No. 21-770

In The

Supreme Court of the United States

SHELBY HAWKINS,

Petitioner,

v.

JOHNNY BANKS, III,

Respondent.

On Petition for Writ of Certiorari To The United States Court of Appeals For The Eighth Circuit

REPLY BRIEF FOR PETITIONER

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I. Officer Hawkins Had Probable Cause to Believe That Mr. Banks Posed an Immediate Threat of Death or Serious Bodily Injury to Himself or Others, Therefore, His Use of Deadly Force Did Not Violate the Fourth Amendment and Reversal is Appropriate

The Respondent's Brief centers around his erroneous characterization of the applicable law in deadly force situations. The Respondent asserts that a police officer cannot use deadly force against a person who, "does not pose an immediate threat of death or serious bodily injury to the officer or to others." Resp. Br. pp. i-iii, 6, 11, 12, 14, & 16. Contrary to the Respondent's assertion and pursuant to this Court's precedent, the use of deadly force is appropriate 'where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others." *Tennessee v. Garner,* 471 U.S. 1, 3 (1985). The reasonableness of [an officer]'s actions...is a pure question of law." *Scott v. Harris,* 550 U.S. 372, 381 n.8 (2007).

The relevant facts, as stated in the district court's order, establish probable cause for an officer in Officer Hawkins' position to believe that Mr. Banks posed a threat of serious harm to Officer Hawkins or others on the scene, and that Officer Hawkins' fear of harm was reasonable. At the least, there is no case

with similar facts to clearly establish that an Officer's fear of serious harm under these circumstances was unreasonable or that the force used was constitutionally unreasonable.

The Respondent cites to the district court's opinion below at numerous points when he states that Officer Hawkins "repeatedly stated in his deposition that whatever struck him could not have come from Banks" Resp. Br. pp. 2 & 10; however, a review of Officer Hawkins' deposition testimony clearly shows that he actually *repeatedly* testified that *he did not know* what struck him. (Aplnt, App. 379-389). Regardless of Officer Hawkins' subjective process during this tense and rapidly evolving incident, as stated above, an objective officer faced with the circumstances as set out in the district court's order would reasonably believe that Mr. Banks posed a threat of serious harm, and this Court has been clear that, "the 'reasonableness' inquiry in an excessive force case is an objective one; the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them." *Graham v. Connor,* 490 U.S. 386, 396 (1989). The undisputed facts, as set out in the district court's order, demonstrate that Officer Hawkins' firing of his weapon was objectively reasonable and constitutional under these circumstances - which were all created by Mr. Banks. Therefore, Officer Hawkins is entitled to qualified immunity, and reversal is appropriate.

II. No Factually Similar Precedent Clearly Prohibited Officer Hawkins' Actions, and Reversal is Appropriate

Even if this Court determines that Officer Hawkins' actions in shooting Mr. Banks, as set out in the district court's order, violated the Fourth Amendment, Mr. Banks has not and cannot meet his burden in demonstrating that Officer Hawkins violated clearly established law. The burden falls on Mr. Banks to "identify a case where an officer acting under similar circumstances as [Hawkins] was held to have violated the Fourth Amendment." *White v. Pauly*, 137 S. Ct. 548, 552 (2017). Instead of citing cases with similar facts that found a constitutional violation, Mr. Banks presented cases where his desired legal conclusion was reached based on distinguishable facts. As such, none of the cases cited by respondent apply to this incident in anyway more than a generalized sense, and pursuant to this Court's precedent, none of the cases cited by Banks could have given notice to Officer Hawkins that his actions on February 17, 2017, violated clearly established law. Even further, *Thompson v. Dill,* 930 F. 3d 1008 (8th Cir. 2019)*, Raines v. Counseling Assoc. Inc.,* 883 F.3d 1071 (8th Cir. 2018), and *Cole v. Hutchins,* No. 4:17CV00553JLH, 2019 WL 903844 (E.D. Ark. Feb. 22, 2019) were all decided after February 17, 2017, and therefore, could not have provided the requisite notice to Officer Hawkins to defeat qualified immunity in this case even if they were factually on point.

Given the fact specific nature of excessive force claims, "officers are entitled to qualified immunity unless existing precedent 'squarely governs' the facts at issue." *Kisela v. Hughes*, 138 S.Ct. 1148, 1153 (2018). Respondent has not cited a case that "squarely governs" the facts of this case. Therefore, Officer Hawkins is entitled to qualified immunity, and the panel's denial of qualified immunity should be reversed.

CONCLUSION

There is simply no precedential case that makes it "sufficiently clear" that Hawkins' actions violated a constitutional right. Under these circumstances, Officer Hawkins should be granted qualified immunity. Officer Hawkins hereby respectfully requests review of the panel majority's opinion, so that he may be granted the protection afforded by qualified immunity and the dismissal of this instant case, and so that society's interests which underly qualified immunity will not be thwarted by the panel majority's opinion.

Respectfully submitted,

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