

No. _____

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

JASON CUNNINGHAM, Individually and as Adult
Natural Son and Sole Wrongful Death Beneficiary
and next of Kin, Affiant and Administrator Ad Litem
and Personal Representative for Nancy Jane
Lewellyn, Deceased and Estate of Nancy Jane
Lewellyn,
Petitioner,

v.

ROBERT PASCHAL, Individually and in his Official
Capacity as a Shelby County Sheriff's Deputy and
MARVIN WIGGINS, Individually and in his Official
Capacity as a Shelby County Sheriff's Deputy,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the ruling in this case by the U.S. Court of Appeals for the Sixth Circuit violate basic fundamental principles of Rule 56 of the Federal Rules of Civil Procedure and therefore in direct conflict with existing precedent of the United States Supreme Court's holdings in Tolan v. Cottan, 572 U.S. 650 (2014) and Scott v. Harris, 550 U.S. 372 (2007) when the Sixth Circuit refused to view any of the facts in the light most favorable to the nonmoving party which were not "utterly discredited" by the dash cam videos but rather should have been viewed in in the light most favorable to the Petitioner in conjunction with the videos to show a dispute as to material fact as to whether Lewellyn posed a threat of death or serious bodily injury at the time she was shot ten (10) times? The Sixth Circuit refused and/or did not consider deposition testimony from Respondent Paschal who was outside of his SUV, regarding distance and cover between Paschal and Lewellyn and two photograph exhibits identified by Respondent Paschal that depict the scene of the shooting of Lewellyn and the position, field of vision and line of sight of Respondent Paschal when he fired his first shot from sixty feet away behind the cover of Jayroe's SUV that establishes a dispute as to material fact that Lewellyn was not pointing the bb gun at Paschal or anywhere in his vicinity and therefore posed no objective reasonable threat of death or serious bodily injury to Paschal which establishes a dispute as to material facts and contradicts Paschal's deposition testimony and the dash cam videos constitutes admissible evidence of a violation of Nancy Lewellyn's constitutional rights that were clearly established,

precluding summary judgment on the basis of qualified immunity. (ECF Nos. 93, 93-1, Photographs, PageID 489, PageID490)

2. Does the continued shooting of a mentally disturbed suspect such as Lewellyn, eight (8) times by Respondents **after** Paschal has shot her two times and the dash cam videos clearly show that Lewellyn had obviously surrendered the bb gun and/or fell to the ground incapacitated without the bb gun or weapon and posed no threat to Respondents, constitute gratuitous violence and excessive force that is a constitutional violation and clearly established under the law and/or an obvious case under the existing precedent and holdings of the United States Supreme Court in Plumhoff v. Rickard, 572 U.S. 765 (2014), precluding summary judgment on the basis of qualified immunity?

LIST OF PARTIES

All parties to the proceeding in the court whose judgment is the subject of this petition appear in the caption of the case on the cover page.

Shelby County, Tennessee and Sheriff William Oldham are not parties to the proceeding in the court whose judgment is the subject of this petition.

No corporations are involved in these proceedings.

RELATED CASES

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No. 2:18-cv-02185-TLP-dkv U.S. District Court for the
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PETITION FOR WRIT OF CERTIORARI

Petitioner Jason Cunningham respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Sixth Circuit was entered on April 19, 2021 for publication but not reported to date and reproduced in Appendix A. The district court's unreported decision denying summary judgment was entered on April 1, 2020 is reproduced in the Appendix B.

JURISDICTIONAL STATEMENT

The court of appeals entered its judgment on April 19, 2021. Pet. App. A. This Court has jurisdiction under 28 U.S.C. Section 1254(1). The United States Court of Appeals for the Sixth Circuit's judgment in this cause was issued prior to July 19, 2021 and the deadline to file a petition for writ of certiorari was extended 150 days to September 16, 2021 in which to file a petition for writ of certiorari. (ORDER LIST: 594 U.S.)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. IV, provides:

The right to 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. Section 1983 provides:

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. . .

INTRODUCTION

For purposes of this Petition for Writ of Certiorari, Petitioner Jason Cunningham will be referred to as Petitioner and/or Cunningham and Nancy Jane Lewellyn, Deceased will be referred to as “Lewellyn”. Respondent Robert Paschal will be referred to as “Paschal”. Respondent Marvin Wiggins will be referred to as “Wiggins”.

Petitioner Jason Cunningham, is the adult natural son of Nancy Lewellyn, Deceased who was shot ten (10) times by Respondents Marvin Wiggins and Robert Paschal in the driveway of her home and died on March 17, 2017. Petitioner respectfully submits that Respondents’ Motion for Summary Judgment on the basis of qualified immunity was properly denied by the District Court pursuant to Rule 56 of the Federal Rules of Civil Procedure, as there are material issues of fact in dispute involving the shooting and death of Nancy

Lewellyn and that her shooting and resulting Wrongful Death were objectively unreasonable under the totality of the circumstances and in violation of clearly established law. Petitioner respectfully submits that Sixth Circuit's Order granting summary judgment to Respondents on the basis of qualified immunity was error and in conflict with Rule 56 of the Federal Rules of Civil Procedure and existing precedent of the United States Supreme Court.

A portion of the record in this cause consists of video from three different Dashcams mounted on the three separate Shelby County Sheriff's Deputies' SUVs. (ECF No. 83-3, SUV Dashcams 1, 2, 3, PageID#345) All three SUVs contained cameras that record looking forward from the SUV and also record looking backward from the SUV.

The three video cams capture **some** of the material facts **but do not** capture all of the material facts as Paschal, Wiggins and Deputy Jayroe were standing and moving outside of their SUV's. The videos do **not** show the sight line and/or field of vision of the Respondents at the time when Respondents shot Lewellyn while standing outside of their SUVs at a minimum distance of sixty (60) feet. The videos do **not** show Respondents' perspective at all times. The dashcam videos never blatantly contradict the Petitioner's version of events so that no jury could believe it. Further, the Court of Appeals did not view the Petitioner's evidence in the light most favorable to the nonmoving party when the Court refused to consider the deposition testimony and photographic evidence offered and introduced through Paschal in his

deposition that when viewed in conjunction with the dash cam videos creates a material issue of fact in dispute that must be decided by a jury and summary judgment for Respondents should not have been granted.

After the first two shots fired by Paschal, both Respondents shot Nancy Lewellyn a combined eight more times **after** she had surrendered the bb gun in obvious plain sight and Respondents continued to shoot her while she was falling and after she had fallen to the ground without the bb gun or weapon in her hand constituting gratuitous violence and excessive force that is a constitutional violation and clearly established under the law and/or an obvious case.

Deputy Jayroe was the first deputy on the scene and the **closest** to Lewellyn at the time of the shooting and Deputy Jayroe **never** fired his weapon at Lewellyn even though Paschal and Wiggins shot Lewellyn ten (10) times at a distance of sixty (60) feet or greater.

STATEMENT OF THE CASE

Petitioner respectfully states the following viewed in the light most favorable to the nonmoving party, considering all of the admissible evidence offered in this cause which is not blatantly contradicted by the three dash cam videos: On March 17, 2017, Nancy Lewellyn was fifty-nine years old and living at the home of her adult son, Jason Cunningham (Petitioner) whose address was 10016 Woodland Pine Cove West in Lakeland, Tennessee. (ECF No. 1, Complaint, PageID# 4-5). On this date, at approximately 12:00 p.m., Nancy Lewellyn, who was obviously suffering from some type

of mental or emotional crisis and/or mental disorder, called 911 Emergency Dispatch and stated that she was out of her medicine, depressed and suicidal and that she had a gun and was threatening to kill herself and anyone who came to her residential address and to tell them that she was sorry for doing so. (ECF No. 1, Complaint, PageID# 4-5) During this 911 telephone call, three Shelby County Deputies were dispatched to Nancy Lewellyn's address in three separate SUV's. (ECF No. 83-3, Dashcams 1,2,3, PageID#345) Shelby County Sheriff's Deputy Justin Jayroe is not a named party to this litigation and was alone in his Shelby County Sheriff's SUV and he was the first to arrive outside of the home located at 10016 Woodland Cove West. (ECF No. 83-3, SUV Dashcam 1, Page ID#345) Deputy Jayroe had certification on that date as a Crisis Intervention Team member in dealing with the mentally ill. (ECF No. 101, Newspaper Article, PageID# 605-606) Deputy Jayroe **never** fired his pistol at Nancy Jane Lewellyn even though Deputy Jayroe was the closest to Nancy Jane Lewellyn at the time of the ten shots were fired by Paschal and Wiggins. Immediately right behind Deputy Jayroe, Respondent Robert Paschal arrived on the scene of Nancy Lewellyn's home and parked behind Jayroe's SUV. (ECF No. 83-3, SUV Dashcams 1, 2, 3, PageID# 345) Paschal was **not** certified as a member of the Shelby County Sheriff's Department's Crisis Intervention Team on the date of the shooting of Nancy Lewellyn. (ECF No. 101, Newspaper Article, PageID# 605-606) It is disputed as to how much information Paschal actually had concerning the nature of the call and Lewellyn when he arrived on the scene because as he

arrives someone can be heard on the dash cam video saying “Whose the complainant?”

Respondent Marvin Wiggins is also a Shelby County Sheriff’s Deputy who arrived on the scene last and he parked his SUV behind Defendant Paschal’s SUV. (ECF No. 83-3, SUV Dashcam 3, PageID# 345) Wiggins was also **not** certified as a member of the Shelby County Sheriff’s Department’s Crisis Intervention Team on the date of the shooting of Nancy Lewellyn. (ECF No. 101, Newspaper Article, PageID# 605-606)

It is undisputed that Nancy Lewellyn **never** had any type of verbal communication nor did she make any verbal threats directly to Wiggins or Paschal **prior** to being shot ten (10) times. It is undisputed that Nancy Lewellyn did **not** harm anyone prior to the arrival of Wiggins, Paschal and Deputy Jayroe or prior to being shot ten times by Paschal and Wiggins. Lewellyn was **never** charged with any crime as a result of anything that took place on March 17, 2017. The nature of Lewellyn’s call to Shelby County Dispatch was a 911 telephone call made by someone who was suffering from some type of mental and/or emotional issue and a cry for help or attention. The Shelby County Sheriff’s Dispatcher sent armed deputies to Lewellyn’s home, including Paschal and Wiggins rather than mental health professionals to assist and help Lewellyn.

After Paschal, Wiggins and Deputy Jayroe arrived in the cove immediately in front of Lewellyn’s home, Nancy Lewellyn walked out of the front door of her home and was holding a bb gun in her right hand but did not aim it at anyone. (ECF No. 83-3, SUV Dashcam

1, Page ID# 345) (ECF No. 100, Wiggins Deposition, PageID# 577-578, 582-583, 603-604) (ECF Nos. 93 and 93-1, Exhibit Photographs, PageID#489-490) It is not a crime in the State of Tennessee to possess a bb gun on personal property and/or at your home. Further, there had been no history of prior calls to 911 at this residence prior to this date.

Nancy Lewellyn turned to her right as she exited her front door. Respondent Marvin Wiggins, Respondent Robert Paschal and Deputy Justin Jayroe **never** identified themselves as Shelby County Sheriff's Deputies, **never** told and/or ordered Nancy Lewellyn to drop the bb gun and/or weapon, **never** told Lewellyn to show her hands and **never gave Lewellyn any warning of any type prior to the ten (10) shots being fired at Nancy Lewellyn.** (ECF No. 83-3, SUV Dashcam 1, PageID# 345) It is undisputed that Nancy Lewellyn **never** walked into the grass in front of her residence with the bb gun when she walked out of the front door but instead she turned to her right and **walked away** from Paschal, Wiggins and Deputy Jayroe, on the concrete walkway connected to her driveway. (ECF No. 83-3, SUV Dashcam 1, PageID# 345) Undisputed that Nancy Lewellyn **never** fired a shot at Wiggins or Paschal or Deputy Jayroe or anyone else in the vicinity. (ECF No. 83-3, SUV Dashcam 1, PageID# 345) There is no proof that there was anyone else present at the scene or the immediate area **prior** to the shooting except Lewellyn, Paschal, Wiggins and Deputy Jayroe.

Wiggins states in his deposition that Nancy Lewellyn **never** pointed the bb gun at him, Paschal or

Deputy Jayroe at any time **prior** to being shot. (ECF 100, Wiggins Deposition, PageID# 577-578, 582-583, 603-604) Petitioner alleges that Paschal fired the first shot while Nancy Lewellyn was holding the bb gun and walking in the driveway, **away from Paschal, Wiggins and Deputy Jayroe** while she was attempting to surrender the bb gun on the hood of the parked car so that it would be visible and in plain sight for all to see. (ECF No. 83-3, Dashcam SUV 1, PageID# 345)

Wiggins said in his statement to Bureau of Professional Standards that when he first saw Nancy Lewellyn, it looked **“like she was under the influence of something.”** (ECF No. 89, Statement, PageID# 407) Wiggins **never** saw or heard Nancy Lewellyn fire a shot from her bb gun because he was taking cover behind his SUV but Wiggins decided that Nancy Lewellyn was a threat of death or serious bodily injury that justified the use of deadly force when he heard a “shot go off,” **without knowing that Nancy Lewellyn never fired the bb gun** and that he **“started putting rounds down range and um, struck the subject.”** (ECF No. 89, Statement, PageID# 406)

Wiggins **never** saw Nancy Lewellyn point the bb gun at anybody on that date but shot at her anyway. (ECF No. 100, Wiggins Deposition, PageID# 583, 603-604) Wiggins shot Nancy Lewellyn four (4) times **without** knowing that she **never** fired her bb gun. (ECF 89, Statement, PageID# 407) (ECF 83-3, SUV Dashcam 1, PageID#345) Wiggins admits that at some point in the shooting, that he did not see the bb gun

that Nancy Lewellyn had been holding in her right hand. (ECF No. 89, Wiggins Statement, PageID# 407) (ECF No. 100, Wiggins Deposition, PageID# 579-580) Wiggins states that Nancy Lewellyn **never** said anything from the time that she came out of the house until she was shot multiple times and lying on the driveway. (ECF No. 89, Wiggins Statement, PageID# 408) Wiggins states in his deposition that Nancy Lewellyn never pointed the bb gun at him. (ECF No. 100, Marvin Wiggins Deposition, PageID# 577-578, 582, 603)

Wiggins further states in his deposition that Nancy Lewellyn **never** pointed the bb gun at Defendant Robert Paschal. (ECF No. 100, Wiggins Deposition, PageID# 577, 582, 603-604) Wiggins states in his deposition that Nancy Lewellyn **never** pointed the bb gun **at Deputy Jayroe or anybody else** that day before she was shot. (ECF No. 100, Wiggins Deposition, PageID# 577, 582-583, 604) Wiggins, Paschal and Deputy Jayroe never verbally identified themselves to Lewellyn as Shelby County Sheriff's Deputies prior to shooting her. (ECF No. 83-3, Dashcam Videos 1, 2, 3, PageID#345) Wiggins states in his deposition that he **never** heard any deputy on the scene say to Nancy Lewellyn and he did not say, "drop the gun, put the gun down" before she was shot 10 times. (ECF No. 100, Wiggins Deposition, PageID# 584, 586) Wiggins states in his deposition that the bb gun held by Nancy Lewellyn was **not** a real gun. (ECF No. 100, Wiggins Deposition, PageId# 586)

Wiggins admits that Nancy Lewellyn **never** walked towards Wiggins or Paschal or Deputy Jayroe when she

had the bb gun in her hand but instead Nancy Lewellyn did just the opposite and turned to her right and started walking towards the parked car in the driveway and did **not walk towards** the deputies. (ECF No. 100, Wiggins Deposition, PageID# 587-588) (ECF No. 83-3, Dashcam SUV 1, PageID# 345) Wiggins stated that he was taking cover behind his SUV 3 and he never said that he saw Nancy Lewellyn raise the bb gun while she was in the driveway. (ECF No. 89, Wiggins Statement, PageID# 404-409) Wiggins admits that he shot at Nancy Lewellyn four times when he heard a shot **without knowing** where the shot came from. (ECF No. 89. Statement, PageID# 406) Wiggins further admits that he aimed and fired his gun at Nancy Lewellyn while she was walking towards the car in the driveway. (ECF No. 91-1, Paschal Deposition, PageID# 433, ECF No. 100, Wiggins Deposition, PageID# 591) (SUV Dashcams 1, 3) Wiggins admits that he fired four shots at Nancy Lewellyn and doesn't recall if he shot her while she was falling down. (ECF No. 100, Wiggins Deposition, PageID# 597) Deputy Justin Jayroe was behind SUV 1 and he was the closest to Nancy Lewellyn but he **never** fired his weapon at Nancy Lewellyn but Wiggins does not know why he didn't shoot when he states "No, I can't speak on his mindset at the time." (ECF No. 100, Wiggins Deposition, PageID# 601-603)

Wiggins admits in his deposition that Nancy Lewellyn **never** pointed the bb gun at him (Wiggins) or Paschal or Deputy Jayroe or anyone else on March 17, 2017 before the shooting of Nancy Lewellyn. (ECF No. 100, Wiggins Deposition, PageID# 603-604)

Paschal stated that when he first saw Nancy Lewellyn that she had a gun in her hand and that she walked out of the front door and turned to Lewellyn's right to go down the walkway and then **she raised the bb gun for the first time in the driveway** and that's when he began to shoot. (ECF 88, Paschal Statement, PageID# 402, ECF 92, Paschal Deposition, PageID# 458-460, ECF 83-3, SUV Dashcam 1, PageID# 345) Paschal does **not** recall giving any verbal commands to Nancy Lewellyn to drop the weapon **before** he shot her. (ECF No. 88, Statement, PageID# 402) Paschal testified that he knew that he was dealing with a potentially mentally unstable person when he arrived at Nancy Lewellyn's home. (ECF No. 92, Deposition, PageID# 447) Paschal states that he had a clear view of Lewellyn's front door. (ECF No. 92, Deposition, PageID# 448) and that he "initiated the shooting". (ECF No. 92, Deposition, PageID# 453) Paschal identified Exhibit Nos. 3, 4 and 9 from the scene of the shooting. (ECF Nos. 93, 93-1, Deposition, PageID# 489-491) Petitioner respectfully states that the Sixth Circuit **never** considered the photograph exhibits which Paschal identified and testified to that showed his location, field of vision and sight line of Lewellyn in the driveway when he fired his first shot at her. (ECF Nos. 93, 93-1, PageID 489-490) This admissible evidence is material and is not blatantly contradicted by the videos and offers admissible proof that Lewellyn never aimed her bb gun at Paschal or in his direction and Paschal was not in fear of death or serious bodily injury when he fired his first shot and qualified immunity should have been denied at the summary judgment stage.

Nancy Lewellyn **never** turned towards the deputies and raised the bb gun and pointed it at them. (ECF No. 83-3, SUV Dashcam 1) (ECF No. 93, 93-1, Photographs, PageID# 489-491) Paschal admits that Deputy Jayroe **never** fired his gun at Nancy Lewellyn even though he was the deputy that was closest to her. (ECF No. 92-1, Deposition, PageID# 466) (ECF No. 83-3, SUV Dashcams 1,2,3)

Petitioner alleges that Paschal shot Nancy Lewellyn immediately **before** the bb gun was slightly raised in the driveway in the dashcam video. (ECF No. 83-3, SUV Dashcam 1, PageID#345) Paschal admits that he first fired two shots at Nancy Lewellyn while she was walking towards the car in the driveway and then there was a **pause and then the eight other shots were fired**. (ECF No. 92, Deposition, PageID# 467-468)

Petitioner alleges that Paschal fired the first shot and hit Nancy Lewellyn in the back, while the bb gun was down by her side, causing the reaction from Nancy Lewellyn to involuntarily raise the bb gun with her right hand for a second and then lower it back to her side and then reaching for her back, where Paschal had shot her and/or she stumbled while walking causing the bb gun to raise slightly for a second and then go back down. (ECF No. 83-3, SUV Dashcam 1) (ECF No. 98, Autopsy Report of Nancy Lewellyn, PageID# 551-566)

Regardless, Nancy Lewellyn **never** pointed the bb gun at anyone, including Wiggins, Paschal and Deputy Jayroe, and her back was facing Wiggins, Paschal and Deputy Jayroe and they were never in any danger for

the second that the bb gun raised up after and/or at or near the time that Nancy Lewellyn was shot by Paschal. (ECF No. 83-3, SUV Dashcam 1, PageID#345, ECF No. 98, Autopsy Report of Nancy Lewellyn, PageID# 551-566, ECF No. 100, Wiggins Deposition, PageID# 577-578, 582, 603-604) Paschal, Wiggins and Deputy Jayroe were taking cover behind the SUVs with their guns drawn, looking at Lewellyn's back, when the first shots were fired and none were in danger of death and/or serious bodily injury from Nancy Lewellyn. (ECF 83-3, Dashcams 1,2,3, PageID#345)

Paschal admits that if Nancy Lewellyn no longer had the bb gun, that she was not a threat of death or serious bodily injury to him (Paschal), Wiggins or Deputy Jayroe. (ECF No. 92, Paschal Deposition, PageID# 474) Paschal further admits that Wiggins first said drop the weapon **after** the 10 shots had been fired and Nancy Lewellyn laid dying on the ground. (ECF No. 92, Paschal Deposition, PageID# 478, ECF No. 95, Autopsy Report PageID#551-566ECF 83-3, SUV Dashcam 1, PageID#345)

Petitioner argues that the proof shows that after surrendering the bb gun and obviously placing the bb gun on the hood of the car parked in the driveway and **prior** to falling to the ground, Nancy Lewellyn stretches out both arms and it is **obvious** and you can plainly see that both of her hands are open and empty and that she is not holding any bb gun or any other type of weapon. (ECF No. 83-3, SUV Dashcam 1, PageID# 345)

After the first two shots, there was a pause described by Paschal, then both Paschal and Wiggins

continue to shoot Nancy Lewellyn **after** she has clearly surrendered the bb gun on the hood of the car and is attempting to get back to the house, falling down with no bb gun in her hand and laying on the concrete driveway incapacitated, posing no threat of any type to anyone, bleeding and dying. (ECF No. 83-3, SUV Dashcam 1, Page ID# 345) (ECF No. 92, Paschal Deposition, PageID# 482-483) Paschal does not dispute that the video from Jayroe's SUV shows Nancy Lewellyn being shot **after** she falls on the ground in the driveway **with no weapon in her hands**. (ECF No. 83-3, SUV Dashcam 1, PageID# 345)(ECF No. 92, Paschal Deposition, PageID# 483-484) Paschal also admits that if someone is laying on the ground after being shot and they have no weapon, **there would be no reason to shoot that person**. (ECF No. 92, Paschal Deposition, PageID# 484) Paschal admits that it is improper to shoot someone after they surrender their weapon. (ECF No. 92, Paschal Deposition, PageID# 485) Paschal admits that Wiggins first shouts drop the weapon **after** the tenth (10th) shoot is fired. (ECF No. 92, Paschal Deposition, PageID# 486) Paschal states that he is approximately **sixty (60)** feet away from Nancy Lewellyn when he shoots her **and** that Defendant Wiggins **is even farther away than that because Wiggins was behind Paschal**. (ECF No. 92, Paschal Deposition, PageID# 488)

The autopsy report of Nancy Lewellyn reveals that Nancy Lewellyn died on March 17, 2017 as a result of multiple gun shot wounds inflicted by Paschal and Wiggins who shot Nancy Lewellyn a total of no less than **Ten (10) times, with four (4) shots and bullet wounds to Nancy Lewellyn's back**. Defendant

Paschal fired 6 shots and Defendant Wiggins fired 4 shots. (ECF No. 83-3, SUV Dashcams 1, 2,3) (ECF No. 95, Autopsy Report, PageID# 551-566)

Reviewed in the light most favorable to the Petitioner, the proof would show that Wiggins, Paschal and Deputy Jayroe never gave any type of order and/or verbal command to Nancy Lewellyn to drop the bb gun or put her hands in the air, never gave her any warning of any type that Wiggins and Paschal would shoot if she did not obey their commands although it was feasible and there was ample time to do so before Paschal fired his first shot.

Nancy Lewellyn was **walking away** from Paschal and Wiggins and Deputy Jayroe and attempting to surrender the bb gun **before** she was shot by walking to the car in the driveway and placing the bb gun on the hood of the car. Nancy Lewellyn **never** pointed the bb gun at Respondents or Deputy Jayroe and **her back** was to them when she was walking towards the car parked in the driveway. (ECF No. 83-3, SUV Dashcam 1, PageID# 345) Petitioner would allege that Lewellyn raised her hand with the bb gun at the time she was shot the first time and the raising of the bb gun was a reaction to being shot or Lewellyn was shot while she stumbled while walking. Regardless, the bb gun was not pointed in the direction of Paschal or Wiggins and the bb gun was quickly lowered as Lewellyn grabs for her back where she was shot and she never pointed and/or shot the bb gun at anyone on the scene. Petitioner respectfully states that the Sixth Circuit Court of Appeals committed error by not viewing the evidence offered by the Petitioner which was not

blatantly contradicted by the dash cam videos, in the light most favorable to the Petitioner and drawing all inferences in the Petitioner's favor.

Further, Nancy Lewellyn was shot multiple times **after** she surrendered the bb gun in plain sight on the hood of the car in the driveway. (ECF No. 83-3, SUV Dashcam 1, PageID# 345) Nancy Lewellyn was shot multiple times **after** she surrendered the bb gun, with her arms extended and hands out and empty as she was walking and falling in plain and obvious sight to Paschal and Wiggins.(ECF No. 83-3, SUV Dashcam 1, PageID# 345)

Petitioner states that the shooting of Lewellyn multiple times after she had obviously surrendered the bb gun and/or laying without the bb gun while she was falling and laying on the ground constitutes gratuitous violence and a violation of Lewellyn's constitutional rights that were clearly established and summary judgment should not have been granted in this cause. The dashcam videos do not so utterly discredit Petitioner's material evidence so that no jury could believe it.

Paschal identified two exhibits during his deposition that fairly and accurately depict the location of the three SUVs parked behind each other at the time of the shooting of Nancy Lewellyn (ECF No. 93, Photograph Exhibit, PageID# 489, ECF No. 93-1, Photograph Exhibit, PageID# 490) and the spot on the driveway where Nancy Lewellyn had fallen after being shot and Paschal's sight, field of vision and perspective when Paschal fired his first shot at Lewellyn. (ECF No. 93-2, Photograph Exhibit, PageID# 490-491)

Importantly, the photograph exhibit found at ECF 93-1, Exhibit, PageID# 490 shows the location where Defendant Robert Paschal was standing to the right of Jayroe's SUV, his field of vision and line of sight in relation to Lewellyn and her home when he first shot her. The Sixth Circuit refused and did not consider this material evidence which provides a genuine dispute to material fact and it was error not to consider the photographs contained in ECF Nos. 93 and 93-1 which should have been viewed in the light most favorable to the Petitioner and in conjunction with the three dash cam videos which would have established a dispute as to material fact as to whether the Respondents had a reasonable objective fear of death or serious bodily injury when Paschal fired his first shot. A review of ECF Nos. 93 and 93-1, PageID# 489-490 and ECF No. 83-3, SUV Dashcams1, 2 and 3, PageID#345 provides proof that Nancy Lewellyn was walking away from Defendants, with **her back to Respondents and not aiming the bb gun at Paschal**, when she was first shot by Paschal, as evidenced by bullet wounds and/or graze bullet wounds to Nancy Lewellyn's back and that Nancy Lewellyn never pointed the bb gun at anyone. (ECF No. 98, Autopsy Report of Nancy Lewellyn, PageID# 551-566)

The photographs and videos contained within ECF Nos. 93 and 93-1 and ECF 83-3, Dashcams SUV 1,2 3 do not blatantly contradict Petitioner's admissible evidence and when viewed in conjunction with each other, provide admissible proof of disputed material fact that Nancy Lewellyn **never** pointed the bb gun at and/or in the vicinity where Wiggins and Paschal and were located at the time that the first shots were fired.

(ECF No. 93, 93-1, Photographs, PageID# 489-491) Exhibit 93-1, Page ID# 490 proves the location, sight line and field of vision of Paschal when he shot Lewellyn. Paschal stated that he was approximately Sixty (60) feet away from Nancy Lewellyn when he shot her. Respondent Paschal stated that Respondent Wiggins was more than Sixty (60) feet away from Nancy Lewellyn when she was shot because Wiggins was standing behind him (Paschal) when Paschal shot.

Therefore, there is admissible proof of a disputed material fact that a jury should decide regarding whether Respondents had an objective fear of imminent death and/or serious bodily injury to Wiggins and Paschal or Deputy Jayroe or anyone else when Nancy Lewellyn was shot by Paschal and continued to be shot a total of Ten (10) times and killed.

When Paschal fired the first two shots, striking Nancy Lewellyn in the back and/or grazing her back, Paschal stated in his deposition that **there is a pause in the shooting** and Nancy Lewellyn is seen in the video trying to hurriedly walk to the parked car to obviously surrender the bb gun on the hood of the parked car in the driveway, in plain and obvious sight to Wiggins and Paschal and Deputy Jayroe.

Wiggins and Paschal were not separated after the shooting but kept together with Deputy Jayroe after the shooting so that they could get their stories straight in violation of the Deadly Force Policy of the Shelby County Sheriff's Department. (ECF No. 99, Deadly Force Policy, PageID# 567-571). This violation calls Respondents' veracity and credibility into question regarding their deposition testimony and

statements made to the Sheriff's Department. (ECF No. 83-3, Dashcams SUV 1 and 2, Time 12:24-12:36 p.m., PageID #345)

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. The ruling of the U.S. Court of Appeals violates the basic fundamental principles of Rule 56 of the Federal Rules of Civil Procedure and therefore in direct conflict with the existing precedent of the United States Supreme Court's holdings in Tolan v. Cottan, 572 U.S. 650 (2014) and Scott v. Harris, 550 U.S. 372 (2007). Respectfully, the Sixth Circuit improperly weighed evidence and resolved disputed issues in favor of the moving party by failing to credit key evidence offered by the Petitioner. In ruling on a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Tolan v. Cottan, Id at page 651. The Sixth Circuit only considered the dash cam videos in making the determination that Lewellyn posed a threat of death or serious bodily injury at the time that Paschal fired the first shot at Lewellyn. The cameras located in the three SUVs did not provide the same field of vision and/or sight line that Paschal had standing outside and to the right of Jayroe's SUV. Paschal's own deposition testimony provided material evidence through the photograph exhibit of his location, sight line and field of vision of Lewellyn when he fired his first shot. (ECF No. 93-1, PageID 490) Further, Paschal was at least sixty (60) feet away from Lewellyn when he fired his first shot. A careful review of photograph exhibits 93 and 93-1 when viewed in

conjunction with the dashcam videos provides admissible proof that Lewellyn never pointed the bb gun at or in the direction of Paschal. As a result, Petitioner has presented admissible evidence of a material disputed fact that Paschal never had an objective reasonable fear of death and/or serious bodily injury when he fired his first shot at Lewellyn that should be resolved by a jury and summary judgment was granted in error.

B. The shooting of a mentally disturbed person such as Lewellyn, eight times by Respondents **after** the dash cam videos clearly show that Lewellyn had obviously surrendered the bb gun and/or fell to the ground without the bb gun or weapon and posed no threat to Respondents, constitutes gratuitous violence and excessive force that is a constitutional violation and clearly established under the law and/or an obvious case. The United States Supreme Court recognized and held

...This would be a different case if petitioners had initiated a second round of shots after an initial round had clearly incapacitated Rickard...or if Rickard had clearly given himself up...

Plumhoff v. Rickard, 572 U.S. 765, 774 (2014)

The law in the Sixth Circuit is clearly established that suspects who are unarmed and who have surrendered are not subject to gratuitous violence during arrest. The Sixth Circuit has recognized that “We have ... consistently held that various types of force applied after the subduing of a suspect are

unreasonable and a violation of a clearly established right.” McCaig v. Raber, 515 Fed.Appx. 551 (6th Cir. 2013) (unpublished) The Sixth Circuit has previously recognized that it is clearly established that shooting a suspect who is incapacitated or while no longer a threat is gratuitous violence and excessive force in violation of the constitution. Margeson v. White County, Tennessee, 579 Fed.Appx. 466 (6th Cir. 2014) (unpublished) In this case, the Court of Appeals did not consider whether the continued shooting of Nancy Lewellyn multiple times **after** she had obviously surrendered the bb gun and/or after falling to the ground with no bb gun or weapon created issues regarding gratuitous violence and excessive force that a jury would have to resolve, precluding summary judgment to the Respondents.

Wiggins and Paschal **never** had an objective reasonable fear of death or imminent serious bodily injury to themselves or anyone else when they shot Nancy Lewellyn Ten (10) times without giving any type of warning or command of any type, including but not limited to: put down the bb gun, show her hands, place her hands in the air, stop walking, stand still or freeze, get on the ground and/or stop and it was feasible to do so before the first shot was fired by Paschal. Wiggins and Paschal shot Nancy Lewellyn ten (10) times with four shots to her back, mortally wounding her when: she was at home (private property) and had not committed a crime, she had called 911 saying that she was out of medicine and was going to kill herself, was obviously mentally unstable and/or suffering a mental crisis of some type, she never verbally threatened them in person, never was charged with a crime of any type,

never aimed the bb gun at anyone, never fired the bb gun at anyone and Paschal and Wiggins had no knowledge that Lewellyn had harmed anyone prior to Paschal, Wiggins and Deputy Jayroe arriving on the scene and shooting her multiple times.

Lewellyn never walked towards Paschal, Wiggins or Deputy Jayroe but instead walked **away** from them when she attempted to and surrendered the bb gun in plain and obvious sight on the hood of the parked car in the driveway. As she was attempting to do so, Paschal fires his first shot and then **there was a pause in the shooting after the first two shots**. Lewellyn reacts to being shot and then staggers toward the parked car and places the bb gun on the hood of the car. Paschal and Wiggins knew that Nancy Lewellyn had been shot and had obviously surrendered the bb gun in plain sight but they continued to shoot her eight more times as she falls to the ground and she is shot multiple times while she is laying on the ground obviously unarmed, defenseless and after she had surrendered.

At the time that the first shot was fired by Paschal, Wiggins, Paschal and Deputy Jayroe were taking cover behind the SUVs and not in danger and/or fear of death or serious bodily injury to themselves or anyone else. When the shots struck Nancy Lewellyn, it was in broad daylight and Paschal and Wiggins clearly saw Nancy Lewellyn surrender the bb gun who was then unarmed and shot 8 more times in the driveway of her home.

Prior to shooting Nancy Lewellyn ten (10) times with four gun shots to her back, Paschal, Wiggins and Deputy Jayroe: **never** identified themselves as Shelby

County Sheriff's Deputies, **never** ordered Lewellyn to drop the bb gun, **never** ordered Lewellyn to show her hands, put her arms up, stop walking or any thing else although there was ample time to do so **before** using deadly force. Wiggins and Paschal's actions in shooting Nancy Lewellyn Ten (10) times were not objectively reasonable under the totality of the circumstances. As a result, Wiggins and Paschal violated Nancy Lewellyn's constitutional rights when they shot and killed her and those rights were clearly established on March 17, 2017 and Respondents were on notice of their constitutional violations. Existing precedent from the United States Supreme Court and the Sixth Circuit Court of Appeals squarely governs the facts of this case and the shooting violated clearly established law. In the alternative, the shooting of Nancy Lewellyn constituted gratuitous violence and was an "obvious" violation of Nancy Lewellyn's constitutional rights.

Wiggins and Paschal's shooting of Nancy Lewellyn multiple times, no less than Ten (10) times, when she posed no threat of death or serious bodily injury to Paschal, Wiggins or Deputy Jayroe or anyone else, was objectively unreasonable under the totality of the circumstances and therefore constitutes excessive force in violation of the United States Constitution. (Lewellyn Autopsy Report, ECF No. 98) Paschal and Wiggins **never** gave Lewellyn any order or command of any type prior to Paschal and Wiggins shooting Lewellyn ten (10) times with four (4) shots to the her back. This Honorable Court should grant the Petitioner's Writ of Certiorari and should reverse the ruling of the Sixth Circuit and affirm the District Court's denial of qualified immunity for Paschal and

Wiggins and should remand this matter for trial by jury for resolution.

The Courts resolve questions of qualified immunity at the summary judgment stage by determining whether the record shows no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(a) of the Federal Rules of Civil Procedure. Credibility judgments and weighing of evidence are prohibited in a reviewing a summary judgment motion. Schreiber v. Moe, 596 F.3d 323, 333 (6th Cir. 2010) The Courts view all facts and related inferences in the light most favorable to the non-moving party. Davenport v. Causey, 521 F.3d 544, 550 (6th Cir. 2008) The Court should not adopt the non-moving party's version of the facts for purposes of summary judgment **only** where the videotape capturing the events in question blatantly contradict the Plaintiff's version of events so that no reasonable jury could believe it. Scott v. Harris, 550 U.S. 372 (2007). In this cause, the Sixth Circuit only relied upon the dash cam videos and did not consider relevant admissible evidence offered by the Petitioner, which was not blatantly contradicted by the videos, that should have been viewed in a light most favorable to the Petitioner and in conjunction with the dash cam videos.

In this case, the **dashcams do not depict all of the genuinely disputed facts**, such as the perspective of Wiggins and Paschal immediately prior to and during the shooting of Nancy Lewellyn. Further, the dashcams do not "blatantly contradict the Petitioner's version of events so that no reasonable jury could believe it." Paschal and Wiggins were both out of

their SUVs when they fired their guns ten times at Lewellyn. The location of the cameras in the SUVs do not have the same field of vision or sight line that Paschal had while standing to the right of Jayroe's SUV and firing his gun. Exhibits 93 and 93-1 (PageID489-490) are material evidence that the Sixth Circuit should have considered in the light most favorable to the Petitioner as to whether Respondents were in objective danger of death or serious bodily injury when they fired their weapons ten times at Lewellyn.

The Courts apply a two-prong test and inquire whether (1) whether the facts, taken in the light most favorable to the party asserting the injury, show that the officer's conduct violated a constitutional right and (2) whether the right violated was clearly established such that "a reasonable official would understand that what he is doing violates that right. Saucier v. Katz, 533 U.S. 194, 201-02 (2001) It is black letter law that individuals have a clearly established right not to be shot absent a probable cause belief that that individual poses a threat of serious physical harm. Mullins v. Cyranek, 805 F.3d 760, 765 (6th Cir. 2015) Further, just because the Courts must look at the circumstances through the eyes of a **reasonable officer** does **not** mean that the Courts must accept the officer's subjective view of the facts when making the assessment. Rather, the Courts must conduct the reasonable officer analysis using the facts in the light most favorable to the plaintiff. Bougess v. Mattingly, 482 F.3d 886, pages 887-889 (6th Cir. 2007).

The United States Supreme Court has held that “Apprehension by use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment.” Tennessee v. Garner, 471 U.S. 1, 7 (1983) The Sixth Circuit has authorized the use of deadly force “only in rare instances.” Sample v. Bailey, 409 F.3d 689, 697 (6th Cir. 2005) “It has been clearly established in this circuit for some time that individuals have a right not to be shot unless they are perceived as posing a threat to officers or others.” King v. Taylor, 694 F.3d 650, 664 (6th Cir. 2012) see also; Ciminillo v. Streicher, 434 F.3d 461, 468 (6th Cir. 2006); Robinson v. Bibb, 840 F.2d 349, 351 (6th Cir. 1988); Bletz v. Gribble, 641 F.3d 743, 752 (6th Cir. 2011); Yates v. City of Cleveland, 941 F.2d 444, 447 (6th Cir. 1991).

Excessive force claims are analyzed under an **objective reasonableness** standard. Graham v. Connor, 490 U.S. 386, 397 (1989) The Courts consider the facts and circumstances of each case, including the severity of the crime at issue; whether the suspect posed an immediate threat to the safety of the officers or others; and whether the suspect was actively resisting arrest or attempting to evade arrest by flight. Sigley v. City of Parma Heights, 437 F.3d 527, 534 (6th Cir. 2006) The ultimate inquiry must always be whether the totality of the circumstances justified the use of force. Mullins v. Cyranek, 805 F.3d 760 (6th Cir. 2015) “In excessive force cases, the threat factor is a **‘minimum requirement for the use of deadly force,’** meaning that deadly force ‘may be used only if the officer has probable cause to believe that the suspect poses a threat of severe physical harm.”

Mullins v. Cyranek, 805 F.3d 760, 766 (6th Cir. 2015) quoting Untalan v. City of Lorain, 430 F.3d 312, 314 (6th Cir. 2005)). It is established black letter law in the Sixth Circuit that **merely possessing a weapon is not enough**, the officer must reasonably believe the individual poses a danger of death or serious physical harm to himself or others to justify the use of deadly force. Bouggess v. Mattingly, 482 F.3d 886 (6th Cir. 2007); see also Dickerson v. McClellan, 101 F.3d 1151 (6th Cir. 1996) Instead, whether a suspect has a weapon constitutes just one consideration in assessing the totality of the circumstances. Thomas v. City of Columbus, 854 F.3d 361, 366 (6th Cir. 2017) “But just because we must look at the circumstances through the eyes of a reasonable officer does **not** mean, as defendants suggest, that we must accept the officers’ subjective view of the facts when making this assessment. ... we must conduct the reasonable officer analysis using the facts in the light most favorable to plaintiff. Bouggess v. Mattingly, 482 F.3d at 887, 889. “Whether the use of deadly force at a particular moment is reasonable depends on an **objective** assessment of the danger a suspect poses at the moment. The assessment must be made from the perspective of a reasonable officer in the defendant’s position.” Bouggess, 482 F.3d at 889. Ultimately, the question is “whether the totality of the circumstances justified a particular sort of ... seizure.” Tennessee v. Garner, 471 U.S. 1, 8-9 (1983) Further, “the fact that a situation unfolds relatively quickly does not, by itself, permit an officer to use deadly force”. Kirby v. Duva, 530 F.3d 475, 483 (6th Cir. 2008) “*Even a split-second decision, if sufficiently wrong, may not be protected by*

qualified immunity.” Bouggess v. Mattingly, 482 F.3d 886, 894 (6th Cir. 2007)

“To the extent that facts shown on video can be interpreted in multiple ways” or are otherwise unclear, that video too must be “viewed in the light most favorable to the plaintiff”. Latits v. Phillips, 878 F.3d 541, 547 (6th Cir. 2017)

The caselaw in the Sixth Circuit is replete with cases in which the Courts have denied an officer’s qualified immunity when taking the facts in the light most favorable to the Plaintiff where the suspect did not pose a serious threat to the officer. See, e.g. , King v. Taylor, 694 F.3d at 662-63 (noting fact dispute as to whether the suspect pointed gun at officers); Brandenburg v. Cureton, 882 F.2d 211 (6th Cir. 1989) (similar); Bletz v. Gribble, 641 F.3d at 752 (disputed facts over whether decedent was putting gun down when he was shot)

In Kisela v. Hughes, the United States Supreme Court reminded and reaffirmed the controlling law that an officer may violate a clearly established constitutional right in an **obvious case** in which any competent officer would have known that the use of deadly force by the officer under the circumstances would be excessive and violate the Fourth Amendment. Kisela v. Hughes, 138 S. Ct. 1148 (2018) Plaintiff has presented material facts in this case that sets out such an **obvious case**. The shooting of Nancy Lewellyn, multiple times with four shots to her back, was objectively unreasonable considering the totality of the circumstances presented and therefore a constitutional

violation by Paschal's and Wiggins' use of excessive force against Nancy Lewellyn.

Petitioner relies upon the cases previously cited and the following cases which were in force **prior** to the shooting of Nancy Lewellyn on March 17, 2017 to show that the constitutional right was clearly established or an "obvious case". In the alternative, existing precedent squarely governs the specific facts at issue that places the constitutional question beyond debate and/or a consensus of cases of persuasive authority that clearly establish the constitutional right:

Supreme Court of the United States:

Plumhoff v. Rickard, 572 U.S. 765 (2014)

Sixth Circuit Decisions:

King v. Taylor, 694 F.3d 650 (6th Cir. 2012)
Qualified immunity denied noting factual dispute as to whether suspect pointed gun at officers.

Brandenburg v. Cureton, 882 F.2d 211 (6th Cir. 1989) Qualified immunity was denied where there was a dispute as to whether the suspect was putting the gun down or not when he was shot and whether suspect was pointing the gun at police when shot.

Dickerson v. McClellan, 101 F.3d 1151 (6th Cir. 1996); Holding that despite uncontroverted evidence of serious danger to officers stemming from the suspect's clear possession of a weapon, his recent firing of the weapon, and his threatening language toward the police, because it was undisputed that the suspect was nonthreatening when he was shot,

the officer was not entitled to qualified immunity. As here, there is a time dispute as to the first shot. Disputed issues of material fact as to whether officer's shot to suspect's back without ever attempting to announce his presence or to **issue a warning** before shooting suspect. Only the facts known to the officer at the time of the alleged violation are to be considered. Disputed issue of fact that precludes summary judgment regarding the time of the first shot and whether suspect was pointing gun at police or not.

Bougress v. Mattingly, 482 F.3d 886 (6th Cir. 2007) Qualified immunity denied where **officer never warned suspect that he might shoot**, as required by *Garner* when feasible under the circumstances. **Nothing indicates that a warning was infeasible.** Craighead v. Lee, 399 F.3d at 962 denying qualified immunity in part, because **"the facts we are required to assume show that a warning was feasible but not given."** "A suspect's flight on foot, without more, cannot justify the use of deadly force." Id. at 891.

Margeson v. White County, Tennessee, 579 Fed.Appx. 466 (6th Cir. 2014) (unpublished) This opinion and precedent from the Sixth Circuit held that genuine issues of material fact remained in dispute regarding whether three police officers used reasonable amount of force in shooting victim to death multiple times, **with at least 12 shots after the suspect had fallen down.** Genuine issues of material fact remained as to whether three police officers used **gratuitous violence** during arrest or

reasonable amount of force in shooting victim to death by firing 43 shots including at least 12 shots after he had fallen to the ground with multiple gunshot wounds, thus precluding summary judgment on his widow's Section 1983 claim of excessive force. Petitioner further relies upon this precedent to establish that Respondents violated clearly established law in the multiple shooting of Nancy Lewellyn and shooting Nancy Lewellyn **after** she had surrendered her bb gun and lay unarmed on the ground but still shot multiple times. Nancy Lewellyn suffered at least four gun shots to her back. This decision by the Sixth Circuit "squarely governs" this case and establishes clearly established law in Petitioner's favor that precludes summary judgment in this cause.

Considering the facts in the light most favorable to the Petitioner, there is admissible proof and/or inferences that Nancy Lewellyn had not committed a crime but was instead mentally and/or emotionally unstable prior to the shooting, Nancy Lewellyn had not pointed the bb gun at anyone, Nancy Lewellyn did not verbally threaten Paschal, Wiggins or Deputy Jayroe when they arrived on the scene, Nancy Lewellyn did not move towards the Respondents or Deputies but did just the opposite, she turned to her right and started walking away from the Respondents and Deputy Jayroe before she was shot, Nancy Lewellyn did not turn around and face Paschal or Wiggins or Deputy Jayroe and/or aim the bb gun at anyone. Further, Nancy Lewellyn was attempting to surrender the bb gun prior to being shot, made no aggressive moves towards the Respondents or Deputy Jayroe,

surrendered the bb gun on the hood of the car in plain sight to the Respondents and Deputy Jayroe. Once Nancy Lewellyn surrendered the bb gun on the hood of the car, it was obvious that she had surrendered the bb gun and she was therefore unarmed. Even **after** surrendering the bb gun in obvious and plain sight, Nancy Lewellyn was shot multiple times as she attempted to go back to the house unarmed. Nancy Lewellyn was shot multiple times while she was unarmed and while she was falling to the ground and after she fell on the ground, defenseless and unarmed, resulting in her Wrongful Death. Prior to shooting Lewellyn ten times, neither Paschal, Wiggins or Deputy Jayroe **ever** gave any order or command to Lewellyn to drop the bb gun, show her hands, raise her arms in the air and/or any other command although they had the time to do so. Nancy Lewellyn was not a threat of death or serious bodily injury or harm under the totality of the circumstances. As a result, the constitutional rights and contours are sufficiently definite with established precedent that would have placed Wiggins and Paschal and any reasonable law enforcement officer on notice that a reasonable official in their position would have known that they were violating the constitutional rights of Nancy Lewellyn when they shot her causing her severe damages and premature extremely painful Wrongful Death.

Nancy Lewellyn clearly was a person suffering from mental crisis and/or mental problems and she needed mental health treatment not being shot Ten (10) times with Four (4) shots to her back, causing her Wrongful Death on March 17, 2017. Respectfully, the Sixth Circuit committed error when it misapplied the basic

principles of Rule 56 of the Federal Rules of Civil Procedure and entered a judgment in conflict with the Supreme Court precedent in the holdings of Tolan v. Cottan and Scott v. Harris by failing to view the Petitioner's evidence in the light most favorable to the nonmoving party when that admissible evidence was not blatantly contradicted by the videos. Further, the Sixth Circuit committed error by failing to recognize that Respondents were guilty of gratuitous violence and excessive force against Nancy Lewellyn for shooting her multiple times after she had clearly and obviously surrendered the bb gun and/or while she was incapacitated and falling and/or shooting her multiple times after she was lying on the ground in a helpless condition.

CONCLUSION

Petitioner respectfully requests that this Honorable Court grant the Petitioner's Writ of Certiorari in this cause.

Respectfully submitted,

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