BREWER,

Petitioner,

v.

TERESA POPE HOOKS, INDIVIDUALLY AND ESTATE OF DAVID HOOKS BY TERESA POPE HOOKS, ADMINISTRATRIX,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This case involves a 42 U.S.C. § 1983 action alleging a Fourth Amendment violation against an officer for seeking and obtaining a search warrant based on information provided by an informant who turned himself in to officers, admitted to committing multiple and unknown/unreported crimes, and whose information was partially corroborated. The officer took the additional step of seeking the advice of an assistant district attorney on whether probable cause existed to seek a search warrant. Officers executing the search warrant knocked and announced their presence, properly breached the residence, and—after the homeowner raised a weapon—shot the homeowner. No claims of failure to knock and announce, improper breach, or excessive force were included in the complaint.

A majority of the panel in the Eleventh Circuit determined that probable cause did not exist to seek the search warrant but reversed the district court's denial of summary judgment as to the other named defendants. The dissent, relying on precedent, found probable cause existed for the search and that summary judgment should have been granted to Petitioner thereby dismissing all claims. The questions presented are:

1. Whether probable cause or arguable probable cause exists to seek a search warrant where an officer relies upon an informant who turns himself in, admits commission of multiple including unreported/unsolved crimes, and whose information is partially corroborated;

2. Whether an officer retains qualified immunity when he takes the additional step of consulting with and relying upon the advice of an assistant district attorney that probable cause exists prior to seeking and securing a search warrant;

3. Whether the subject of a knock and announce search warrant raising a weapon at officers executing such a warrant breaks the causal connection between the allegedly flawed search warrant and damage claims including the death of a homeowner shot by officers who warned the subject homeowner to drop his weapon before firing.

LIST OF PROCEEDINGS

United States Court of Appeals
for the Eleventh Circuit

No. 18-10628

Teresa Hooks, Et Al., *Plaintiffs-Appellees,* v.
Christopher Brewer, Et Al., *Defendants-Appellants.*

Opinion Date: June 19, 2020

Rehearing Denial Date: September 1, 2020

United States District Court for the
Southern District of Georgia, Dublin Division

No. CV 316-023

Teresa Pope Hooks, Individually; and
Estate of David Hooks, by Teresa Pope Hooks,
Administratrix, *Plaintiffs,* v. Christopher Brewer;
Steve Vertin; and William "Bill" Harrell; *Defendants.*

Final Order Date: January 29, 2018

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PETITION FOR A WRIT OF CERTIORARI

Christopher Brewer petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit opinion affirming in part and reversing in part is available at 818 Fed.Appx. 923 and is produced in the Appendix at App.1a-16a. The United States District Court decision denying summary judgment to Christopher Brewer, et al. is not reported but is available at 2018 WL 10149641 and is produced in the Appendix at App.40a-104a.

JURISDICTION

The judgment of the Eleventh Circuit Court of Appeals was entered on June 19, 2020. (App.1a). A petition for rehearing was denied on September 1, 2020. (App.105a-106a). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. IV

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

42 U.S.C. § 1983

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

STATEMENT

A. Facts Giving Rise to This Case.[1]

In the late evening/early morning hours of September 22/23, 2014, Rodney Garrett ("Garrett") stole items including a Lincoln Aviator purportedly but not actually owned by the resident ("the Aviator") from the carport and the curtilage buildings of Teresa Hooks ("Teresa" or "Respondent") and David Hooks ("Hooks") residence in rural Dublin, Georgia. (App.41a; App.108a-109a). Around 2:00 p.m. on September 23, 2014, Hooks contacted the Laurens County Sheriff's Office ("LCSO") to report that multiple guns and money had been taken from his and his wife's personal vehicles at his residence and that his Aviator was missing. *Id.* Sgt. Robbie Toney ("Toney") and Deputy Brian Fountain investigated the reported theft. App.3a. Toney attempted to obtain fingerprints, but was unsuccessful. *Id.* Hooks indicated to Toney he thought former employees might be involved, but was not sure. *Id.* Toney attempted to follow up with Hooks. *Id.* Toney left Hooks a voicemail and went to Hooks' house the next day, but no one appeared to be at home. *Id.*

On September 24, 2014, Garrett's mother contacted Sgt. Ryan Brooks ("Brooks") indicating her husband was ill—she asked Brooks to come by. (App.3a). Brooks, who was not on duty but had a shift upcoming, had known the Garretts since he was a child, lived nearby and was a family friend. (App.29a; App.153a-154a).

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1 Because this matter arises out of a motion for summary judgment, facts are viewed in light most favorable to the non-movant. *See e.g. Plumhoff v. Rickard*, 134 S. Ct. 2012, 2017 (2014).

Brooks learned, upon arrival, that the real reason he was called was because Garrett wanted to turn himself in. (App.3a; App.111a). Garrett was subject to an arrest warrant for stealing a truck and had been "hiding out." (App.3a; App.42a-43a). However, Garrett indicated to Brooks that Garrett had stolen another vehicle—the Aviator. *Id.* At the time, there were no suspects regarding the Aviator theft or other items reported stolen by Hooks. (App.150a-151a; App.179a-180a). Brooks called in the Aviator VIN and determined it had been reported stolen from the location Garrett indicated. (App.154a-155a). Garrett told Brooks that he had also stolen digital scales, money, a neoprene bag ("the Bag"), and two guns from Hooks' garage, property and vehicles. (App.3a-4a).

Brooks contacted Petitioner, the head of the LCSO narcotics unit, and reported to Petitioner that Garrett, during thefts from the Hooks property, had come upon the Bag (later determined by Garrett to contain methamphetamine), in the console of a truck under the Hooks property carport along with currency and weighing scales. (App.31a; App.145a-146a; App.173a-174a; App.188a-190a). Petitioner was told by Toney that there was such a truck reported as parked under Respondent's carport. (App.173a-174a; App.188a-190a). Garrett told Brooks that the large amount of methamphetamine he found in the Bag scared him and believed only a well-connected drug dealer would have so much methamphetamine. (App.4a; App.30a-31a). While at the Garrett house, Brooks requested and was granted permission to search the Garretts' house and property. (App.176a-177a). Brooks also asked Garrett about a four-wheeler which may have been stolen in

another theft. (App.156a-158a). Garrett led Brooks into the woods and showed Brooks a four wheeler. *Id.*

Brooks, as noted, contacted Petitioner. (App.155a-156a). Petitioner and Corporal Timothy Burris ("Burris") arrived and searched the Aviator finding two guns and a metal case/box containing methamphetamine. (App.4a). Garrett was taken to LCSO where he was questioned by Sgt. Lance Padgett ("Padgett"), Brooks, Petitioner, and Burris. *Id.* During questioning, Garrett admitted not only to stealing the Aviator, but also told the deputies he regularly bought methamphetamine from Chris Willis, that Willis had a lot of drugs in his house, that Garrett had smoked approximately a half-gram of methamphetamine from the bag found in the Aviator, and that Garrett had contemplated selling the remaining methamphetamine. (App.49a). In addition, Garrett admitted to other crimes including purchasing a chainsaw Garrett knew was stolen. (App.165a-166a). Padgett told Petitioner that the chainsaw was not previously known to be stolen. (App.165a-166a; App.177a). According to Garrett, due to the amount of the drugs in the bag, he was afraid for his safety and decided to turn himself in. (App.37a). During the questioning of Garrett, both Petitioner and Padgett attempted to "trip Garrett up" on his story—a police technique to determine reliability—but were unsuccessful. (App.162a-164a; App.174a-175a; App.191a).

Petitioner had been provided previous information linking Hooks to drugs, including methamphetamine. (App.28a-29a). In 2002, Robbie Miller ("Miller") had alleged Hooks was distributing methamphetamine, but could not provide any further information. (App.187a). In 2009, Jeffrey Frazier ("Frazier") claimed that he had been supplying approximately 100 grams

of methamphetamine to Hooks about once per month at the Hooks residence. (App.29a; App.180a-185a). Approximately one year prior to Garrett breaking into the vehicles and stealing the Aviator, Hooks' former employee Marquel May ("May") alleged to LCSO personnel that Hooks was distributing methamphetamine. (App.54a). Petitioner performed—at that time—an investigation into the allegations made by Frazier, but was unable to confirm the allegations. (App.4a-5a). During Petitioner's investigation of the information from Frazier and, to some extent, Miller, Petitioner drove to Respondent's residence in an attempt to make contact with Hooks; he and other narcotics investigators drove out to the area periodically looking to see if there was suspicious activity or to make a stop. (App.29a).

After interviewing Garrett, Petitioner took an additional step and contacted Assistant District Attorney Brandon Faircloth ("Faircloth") for consultation about probable cause for seeking a search warrant for the Hooks property. (App.149a). Faircloth was aware that the information provided by Frazier was something from the past and that the new information from Garrett was the primary basis for probable cause. (App.148a). Faircloth indicated that Petitioner had sufficient probable cause to apply for a search warrant. (App.31a). Faircloth specifically recommended Petitioner include everything, including reference to earlier information in the application. *Id.* Though he did not specifically review the warrant application, Sheriff Harrell also agreed Petitioner had probable cause based on the information Petitioner told Sheriff Harrell. (App.5a).

Petitioner—as an experienced narcotics officer—had concerns that Hooks would learn of Garrett's arrest, and/or that the sheriff's office had the meth/scales and that Hooks might hide or destroy evidence. (App.191a-193a). Accordingly, Petitioner quickly worked through the process to seek and secure a warrant based on available evidence. (App.31a). In the affidavit for the search warrant, Petitioner included that he was familiar with Hooks and his residence from a prior narcotics investigation and relayed information related to Garrett's unsolicited confession. (App.5a; App.118a-123a). Petitioner conferred with Deputy Burris while typing up the search warrant. (App.184a). Petitioner could not recall the specific questions he asked Burris. *Id.* While Petitioner was typing up the warrant, he could not recall the date of the Frazier interview. (App.180a-182a). Petitioner did not include any information from Miller or May because he could not recall the specifics of their tips. (App.183a; App. 185a-186a). The magistrate judge signed the warrant the same night. (App.5a).

Given the drugs involved and concerns about destruction of the evidence and corruption of information, LCSO officers and Brewer decided the search warrant once secured would be executed that evening. (App.192a-193a). Sheriff's Response Team ("SRT") was to secure the search warrant scene. (App.168a-170a). Once the warrant was granted by the judge, a pre-execution briefing was held. (App.5a). At the briefing, officers discussed that Hooks had multiple weapons and his outer buildings had been reported burglarized the day before. (App.5a; App.159a-160a). A uniformed deputy, Kasey Loyd ("Loyd"), known personally to the Hooks family, would be stationed at the carport door

in full uniform and all law enforcement officers had the word "Sheriff" displayed in more than one location on their uniforms. (App.57a; App.171a-172a). Loyd was to knock and announce multiple times. (App.171a-172a). It was specifically discussed officers would not be in a hurry at the scene, would take their time with the knock and announce, and would allow the resident(s) time to respond. (App.160a).

The warrant was executed shortly after the judge signed the warrant. (App.5a-6a). Teresa, who had hearing deficits, heard pounding and yelling at the back door and saw a line of cars from her upstairs window. (App.196a; App.198a-200a). Teresa ran downstairs to wake Hooks who came out naked holding a shotgun. (App.2a; App.6a; App.203a). Teresa acknowledged that she and Hooks were visible to someone outside of the back door (where Loyd was stationed) and recalled seeing forms outside that door. (App.200a-201a).

After knocking/announcing at least two times on the back door, Loyd saw the light flip on in the foyer; he then saw Teresa then Hooks through the door. (App.136a-141a). The two were moving in Loyd's direction and he thought they were coming to the door. *Id.* Loyd stated, "they were looking at me. I was looking at them. I mean, I could see them clearly, you know, in the foyer and I really, I thought they were coming." (App.139a-140a). Instead of coming to the door, Hooks "dipped off to the last room on the right." *Id.*

Because of this and because he did not want occupants to barricade themselves into a room, arm themselves, or destroy evidence, Loyd and the SRT decided to breach. (App.135a; App.140a-141a). Loyd

moved out of the way, the door was breached, and the entry team started filing in what was the kitchen area; as each officer crossed the threshold they were yelling "Sheriff's office with a search warrant." (App.141a-142a; App.161a; App.210a-211a). Hooks had a shotgun at his side when he entered the living room area off of the hallway. (App.127a). Hooks, with Teresa following, then went through a side doorway to the dining room area. (App.204a-206a). However, because Hooks was moving faster, Teresa lost sight of him; before she made it to the dining room, she ran back toward the bedroom and then shut the door. (App.206a; App.208a-209a). Hooks continued into the kitchen naked with the shotgun and pointed it at the officers, looked at Deputy Buck Forte ("Forte"), raised/shouldered his gun, and pointed it at Forte. (App.131a-132a). Forte said "Drop the gun" up to three times but Hooks continued toward Forte with the now shouldered, pointed gun. (App.132a). Deputy Rusty Stewart also yelled "Gun. Gun. Gun." (App.131a). The deputies then fired their weapons at Hooks. (App.133a). Hooks was shot and later succumbed to his injuries. (App.6a).

B. Proceedings in the District Court.

Respondent filed a complaint alleging Petitioner improperly obtained and executed a search warrant in violation of the Fourth Amendment. (App.68a). Petitioner filed a motion for summary judgment as to all claims and on January 29, 2018, the District Court denied Petitioner's motion for summary judgment. (App.40a; App.104a). Petitioner appealed to the Eleventh Circuit. (App.1a-2a).

C. Proceedings in the Appellate Court.

On June 19, 2020, the Eleventh Circuit dismissed the majority of Respondent's claims but affirmed the District Court's denial of summary judgment as to all claims against Petitioner. (App.1a-16a). The Eleventh Circuit found a question of material fact as to whether Petitioner had even arguable probable cause for a search warrant. (App.9a-14a). The Eleventh Circuit majority found an issue of material fact as to whether Petitioner intentionally or recklessly made misstatements regarding Garrett admitting to committing "other crimes" and Frazier claiming Hooks distributed drug and intentionally omitted that the Frazier investigation was five years old and none of his claims had been corroborated. *Id.* In dissent, Honorable Britt C. Grant wrote that the majority should have dismissed all claims including those against Petitioner. (App.28a-39a).

Petitioner timely filed a petition for rehearing en banc, which was denied on September 1, 2020. (App. 105a-106a).

REASONS FOR GRANTING THE PETITION

A writ may be granted if it is shown 1) that a U.S. Court of Appeals decision is in conflict with another U.S. Court of Appeals decision on the same matter; 2) a state's supreme court has ruled on a federal question in a way that conflicts either with another state's supreme court or with a U.S. Court of Appeals; or 3) a U.S. Court of Appeals has decided an important question of federal law that has not been, but should be, settled by the U.S. Supreme Court. Supreme Court. R. 10.

In this matter, the decision of the two member majority of the Eleventh Circuit creates a conflict with long standing precedent of this Court and other U.S. Courts of Appeal regarding the level of investigation which is required by an officer before obtaining a search warrant involving drug activities, where an informant admits to committing multiple including unreported and unsolved crimes and where an officer has corroborated parts of the informant's allegations. In addition, a split of opinions exists as to whether a causal connection can be made between obtaining a purportedly improper search warrant and a homeowner's death where the homeowner undisputedly raises a firearm at the officers executing the search warrant. Further, this case presents an important question of law that has not yet been decided by the U.S. Supreme Court, including whether an officer, who makes a good faith effort to determine probable cause by reaching out to an assistant district attorney, has at least arguable probable cause based on the

reliance of the assistant district attorney's agreement that probable cause exists. Finally, the decision of the Eleventh Circuit is contrary to precedent of this Court, specifically this Court's findings in *Illinois v. Gates*, 462 U.S. 213, 272, 103 S. Ct. 2317, 2350, 76 L. Ed. 2d 527 (1983), *U.S. v. Harris*, 403 U.S. 573, 582, 91 S.Ct. 2075, 29 L.Ed.2d 723 (1971), and *Franks v. Delaware*, 438 U.S. 154, 164-65, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) regarding an officer's determination of whether probable cause exists to seek a search warrant.

I. OTHER CIRCUITS ARE IN CONFLICT OVER WHETHER AN OFFICER MAY RELY ON PARTIALLY CORROBORATED INFORMATION FROM AN INFORMANT TO ESTABLISH PROBABLE CAUSE.

The Eleventh Circuit's decision is in conflict with the decisions of other Circuits regarding the determination of the reliability of an informant. Under controlling precedent from this Court, a trial court is to determine whether an informant's tip establishes probable cause under the totality of the circumstances. *Gates*, 462 U.S. at 272. The decision of the Eleventh Circuit in the case *sub judice* would require an officer to corroborate every aspect of an informant's information to determine whether the informant was reliable before seeking/securing a search warrant. No clearly established precedent has placed such a burden upon an officer. "Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct." *Reichle v. Howards*, 566 U.S. 658, 664, 132 S. Ct. 2088, 2093, 182 L. Ed. 2d 985 (2012). "To be clearly established, a right must be sufficiently clear that every reasonable official would [have understood] that what

he is doing violates that right." *Id.* (internal quotations and citations omitted).

Some circuits have held that information provided by a non-confidential (known) informant, who admits to committing criminal acts is sufficient to establish probable cause. *U.S. v. Kinison*, 710 F.3d 678 (6th Cir. 2013) ("a known informant's statement can support probable cause even though the affidavit fails to provide any additional basis for the known informant's credibility and the informant has never provided information to the police in the past"); *U.S. v. Buckley*, 4 F.3d 552, 556 (7th Cir. 1993) (confidential informant who admitted to regularly purchasing cocaine from defendants could be deemed reliable by court even though officer failed to give details about corroboration of other information). Other circuits hold that probable cause can be established through a known informant making a statement against penal interest and some corroboration by officers. *See e.g. U.S. v. Augustine*, 742 F.3d 1258 (10th Cir. 2014) (probable cause exists where an informants "statements were against his penal interest and . . . the police were able to corroborate some of the information he provided"); *U.S. v. Allen*, 297 F.3d 790 (8th Cir. 2002).

Here, the Eleventh Circuit majority found even arguable probable cause could not be established despite Garrett's admission to committing multiple crimes (theft of the Hooks' property, repeated drug use, purchasing drugs from Mr. Willis) and Petitioner's corroboration of some of the facts described by Garrett (the VIN matched the vehicle Hooks reported stolen, the description of Hooks property matched Petitioner's knowledge of the property—location and layout of the house, carport, and shed). (App.31a; App.

43a; App.155a-156a). Such a finding is in conflict with the decisions of other circuits. *See e.g. U.S. v. Brennan*, 538 F.2d 711, 720 (5th Cir. 1976) ("an accumulation of innocent detail conforming to the original tip has been held to have corroborative value").

In addition, the Eleventh Circuit failed to review the totality of the circumstances. This Court has determined that a magistrate may rely upon "a law enforcement officer's knowledge of a suspect's reputation" when making a decision as to whether probable cause exists. *Harris*, 403 U.S. at 582. In this matter, the information provided by Garrett related to the methamphetamine was further corroborated by Petitioner's knowledge of several previous allegations against Hooks regarding possession of methamphetamine, including the tip from Frazier. (App.31a; App. 182a; App.185a-186a). Other circuits have found that a prior tip could be used to support probable cause. *See e.g. Emery v. Holmes*, 824 F.2d 143, 149 (1st Cir. 1987) ("Where recent information corroborates otherwise stale information, probable cause may be found"); *U.S. v. Rubio*, 535 Fed. Appx. 251, 255 (4th Cir. 2013) (use of information from three years prior was not improper to include in a search warrant application when viewed under the totality of the circumstances); *U.S. v. Spikes*, 158 F.3d 913, 924 (6th Cir. 1998) (use of information from four years prior regarding manufacture of crack cocaine could be used to support probable cause where new information updated and corroborated prior information). The Eleventh Circuit's holding would require a magistrate to completely disregard an officer's knowledge of the reputation of an individual in the community, which is in conflict with the decisions of other circuits.

The Eleventh Circuit's holding fails to utilize the totality of the circumstances standard and instead places a burden upon officers to corroborate every possible fact related by an informant who has admitted to committing multiple crimes. This burden is in conflict with the findings of not only other circuits but of this Court. *Harris*, 403 U.S. at 583-584 ("[a]dmissions of crime, like admissions against proprietary interests, carry their own indicia of credibility—sufficient at least to support a finding of probable cause to search").

In addition, the Eleventh Circuit's holding implies that the warrant did not "establish a connection between the defendant and the residence to be searched and a link between the residence and any criminal activity." (App.8a) (*citing U.S. v. Martin*, 297 F.3d 1308, 1314 (11th Cir. 2002)). This conclusion is in direct conflict with the Sixth and Ninth Circuits. In the Sixth Circuit, "a magistrate issuing a search warrant may infer that drug traffickers use their homes to store drugs and otherwise further their drug trafficking. This reflects the reality that, in the case of drug dealers, evidence is likely to be found where the dealers live." *U.S. v. Coleman*, 923 F.3d 450, 457 (6th Cir. 2019), cert. denied, 140 S. Ct. 580, 205 L. Ed. 2d 360 (2019) (internal citations and quotations omitted). Similarly, the Ninth Circuit has found "in weighing the evidence supporting a request for a search warrant, a magistrate may rely on the conclusions of experienced law enforcement officers regarding where evidence of a crime is likely to be found" *U.S. v. Ayers*, 924 F.2d 1468, 1479 (9th Cir. 1991) (finding officer's averment that in "his experience that drug traffickers have contraband and other evidence of their crime in their residences" was a sufficient nexus).

Because Hooks was alleged to have been trafficking drugs, the magistrate was permitted to infer that the vehicle located in his carport within the curtilage of the house from where the methamphetamine stolen by Garrett was alleged to have been found, could establish a connection to Hooks' residence and the sale of drugs.

II. THERE IS A SPLIT AMONG CIRCUITS REGARDING WHETHER A HOMEOWNER RAISING A WEAPON DURING THE EXECUTION OF A SEARCH WARRANT WOULD BREAK THE CAUSAL CONNECTION TO INJURY CLAIMS THAT FOLLOW.

This case is also of exceptional importance, because it involves a significant break in the causal connection and creates a conflict among circuits. The Eleventh Circuit refused to issue a ruling on proximate cause, despite the indisputable evidence before it. (App.16a) Under Eleventh Circuit precedent, "[a] § 1983 claim requires proof of an affirmative causal connection between the defendant's acts or omissions and the alleged constitutional deprivation." *Troupe v. Sarasota County, Fla.*, 419 F.3d 1160, 1165 (11th Cir. 2005). Further, as this Court has previously determined, "[p]roper analysis of [the] proximate cause question require[s] consideration of the 'foreseeability or the scope of the risk created by the predicate conduct,' and require[s] the court to conclude that there [is] 'some direct relation between the injury asserted and the injurious conduct alleged.'" *County of Los Angeles, Calif. v. Mendez,* 137 S.Ct. 1539, 1548, 198 L. Ed. 2d 52 (2017) (*quoting Paroline v. U.S.,* 134 S.Ct. 1710, 1719 (2014)).

Even if Petitioner lacked probable cause to secure the search warrant, which Petitioner denies, a distinct lack of proximate cause exists between the application for the search warrant and the damage claims including the death of Hooks. The SRT, who executed the warrant, took multiple precautions to prevent any violence, including the placement of a uniformed officer, known to the residents, to knock at the door. (App.5a; App.57a; App.159a-160a; App.168a-172a). Precedent in other circuits would have found Hooks' act of raising a weapon at officers broke the causal connection between the allegedly improper search warrant and Hooks' death. *Kane v. Lewis*, 604 Fed. Appx. 229 (4th Cir. 2015) (no reasonable jury could have found officer's knock-and-announce violation proximately caused death where plaintiff came at officers with a knife); *James v. Chavez*, 511 Fed.Appx. 742, 750 (10th Cir. 2013) (concluding when a suspect was killed while attempting to stab an officer, it was suspect's "unlawful and deliberate attack on the SWAT team [that] constitute[d] a superseding cause of his death"); *Cameron v. City of Pontiac*, 813 F.2d 782, 786 (6th Cir. 1987) ("[e]ven if [plaintiff] had been seized by unreasonable means, his estate could not recover unless the constitutional violation was a proximate cause of his death."); *Lamont v. New Jersey*, 637 F.3d 177, 186 (3rd Cir. 2011) (troopers' decision to pursue plaintiff into woods did not proximately cause his death, rather, plaintiff's noncompliant, threatening conduct in the woods was a superseding cause that served to break the chain of causation between the entry and the shooting); *Hundley v. District of Columbia*, 494 F.3d 1097, 1104-1105 (D.C. Cir. 2007) (court rejected theory that, if the officer had acted unreasonably in initiating the encounter, the officer was necessarily liable for

the shooting, regardless of whether it was done in self-defense, since the suspect's threatening movement was a superseding cause that broke the causal chain between the initial stop and the shooting). The Eleventh Circuit's finding has caused a split among circuits in the determination of a causal connection.

III. THE QUESTION PRESENTED IS OF EXCEPTIONAL IMPORTANCE.

The decision of the Eleventh Circuit has placed an impossible burden upon officers to determine when probable cause may be established and represents a significant erosion of qualified immunity. Not only does the Eleventh Circuit's decision fail to take into account that Garrett confessed to committing multiple crimes and Petitioner was able to corroborate some of Garrett's statements, but it also fails to account for Petitioner's reliance upon the advice of an assistant district attorney prior to seeking a search warrant. Law enforcement are under heightened societal scrutiny, but the court of public opinion is of no moment to the legal analysis trial courts are bound by precedent to apply.

This Court has found that where the alleged Fourth Amendment violation involves a search or seizure pursuant to a warrant, the fact that a neutral magistrate has issued a warrant is the clearest indication that the officers acted in an objectively reasonable manner. *Messerschmidt v. Millender*, 565 U.S. 535, 546 (2012). Further, there is an "extremely high" threshold for denying an officer immunity based on a warrant affidavit "because '[i]t is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to

issue a warrant comporting in form with the requirements of the Fourth Amendment.'" *U.S. v. Leon*, 468 U.S. 897, 921 (1984). "Even law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991) (*quoting Anderson v. Creighton*, 483 U.S. 635, 641, 107 S.Ct. 3034, 3040, 97 L.Ed.2d 523 (1987)). "In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Brinegar v. U.S.*, 338 U.S. 160, 175, 69 S. Ct. 1302, 1310, 93 L. Ed. 1879 (1949)

Prior to submitting a search warrant to a magistrate, Petitioner sought the advice of an assistant district attorney, who agreed that Petitioner had probable cause to seek a search warrant. (App.31a). In finding an issue of fact as to whether Petitioner had probable cause for the search warrant, despite the acknowledgement of such by an assistant district attorney, the Eleventh Circuit's decision would require officers to be more knowledgeable than lawyers in making a probable cause determination. This would cause a significant erosion to qualified immunity and leave officers within the Eleventh Circuit guessing as to what may or may not constitute probable cause.

IV. THE COURT OF APPEALS' DECISION IS INCORRECT AND CONFLICTS WITH THIS COURT'S PRECENT REGARDING THE DETERMINATION OF WHETHER PROBABLE CAUSE EXISTS.

In determining whether probable cause exists, this Court has recognized that officers are non-lawyers,

often working to hastily gather information, who must regularly rely on information that may later turn out to be less than totally reliable. *See Gates*, 462 U.S. at 272, *Harris*, 403 U.S. at 582, and *Franks*, 438 U.S. at 164. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (*quoting Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982)). Qualified immunity "[w]hen properly applied, protects all but the plainly incompetent or those who knowingly violate the law." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743, 131 S.Ct. 2074, 179 L.Ed.2d 1149 (2011). Immunity will only be lost, when the warrant is "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Messerschmidt,* 565 U.S. at 547. Furthermore, the goal of a search warrant varies from the goal of an arrest warrant. As recognized by this Court,

> while an arrest warrant and a search warrant both serve to subject the probable-cause determination of the police to judicial review, the interests protected by the two warrants differ. An arrest warrant is issued by a magistrate upon a showing that probable cause exists to believe that the subject of the warrant has committed an offense and thus the warrant primarily serves to protect an individual from an unreasonable seizure. A search warrant, in contrast is issued upon a showing of probable cause to believe that the legitimate object of a search is located in

> a particular place, and therefore safeguards an individual's interest in the privacy of his home and possessions against the unjustified intrusion of the police.

Steagald v. U.S., 451 U.S. 204, 212-13, 101 S. Ct. 1642, 1648, 68 L. Ed. 2d 38 (1981). Based on the information provided by Garrett, Petitioner had probable cause to believe that drugs may be found in the Respondent's residence and acted properly upon that information.

As noted above, informant Garrett, turned himself in to Brooks claiming he was scared because of the quantity of drugs he had found after stealing a vehicle and other items from the Respondent's property. (App.3a-4a; App.30a). Garrett cooperated with officers, allowing them to search his house and property and leading officers to any items the officers thought may have been stolen. (App.49a; App.156a-158a; App.165a-166a; App.176a-177a). Despite multiple attempts to trip Garrett up, Garrett's story remained the same. (App.162a-164a; App.174a-175a; App.191a). Even so, the Eleventh Circuit denied Petitioner qualified immunity and found a question of fact as to whether Petitioner lacked probable cause to obtain a search warrant noting possible misrepresentations and omissions related to information about Garrett and Frazier. (App.9a-11a). Specifically, the Eleventh Circuit pointed to Petitioner's statement regarding Frazier's tip from five years earlier about Hooks redistributing methamphetamine and whether the information provided by Garrett actually led to the recovery of stolen property previously unknown to officers. *Id.*

As noted by the dissent, even without the alleged misrepresentations and omissions, Petitioner established at least arguable probable cause through infor-

mation provided by Garrett, an informant who confessed to multiple crimes and whose information was at least partially corroborated. (App.32a-34a). Further as explained in the dissent, though Frazier did not use the word "redistribution" he mentioned Hooks' methamphetamine business and that he was supplying Hooks with over 100 grams of methamphetamine per month. *Id.* In addition, with regard to the age of the Frazier information, the Eleventh Circuit has previously found, stale information "is not fatal where the government's affidavit updates, substantiates, or corroborates the stale material." *U.S. v. Jiminez*, 224 F.3d 1243, 1249 (11th Cir. 2000); *U.S. v. Butler*, 102 F.3d 1191, 1198 (11th Cir. 1997) (information not stale where officer relied on primary informant, but also inserted an unsubstantiated tip from an unindicted co-conspirator). Even if the Frazier information would have been stale and not sufficiently corroborated in the past, it was corroborated by the information from Garrett. Petitioner took the extra, unusual step of consulting with an assistant district attorney, who agreed enough probable cause existed to seek a search warrant. (App.31a; App.149a). The issuing court agreed. (App.115a-116a).

With regard to the recovery of stolen property previously unknown to officers, Padgett testified he told Petitioner that the chainsaw recovered from Garrett's property was previously unknown to officers. (App.165a-166a; App.177a). Therefore, even if the information was incorrect, at the time Petitioner drafted the affidavit, he reasonably believed that Garrett had given information which led to the recovery of stolen property which was previously unknown to officers.

As this Court has noted, "affidavits for search warrants . . . are normally drafted by nonlawyers in the midst and haste of a criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area." *Harris,* 403 U.S. at 577.

> When the Fourth Amendment demands a factual showing sufficient to comprise probable cause, the obvious assumption is that there will be a truthful showing. This does not mean 'truthful' in the sense that every fact recited in the warrant affidavit is necessarily correct, for probable cause may be founded upon hearsay and upon information received from informants, as well as upon information within the affiant's own knowledge that sometimes must be garnered hastily. But surely it is to be "truthful" in the sense that the information put forth is believed or appropriately accepted by the affiant as true.

Franks, 438 U.S. at 164-65. To show a Fourth Amendment violation "'[t]here must be allegations of deliberate falsehood or of reckless disregard for the truth,' and '[a]llegations of negligence or innocent mistake are insufficient.'" *Herring v. U.S.*, 555 U.S. 135, 145 (2009) (*quoting Franks*, 438 U.S. at 171). At most, the alleged misstatements and omissions were due to negligence, not a deliberate disregard for the truth. Therefore, the Eleventh Circuit's holding finding Petitioner is not entitled to qualified immunity should be reversed as contrary to the binding precedent of this Court.

V. THE DISTRICT COURT'S PROXIMATE CAUSE DETERMINATION CONFLICTS WITH THIS COURT'S OPINION IN *CITY OF LOS ANGELES, CALIFORNIA V. MENDEZ*.

As noted above, Respondent's claim of wrongful death based on the alleged improper search warrant should have been dismissed due to a lack of proximate cause. *Mendez* 137 S. Ct. at 1548. In *Mendez* this Court found that there must be "some direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 1549 (quoting *Paroline v. U.S.*, 134 S.Ct. 1710, 1719 (2014). While this case is factually distinct from *Mendez* in that the causal connection is even more tenuous between the alleged unconstitutional conduct and Hooks' death. In this matter (unlike in *Mendez*) Respondent has not claimed excessive force of the officers entering the residence, claim improper entry into the residence by the executing officers, or claim that the officers entered unannounced.

Instead, Respondent alleges Hooks' death was a reasonably foreseeable result of the allegedly improper search warrant. At the meeting prior to the execution of the search warrant, the officers discussed specific steps to prevent any such result. (App.5a-6a; App.159a-160a; App.168a-172a). Furthermore, Hooks raising his weapon at officers broke any causal connection that may have existed. (App.131a-132a). "The causal relation does not exist when the continuum between Defendant's action and the ultimate harm is occupied by the conduct of deliberative and autonomous decision-makers." *Dixon v. Burke County*, 303 F.3d 1271, 1275 (11th Cir. 2002); *see also*, *Bodine v. Warwick*, 72 F.3d 393, 400 (3rd Cir. 1995). By permitting Res-

pondent's claim that Hooks' death may be linked to the alleged improper search warrant, which was indisputably properly executed, the Eleventh Circuit has effectively permitted any damages no matter how remote to flow from an alleged 42 U.S.C. § 1983 claim. Such is contradictory to this Court's findings in *Mendez* that there must be "some direct relation between the injury asserted and the injurious conduct alleged." *Mendez*, 137 S. Ct. at 1549.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. The Court should consider summary reversal of the decision of the Eleventh Circuit Court of Appeals to deny Petitioner qualified immunity.

Respectfully submitted,

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