No. 21-5733

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ERIC WESTRY—PETITIONER

vs.

VICTOR LEON—RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE

SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ERIC WESTRY—*Pro se*
3250 E. MAIN STREET APT 52
WATERBURY, CT 06705
203.819.4163

QUESTIONS PRESENTED

1. How is it proper and legal for the court to state there were undisputed facts of physical assault, threatening behavior, and physical resistance of Eric Westry against the police in the face of continuous objections disputing this false narrative for 1,984 (11 SEPTEMBER 2021) days counting—here and in other courts—that Eric Westry did NOT assault his wife and was awakened by the pounding on the door just prior to being broken down by the police?
2. How can assisting the police, reaching out toward the nearest officer to hand his child represented on the audio-video evidence with Mr. Eric Westry stating under duress "I am handing her to you" while other officers nonsensically were pulling in the opposite direction, not cooperating or employing their requirement of reassessment of the threat continuum—BECAUSE THERE WAS NONE—be considered and misconstrued as being non compliant and threatening?
3. How is this false narrative not an invention of the police and state attorneys in the face of Maria Westry's testimony under oath confirmed this vis-à-vis the acne on her face not representing slap marks?
4. If there is no record of Mr. Eric Westry admitting to assaulting his wife (because he did NOT), in a dismissed case and no allocution why is it considered by the judges as no dispute to a victim services narrative that he assaulted his wife?
5. Where are the pictures of these so-called slap marks if this were not a Brady Violation and conspiracy between police and prosecutors to claim injuries that were never photographed and documented in a file?

6. How can the court decide that a cooperating father handing his daughter over to the police, who then fire their weapon at both father and daughter not be considered culpable of excessive force and therefore still be in compliance with the rules granting qualified immunity?
7. Isn't an issue of genuinely disputed facts, a matter for a jury to decide under the forgoing circumstances and not the district judge?
8. Considering the forgoing, isn't it true that under Rule 56 (c) the court should have denied summary judgment because the objection brief and video—including facts falsely deemed undisputed within—are indicative that the non-movant is entitled to it?

LIST OF PARTIES

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

TABLE OF CONTENTS

PAGE NUMBER

INDEX TO APPENDICES

PAGE

TABLE OF AUTHORITIES CITED

CASES **PAGE NUMBER**

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Eric Westry respectfully prays that a writ of certiorari issue to review the judgment below by the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A1-A5 the petition and is

[ ] reported at; or, [ ] has been designated for publication but is not yet reported; or,

[X] is unpublished. 20-203 Eric Westry v. Victor Leon

The opinion of the United States district court appears at Appendix A6-A21 the petition and is

[ ] reported at; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished. Eric Westry v. Victor Leon 3:17-cv-00862 (VAB)

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 2 MARCH 2021.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 22 APRIL 2021, and a copy of the order denying rehearing appears at Appendix.

[X] An extension of time to file the petition for a writ of certiorari was granted due to the Severe Acute Respiratory Coronavirus-2 (SARS-CoV-2) Pandemic which causes Coronavirus Disease (COVID-19) to and including (18 SEPTEMBER 2021) on (date) in Application No. A .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S. Code § 1983 - Civil action for deprivation of rights

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

42 U.S. Code § 1988 - Proceedings in vindication of civil rights
(a)Applicability of statutory and common law
The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees
In any action or proceeding to enforce a provision of
sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92–318 [20 U.S.C. 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C. 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or section 12361 of title 34, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees
In awarding an attorney's fee under subsection (b) in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

28 U.S. Code § 1331 - Federal question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S. Code § 1343 - Civil rights and elective franchise

...

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

28 U.S. Code § 1367 - Supplemental jurisdiction
(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

Rule 56. Summary Judgment

...

(c) Procedures.
(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:
(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

STATEMENT OF THE CASE

On 23 May 2017 John R. Williams filed appearance and current complaint on Eric Westry's behalf against Victor Leon for excessive force and deprivation of rights engendered in the laws of the United States and the State of Connecticut. Defendant appearances on 26 June 2017; Amended scheduling order occurred 11 February 2019; 17 June 2019 Motion for Summary Judgement by defense; Opposition Memorandum to Summary Judgement filed by Plaintiff on 5 July 2019 with NOTICE of Manual Filing of Exhibit 1 (on MSD1) video recording of Plaintiff 11 July 2019; Reply by defense to Summary Judgement response; Summary Judgement hearing before Judge Victor A. Bolden; Order granting in part and denying in part Motion for Summary Judgement with clerk directed case closure, 21 December 2019; Judgement 30 December 2019; Appearance of Eric Westry 15 January 2020; Notice of appeal and Concomitant Motion for Leave to Proceed in forma pauperis thereto, 16 January 2020.

DECISION:

Judge Victor A. Bolden—in reversing the order of events—stated "Mr. Westry also admits that in the exchange with police officers, if they were attempting to grab his infant daughter Amelia" [sic] (again, who is Amelia? As he deliberately leaves off the African half of my daughter's first name) "he was also 'pulling back. Westry Dep. at 73:3-6 ('Q: . . . as they were pulling [on Amelia]' [sic], (again, who is

"Amelia"? As he deliberately leaves off the African half of my daughter's first name) "you were also pulling, correct? A: 'If they were pulling my arms, I was pulling back.' Omitting the context of pulling back TOWARDS THE NEAREST OFFICER.). Mr. Westry also can be heard telling the police officers, 'you going to have to kill me,' when asked to comply with the police officer's instructions." This comment, to protect his home, from an unannounced, unwelcome invasive force in NON-EXIGENT CIRCUMSTANCES was heard from the plaintiff before the 00:27 seconds mark of 02:31. The police kicked down the Plaintiff's door, woke him up, abandoned community policing procedures of defuse and deescalation, and began to behave as if they were disarming an unarmed homeowner in their deadly assault in just 27 seconds, firing their weapon on Eric Westry and his daughter A.W. indicative of recklessness bereft of restraint from the police. The aforementioned comment did not come DURING multiple officers pulling and assaulting Mr. Westry and his daughter Amelia- Amenirdis (NOT AMELIA). "I am handing her to you" however, DID COME DURING the "exchange" vis-à-vis Bolden's incongruous account. "They" and "officers" ignored in the deposition, prove there were multiple forces pulling in different directions as the plaintiff tried to hand and communicate his intent to the closest officer, that he was reaching toward him in compliance. Inexplicably and contrary to facts and logic he relies on, Judge Bolden "testifies and deliberates"— IN LIEU OF A WHAT A JURY SHOULD OR SHOULDN'T DO, IN THEIR RESPONSIBLE SOLE ROLE AND CAPACITY, MAKING DECISIONS—

the following: "The undisputed facts thus indicate that Mr. Westry was both non-compliant and threatening." Under those aforementioned FACTUAL conditions, requirements and parameters espoused by Judge Boden himself —Mr. Westry and his daughter A.W. (NOT "Amelia") ARE BOTH COMPLIANT AND NON-THREATENING. Nevertheless Judge Bolden's inexplicable decision— leaving out and chronologically reordering facts, not acknowledging or omitting opposing forces by multiple officers—was the following: "The undisputed facts thus indicate that Mr. Westry was both non-compliant and threatening." Nonplussed by this non sequitur, this appellant turns to the Justices of the Supreme Court of the United States.

REASONS FOR GRANTING THE WRIT

The question of Qualified Immunity is the most controversial legal issue of our time, denying justice to countless Black people—specifically Black men before it was formally addressed in 1967 Pierson v. Ray, 386 U.S. 547 (1967) 87 S. Ct. 1213; 18 L. Ed. 2d 288; 1967 U.S. LEXIS 2791, throughout hundreds of years of African Slavery and subjugation from a White unaccountable authority codified in social culture and the legal system of the United States. High profile cases have exposed the injustice of near zero accountability for the police terrorizing our communities. As Judge Victor A. Bolden wrote, "To the extent that Mr. Westry is arguing that his offer to give them the infant child, after they began using more force, but before the use of the TASER, constitutes compliance sufficient to make the TASER's use excessive, there is no clearly established law that would result in liability for Officer Leon at that level of specificity." In light of the untrue assertion—really lie—of "undisputed facts" and the foregoing attempt SAYING AND ENACTING "I AM HANDING HER TO YOU" is proof positive that Mr. Westry and his child were fired upon while more than compliant and non threatening, physically offering his child to the nearest officer. Only the Supreme Court of the United States can settle this "clearly established law" in providing a more comprehensive understanding of what police can or cannot do with impunity.

"Westry primarily contends that, because he told officers that he would hand his young daughter over to them, he could not have been threatening and non-compliant." There was no "...he TOLD the officers, that he WOULD hand his young

daughter over to them...," IT WAS HAPPENING but the officers, MORE INTERESTED IN PUNISHMENT, chose to fire at us instead of taking my child, CLEARLY BEING OFFERED TO THEM. This is the very definition of compliance and non threatening behavior regardless of what was said and reversed before (hence the court reordering the chronological facts is deceptive). The police and defendant rely on the need for pacification of a threat. Pacification is not warranted for a person assisting the officers before the use of deadly force on a cardiac patient. The officer was so close, that he could have felt the breath of my words "I AM handing her to you" much less heard them.

The court contends: "On appeal, Westry does not challenge the district court's legal determination about what constituted a violation of an arrestee's clearly established rights at the time of the encounter. He instead contests the district court's determination that the undisputed facts established that Westry was threatening and non-compliant during the encounter." **How is it that the court can put words in my mouth, saying "facts" were undisputed when I am explicitly disputing them, having done so for 1,984 days with probative dispositive documentary and audio/video evidence and my brief (p.7, 8), reply and below?**

A perfect example of this is the following startling remark by the court: "...he told officers that he would hand his young daughter over to them, he could not have been threatening and non-compliant." This is a lie for qualified immunity! I was doing it! The same is true of this: "Finally, Westry concedes that he resisted officers'

attempts to "pry [his] arms open" [sic] while they asked him to release his daughter. *Id.* at 17," business deliberately omitting that I was not resisting but "pulling back" towards and offering my child to the nearest officer demonstrated in the video for the same reason in the video evidence, which controls is ignored. VIDEO CONTROLS.

Therefore, in the event of both the court and defense failing to properly address or support a fact, under Rule 56 (c) the court should have denied summary judgment because the objection brief and video—including facts deemed undisputed within—are indicative that the non-movant is entitled to it.

The tone was set by a call to the police, apparently by victim services. The court states, "He does not dispute the Victims Services call that he has a verbal and physical altercation with Mrs. Westry. *Id.* at 1." N.B.: The plaintiff has been writing motions for the past 1,984 DAYS in several courts—multiple in Waterbury, and one in New Britain and Bridgeport (Cases: UWY-FA-16-6031090- S, UWY-CV-18-5021356-S, UWY-CV-17-5021057-S, UWY-CV-18-5021357-S, UWY-CV-17-5021056-S, HHB-CV17-5020951-S, 3:17 CV 640, and Claims Commission Case #25349)—proclaiming his innocence and has NEVER failed to dispute the claim that Eric Westry assaulted his wife nor has there been any such allocution, most tellingly, in this court's record of this DISMISSED case:

Maria Westry stated UNDER OATH in Family Court under Eric Westry's cross examination that the marks on her face were anything other than adult acne,

was an invention of the police: Judge Robert Nastri's court 27 JUNE 2016, Page 16, Lines 23-26 "BY MR. WESTRY: Q: **"So the police report indicated that you had been slapped in the face—that you had redness on your face."** Pages 16, 17 Line 27 and 1: MRS. WESTRY: "A: **I never said I had redness from being slapped in the face."** This is evidence that there was no evidence of the assault the police manufactured while suborning perjury over and over again in this case in their sworn statements. This particular evidence is confirmatory of the absence of evidence of at least this: probable cause. In the police's required assessment of the threat continuum, their guard should have been lowered. Police might consider that Mr. Westry was being set up by his wife instead of leaping to the conclusion that a certified and licensed clinician charged with the mission of protecting and caring for children daily—surely inquired about in his requisite assessment of the threat continuum along with whether there were any weapons in the home— would conclude that Mr. Westry was NOT likely to harm his own child.

This narrative that Mrs. Westry was hiding under the table is accepted by Judge Bolden and the Appellate Court? Who told them that? What happened to "Trust but verify" if the defense makes the point to say that their meeting Mrs. Westry was at the car and NOT meeting her under the table. This "undisputed" rhetoric is like whispering into the right end of a circle of people and getting an entirely different answer back to your left ear. It doesn't make sense in light of this portion of my brief: "Judge Bolden also erred in testifying that the Plaintiff never

disputed any charge of assaulting his wife. This is clearly a lie, evidenced by the 1,984 days and counting, of him defending his innocence. There has NEVER been an allocution to any crime presently nonexistent due to dismissed charges. Therefore the claim by the defendant of an assault with NO PICTURES or evidence is specious and does not warrant the home invasion that proceeded." This is a conspiracy to say their were injuries AFTER it was too late to take pictures of these ostensible "slap marks." Were was the confidence in this yarn the defense is spinning not present in their notes and false police reports? It undermines their entire defense.

My attorney's opposition to Summary Judgment states: "The undisputed facts of this case are that the defendant was dispatched to the plaintiff's residence pursuant to a call alleging that the plaintiff had assaulted the mother of his child. Upon arrival at the residence, the defendant admits that the alleged victim was outside the house and that she did indeed report that the plaintiff had assaulted her with his hands." "ALLEGING." When does alleging mean confession and conviction on a case dismissed, no less? The courts have received a message back to their left ear that was CONFESSION from the defense when the original message from the plaintiff was "ALLEGING," thus conflating the two. (I would like to know what calls and Internet contacts Mrs. Westry made concocting a story before, during, and after any call to victim services and discussion with the police, which a jury would know but for the district appellate courts acceptance of unverifiable allegations. The

violations of the Fourteenth Amendment of Equal Protection clause is violated once again the this historic theme that a White woman can accuse a Black man of anything, putting his life at risk during and since this case!)

Per the Appellate Court, "We review orders granting summary judgment de novo." Really? Parroting the district court, the appellate court also states: "Westry does not dispute, however, that when officers arrived at his home in response to an emergency call, his wife reported that Westry had assaulted her and that Westry had locked himself in a bedroom with their one-year-old daughter." This is a LIE! IT HAS BEEN CONTESTED IN COURT FOR 1,9844DAYS AND COUNTING IN THIS AND ALL LITIGATIONS ASSOCIATED WITH THIS EVENT. Judge Bolden in the district court asserts: "A call to the Victim Services' Hotline from Mrs. Westry prompted Officer Leon's visit. Id. ¶ 13. In that call, Mrs. Westry described being under the kitchen table, while her husband was locked in the bedroom with their baby daughter, Amelia. Id. (Again, deliberately omitting my child's Legal African FULL FIRST name, "A.W.") When Officer Leon and other police officers arrived, Mrs. Westry described having been assaulted by Mr. Westry and stated that he continued to be locked in the bedroom with their child. Id. ¶ 14. Mr. Westry allegedly had 'slap[ped] her in the face numerous times and drag[ged] her out of the bedroom.' Id. ¶ 15. Officer Leon noticed red marks all over Mrs. Westry's face. Id." First, why would Mrs. Westry be hiding under the only table directly in front the

staircase while what's underneath is immediately visible while descending the stairs? There is just one table in the whole home, just one!

Not present or witnessing this "hiding under the table," but using it as part of his decision making, Judge Bolden says that the defendant says: "Officer Leon argues that 'from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,' his use of the TASER was reasonable and justified. Def.'s Mem. at 7. He reiterates the circumstances leading up to the officers' arrival at the Westry home: his dispatch to the Westry home, following a Victims' Services Hotline call; the information in the call about a woman hiding under the kitchen table, while her husband was locked in the bedroom with their minor child; upon arrival, finding Mrs. Westry crying hysterically; Mrs. Westry stating that she had been assaulted and that her husband was now locked in the bedroom with their minor child; observing the red marks on Mrs. Westry's face, consistent with her alleged assault; and Mr. Westry "both resisting arrest and placing the safety of his daughter, Amelia, and the police officer in jeopardy." *Id.* at 7-8. [Again, omitting my daughter, A.W.s' African Identity.]

"Mr. Westry argues that he did not pose any immediate threat to anyone, his resistance was entirely passive, and he was not attempting to flee. Pl.'s Opp. at 3. He does not dispute the Victims' Services call or that he had a verbal and physical altercation with Mrs. Westry. *Id.* at 1." Again, this is a LIE, exposed by my deposition and repeated testimony, motions, and pleas in various courts including

this case for 1,984 days continuing. Why is the court attempting to erase my demur of those "alternative facts?"

My lawyer received this transcript information on 11 JANUARY 2017 and scanned the originals left for him upon retainment of the firm when Attorney John R. Williams provided an electronic copy to his client [Eric Westry on 22 MAY 2017 the SAME DAY he filed NO. 3:17cv862 (VAB) against the defendant] and would have never failed to demur this false narrative of assault or displayed acquiescence to the defense's claims, therefore denying genuine dispute of facts that would lead to a summary judgment. Why is it in or inferred in the record by the district and rubber stamped by the appellate courts? Consequently, my reputation is being further besmirched by the court by publication across the Internet, insisting that a licensed and certified clinician who spent his life serving and saving the lives of children, families, and women in distress and abusive situations as a senior clinical social worker, Clinical Director, and worker/domestic violence counselor in Harlem and the psychiatric department of Harlem Hospital, respectively, was actually an admitted PERPETRATOR! This is OUTRAGEOUS AND UNTENABLE AND SHOULD BE CORRECTED BY THE COURT. She said she never said she had a red face or marks because of being slapped and did not have to say so, pursuant to C.G.S. § 54-84b. This gave the police no reason to weigh Maria Westry's claim with her words and no marks or evidence of probable cause, more than the compliant Eric Westry in the bedroom, the start of the confrontation, notwithstanding. She

could have lied—and was lying—on 05.APR.2016 but NOT UNDER OATH ON THE STAND vis-à-vis marks on her face. This is the defense and invention of the police upon which they can justify an unwarranted war footing and posture.

Counsel for the Plaintiff is correct "At a minimum, the video evidence in this case demonstrates the existence of genuine disputes regarding material facts thus requiring that the defendant's motion for summary judgment be denied...just as the evidence supports the plaintiff's contention that unreasonable force was used against him, and defeats the defendant's claim to the contrary, so too does the evidence defeat the affirmative defense of qualified immunity. In that respect, the defendant admits that '[i]t is clearly established that officers may not use a taser against a compliant or non-threatening suspect.' Muschette on Behalf of A.M. v. Gionfriddo, 910 F.3d 65, 69 (2nd Cir. 2018), citing Garcia v. Dutchess Cty., 43 F. Supp. 3d 281, 297 (S.D.N.Y. 2014) (such force may not be used against an arrestee 'who no longer actively resisted arrest or posed a threat to officer safety"). The defendant incorrectly cites Muschette in support of his motion, whereas in fact it clearly defeats the motion. In that case, unlike in this one, the victim 'had fled...and hunkered down in a restricted construction area, holding a large rock.' Not only was he in flight, he presented an immediate physical threat to the officer. Neither circumstance is present here. Soto v. Gaudett, 862 F.3d 148 (2nd Cir. 2017), the only other case upon which the defendant relies, also does not support his contention. In that case, the victim was actively in flight from the defendant when the Taser was deployed. The court specifically held that the force would not have been reasonable, and qualified immunity would not have been available, were the victim not actively engaged in flight. 182 F.3d at 159.

'A motion for summary judgment may properly be granted...only where there is no genuine issue of material fact to be tried, and the facts as to which there is no such issue warrant the entry of judgment for the moving party as a matter of law....The function of the district court in considering the motion for summary judgment is not to resolve disputed questions of fact but only to determine whether, as to any material issue, a genuine factual dispute exists....In determining whether the moving party is entitled to judgment as a matter of law...or whether instead there is sufficient evidence in the opposing party's favor to create a genuine issue of material fact to be tried, the district court may not properly consider the record in piecemeal fashion, trusting innocent explanations for individual strands of evidence; rather, it must 'review all of the evidence in the record,' Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 150 (2000)....And in reviewing all of the evidence to determine whether judgment as a matter of law is appropriate,

'the court must draw all reasonable inferences in favor of the nonmoving party,' Reeves, 530 U.S. at 150..., even though contrary inferences might reasonably be drawn....Summary judgment is inappropriate when the admissible materials in the record make it arguable that the claim has merit..., for the court in considering such a motion must disregard all evidence favorable to the moving party that the jury is not required to believe....In reviewing the evidence and the inferences that may reasonably be drawn, the court may not make credibility determinations or weigh the evidence....Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge....Where an issue of material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate....In sum, summary judgment is proper only when, with all permissible inferences and credibility questions resolved in favor of the party against whom judgment is sought, there can be but one reasonable conclusion as to the verdict....' Kaytor v. Electric Boat Corporation, 609 F.3d 537, 545-6 (2nd Cir. 2010) (quotation marks and citations omitted)."

"*Muschette*, 910 F.3d at 70 ('To determine whether the relevant law was clearly established, we consider the specificity with which a right is defined, the existence of Supreme Court or Court of Appeals case law on the subject, and the understanding of a reasonable officer in light of preexisting law.'s') (citation and internal quotation marks omitted). Firing on an unarmed compliant and non-threatening man—facilitating compliance—and infant is therefore NOT a reasonable officer and under the Doctrine of Stare decisis '[i]t is clearly established that officers may not use a taser against a compliant or non-threatening suspect.' "

How is it that the court can put words in my mouth, saying "facts" were undisputed when I am explicitly disputing them with probative dispositive documentary and audio/video evidence and my brief (p.7, 8), reply and below?

A perfect example of this is the following startling remark by the court: "...he told officers that he would hand his young daughter over to them, he could not have been threatening and non-compliant." This is a lie for qualified immunity! I was doing it! The same is true of this: "Finally, Westry concedes that he resisted officers' attempts to "pry [his] arms open" [sic] while they asked him to release his daughter. *Id.* at 17," as a misrepresentation for the defense by the court! The truth is that my child was being offered to the closes officer while others on the opposite side of her in my arms, were pulling and impeding the exchange. This penchant to believe a police union lawyers and corporation counsel on their face with incontrovertible audio-video evidence to the contrary is typical and untenable. These cops were acting as six or seven different entities, opposing and negating one another shows there was no coordination nor requisite reassessment of any threat continuum. That failing reassessment kept them on a war footing, aggressing Eric Westry with intent to punish and harm him and with indifference to his daughter. In doing so, they fired a weapon and are culpable and liable to violations of not only Eric Westry's rights, but to his daughter's as well. The video supports these facts, which controls. VIDEO CONTROLS.

This decision was NEVER, as the court remarked, "viewed in the light most favorable to the plaintiff..." or per the true facts presented by the Plaintiff above or the court would have correctly found me non threatening—helpful even doing the police's job—and compliant and therefore entitled to provisions that officers may not use a taser against a compliant or non-threatening suspect.'under Muschette on

Behalf of A.M. v. Gionfriddo, 910 F.3d 65, 69 (2nd Cir. 2018), citing Garcia v. Dutchess Cty., 43 F. Supp. 3d 281, 297 (S.D.N.Y. 2014) (such force may not be used against an arrestee 'who NO LONGER actively resisted arrest or posed a threat to officer safety." If the police thought I was a threat but decided to assist them means **"NO LONGER ACTIVELY RESISTED."**

The District Court erred by dismissing this complaint in one or more of the following ways: Violation of 4th Amendment through the violation of privacy in one's home and specifically one's sanctuary of bedroom through this random and abusive search and seizure via Mapp v. Ohio. This happened four hours after an argument, proving there were NOT exigent circumstances warranting the kicking down of the door of the private sanctuary of a U.S. Citizen who is entitled to Fifth Amendment protections of procedural due process (in civil and criminal proceedings) and substantive due process. The basis if inquiry or judicial review is, I imagine to balance the importance of the government's interest with the appropriateness of the methodology employed and implemented with the eventual infringement of Eric Westry's right serves as the fundamental requisite of the highest level of judicial review and strictest scrutiny. That video is not the paragon of a police force's supposed training to de-escalate, diffuse, and disarm. Per substantive due process it constitutes a violation of my RIGHTS OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW. Hospitalizing me twice in relation to the same incident and again after release, holding me hostage in

Waterbury the police station after release in New Haven is draconian mistreatment and a vulgar display of governmental power.

By federal law, wayward police who have lied on the Connecticut government record, BEFORE they knew their illegal actions were recorded, which were in violation of sections 1331, 1343(3) and 1367(a) of Title 28 and Sections 1983 and 1988 of Title 42 of the United States Code are subject to facilitation and acceptance of a false police report which impeaches the police, the state attorney, and dcf under "falsus in uno, falsus in omnibus, meaning "false in one thing, false in everything,". Yes, in each person's home, they have the highest possible expectation of privacy inside their own home, and arguably, even more so in their bedroom and further, in their bed! Absent possession of a warrant for my arrest, the police must have some emergency reason, called "exigent circumstances", for entry into my daughter and my home which, arriving 4 or more hours late at 21:39 on 05.APR.2016 IS NOT A RESPONSE TO EXIGENT CIRCUMSTANCES!

Fourth Amendment violation of unreasonable force by a Waterbury police officer prompted and warranted this civil action pursuant to 42 USC § 1983. The plaintiff trained in psychology, education, and medicine, holds three graduate degrees and three years of medical school physician training and has never endangered people or specifically children over the decades of his training and professional practice, saving children and families' lives. The defendant admits to firing his weapon, striking the plaintiff laying in bed, while holding his infant child

in REAL TIME. The video that makes clear the plaintiff attempted—pleaded, no less— "I am handing her to you"— was repeated by the court—who further CONFUSES the situation, REFERRING TO ANOTHER PERSON, unless he is DELIBERATELY LEAVING OFF THE AFRICAN PART OF MY CHILD'S FIRST NAME—chooses instead to rely on a three-year old memory of the event: a deposition that is mischaracterized/misquoted out of context, as the plaintiff pulling away from the police. (The Plaintiff clearly states that he cannot expect to remember every detail from three years ago (ignored, not quoted by the judge) and that the Video provides better facts than a deposition, which as clearly reordered, twisted, perverted, and misinterpreted by the court.) The audio-video clearly proves that the plaintiff initiated and tried to enlist the police's help in compliance, stating his intent "I am handing her to you" as that the plaintiff was pulling TOWARD the closest police officer while other officers were pulling against him in the opposite or different direction, towards themselves, adjacent and behind the Plaintiff. Trying to pry my arms open instead of taking my child, willingly offered to them is like handing money over to a cashier who then grabs my hand and wrestles the money away: pushing on an open door; it prevents me from doing the job for the police—handing my child to the closest one. So, the defendant is claiming that I fought them forcing them to accept an outcome that they actually endeavored to achieve? It doesn't make sense unless their true endeavor was conflict and violence because they felt insulted by my initial verbal protest. Their was never a reassessment and modification of their behavior. They made this a fight by pushing on an opening

door. It is against the laws of physics to hand the child to more than one person in different locations simultaneously; only one can receive the child but the police chose to fire a weapon in its stead and write false perjurious sworn statements in police reports before they knew of the existence of a video. (The court—or better a jury—has plenty reason, for this fact alone, to question the credibility of the police. This was specifically said—and apparently ignored or overlooked in the deposition available to the court.) To be clear, the offending forces were the officers choosing to assault a man and child, even after he asked them to take her. Punishment submitting these words offering the child are untenable, undisputed and illegal under 42 USC § 1983 law, the court's and defendant's acknowledgment that "[i]t is clearly established that officers may not use a TASER against a compliant or non-threatening suspect,..." qualified immunity does not exist as the video controls, NOT a mischaracterized cherry-picked and DATED albeit otherwise accurate eye-witness account. "I am handing her to you" and "I will hand her to you" while attempting to do it is the very definition of "compliant and non-threatening" behavior, which reverses a manufactured opinion, against the facts, that there was qualified immunity.

FEDERAL RULES OF PROCEDURE: Objection of "Facts."

According to Federal Rules of Procedure, "facts" of the misquoted or mischaracterized deposition, comment during the attempted offer of minor child, constituted NOT a tug-of-war but a contradiction of the only available evidence of

an offer by Eric Westry of his child, to the nearest officer: Video. This claim of threatening noncompliance constitutes a genuine dispute by the defense and an OBJECTION to a "fact" supported by admissible evidence in favor of the Plaintiff. The Plaintiff may object to the court's and defense's support of a SUBJECTIVE OPINION that Eric Westry was pulling away from officers, demarcating a disputed assertion from fact that can be presented as a form of admissible evidence because Eric Westry can prove to a jury that he was—in fact—pulling IN the direction of the closest officer and talking to him, no less. Per Hon. Joseph Shortall (Case: HHB-CV17-5020951-S) the video is the best most objective information for what happened that night of which the Connecticut assistant attorney general acquiesced. The video controls, NOT judicial replacement of an out-of-context recitation of a deposition. VIDEO is the ONLY OBJECTIVE EVIDENCE AVAILABLE and the entire video contradicts EVERYTHING the police wrote in their ILLEGAL and PERJURIOUS SWORN STATEMENTS, again genuine dispute of the defendant's disingenuousness. The full police record and lie that the child was removed before the Plaintiff offered his child to the police assaulting both Plaintiffs is indicative of the police's consciousness of guilt. They needed to make it sound bad, dangerous, and threatening. The video was a completely haphazard attempt by a groggy, just awoken father to protect this Black man—and former innocent victim of New York City Stop and Frisk policies and other indignities—and his daughter from the historically destructive force of some, not all, police in their communities. Per Rochin v. California, "On appeal, the District Court of Appeal affirmed the

conviction, despite the finding that the officers were guilty of unlawfully breaking into and entering defendant's room and were guilty of unlawfully assaulting and battering defendant while in the room," and—as was the following in Mr. Westry's case—"were guilty of unlawfully assaulting, battering, torturing and falsely imprisoning the defendant at the alleged hospital" was a violation of Mr. Westry and his daughter A.W.s' Eight Amendment Rights of the Constitution of the United States."(Rochin v. California 101 Cal. App. 2d 140, 143, 225 P. 2d 1, 3)

The defendant is in violation of sections CONN. GEN. STAT. § 46a-100 and in connection with the pattern-or-practice provision of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, additionally the "Safe Streets Act" Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d Title VI and VII of the Civil Rights Act of 1964. Victor Leon and his agents are responsible for violations of Connecticut Statues and Civil Rights Laws included but are not limited to, Equal Protection: Article First, Section 20 as amended by Article V and Article XXI of the Amendments to the Connecticut Constitution; C.G.S. Section 46a-58(a); C.G.S. Section 46a-69 and C.G.S. Section 46a-71(as amended by Public Act 01-28) are also applicable violations by the defendant.

Irreparable damages have been caused after their excessive force to this appellant and his daughter by the defendant when he and police proceeded to lie to state officials, causing the plaintiff to lose income, reputation, career, permanently and most importantly a daily life living with his daughter for 1,984 DAYS and

counting [due to a false police report and violation of 17a-101k-3 of the Regulations of Connecticut State Agencies. Reg. Conn. State Agencies § 17a-101k-8(j)] which were used to permanently destroy the plaintiff's income capacity and reputation as stated by Judge Joseph Shortall who went further to characterize the decision as "erroneous" and the resulting insult to injury as "grossly negligent" and "egregious" all emanating from the illegal actions of the defendant in this case.

The district court correctly found that Mr. Westry's constitutional rights were violated. This should have taken into account Mr. Westry's words to defend his home followed by IMMEDIATE acquiescence in seconds to trying to hand his daughter to the nearest officer. (It should not be lost on the court, the commendable record with stellar recommendations of an experienced mental heath and educational professional, possessing three graduate degrees and three years of medical school education and that was UNARMED!) He was pulling in his (the officer's) direction while other officers were pulling in opposing directions ADMITTED TO BY THE DEFENSE). While it was Mr. Westry who chose to defuse and use restraint, deescalation, and compliance, the defendant and waterbury police, are the ones that chose the escalation to War-like, militant, soldier mentality, looking for some "action," losing self control, discipline and defying their responsibility to defuse and deescalate, but finding retribution and retaliation in response to nonviolent verbal resistance [(the aforementioned destruction of livelihood and reputation, a violation of Eighth Amendment of the United States

Constitution (Cruel and Unusual Punishment)]. Given the defense's argument, they have the right to kill someone for disagreeing with them WHILE LAYING ON THEIR BACK UNARMED AND DEFENSELESS, which is what the Plaintiff was emphasizing when the defense engages in frivolous subterfuge, in mangacci attempts to emphasize and pervert words of Plaintiff in defense of his home as I AM GOING TO KILL THE POLICE; it is ridiculous and desperate to use the words "Oh no"...as anything other than Mr. Westry attempt to contextualize, redirect, and emphasize this nonviolent verbal protest of the plaintiff and police's invasion of his home ON HIS BACK. It was clearly an attempt to bring the conversation back to the fact that FATHER AND CHILD WERE ON THEIR BACK, UNARMED AND OUTNUMBERED AND CLEARLY NOT A THREAT, REGARDLESS OF A VERBAL PROTEST. The district court reordered the facts, giving the false presentation and impression of a threat AFTER Mr. Westry said to the nearest officer, "I am handing her to you, I am handing her to you" to be met with the defendant firing his weapon at Mr. Westry AND his daughter A.W. anyway (DO NOT CALL HER "AMELIA"). This is the same mentality of Officers Stephen Hart and Anthony Carelli where the former said, "I don't give a fück NIGGER" open the door and the latter fired the fatal shot in Kenneth Chamberlain Chamberlain v. City of White Plains, No. 16-3935 (2d Cir. 2020). By right, both Westrys have had their lives illegally put in danger from this assault. Is there no room for correction and flexibility to preserve life? <u>If Mr. Westry could do it, certainly these officers should have performed the same.</u> This would not be the case if Mr. Westry was

White; he would not be hospitalized and probably not arrested with NO PICTURES OR EVIDENCE OF AN ASSAULT. WHERE ARE THE PICTURES, I ASK THE JUSTICES OF THIS COURT? There were NO exigent circumstances; no reason for the police to come in and "kick some ass"; "get some action"; or "tune him up" and then blame him, echoed by Judge George Levine (2018) HHB-CV17-5020951-S after viewing the video. (paraphrased as being punished anyway)! [This was an egregious violation of Eighth Amendment of the United States Constitution (Cruel and Unusual Punishment).] This Institutional racism and resentment by some people in this violent power structure needs to be reformed to protect ALL people. This is a matter of recruitment of police officers engendering a respectful and safe culture with the proper temperament, not to kill people by whom they feel offended or resentment and are sworn to protect.

There is no doubt that the wayward defendant and police, risked the life of Mr. Westry but also his daughter who in the defendant's argument, was noncompliant and threatening and deserving of being fired upon, risking her injury AND her father's. This was reckless and the plaintiff implores the court should take the liberty to consider this violation and claim of infringement of both father and daughter's rights. Would you fire a revolver, shotgun, rifle or taser gun at a father and child centimeters apart? What the Hell were they thinking, bringing out a weapon when—according to my counsel and recollection, approximately up to SEVEN OFFICERS WERE PRESENT IN MY BEDROOM. (Each person has the highest possible expectation of privacy inside their own home, and arguably, even

more so in their bedroom and ultimately more in their bed, WITHOUT THE PRESENCES OF EXIGENT CIRCUMSTANCES AS THERE WERE NOT, FOUR HOURS LATER, FROM A NONVIOLENT EVENT.) Are they so inept and cowardly that they can't have a conversation—or send someone in with a fraction of the father's level of psychological training and credentialing—to talk intelligently with a man holding his own baby? Fire and brimstone was never the answer. War was not the answer for those who had the advantage and numbers from the start and were clearly not under threat. The defense prattles on about threat but there was no physical threat from Mr. Westry; it was tantamount to, and no credible than, a civilian claiming he has the nuclear codes and imminently plans to launch nuclear weapons at the country's nearest adversary with nothing but a baby in his arms laying on his back in bed. There was NO credible notion of a threat. These police, including the defendant, didn't have the commonsense, judiciousness, and good discernment to differentiate adult acne from hand slap marks, or to understand "I am handing her to you" is actually pushing on an open door? Their actions were untenable as stated in the Constitutional Amendments and United States Code that prohibit them. Perhaps they needed someone with the education and training to accompany them, to think outside of the fog of war, in which, their local and national conscience resides.

I ask the court, why was it necessary then—if they were so exemplary and right—for the police to lie (also found by Judge Shortall HHB-CV17-5020951-S) on sworn statements in the police report, if there was no consciousness of guilt? This

defendant participated in creating a legal document that the actual event on video contradicts: A sham created by the defendant. Their mentality is for capitulation all around, even when they are at fault.

They claim they had no access claiming the door was lock, when in fact the bedroom door is never locked to Maria Westry (She comes home everyday to the tool on the bookcase a meter away to open the door (in trial testimony UWY-FA-16-6031090-S May and June 2017 under Judge Cutsumpas which the defense never bothered to research). This after a home invasion on 10 May 2007 and the criminal from the next door neighbors, apprehended after this appellant chased him away from his home, as any person had the right in their own home. By contrast to this present case, Mr. Westry was passive and eventually—in a matter of seconds—passive, physically, and verbally compliant, clearly stating, "I am handing her to you.") The criminal case in any iteration of process would have been dismissed and was. Yet I remain imprisoned by lies, deceit and animus because of subsequent illegal actions of rogue administrative agencies parroting and propagating false police reports written by the defendant: Judge Joseph Shortall's findings were that such agencies actions were "erroneous," and "egregious," and "grossly negligent..." that "...can have severely harmful consequences that that person's livelihood and reputation and may have had such consequences for this appellant." That agency's accountability has been deferred until 2022 but what about the root cause: This defendant Mr. Leon and the waterbury police?

CONCLUSION

Honorable Justices, I have proven that my lawyers nor have I ever failed to reject this creation of the defense, that we never demurred on assertions that I committed a crime of assault and admitted that is why the police were summoned where I was threatened a room full of up to seven cops, who faked a police report, stating that I was physically provocative and threatening to them, saying in sworn statements, **"you better get out of here."** That is but one of the crimes the police committed. This declination to dispute NEVER HAPPENED.

With the accurate and correct facts in place the district court who already found:

"...Officer Leon argues that summary judgment should be granted because 'under these circumstances, the actions [were] totally reasonable and, therefore, no constitutional violation occurred.' *Id.* at 8. The Court disagrees."

Finding that my Fourth Amendment rights were violated then accords with Judge Bolden, 'At the time of this arrest, it was "clearly established that officers may not use a TASER against a compliant or non-threatening suspect." *Muschette*, 910 F.3d at 69 (citing *Tracv v. Freshwater*, 623 F.3d 90, 96-98 (2d Cir. 2010); *Garcia v. Dutchess Cty.*, 43 F. Supp. 3d 281, 297 (S.D.N.Y. Aug. 21, 2014) (concluding that it is clearly established in the Second Circuit that "it [is] a Fourth Amendment violation to use 'significant' force against arrestees who no longer actively resisted arrest or posed a threat to officer safety') [sic]. Per Eric Westry "I am handing her to you" and "I will hand her to you" while attempting to do it, is the very definition of

"compliant and non-threatening" behavior, which reverses a manufactured opinion, against the facts, that there was qualified immunity. The district court decision was a non sequitur under the true facts and complete record.

There is no doubt that the wayward defendant and police, risked the life of Mr. Westry but also his daughter who in the defendant's argument, was noncompliant and threatening and deserving of being fired upon, risking her injury AND her father's. This was reckless and the plaintiff implores the court should take the liberty to consider this violation and claim of infringement of both father AND DAUGHTER'S RIGHTS BY THE DEFENDANT. Again, would you fire a revolver, shotgun, rifle or taser gun at a father and child centimeters apart? Again what the Hell were they thinking, bringing out a weapon when—according to my counsel and recollection, approximately up to SEVEN OFFICERS WERE PRESENT IN MY BEDROOM. (Each person has the highest possible expectation of privacy inside their own home, and arguably, even more so in their bedroom and ultimately more in their bed, WITHOUT THE PRESENCES OF EXIGENT CIRCUMSTANCES AS THERE WERE NOT, FOUR HOURS LATER, FROM A NONVIOLENT EVENT.)

The RACIST, SEXIST, and DISPARITIES of one's POLITICAL STATION, between this case and the State of Connecticut v. Justina Moore (Connecticut Prosecutor) never being held to account did not experience the damages of lost parenting my child, home, car, career, income, reputation and any form of livelihood and peace of mind from emotional distress and anguish in a case similarly situated

— sans my innocence, but for her fleeing, which makes her situation worse while receiving no accountability—are exactly why this is a disparate civil rights issue to be handled by a jury!

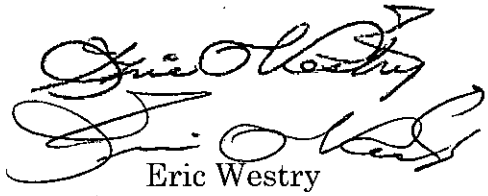
I therefore respectfully ask this Court to reverse the judgement of the district court and affirmation of the appellate court with a finding in fact in favor of the appellant ending this 1,984 day nightmare for constitutional violations and punitive emotional distress, damages (five years and continuing loss of livelihood and permanent reputation damages: a bell that cannot be unrung). In the alternative the court should remand the case for a fair and impartial trial before an unprejudiced jury on proper evidence and under correct instructions as is just and proper. The Motion for Summary Judgment, with NO QUALIFIED IMMUNITY should be issued in keeping with the video that always controls.

As Black people in this country have historically been failed by the "Justice System" specifically courts, vis-à-vis the interests of fair and equal justice, Judges know these cops lied on police reports stating that I told them they "**better get out of here.**" taking a physically aggressive and provocative stance to make me sound threatening and still their testimony was not impeached? This is also part of the institutional racism in the system. Video supercedes sworn testimony Scott v. Harris, 550 U.S. 372 (2007); Addona v. D'Andrea, 692 Fed. Appx. 76 (2017).

Perhaps most tellingly, the errors, misrepresentations, and out right lies here against me have culminated to and constitute, Fifth and Fourteenth procedure and substantive due process violations, Equal Protection violations, that eventually led to Eighth Amendment Cruel and Unusual Punishment violations that have had an unalterable effect on my family, emotional, financial, and physical health and well-being.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Eric Westry

Date: 11 SEPTEMBER 2021