

No. _____

IN THE

Supreme Court of the United States

William J. Cost and William J. Cost, Jr.,

Petitioners

-v-

Borough of Dickson City, Michael Ranakoski
and Michael McMorrow

Respondents

On Petition For Writ of Certiorari
To the United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred when it held exigent circumstances existed based solely on a 911 call about a domestic disturbance from a disgruntled neighbor that resulted in Respondents kicking down the door to the family home and entering without a warrant when no noise was heard at the doorstep and there were no occupants who needed emergency assistance inside?

PARTIES TO THE PROCEEDING

Petitioners are William J. Cost and William J. Cost, Jr.. The respondents to the proceeding whose judgment is sought to be reviewed are the Borough of Dickson City, Michael Ranakoski and Michael McMorrow.

STATEMENT OF RELATED PROCEEDINGS

- *Cost, et al. v. Borough of Dickson City, et al.*, 18-cv-1494; 18-cv-1510, U.S. District Court for the Middle District of Pennsylvania. Judgment entered October 15, 2020.
- *Cost, et al. v. Borough of Dickson City, et al.*, 20-3120, U.S. Court of Appeals for the Third Circuit. Judgement entered June 3, 2021.
- *Cost, et al. v. Borough of Dickson City, et al.*, 20-3120, U.S. Court of Appeals for the Third Circuit. Order entered July 6, 2021.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully request a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The decision of the court of appeals is reported at 2021 U.S. App. LEXIS 16570 and is reprinted in the Appendix to the Petition (App. A, at 1-12). The court of appeals denied a petition for rehearing on July 6, 2021. (App. C, at 1-2). The district court's opinion granting summary judgment to respondents is reported at 2020 U.S. Dist. LEXIS 190847 and reprinted at App. B, at 1-31.

JURISDICTION

The court of appeals issued its decision on June 3, 2021. (App. A, at 1-12). The court of appeals denied a petition for rehearing on July 6, 2021. (App. C, at 1-2). This Court has jurisdiction under 28 U.S.C § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

“The Fourth Amendment provides: [1] “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." *U.S. Const. amend IV.*

INTRODUCTION

Faced with a new emerging assault on constitutional rights, courts must ensure constitutional rights are protected, and the most sacred one, home ownership, must not fall to overzealous law enforcement. There is no more important right than one's sanctity in his home. The one place where the government cannot enter without a warrant unless exigent circumstances exist. The government cannot ruin a man's castle based on a 911 call from a disgruntled neighbor.

STATEMENT OF THE CASE

Petitioners, William J. Cost, Sr. and Jr., brought this action under 42 U.S.C.S. § 1983 for constitutional claims of unlawful search and seizure, excessive force, assault and battery, false arrest/false imprisonment, malicious prosecution and inadequate training/supervision. On September 3, 2016, Respondent Ranakoski kicked down the door to the family home of Petitioners after arriving on scene and hearing nothing coming from the home once on the doorsteps.

The disgruntled neighbor across the street called 911 and the 911 incident report noted the call as “male female verbal dome[stic]”. (Dkt. No. 15 at A233). There were no reports of anyone reporting or saying “help” when the officers arrived on the scene. (Dkt. No. 14 at A85).

The Respondents did not interview the 911 caller or take any statements from the disgruntled neighbors on the day in question. (Dkt. No. 14 at A86). They relied entirely on the 911 call information and their own observations once arriving at the family home. The facts within the affidavit submitted by the disgruntled neighbors were not known to the officers at the time of entering the home without a warrant. (Dkt. No. 14 at A86).

Once inside the residence, the Respondents found the Petitioners sitting around the dining room table. None of the occupants of the home needed any type of emergency assistance. (Dkt. No. 14 at A85). The Respondents ordered the Petitioners to their knees and handcuffed them. Petitioner William Cost, Sr., was arrested and taken in the police cruiser in handcuffs to the processing center in Lackawanna County by Respondent Ranakoski and charged with disorderly conduct, which was ultimately dismissed.

Respondents did not interview any witnesses, including the 911 disgruntled neighbor or her husband on the day in question. (Dkt. No. 14 at A86). Respondents did not have any information about any prior police calls to the home when Officer Ranakoski kicked down the door to the family home. (Dkt. No. at A71).

The court of appeals decision affirmed the district court's granting summary judgment to Respondents based on the conclusion that exigent circumstances existed allowing Respondents to break down the family door, handcuff and arrest the Petitioners in their own home without a warrant. The court of appeals decision is in direct conflict with the decisions of the Tenth and Eleventh Circuits that do not allow law enforcement to enter a home without a warrant based solely on a 911 call for a domestic disturbance.

This petition provides the Court the perfect vehicle to resolve the conflict between the circuits related to when law enforcement can enter a home without a warrant based on exigent circumstances of providing emergency aid and responding to a domestic call.

The petition should be granted.

REASONS FOR ALLOWANCE OF THE WRIT

The decision below shows a circuit conflict over the question presented that warrants this Court's review. Unlike the Tenth and Eleventh Circuits, the Third Circuit allows law enforcement to enter a home without a warrant based on a 911 domestic call when there are no indicia of an urgent, ongoing emergency. The Eleventh and Ten Circuit require some evidence of either an emergency or violence. "... [G]ranting unfettered permission to officers to enter homes, based only upon a general assumption domestic calls are *always* dangerous, would violate the Fourth Amendment." United States v. Davis, 290 F.3d 1239, 1244 (10th Cir. 2002)(emphasis in original).

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U. S. 1, 6, 133 S. Ct. 1409, 185 L. Ed. 2d 495 (2013). At the Amendment's "very core," we have said, "stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion." ... The Amendment thus "draw[s] a firm line at the entrance to the house." Lange v. California, 141 S. Ct. 2011, 2018 (2021)(cleaned up). "We have thus recognized a few

permissible invasions of the home and its curtilage.” Caniglia v. Strom, 141 S. Ct. 1596, 1599 (2021).

The decision below is incorrect since law enforcement cannot enter a home without permission when there is no evidence of imminent harm based on a call from 911 of a domestic disturbance from a disgruntled neighbor. This Court has “... repeatedly ‘declined to expand the scope of . . . exceptions to the warrant requirement to permit warrantless entry into the home.’” Caniglia, 141 S. Ct. at 1600.

I. THERE IS A CIRCUIT CONFLICT OVER THE QUESTION PRESENTED

The Third Circuit held the 911 domestic call presented sufficient evidence of exigent circumstances to allow the officers to kick a door open to gain access to the home even though there was no noise coming from the house at the time Respondents were at the door. (App. A, at 8-9). The Third Circuit reasoned that when the officers knocked on the home doors and no one responded in ten to fifteen minutes, they “remained concerned that ‘there was somebody in that home that needed aid.’” (App. A, at 9).

Erroneously, the Third Circuit believed the officers were aware of prior calls to the home; however, neither of the officers testified to the same. (Dkt. No. 14 at A71). After kicking down the door, no one in the

home needed assistance or emergency care. (Dkt. No. 14 at A85). The Petitioners were sitting around the dining room table. (Dkt. No. 14 at A114). Nothing in the record shows there was a chaotic scene or evidence of violence allowing Respondents to enter the home without a warrant.

In contrast the Eleventh Circuit requires much more before law enforcement can enter a home without a warrant in reliance on giving emergency-aid. Specifically, in the Timmann case, the Eleventh Circuit noted, "... these circumstances have in common the indicia of an urgent, ongoing emergency, in which officers have received emergency reports of an ongoing disturbance, arrived to find a chaotic scene, and observed violent behavior, or at least evidence of violent behavior." United States v. Timmann, 741 F.3d 1170, 1179 (11th Cir. 2013); See also, Walters v. Freeman, 572 Fed. Appx. 723 (11th Cir. 2014)(finding no indicia of an emergency that required a warrantless entry).

Likewise, the Tenth Circuit requires more than a 911 domestic call to allow law enforcement to enter a home without a warrant. "A report of a domestic argument—standing alone—does not demonstrate exigent circumstances *per se*." Storey v. Taylor, 696 F.3d 987, 994 (10th Cir. 2012). In that case, the Tenth Circuit noted that "[a]bsent additional facts

indicating a greater possibility of violence, a loud argument between spouses does not suffice to justify a warrantless seizure within the home.” Id. at 997 (emphasis added).

Given this Court’s guidance in Lange and Caniglia, the Circuit conflict should be resolved in favor of the decisions rendered by the Tenth and Eleventh Circuit since as this Court recognized the home is most important property right provided by the Fourth Amendment. “Or again: “Freedom” in one’s own “dwelling is the archetype of the privacy protection secured by the Fourth Amendment”; conversely, “physical entry of the home is the chief evil against which [it] is directed.” ... The Amendment thus “draw[s] a firm line at the entrance to the house.” Lange v. California, 141 S. Ct. 2011, 2018 (2021)(cleaned up).

II. THE DECISION BELOW IS INCORRECT

This Court’s review is also warranted because the decision below is wrong. Petitioners presented a case that should have warranted summary judgment in their favor since the sanity of the home demanded that a police officer not kick down the door to a family home when absolutely no noise was heard when the officers arrived at the doorstep

of the home even though Respondents had been dispatched to the home based on a 911 domestic disturbance.

To allow police officers to kick down a door to a family home when there is no evidence of a chaotic scene or injury is wrong and this Court should teach the lower courts to hold law enforcement accountable for illegally entering a home and causing damage. “The ‘physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” Davis, 290 F.3d at 1242.

Alternatively, at the very least, Petitioners raised an issue of material fact about whether exigent circumstances existed to justify Respondents kicking down the door to the family home since the wife-mother denied stating “stop, stop” and the Respondents admitted that the voice was from a female and not the children. (Dkt. No. 14 at A96). The only female in the home was the wife-mother, and she denied that she ever yelled “stop, stop” that Respondents claim occurred. (Dkt. No. 15 at A170). Consequently, if hearing “stop, stop” is sufficient to break down the door to a family home, there is a disputed issue of material fact that provides Petitioners with their day in court.

“The existence of exigent circumstances is a mixed question of law and fact.” Davis, 290 F.3d at 1241. As this Court has held, “[b]ut that evidence at most creates a genuine issue of material fact on the critical question of the credibility of petitioners' justifications for their decision: On that issue, it simply cannot be said that there is no genuine issue as to any material fact.” Bd. of Educ. v. Pico, 457 U.S. 853, 875 (1982).

CONCLUSION

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

Respectfully submitted,

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APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3120

WILLIAM J. COST; WILLIAM J. COST, JR.,
Appellants

v.

BOROUGH OF DICKSON CITY; MICHAEL RANAKOSKI; MICHAEL
MCMORROW

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Nos. 3-18-cv-01494, 3-18-cv-01510)
District Judge: Honorable Malachy E. Mannion

Submitted under Third Circuit L.A.R. 34.1(a)
May 27, 2021

Before: GREENAWAY, JR., SHWARTZ, Circuit Judges, and ROBRENO, District
Judge.^{*}

(Filed: June 3, 2021)

OPINION**

^{*} The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

^{**} This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

SHWARTZ, Circuit Judge.

Plaintiffs William Cost, Sr. and William Cost, Jr. brought claims under 42 U.S.C. § 1983 and Pennsylvania state law against Defendants Officer Michael Ranakoski, Officer Michael McMorrow, and the Borough of Dickson City arising from the forced entry into Plaintiffs' home following a neighbor's 911 call and Cost, Sr.'s subsequent arrest for disorderly conduct. Because exigent circumstances justified the officers' entry, probable cause supported Cost, Sr.'s arrest, and reasonable suspicion supported Cost, Jr.'s brief detention, we will affirm the District Court's order granting summary judgment for Defendants.

I

A

On the evening of September 3, 2016, Renee Giedieviells, who lived across the street from Plaintiffs, heard yelling from Plaintiffs' home. After hearing a woman yell "Help!", Ms. Giedieviells called 911 to report the situation and said that she believed children were inside.¹ App. 357. The Dickson City Police Department dispatched Ranakoski and McMorrow to Plaintiffs' home. When the officers arrived at the home, they alleged that they could hear yelling, including a woman screaming "stop" several times.² App. 201. The home became quiet when the officers approached the front door.

¹ Michael Giedieviells provided an affidavit stating that he also heard a woman yelling "Help!" and "Stop it!" after his wife called 911. App. 368.

² The District Court determined that it was undisputed that the Officers heard a female voice scream "stop" when they arrived at the house. App. 28. In doing so, the District Court noted that Cost, Sr.'s wife's affidavit, in which she stated that she did not yell "stop" or "help" on that day, did not refute the Officers' testimony because the

The officers knocked and announced themselves at the front and side doors several times over the course of the next ten to fifteen minutes. Receiving no response, McMorrow contacted Police Chief Michael Resetar and obtained permission to force entry into Plaintiffs' home. The officers entered and found Plaintiffs at a table close to the door.

The officers handcuffed Plaintiffs and Ranakoski swept the home to check for any possible threats. Ranakoski found Cost, Sr.'s wife, Heather Rought, upstairs with two children and brought them downstairs. Rought told McMorrow that there was a loud argument between Cost, Sr. and their daughter regarding her cell phone.

Cost, Jr. provided his identification to Ranakoski, who then uncuffed him. Cost, Sr. refused to provide his name, so Ranakoski brought him to the Lackawanna County Processing Center for identification and issued him a citation for disorderly conduct pursuant to 18 Pa. Cons. Stat. § 5503(a)(4). The citation was ultimately dismissed because Ranakoski did not appear at the hearing.

parties agree the fight was between Cost, Sr. and his daughter, not his wife. App. 28. Further, the District Court also determined that Cost, Sr.'s testimony that he did not hear anyone yelling when the police arrived does not rebut the Officers' testimony because "Cost, Sr.'s testimony means only that he did not hear the shouting from his own house—not that the shouting did not occur." App. 29. We need not decide whether the allegation that the Officers heard yelling upon arrival is a disputed fact because this fact is not material. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) ("Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment."). Exigent circumstances existed regardless of whether the Officers heard yelling upon their arrival at the house.

B

Cost, Sr. and Cost, Jr. filed separate complaints against Defendants, alleging violations of the Fourth Amendment under 42 U.S.C. § 1983 and state law.³ The District Court sua sponte consolidated the cases.⁴

Plaintiffs moved for summary judgment on their Fourth Amendment search and seizure claims and Defendants moved for summary judgment on all claims. In connection with their summary judgment motion, Defendants attached affidavits from Renee and Michael Giedieviells, which Plaintiffs moved to strike under Rule 37 because Defendants produced them after the close of discovery and did not identify the Giedieviells as witnesses during discovery. The District Court “decline[d] to strike the

³ Cost, Sr. brought the following claims: (1) unlawful search and seizure in violation of the Fourth and Fourteenth Amendments against all Defendants; (2) excessive force in violation of the Fourth Amendment against all Defendants; (3) state law assault and battery against Ranakoski; (4) false arrest, false imprisonment, and malicious prosecution against all Defendants under both the Fourth Amendment and state law; and (5) Fourth Amendment failure to train and inadequate supervision against Dickson City. Cost, Jr.’s complaint contained the same causes of action, except it contained no malicious prosecution claims.

⁴ The District Court did not abuse its discretion by consolidating the cases. Rule 42 provides that “[i]f actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.” Fed. R. Civ. P. 42(a)(2). Rule 42 “confers upon a district court broad power, whether at the request of a party or upon its own initiative, to consolidate causes for trial as may facilitate the administration of justice.” Ellerman Lines, Ltd. v. Atl. & Gulf Stevedores, Inc., 339 F.2d 673, 675 (3d Cir. 1964); see also Hall v. Hall, 138 S. Ct. 1118, 1131 (2018) (“District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases.”). Plaintiffs’ complaints involved common questions of law and fact and thus judicial economy favored consolidation. Moreover, Plaintiffs have not identified any prejudice resulting from consolidation other than a vague allegation of “factual spill-over” because Cost, Jr. “was not officially charged with disorderly conduct while Cost, Sr. was.” Appellants’ Br. at 23. This potential prejudice could be cured by a jury instruction. Accordingly, consolidation under Rule 42 was proper.

affidavits . . . for the reasons set forth in Plaintiffs' motion," App. 44, because (1) Plaintiffs were not surprised, since Cost, Sr.'s deposition testimony indicated he was aware of Ms. Giedieviells's identity; (2) there was no evidence of bad faith, since Defendants' counsel immediately informed Plaintiffs of the affidavits after they were procured; (3) the Giedieviellses' testimony was "critical" to the case; and (4) allowing the affidavits would not disrupt trial preparations, App. 44-45.

The District Court, however, struck the affidavits without prejudice because they were not made "under penalty of perjury," as required by United States ex rel. Doe v. Heart Solution, PC, 923 F.3d 308, 315 (3d Cir. 2019). The District Court allowed Defendants to cure the deficiency by submitting compliant affidavits, which they did.⁵

⁵ The District Court acted within its discretion in denying Plaintiffs' motion to strike. Rule 26(a)(1) requires the disclosure of "the name . . . of each individual likely to have discoverable information—along with the subjects of that information." Fed. R. Civ. P. 26(a)(1)(A)(i). When Rule 26's requirements are not met, district courts may exclude evidence on a motion to strike under Rule 37. See Fed. R. Civ. P. 37(c)(1). "[T]he exclusion of critical evidence is an extreme sanction, not normally to be imposed absent a showing of willful deception or flagrant disregard of a court order by the proponent of the evidence." In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 791-92 (3d Cir. 1994) (quotation marks and citation omitted). Here, the Giedieviellses' affidavits could not reasonably have surprised or prejudiced Plaintiffs. While Renee Giedieviells was incorrectly identified as "Renee Getwell" in the 911 record and the Police Incident Report produced during discovery, Cost, Sr. testified that he knew "Renee Getwell" was the neighbor across the street who called 911. App. 108. Additionally, Plaintiffs did not produce any evidence of bad faith on the part of Defendants in not providing these affidavits during discovery. Finally, because we decided Heart Solution after Defendants submitted the Giedieviellses' affidavits but before the District Court ruled on the motion to strike, the Court fairly allowed Defendants to cure the Heart Solution issue so that the "critical" information in the affidavits could be considered at summary judgment. App. 45.

The District Court thereafter granted Defendants' summary judgment on Plaintiffs' claims of unlawful search and seizure, false arrest and imprisonment, and Cost, Sr.'s claim of malicious prosecution, because the 911 call and the shouts the officers heard presented exigent circumstances that permitted their warrantless entry into Plaintiffs' home. The Court found that these facts, together with Rought's confirmation that there had been a loud fight in the house between Cost, Sr. and his daughter, provided reasonable suspicion to detain Cost, Jr., and probable cause to arrest Cost, Sr. because the facts were "sufficient to warrant a person of reasonable caution to conclude that Cost, Sr. . . . engag[ed] in fighting in such a manner that recklessly caused public annoyance or alarm," in violation of Pa. Cons. Stat. § 5503(c). App. 25-26.

Plaintiffs appeal.⁶

II⁷

To state a claim for relief under § 1983, "a plaintiff must demonstrate the defendant, acting under color of state law, deprived him or her of a right secured by the

⁶ The District Court also granted Defendants' motion for summary judgment on Plaintiffs' excessive force and municipal liability claims under Monell v. Department of Social Services, 436 U.S. 658 (1978), and declined to exercise supplemental jurisdiction over Plaintiffs' state law claims. Because Plaintiffs make no arguments concerning these issues in their opening brief, Plaintiffs have waived their right to appeal these rulings. See Kost v. Kozakiewicz, 1 F.3d 176, 182 (3d Cir. 1993) (holding that where appellant fails to raise an issue in its opening brief, "the appellant normally has abandoned and waived that issue on appeal and it need not be addressed by the court of appeals").

⁷ The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1337. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's order granting summary judgment. Andrews v. Scuilli, 853 F.3d 690, 696 (3d Cir. 2017). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

Constitution or the laws of the United States.” Kaucher v. Cnty. of Bucks, 455 F.3d 418, 423 (3d Cir. 2006) (citation omitted). Accordingly, to evaluate Plaintiffs’ claims in the context of a motion for summary judgment, we must determine whether there are disputed issues of material fact that, if found for Plaintiffs, would show they were deprived of a constitutional right. See id. Plaintiffs bring the following Fourth Amendment claims against Defendants: unlawful search and seizure, false arrest, false imprisonment, and malicious prosecution. As explained below, Plaintiffs have not shown that Defendants violated their rights.

Plaintiffs’ unlawful search claims fail if an exception to the warrant requirement permitted the search. See United States v. Coles, 437 F.3d 361, 365 (3d Cir. 2006) (“Warrantless searches and seizures inside someone’s home . . . are presumptively unreasonable [under the Fourth Amendment] unless . . . probable cause and exigent circumstances exist to justify the intrusion.” (emphasis omitted)). Plaintiffs’ unlawful seizure, false arrest, false imprisonment, and malicious prosecution claims fail if Defendants had probable cause to believe that a crime was being committed. See James v. City of Wilkes-Barre, 700 F.3d 675, 680 (3d Cir. 2012) (“To state a claim for false arrest under the Fourth Amendment, a plaintiff must establish . . . that the arrest was made without probable cause.”); Zimmerman v. Corbett, 873 F.3d 414, 418 (3d Cir. 2017) (“To prevail on [a] malicious prosecution claim under § 1983, [a plaintiff] must establish that . . . the defendant[s] initiated the proceeding without probable cause.” (third

alteration in original) (citation omitted)).⁸ We will first examine whether an exception to the warrant requirement permitted the officers to enter Plaintiffs' home, and then we will address whether the officers had probable cause to believe that a crime was being committed.

A

Police officers may enter a home without a warrant under exigent circumstances. See Brigham City v. Stuart, 547 U.S. 398, 403 (2006) ("[L]aw enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury."). Exigent circumstances exist where there is "danger to the lives of officers or others." Coles, 437 F.3d at 366. "We evaluate whether exigent circumstances existed by an objective standard; the subjective intent of the officer is irrelevant." United States v. Mallory, 765 F.3d 373, 383 (3d Cir. 2014).

Exigent circumstances justified the officers' warrantless entry into Plaintiffs' home. The 911 call indicated that there was a "male female verbal dome[stic]" dispute at Plaintiffs' home and that children were there and possibly crying. App. 233-34. Ranakoski and McMorrow testified that there was no yelling when they reached the door

⁸ As previously noted, Cost, Jr. did not bring a malicious prosecution claim, as he was not charged with any crime. Additionally, because he was never placed under arrest, his false imprisonment claim requires only that he was detained without reasonable suspicion that a crime was committed. See Gwynn v. City of Phila., 719 F.3d 295, 304 n.4 (3d Cir. 2013). Because reasonable suspicion is a "less demanding" standard than probable cause, United States v. Ritter, 416 F.3d 256, 263 n.7 (3d Cir. 2005), our probable cause analysis suffices for the reasonable suspicion required as to Cost, Jr.

of the home.⁹ The officers knocked and announced their presence at both the front and side doors for several minutes, but they received no response and remained concerned that “there was somebody in that home that needed aid.” App. 67. They relayed these concerns to Chief Resetar, who also believed that exigent circumstances existed. Considering the totality of these circumstances, Ranakoski and McMorrow “reasonably . . . believe[d] that someone [was] in imminent danger,” so their entry into Plaintiffs’ home was justified without first obtaining a warrant. Couden v. Duffy, 446 F.3d 483, 496 (3d Cir. 2006) (quotation marks and citation omitted); see also United States v. Black, 482 F.3d 1035, 1040 (9th Cir. 2007) (noting that “the exigencies of domestic abuse cases present dangers that . . . may override considerations of [Fourth Amendment] privacy”); United States v. Rohrig, 98 F.3d 1506, 1522 (6th Cir. 1996) (explaining that “the governmental interest in immediately abating . . . loud and disruptive noise in a residential neighborhood is sufficiently compelling to justify warrantless intrusions under some circumstances,” including a domestic disturbance “for an extended period of time without serving any apparent purpose”); United States v. Brown, 64 F.3d 1083, 1086 (7th Cir. 1995) (observing “outcries would justify entry”); cf. Georgia v. Randolph, 547 U.S. 103, 118 (2006) (“No question . . . reasonably could be [raised] about the authority of the police to enter a dwelling to protect a resident from domestic violence[.]”). Because exigent circumstances justified the officers’ entry and sweep of the premises, Plaintiffs’ Fourth Amendment unlawful search claims fail.

⁹ McMorrow had also previously been to Plaintiffs’ home in response to a report of a domestic dispute.

B

The existence of probable cause defeats Plaintiffs' unlawful seizure, false arrest, false imprisonment, and malicious prosecution claims.

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 Phila., 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, 873 F.3d at 418 (quotation marks and citation omitted), 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). In this context, "we view all such facts and assess whether any reasonable jury could conclude that those facts, considered in their totality in the light most favorable to the nonmoving party, did not demonstrate a 'fair probability' that a crime occurred." Id. at 468.

"Whether any particular set of facts suggest that an arrest is justified by probable cause requires an examination of the elements of the crime at issue." Wright, 409 F.3d at 602. Cost, Sr. was charged with disorderly conduct. Under Pennsylvania law, "[a] person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he . . . creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the

actor.” 18 Pa. Cons. Stat. § 5503(a)(4). “Public” means “affecting or likely to affect persons in a place to which the public or a substantial group has access . . . [including] any neighborhood.” Id. § 5503(c).

Here, Ranakoski and McMorrow had probable cause to believe that a crime was occurring when they arrived at Plaintiffs’ home. The 911 call indicated that there was a domestic dispute taking place which was loud enough to be heard across the street. This conduct caused “public inconvenience, annoyance or alarm” and “serve[d] no legitimate purpose.” 18 Pa. Cons. Stat. § 5503(a)(4).¹⁰ Rought told the officers that Cost, Sr. was loudly arguing with his daughter for about a half-hour regarding her cell phone, that she brought the children upstairs “to get away from” him, and that she declined to answer the door when the officers knocked because she did not want to leave her children alone upstairs. App. 298. This information, coupled with the 911 call, the shouts for help the officers heard, and Cost, Sr.’s refusal to supply his identification, provided a basis for a reasonable police officer to conclude that the offense of disorderly conduct had been committed. The presence of probable cause defeats Plaintiffs’ unlawful seizure, false arrest, false imprisonment, and malicious prosecution claims. See Zimmerman, 873 F.3d at 418 (malicious prosecution); James, 700 F.3d at 680 (false arrest and imprisonment);

¹⁰ After the officers forced entry, they detained Plaintiffs and conducted a security sweep of the premises. The officers then reviewed Cost, Jr.’s identification and released him from his handcuffs. These acts were reasonable and defeat Cost, Jr.’s claim of false imprisonment. See, e.g., Adams v. Williams, 407 U.S. 143, 146 (1972) (“[B]rief [detention] . . . to determine [a suspect’s] identity or to maintain the status quo momentarily while obtaining more information[] may be most reasonable in light of the facts known to the officer at the time.”).

Coles, 437 F.3d at 365 (seizure). Therefore, the District Court properly granted summary judgment in favor of Defendants.

III

For the foregoing reasons, we will affirm the District Court's order granting summary judgment for Defendants.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM J. COST, :
Plaintiff : **CIVIL ACTION NO. 3:18-1494**
v. : **(JUDGE MANNION)**

BOROUGH OF DICKSON CITY, :
and **MICHAEL RANAKOSKI,** :
: **Defendants**

WILLIAM J. COST, JR., :
Plaintiff :
v. :
: **Defendants** :

BOROUGH OF DICKSON CITY, :
MICHAEL RANAKOSKI, and :
MICHAEL McMORROW :

MEMORANDUM¹

Presently before the court is a motion for partial summary judgment filed by the plaintiffs William J. Cost, Sr. ("Cost, Sr.") and William J. Cost, Jr. ("Cost, Jr."), (collectively, "Plaintiffs"), ([Doc. 17](#)), and a motion for summary judgment filed by the defendants the Borough of Dickson City ("Dickson

¹ By order dated July 31, 2018, this case was consolidated with *Cost v. Borough of Dickson City and Michael Ranakoski*, No. 3:18-1510. ([Doc. 3](#)).

City"), Officer Michael Ranakoski, and Officer Michael McMorrow, (collectively, "Defendants"), ([Doc. 24](#)). For the reasons set forth below, Plaintiffs' motion for partial summary judgment will be **DENIED**, and Defendants' motion for summary judgment will be **GRANTED** with respect to the federal claims in Counts I, II, IV, V, and VI.

I. BACKGROUND²

The suit stems from an incident that occurred on September 3, 2016. At approximately 8:00 p.m., a neighbor of the Plaintiffs, Renee Giedieviells reported hearing yelling, screaming, and arguing coming from Plaintiffs' residence. Ms. Giedieviells also reported hearing a female screaming "Help! Help!", at which point she called 911. The police incident report indicated the following: "male[/]female verbal dome[stic]," "children on scene someone is crying," "caller unkn[own] if weapons or not." ([Doc. 25-3, at 6](#)). Officer Ranakoski and Officer McMorrow ("the Officers") of the Dickson City Police Department responded to the call. When they arrived on scene, both Officers reported hearing yelling and a female shouting "stop" inside the residence, but everything became quiet when they approached the front door. The

² These facts are derived from the parties' statements of fact and the record. The court only includes facts material to the issues in the case, and it does not include legal conclusions.

Officers knocked on the front and side door for several minutes and identified themselves as the Dickson City Police; however, they received no response.

Officer Ranakoski testified that, despite not hearing anything from inside the house, he “[a]bsolutely” believed someone was in need of help due to details of the 911 call—in particular that children were screaming—and because he heard a female yelling “stop.” Officer Ranakoski explained, “At th[at] point we had to assume the worst. Somebody could have been tied up and unconscious and unable to shout for help.” ([Doc. 25-7, at 15](#)).

While Officer Ranakoski continued to knock on the door, Officer McMorrow phoned their chief of police seeking guidance. The chief agreed that exigent circumstances existed and, “for the safety of the person that the neighbor heard screaming, and the woman that we heard scream ‘stop,’” that forced entry was “necessary to protect the people inside for their own well[-]being.” ([Doc. 25-7, at 11](#)).

After knocking and announcing several more times and indicating that they would force entry if they were not met at the door, Officer Ranakoski forced the side door open. Upon entry, the officers observed both Cost, Sr. and Cost, Jr. sitting at their kitchen table, at which point they ordered Plaintiffs on their knees, and Officer Ranakoski handcuffed them and patted them down.

One of the officers, though it is not clear who, went upstairs and encountered Heather Rought (“Rought”), Cost, Sr.’s wife, as well as their ten-year-old son and fourteen-year-old daughter. Rought was brought downstairs and Officer McMorrow interviewed her. Rought stated that Cost, Sr. and their daughter had been arguing over a cell phone and, when police arrived, she went upstairs with the two younger children. Rought stated she did hear the Officers banging on the door, but she did not want to leave her children alone upstairs. Rought acknowledged that the argument was loud and that it lasted approximately thirty minutes; however, she attested that she personally “never screamed ‘Help! Help!’ or ‘Stop! Stop!’ on 9/3/2016.” ([Doc. 47, at 2](#)).

Meanwhile, Plaintiffs were asked about their identities. Cost, Jr. identified himself and was released from the handcuffs. Cost, Sr. refused to identify himself and consequently was put in a police car to be transported to the Lackawanna County Processing Center to be fingerprinted for a suspect identification. After Officer Ranakoski conferred with Officer McMorrow and he related what Rought told him about the fight, Cost, Sr., was placed under arrest for disorderly conduct pursuant to [18 Pa.C.S. §5503\(a\)\(4\)](#). Upon arrival at the processing center, Cost, Sr. identified himself and was released. On November 7, 2016, the citation was dismissed after Officer Ranakoski failed to appear for the hearing.

Plaintiffs separately brought suit against Defendants, though their complaints are nearly identical. In Count I, Plaintiffs allege an unlawful search and seizure claim under the Fourth and Fourteenth Amendments against all Defendants. In Count II, they allege a Fourth Amendment excessive force claim against all Defendants. In Count III, they allege a state law assault and battery claim against the Officers.³ In Count IV, they allege a Fourth Amendment and state law false arrest and false imprisonment claim against all Defendants. In Count V, Cost, Sr. alone alleges a Fourth Amendment and state law malicious prosecution claim against all Defendants. Finally, in Count VI, Plaintiffs allege an inadequate supervision and training claim against Dickson City.

On February 5, 2019, Plaintiffs filed their motion for partial summary judgment, ([Doc. 17](#)), a statement of facts, ([Doc. 18](#)), and a brief in support, ([Doc. 22](#)). Defendants filed an answer to the statement of facts, ([Doc. 29](#)), and a brief in opposition, ([Doc. 35](#)). Plaintiffs filed a reply brief. ([Doc. 40](#)).

On February 19, 2019, Defendants filed their motion for summary judgment, ([Doc. 24](#)), a statement of facts, ([Doc. 25](#)), and a brief in support, ([Doc. 39](#)). Plaintiffs filed an answer to the statement of facts, ([Doc. 43](#)), and a brief in opposition, ([Doc. 46](#)). Defendants filed a reply brief. ([Doc. 48](#)).

³ Cost, Sr.'s claim is against Officer Ranakoski only.

On February 20, 2019, Plaintiffs filed a motion to strike Defendants' statement of facts because it included the affidavits of two neighbors, Renee and Michael Giedieviells, who witnessed the events of September 3, 2016, because Plaintiffs claimed they were not previously disclosed. By separate memorandum and order, the court granted the motion to strike the affidavits but permitted Defendants fourteen days to cure the deficiencies noted. ([Doc. 49](#); [Doc. 50](#)).

Defendants did so by filing an amended statement of facts with corrected affidavits on March 31, 2020. ([Doc. 51](#)). However, that same day, Plaintiffs' counsel filed a letter arguing that the affidavits "provide nothing to assist the Court since neither new affidavit states that the information personally known was given to any of the arresting police officers." ([Doc. 52](#)).⁴ On April 3, 2020, Defendants filed a motion to strike the letter from Plaintiffs' counsel, ([Doc. 54](#)), as well as a brief in support on April 16, 2020, ([Doc. 55](#)).

⁴ Plaintiffs also filed an answer to the amended statement of facts objecting to both affidavits. ([Doc. 53](#)). Plaintiffs objected to Renee Giedieviells's affidavit, arguing that it is "meaningless on the issue of probable cause and/or exigent circumstances" because she did does not attest that she spoke to any of the Defendants on the night of the incident. ([Doc. 53, at 1](#)). Plaintiffs objected to the affidavit of Michael Giedieviells arguing, once again, that he "was not disclosed during discovery," and that the affidavit is likewise meaningless. ([Doc. 53, at 2](#)).

Plaintiffs' filed a brief in opposition, ([Doc. 56](#)), and Defendants filed a reply brief, ([Doc. 57](#)).

II. STANDARD

“Summary judgment is appropriate when, drawing all reasonable inferences in favor of the nonmoving party, the movant shows that there is no genuine dispute as to any material fact, and thus the movant is entitled to judgment as a matter of law.” *Minarsky v. Susquehanna Cty.*, 895 F.3d 303, 309 (3d Cir. 2018) (internal quotation marks omitted). “A dispute is genuine if a reasonable trier-of-fact could find in favor of the non-movant, and material if it could affect the outcome of the case.” *Bradley v. West Chester Univ. of Pa. State Sys. of Higher Educ.*, 880 F.3d 643, 650 (3d Cir.) (internal quotation marks omitted), *cert. denied*, 139 S.Ct. 167 (2018). In considering a motion for summary judgment, “the court need consider only the cited materials, but it may consider other materials in the record.” [Fed.R.Civ.P. 56\(c\)\(3\)](#).

III. DISCUSSION

A. Motion to Strike Plaintiff’s Counsel Letter

In this motion, Defendants argue that, because counsel’s letter contains additional factual and legal argument independent of Plaintiffs’ brief in opposition and response to the Defendants’ statement of facts, it is prohibited

under the Local Rules. In the alternative, Defendants ask that they be permitted an opportunity to respond to the additional arguments.

Plaintiffs filed a brief in opposition, arguing that the letter is permissible because, according to this court's website, the undersigned judge allows written correspondence from counsel via the court's electronic filing system. ([Doc. 56](#)). Defendants respond, arguing that a statement regarding the court's written communication preferences does not equate to a green light for parties to add additional argument on a motion for summary judgment by letter. ([Doc. 57](#)).

The court agrees with Defendants and will **STRIKE** counsel's letter, ([Doc. 52](#)), from the record. Aside from the fact that such a filing is not authorized under either the Federal Rules of Civil Procedure or the Local Rules, it is repetitious of the arguments previously set forth in Plaintiffs' briefs. See [Fed.R.Civ.P. 12\(f\)](#) (permitting the court to "strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.").

B. Motions for Summary Judgment and Partial Summary Judgment

Plaintiffs have chosen to move for summary judgment by "Point" instead of by "Count," thus making it difficult for the court to ascertain which Counts—and for which of the Plaintiffs—they seek the entry of judgment.

Nevertheless, upon close review, it appears that Plaintiffs seek summary judgment as to both Plaintiffs on Counts I, IV, VI and for Cost, Sr. on Count V. Because Defendants have moved for summary judgment on all Counts, the court will analyze each Count individually and note the instances where Plaintiffs also move for summary judgment.

Initially, however, the court notes that Plaintiffs bring their Count I unlawful seizure and search claims against Defendants under both the Fourteenth Amendment Due Process Clause and the Fourth Amendment, alleging that their arrest and the use of force constituted a deprivation of due process. Because the Fourth Amendment covers their stated claims, Plaintiffs' Fourteenth Amendment claims, as standalone claims, must be dismissed under the "more-specific provision rule." "Where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing the claims." *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (internal quotation marks omitted). See also *Lawson v. City of Coatsville*, 42 F.Supp.3d 664, 675-76 (E.D.Pa. 2014) ("[W]here the Fourth Amendment covers alleged misconduct—such as searches and seizures without probable cause—a plaintiff's claims must be analyzed under the Fourth

Amendment, not under the rubric of substantive due process.”). Accordingly, Plaintiffs’ Count I claims under the Fourteenth Amendment are **DISMISSED**.

1. Count I: Unlawful Search and Seizure; Count IV: False Arrest/False Imprisonment; Count V: Malicious Prosecution

Because the warrantless entry into the home and the arrest of Cost, Sr. were supported by probable cause and the detention of Cost, Jr. by reasonable suspicion, and because each of Plaintiffs’ Fourth Amendment claims hinge on a lack of probable cause or reasonable suspicion, the entry of summary judgment in favor of Defendants is appropriate on Counts I, IV, and V.

“The threshold question for each of [Plaintiffs’] Fourth Amendment claims [under §1983 for unlawful search and seizure, false arrest/false imprisonment, and malicious prosecution] is whether [Defendants] had probable cause to arrest [Cost, Sr.]”—or, in the case of Cost, Jr., reasonable suspicion to detain him. *Lawson*, 42 F.Supp.3d at 673 (citing *James v. City of Wilkes-Barre*, 700 F.3d 675, 680, 683 (3d Cir. 2012) “To establish a false imprisonment or arrest claim, a detention must be unlawful, and to establish a malicious prosecution claim, there must be an absence of probable cause to arrest. Accordingly, probable cause defeats a claim for malicious prosecution and for false imprisonment or arrest.” *Sheedy v. City of*

Philadelphia, 184 Fed.App'x 282, 284 (3d Cir. 2006) (internal citations omitted). See also *James*, 700 F.3d at 680, 683 (lack of probable cause is an element of a Fourth Amendment false arrest claim); *Johnson v. Knorr*, 477 F.3d 75, 81-82 (3d Cir. 2007) (lack of probable cause is an element of a Fourth Amendment malicious prosecution claim); *Groman v. Twp. of Manalapan*, 47 F.3d 628, 636 (3d Cir. 1995) (lack of probable cause is an element of a Fourth Amendment false imprisonment claim based on detention pursuant to an unlawful arrest); *Henry v. United States*, 361 U.S. 98, 102 (1959) (“[I]f an arrest without a warrant is to support an incidental search, it must be made with probable cause.”).

“[A]n arrest requires probable cause.” *Arditi v. Subers*, 216 F.Supp.3d 544, 552 (E.D.Pa. 2016). “Probable cause to arrest exists when the facts and circumstances within the arresting officer’s knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.” *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 788 (3d Cir. 2000). See also *Lawson*, 42 F.Supp.3d at 673 (“An arrest was made with probable cause if ‘at the moment the arrest was made . . . the facts and circumstances within [the officers’] knowledge . . . were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense.’” (internal

quotation marks omitted)). “In conducting an inquiry into whether probable cause to arrest existed, a court should consider the totality of the circumstances presented, and ‘must assess the knowledge and information which the officers possessed at the time of arrest, coupled with the factual occurrences immediately precipitating the arrest.’” *Price*, 2016 WL 3876442, at *5 (citing *United States v. Stubbs*, 281 F.3d 109, 122 (3d Cir. 2002)).

Further, “the probable cause standard does not turn on the actual guilt or innocence of the arrestee, but rather, whether the arresting officer reasonably believed that the arrestee had committed the crime.” *Arditi*, 216 F.Supp.3d at 552. See also *Lawson*, 42 F.Supp.3d at 674 (“In other words, the constitutional validity of the arrest does not depend on whether the suspect actually committed any crime.”).

Similarly, where a plaintiff’s detention is lawful because it is supported by reasonable suspicion, he cannot succeed on a false arrest/false imprisonment claim. See *Gwynn v. City of Philadelphia*, 719 F.3d 295, 304 n.4 (3d Cir. 2013) (noting that to succeed on a false imprisonment claim, a plaintiff must show that the detention was unlawful); *Waters v. Madson*, 921 F.3d 725, 743 (8th Cir. 2019) (holding a plaintiff’s claim for false arrest was properly dismissed where an officer temporarily detained the plaintiffs pursuant to reasonable suspicion and therefore the officers “acted with

proper legal authority"). Reasonable suspicion "requires less than probable cause, but there must be at least a minimal level of objective justification for making the stop." *United States v. Whitfield*, 634 F.3d 741, 744 (3d Cir. 2010) (internal quotation marks omitted).

Therefore, if Defendants had probable cause (or reasonable suspicion in the case of Cost, Jr.'s detention), "then no constitutional violation took place [regarding Plaintiffs' claims for false arrest/false imprisonment, unlawful search and seizure, and malicious prosecution]." *Lawson*, 42 F.Supp.3d at 673. No doubt that, "[g]enerally, the question of probable cause in a section 1983 damage suit is one for the jury," which "is particularly true where the probable cause determination rests on credibility conflicts." *Id.* (internal quotation marks omitted). "However, a district court may conclude that probable cause exists as a matter of law if the evidence, viewed most favorably to Plaintiff, reasonably would not support a contrary factual finding, and may enter summary judgment accordingly." *Id.* (internal quotation marks omitted). It is the court's function "to determine whether the objective facts available to the officers at the time of arrest were sufficient to justify a reasonable belief that an offense was being committed." *Price*, 2016 WL 3876442, at *5 (internal quotation marks omitted).

As to the Plaintiffs' claims of unlawful search and seizure of their persons, they argue that neither of them should have been handcuffed or arrested since "they had not committed in [sic] crime in the privacy of their own home." ([Doc. 22, at 6](#)). As to Cost, Jr., Plaintiffs emphasize that he was not charged or cited with a crime, apparently in support of the argument that his detention was illegal. As to Cost, Sr., Plaintiffs argue that because the Officers only testified to hearing a female voice when they arrived on scene, they did not have probable cause to arrest him for disorderly since they did not personally hear Cost, Sr. yelling. Plaintiffs contend that, even if Officers had heard Cost, Sr. from inside of his house, because he was speaking "in the privacy of his own home," this could not have formed the basis for probable cause to arrest him on disorderly conduct because, "as a matter of law, anything said in the home is not evidence that could be used against him for the charge of disorderly conduct." ([Doc. 46, at 3](#)).

In support of their argument that the conduct inside one's home cannot serve as the basis of a disorderly conduct charge, Plaintiffs rely on *Groman v. Township of Manalapan*, 47 F.3d 628, 636 (3d Cir. 1995). There, the plaintiff sued the police officers that arrested him for, among other things, disorderly conduct after he was involved in a physical altercation with a police officer inside of his home. The Third Circuit observed that the New Jersey

statute for disorderly conduct necessitated that the conduct occur in public and, pursuant to New Jersey courts' interpretation of the statute, one could not be charged under it for conduct that took place on one's own property. *Id.* at 635-36.

Conversely, Defendants argue that the brief detention of Cost, Jr. was reasonable in light of the circumstances, since he was only detained momentarily to maintain the *status quo* while the Officers ascertained his identity and determined whether any danger existed elsewhere in the residence. Defendants point out that the Officers did not initially know who was involved in the argument reported in the 911 call and therefore it was reasonable for Cost, Jr. to be briefly detained in order to identify and question him. Once Cost, Jr. revealed his identity and it was determined that he had not committed any crime, Defendants note that his handcuffs were promptly removed. Accordingly, Defendants argue that Cost, Jr.'s unlawful search and seizure claim must fail because it was objectively reasonable to detain him under the circumstances.

With respect to Cost, Sr., Defendants argue that probable cause existed to arrest him for disorderly conduct in light of the undisputed fact that Rought relayed to the Officers that Cost, Sr. had engaged in a loud argument with his daughter for approximately 30 minutes, which continued until the

Officers approached the house, and because the argument annoyed and alarmed Plaintiffs' neighbors enough to seek police intervention. Defendants assert that the fact Cost, Sr. was inside his residence is immaterial given that his conduct affected the immediate neighborhood, including the Giedieviells and other surrounding homes, which qualifies as affecting the public. See [18 Pa.C.S. §5503\(c\)](#) ("[P]ublic" means affecting or likely to affect persons in a place. . . includ[ing] . . . any neighborhood, or any premises which are open to the public."). Defendants argue that, under Plaintiffs' reasoning, anything a resident does in his home, without exception, could not qualify as disorderly conduct regardless of its effect on the outside public. This, Defendants argue, is contrary to the plain text of the statute, which states that fighting in a manner that recklessly creates a risk of public annoyance or alarm constitutes disorderly conduct.

Here, the court finds that the probable cause/reasonable suspicion determination does not rest on credibility determinations and that, in viewing the evidence in the light most favorable to Plaintiffs, no genuine dispute of material fact exists as to whether the Officers, based upon the facts known to them at the time, had reasonable suspicion to detain Cost, Jr. and probable cause to arrest Cost, Sr.

As to Cost, Jr., the facts and reasonable inferences that the Officers were presented with warranted reasonable suspicion that he committed a crime which injured the female resident of the house and caused her to yell “stop,” or that he posed a threat to the Officers’ safety. Cost, Jr.’s brief detention was thus not violative of the Fourth Amendment. With respect to the arrest of Cost, Sr., the objective facts available to the Officers at the time of the arrest, including the 911 caller’s report of domestic dispute, Rought’s statement that Cost, Sr. had been arguing with their daughter, and the yelling that the Officers themselves heard upon arrival at the scene, “were sufficient to warrant a prudent man in believing that [the suspect] had committed or was committing an offense”—to wit, disorderly conduct. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). Although Plaintiffs repeatedly argue that the Officers did not testify to hearing Cost, Sr. yelling from inside of his home, there is no requirement that an arresting officer personally witness the crime for which he is arresting a suspect. See *Dreibelbis v. Clark*, __ Fed.App’x __, 2020 WL 2185280, at *2 (3d Cir. May 6, 2020) (holding that a trooper had probable cause to cite a defendant for disorderly conduct based upon reports from witnesses that the defendant was yelling, shouting, and attempted to push past a security guard); *Wright v. City of Philadelphia*, 409 F.3d 595, 601-02 (3d Cir. 2005) (“[A]ll interpretations of probable cause require a belief of guilt

that is reasonable, as opposed to certain." (internal quotation marks omitted)).

Finally, although Plaintiffs argue that, pursuant to *Groman*, it was *per se* unreasonable to charge Cost, Sr. with disorderly conduct because his conduct occurred inside of his home and not in "public," *Groman* is inapposite. *Groman* observed that "[a] disorderly conduct charge under [New Jersey law] requires that the behavior have been in 'public'" and, thus, the plaintiff "could not have committed the offense . . . in his own home." *Id.*, [47 F.3d at 635](#) (quoting N.J. Stat. §2C:33-2).^{5,6}

⁵ It appears that the plaintiff in *Groman* was charged under the subsection of the New Jersey statute pertaining to "Offensive language," which specifically required that the conduct occur "in a public place." [N.J. Stat. §2C:33-2\(b\)](#).

⁶ Although Plaintiffs do not develop the argument, the court notes in passing that, in a footnote, *Groman* cited Pennsylvania's disorderly conduct statute, suggesting that it too may require the conduct to be public. In doing so, the court cited the Pennsylvania Superior Court case [Commonwealth v. Weiss, 490 A.2d 853 \(Pa.Super.1985\)](#), wherein the court found that the "public" requirement was not satisfied where the defendant screamed epithets at police officers after they broke down her door to arrest her husband. The *Groman* commentary on the Pennsylvania disorderly conduct statute, however, is of little value in resolving the present issue of whether the Officers possessed probable cause for several reasons. First, neither party has addressed either *Groman* footnote or the *Weiss* case. Further, not only was *Groman*'s footnote discussion of the statute *dictum* insofar as the issue of its requirements were not before the court, but, significantly, *Weiss*, as an intermediate Pennsylvania court decision, is not binding on federal courts. Finally, it is noteworthy that *Weiss* presented a markedly different factual scenario than the instant case. Whereas the *Weiss* defendant's

Unlike that statute, nothing in Pennsylvania's disorderly conduct statute specifically requires that the suspect's actions occur public. Instead, it merely requires that a person, "with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, . . . engage[] in fighting or threatening, or in violent or tumultuous behavior." [18 Pa.C.S. §5503\(a\)](#). The statute further provides,

As used in this section the word 'public' means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

[18 Pa.C.S. §5503\(c\)](#).

Here, the court concludes that there was sufficient probable cause to support the arrest of Cost, Sr. for disorderly conduct. At the time of the arrest, the Officers were aware that a neighbor reported a male/female domestic fight at Plaintiffs' house, they personally heard yelling coming from the house upon arrival, and Rought confirmed that a loud fight had occurred between Cost, Sr. and his daughter. This "reasonably trustworthy information [and]

disorderly conduct was directed at the police and was exclusively in response to the police breaking down her door, Cost, Sr.'s disorderly conduct occurred prior to the police's arrival and, indeed, it is what caused neighbors to call police to his residence in the first place.

circumstances within the [Officers'] knowledge," would have been sufficient to warrant a person of reasonable caution to conclude that Cost, Sr. committed the offense of disorderly conduct—that is, engaging in fighting in such a manner that recklessly caused public annoyance or alarm. Accordingly, the court concludes that, as a matter of law, probable cause for Cost, Sr.'s arrest existed.

As to the warrantless entry, Plaintiffs contend that there were no exigent circumstances to justify the forced entry. Citing Rought's affidavit that she never screamed "help" or "stop," Plaintiffs assert that when the Officers arrived on scene, no one was screaming for help. As throughout their briefing, Plaintiffs focus on the fact that Cost, Sr. was only charged with disorderly conduct, a "minor summary offense," which was later dropped. ([Doc. 46, at 7](#)). Plaintiffs further argue, "Given the fact that the alleged crime was minor and not a felony and there was no evidence on scene of any one [sic] crying, blood [sic] or requesting assistance, there was no justification for [Officer] Ranakoski to break down Plaintiffs' home door." ([Doc. 46, at 7](#)). Thus, Plaintiffs frame the situation as one in which the Officers broke down Plaintiffs' door in order to arrest Cost, Sr. for the predetermined charge of disorderly conduct despite knowing they lacked probable cause to do so.

Defendants, conversely, argue that the entry into Plaintiffs' residence was justified by exigent circumstances—to wit, in the context of responding to a report of a domestic dispute, a woman was yelling "stop" when police arrived on scene and all noise ceased when the Officers approached the house, causing them to believe that someone inside was in immediate danger. Defendants note that the evaluation of the legality of a warrantless search must be made in the context of the totality of the circumstances and cite the incident report which indicated that the 911 caller reported a male/female domestic dispute with crying children.

"Warrantless searches and seizures inside someone's home . . . are presumptively unreasonable unless the occupants consent or probable cause and exigent circumstances exist to justify the intrusion." *United States v. Coles*, 437 F.3d 361, 365 (3d Cir. 2006) (emphasis omitted). Whether exigent circumstances justify a warrantless search or seizure is determined from the totality of the circumstances, as they were reasonably known to, or discoverable by, officers at the time of the entry. *Parkhurst v. Trapp*, 77 F.3d 707, 711 (3d Cir. 1996). This determination is made on a case-by-case basis and focuses simply on what a reasonable, experienced police officer would believe given the circumstances. *United States v. Reed*, 935 F.2d 641, 643

(4th Cir. 1991); *United States v. Williams*, 431 F.3d 1115, 1118 (8th Cir. 2005).

In defining exigent circumstances, the Supreme Court has identified four circumstances that justify a warrantless intrusion into a person's home: (1) hot pursuit of a fleeing felon; (2) imminent destruction of evidence; (3) the need to prevent a suspect's escape; or (4) the risk of danger to the police or other persons inside or outside the dwelling. See *Minnesota v. Olson*, 495 U.S. 91, 100 (1990).

Here, based upon the undisputed material facts of record, the court agrees with Defendants that probable cause and exigent circumstances supported the warrantless entry into Plaintiffs' home. Once again, Officer Ranakoski and Officer McMorrow both testified that they heard a female screaming "stop" when they arrived at the house, and that the yelling ceased when they approached the door. ([Doc. 25-7, at 4](#); [Doc. 25-8, at 4](#)). Although Plaintiffs attempt to contest this fact by citing to Rought's affidavit wherein she states she did not yell "stop" or "help," as Defendants observe, the Officers did not claim to know which of the female residents of the house

they heard yelling and, moreover, the parties agree the fight was between Cost, Sr. and his daughter—not Rought.⁷

Furthermore, it is significant that these events took place in the context of responding to a call for a domestic dispute. Plaintiff's notion that the Officers knew precisely what they would find upon entering the home in that they knew they would find no one was injured or that they would ultimately only arrest Cost, Sr. for disorderly conduct strains credulity. Plaintiffs cannot reasonably deny that the police incident report indicated that the caller reported a domestic dispute with children crying.⁸ ([Doc. 25-3, at 5](#)). Although

⁷ When asked about the Officers' testimony that they heard a female yelling, Cost, Sr. stated he did not hear anyone yelling "stop" or "help" after police arrived. ([Doc. 21, at 9](#)). However, this likewise does not rebut the Officers' testimony since it does not put into dispute what the Officers heard. Regardless of what Plaintiffs state they personally did or did not hear, the fact remains that the Officers' testified that they heard yelling and a female shouting "stop" several times when they arrived at the residence. Thus, Cost, Sr.'s testimony means only that he did not hear the shouting from his own house—not that the shouting did not occur.

⁸ Although Plaintiffs deny this in their response to Defendants' statement of facts on the basis that it is inadmissible hearsay, this argument is meritless. ([Doc. 43, at 6-7](#)). First, the statements in the incident report are not hearsay to the extent that they are being offered to show the effect on the listeners—Officers Ranakoski and McMorrow. Moreover, even if it were, "hearsay evidence proffered in support or opposition to summary judgment may be considered if the out-of-court declarant could later present that evidence through direct testimony, *i.e.*, 'in a form that would be admissible at trial.'" *Williams v. Borough of West Chester*, 891 F.2d 458, 466 n.12 (3d Cir. 1989).

Plaintiffs assert that the neighbor who made the 911 call was disgruntled, as Plaintiffs themselves argue, the Officers did not speak with the Giedieviells prior to making entry and there is no allegation that the Officers knew the identity of the 911 caller upon responding to the call or that they were aware of any previous issues between the Plaintiffs and the Giedieviells.

Plaintiffs additionally argue that exigent circumstances exist only when there are signs of medical distress, loss of blood, or violence; however, they are incorrect. “Exigent circumstances exist where officers reasonably . . . believe that someone is in imminent danger,” which is what occurred here.

Couden v. Duffy, 446 F.3d 483, 496 (3d Cir. 2006) (internal quotation marks omitted). Indeed, the Third Circuit has upheld a finding of exigent circumstances where police officers testified to observing “*what they believed* to be underage drinking and violation of a noise ordinance.” See *Noone v. City of Ocean City*, 60 Fed.App’x 904, 910 (3d Cir. 2003) (emphasis added). The court held that “[t]he governmental interest in abating these illegal activities justified warrantless entry into [the plaintiff’s] property” and, accordingly, summary judgment in favor of the defendant police officers was warranted.

Finally, Plaintiffs argue that the Officers lacked probable cause because the Officers did not speak with the Giedieviells on the night of the

incident and, thus, what the Giedieviells heard is irrelevant since they did not communicate it to the Officers. However, this argument likewise fails, given that the question of whether probable cause existed is measured from the time that the Officers took the actions in question. The fact that the Officers did not first pause to interview neighbors before forcing entry only supports their testimony that they believed someone inside the residence was in imminent danger. The warrantless entry thus did not violate the Fourth Amendment.

Therefore, in light of these facts, the court concludes that the Officers had probable cause to believe that a crime was being committed inside Plaintiffs' residence because, based upon the totality of the circumstances, a reasonable officer in their position would have perceived someone inside Plaintiffs' residence to be in need of immediate help. Thus, the court concludes as a matter of law that probable cause and exigent circumstances justified the warrantless entry into Plaintiffs' home.

Having concluded that the Officers possessed reasonable suspicion to detain Cost, Jr., probable cause to arrest Cost, Sr., and that probable cause and exigent circumstances supported the warrantless entry, and thus that there was no violations of Plaintiffs' Fourth Amendment rights, their claims for unlawful search and seizure, false imprisonment/false arrest, and

malicious prosecution fail as a matter of law. See *Sheedy*, 184 Fed.App'x at 284. Accordingly, summary judgment in favor of Defendants on Plaintiffs' federal claims in Counts I, IV, and V is **GRANTED**.

2. Count II: Excessive Force

Defendants alone seek summary judgment on Count II, arguing that the undisputed evidence of record shows that Plaintiffs were merely handcuffed and placed on their knees by Officer Ranakoski immediately after forcible entry into the residence was made. Defendants emphasize that Cost, Jr.'s detention was particularly brief, since he was released promptly after he identified himself. In light of these facts, Defendants argue that the *de minimis* force used was objectively reasonable under the circumstances and "cannot possibly be construed as [the use of] excessive force upon either Plaintiff." ([Doc. 39, at 30](#)).

Plaintiffs, by contrast, argue that Defendants used excessive force because they were forced to their knees and handcuffed "for no reason since they were sitting at their dining room table doing nothing illegal." ([Doc. 46, at 12](#)). Plaintiffs contend that, because they were not doing anything threatening when the Officers encountered them, any force used against them was, in and of itself, excessive.

“The use of excessive force is itself an unlawful ‘seizure’ under the Fourth Amendment.” *Couden*, 446 F.3d at 496. In deciding whether the challenged conduct constitutes excessive force, “a court must determine the objective reasonableness of the challenged conduct, considering the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* at 496-97 (internal quotation marks omitted). “Other factors include the duration of the [officer’s] action, whether the action takes place in the context of effecting an arrest, the possibility that the suspect may be armed, and the number of persons with whom the police officers must contend at one time.” *Id.* at 497 (internal quotation marks omitted).

In evaluating reasonableness, the court must take into consideration the fact that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” Thus, the court should not apply “the 20/20 vision of hindsight,” but should instead consider the “perspective of a reasonable officer on the scene.”

Id. (quoting *Graham v. Connor*, 490 U.S. 386, 397 (1989)).

Here, the court will grant summary judgment in Defendants’ favor because, in light of the undisputed material facts, Plaintiffs have not produced

evidence such that a reasonable jury could find that the Officers employed unreasonable force. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-52 (1986). As discussed in depth above, the record reflects that, when the Officers arrived, they were faced with a female yelling in distress in the context of responding to a domestic dispute call. Upon encountering Plaintiffs, the Officers had no way of knowing whether they were residents of the house or strangers who had just broken in and harmed the residents, nor could they have known whether there were additional suspects in the home. The fact that the Officers had to contend with two suspects—the Plaintiffs—in addition the possibility of unknown others strongly indicates that detaining Plaintiffs with handcuffs was eminently reasonable.

Even if Plaintiffs could show that the Officers knew Plaintiffs were in fact residents of the house, once again, the Officers had no way of knowing whether they were armed or had just committed a violent crime against someone else in the home.⁹ Thus, given these facts, the court finds that it was objectively reasonable for Officers to neutralize the potential immediate risk Plaintiffs posed to them by immobilizing Plaintiffs with handcuffs while a *Terry* search of the remainder of the house was conducted.

⁹ In fact, Cost, Jr. did not identify himself until after he was handcuffed and Cost, Sr. refused to identify himself until he was transported to the processing center.

With respect to the duration of the force, Cost, Jr. was handcuffed only briefly until he identified himself. Cost, Sr. refused to identify himself and, after the Officers interviewed Rought, he was charged with disorderly conduct, transported in handcuffs to the processing center for a suspect identification, and released. The fact that the use of force here was merely detention in handcuffs and was only as long as was necessary to neutralize any threat in the house and to ascertain Plaintiffs' identities, again strongly suggests that the use of force was objectively reasonable. See *Boardman v. City of Philadelphia*, 661 Fed.App'x 183, 189-90 (3d Cir. 2016) (declining to find that the court erred in instructing the jury that "handcuffing without more does not constitute excessive force"). Accordingly, because all pertinent factors in determining whether the use of force was excessive weigh in favor of the objective reasonableness of the Officers' actions, the court finds that, in light of the evidence produced by Plaintiffs, no reasonable jury would find that the use of force by the Officers against either Cost, Sr. or Cost Jr. was objectively unreasonable under the circumstances such that it could be considered excessive and a violation of the Fourth Amendment. Therefore, summary judgment is **GRANTED** in favor of Defendants on Count II.

3. Count VI: Inadequate Supervision and Training

With respect to Plaintiffs' Count VI *Monell* claims against Dickson City for failing to adequately train its officers as to the probable cause requirement for arrest, since the court has found no violations of Plaintiffs' constitutional rights by either Officer Ranakoski or Officer McMorrow, summary judgment in favor of Dickson City is **GRANTED** on this count. See *Williams v. Borough of West Chester*, 891 F.2d 458, 467 (3d Cir. 1989) (In general, as a matter of law, a *Monell* claim against a municipal defendant cannot proceed where plaintiff has failed to show he suffered a constitutional violation.).¹⁰

4. Count III: Assault and Battery; Count IV: State Law False Arrest and False Imprisonment

Because the court has entered summary judgment on all of Plaintiffs' federal claims, it will decline to exercise supplemental jurisdiction over their remaining state law claims in Count III for assault and battery and Count IV

¹⁰ In support, Plaintiffs cite another case before this court, *Raj v. Dickson City Borough*, No. 17-0692, 2018 WL 571949, at *3-4 (M.D.Pa. Jan. 26, 2018) (denying a motion to dismiss), in which the plaintiff brings a *Monell* claim against Dickson City. The merits of that case, however, were ultimately decided against the plaintiff. More importantly, as Plaintiffs' counsel should be aware, allegations in a complaint are just that, allegations, until proven on the merits. The mere fact Dickson City has previously been sued under the same legal theory certainly does not stand for the proposition that Dickson City "has a custom of illegally seizing people without probable cause or reasonable suspicion," as Plaintiffs contend. ([Doc. 22, at 11-12](#)).

for false arrest and false imprisonment, and these claims are **DISMISSED WITHOUT PREJUDICE**. See 28 U.S.C. §1367(c)(3); *Borough of W. Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir.1995) (“[W]here the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.”).

IV. CONCLUSION

For the reasons set forth above, Plaintiffs’ Count I Fourteenth Amendment claims are **DISMISSED WITH PREJUDICE**. Defendants’ motion for summary judgment, ([Doc. 24](#)), is **GRANTED** with respect to Plaintiffs’ federal claims in Counts I, II, IV, V, and VI, and judgment is entered in favor of Defendants and against Plaintiffs on these claims. Plaintiffs’ state law claims against Defendants in Counts III, IV, and V are **DISMISSED WITHOUT PREJUDICE**. Finally, Plaintiffs motion for summary judgment, ([Doc. 17](#)), is **DENIED**. An appropriate order will issue.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

DATE: October 15, 2020

18-1494-02

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3120

WILLIAM J. COST; WILLIAM J. COST, JR.,
Appellants

v.

BOROUGH OF DICKSON CITY; MICHAEL RANAKOSKI; MICHAEL
MCMORROW

(D.C. Civil Nos. 3-18-cv-01494, 3-18-cv-01510)

SUR PETITION FOR REHEARING

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, and PHIPPS, Circuit Judges and *ROBRENO, District Judge

The petition for rehearing filed by Appellant in the above-entitled case having
been submitted to the judges who participated in the decision of this Court and to all the
other available circuit judges of the circuit in regular active service, and no judge who
concurred in the decision having asked for rehearing, and a majority of the judges of the
circuit in regular service not having voted for rehearing, the petition for rehearing by the

*The vote of Hon. Eduardo C. Robreno, who is sitting by designation, is limited to
panel rehearing only.

panel and the Court en banc, is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Date: July 6, 2021

CLW/cc: Cynthia L. Pollick, Esq.
Patrick J. Murphy, Esq.