No. 21-5733

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 REHEARING (REBUTTAL INCLUSIVE)

ERIC WESTRY—*Pro se*
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This timely request within 25 days for acceptance of a rehearing/ reconsideration of the plaintiff's petition, also serves as a rebuttal that was not provided due to a miscommunication out of the Supreme Court of the United States Office of the Clerk. [The Clerk's Office, who finally retuned a call on 22 NOVEMBER 2021, agreed to the inclusion that unreturned calls, on 9th (multiple), 4th (2 calls), and 2nd of November 2021, to the clerk's office concerning the case were a contributory factor in the rebuttal not being submitted before 19 NOVEMBER 2021, be included in this request].

To be clear, commonsense does not dictate that a police officer fire a weapon upon an unarmed man holding his thirteen month old baby. It is craven even for an officer of the court or police officer he represents to display such moral turpitude, asserting a dangerous idea such that a deadly discharge, centimeters away from an unarmed defenseless infant and man, no less, is justified. Qualified Immunity must account for, not only what a reasonable officer does, but what s/he does not do; there is a required reassessment of threat continuum ESPECIALLY AFTER 28 SECONDS OF CHANGES IN CIRCUMSTANCES! What does "I AM HANDING HER TO YOU" mean and can it be even truer when it is being shown and carried out? The circuit court ignored the latter. There is no excuse for any political idea that supports the death of children in a venue from a surely deadly weapon being used against a cardiac patient and an infant that would not survive 50,000 volts from a taser gun in the sanctity of his bedroom. This, while discharged by a group of police officers surrounding ONE UNARMED MAN AND HIS CHILD. Is it not true

that officers demand a person lie down in surrender and compliance? I WAS ON MY BACK! They were already half-way there. Doesn't any other citizen face prosecution for firing a weapon at disarmed or harmless people, particularly babies? What is the policy of police, firing weapons at unarmed people? Can a cop fire a weapon on the street with people in the way? No! He CANNOT, then fire a weapon with an infant literally in the arms of an unarmed man in a bedroom. This is the essence of culpability and recklessness. To fire a weapon at an unarmed man irresponsibly centimeters from an infant is an obvious act of generalized indifference to human life. Why must police be treated any different, than a reckless citizen and how can the circuit court rule illegitimately to place the blame of injury and risk of injury on the victims and not the shooter who claims ostensibly that they felt threatened from a THREATENING SITUATION HE (THEY) CAUSED AND ESCALATED? It is an inherent non-sequitur. To treat them differently in an obvious malevolent act would —and has—spurred on these deadly acts of impunity by rogue cops nationally, which will only continue. When does it stop? Where is the barrier and accountability and common sense of professional comportment and not just offering another permit and carte blanch to trying out a weapon anyway, firing AFTER COMPLIANCE OCCURRED? The defendant's argument of firing this weapon upon capitulation of the plaintiff is the very definition of excessive.

If in Tennesse v. Garner, "[t]he use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable," said the 6-3 decision, written by Justice Byron White, how can it be reasonable against

an unarmed man and child laying on their backs? I am speaking up for the effect of this impact litigation on accountability for harming two people because clearly my child is not being given the voice to say "don't shoot at me, officer." Justices, please, first of mind remains that the firing of this deadly weapon was the last event, not an action employed to produce compliance but as a compounded measure AFTER it was present; it was, as Hon. George Levine stated, punishment after compliance anyway. Punishment occurred because police were (the defendant was) insulted by the verbal protest of an unarmed man. Is it really credible that the officers—AS THE AGGRESSORS AND ESCALATING CAUSE OF THE THREATENING SITUATION—felt threatened by an unarmed man who changed his position to help hand his only child to the strangers assaulting them 28 seconds later? Was the expectation that I was supposed to miraculously attack several officers in a swift "Matrix"-like ascension into the air to wipe them away? This is not Hollywood and extraordinary characterizations, implications, and insinuations by the defendant insults the court's and everyone else's intelligence. Where is the weapon that engendered fear in these officers and why did they alter and lie in sworn statements if they already could demonstrate that they were threatened? For GOD's sakes, they conspired with state child welfare that the plaintiff used the child as a human shield to further accentuate their buffer of lies to support or rather conceal their illegal action before they knew there was a video. That is the very definition of consciousness of guilt; it connotes that they would have acted differently if they knew their actions were being recorded. Was that icing on the cake? Inculpatory

consciousness of guilt before they knew there was a video of the defendant and his fellow offenders' illegal and surreptitious actions, is more accurate.

What's more, the flagrant act of literally walking on the plaintiff's person, and wiping their filthy shoes off atop his bed and person are flagrant, egregious, extraordinary stark evidence of the contempt held for the plaintiff: an indictment of intent and presence of mind and on video which controls. The defendant relies on a deposition conducted three years after the event to which the plaintiff strongly protested in said deposition that the video is a far better representation than what he attempted to remember who he was pulling toward to hand his child, was there, and if so, where forces pulled in the opposite direction. The Hon. Joseph Shortall on 1 OCTOBER 2018 also called this the best indication of what happened that night, to which the Connecticut assistant attorney general had to agree. The defendant prefers to rely heavily on subterfuge, obfuscating the true focus of the argument, conflating the importance of the contents of elements such as the depositions and realtime witness video in an attempt to present these two with false equivalency. Video supersedes sworn testimony Scott v. Harris, 550 U.S. 372 (2007); Addona v. D'Andrea, 692 Fed. Appx. 76 (2017). Video controls and the use of stale depositions in lieu of it, by anyone, is deceptive, duplicitous, and lazy. Who cannot be nonplussed by the "equivalence."

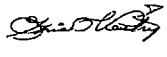
Everyone began back-peddling and equivocating after a video was known especially the corrupt department of children of families-police conspiracy who relied heavily on the false police reports before and after, they violated Hon. Joseph

Shortall's orders, destroying the plaintiff's reputation, career, and income. This is the original sin caused by the defendant and the Waterbury police from which every hint of damages originates.

I therefore respectfully ask this Court to accept this timely request for reconsideration/rehearing within the 25 day provision and rebuttal (due to the miscommunication from the Clerk's Office of the Supreme Court of the United States), 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 2,096 day nightmare for constitutional violations and punitive emotional distress, damages (more than five and one half years and continuing loss of livelihood and permanent reputation damages: a bell that continues in subsequent investigations of waterbury police violations and attempts on my life and livelihood 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. Members of the court have repeatedly said that the court is apolitical. To ignore and not grant a hearing on this seminal issue in the nation's history and protective rights of groups of individuals—in comparison to dubious other acceptances—would be a political and therefore irresponsible, and callous act of inaction and dereliction of duty; an indelible mark of stench on a besmirched court.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Eric Westry Date: 31 DECEMBER 2021

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PROOF OF SERVICE AND CERTIFICATION

I, Eric Westry do swear or declare that on this date, 31 DECEMBER 2021, as required by Supreme Court Rule 29 I have service the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* AND PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or the party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail, e-mail properly addressed to each of them with first-class postage prepaid, or by delivery to the third-party commercial carrier for delivery with in 3 calendar days. (Delivered in confirmatory e-mail and ~~attempted in person~~).

This document certifies that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

The names and addresses of those served are as follows:

Joseph A. Mengacci Office of Corporation Counsel 236 Grand Street 3rd Fl Watebury, CT 06702 jmengacci@waterburyct.org

Daniel J. Foster Office of Corporation Counsel 236 Grand Street 3rd Fl Waterbury, CT 06702 dfoster@waterburyct.org

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 31 DECEMBER 2021