No. 22-8

IN THE

Supreme Court of the United States

ANTHONY MOMPHARD, JR., Individually and in his official capacity as a Deputy Sheriff of the Macon County Sheriff's Department; ROBERT HOLLAND, in his Official capacity as the Sheriff of Macon County; WESTERN SURETY COMPANY, a South Dakota Corporation; THE OHIO CASUALTY INSURANCE COMPANY, a New Hampshire Corporation,

Petitioners,

v.

MELISSA B. KNIBBS, as Personal Representative of the Estate of Michael Scott Knibbs,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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ARGUMENT

This Court should Deny Defendants' Petition for Writ of Certiorari. The matter on appeal is a straightforward instance of a trial court misapplying the summary judgment standard. The Fourth Circuit of Appeals correctly ruled that there are factual disputes between the parties that are "quintessentially genuine and material." *Knibbs v. Momphard*, 30 F.4th 200, 216 (4th Cir. 2022)(internal citations omitted).

The Fourth Circuit correctly ruled that the materially disputed facts were "(1) whether Knibbs pointed his gun at Deputy Momphard; and (2) whether Deputy Momphard was "readily recognizable as a law enforcement officer" on Knibbs' porch." *Id.*

The issue of whether Knibbs pointed his gun at Momphard goes to the question of an "objectively immediate threat," and the issue of whether Momphard was readily recognizable as law enforcement goes to whether a reasonable officer in those same circumstances would determine it was foreseeable that Knibbs would arm himself to investigate the nocturnal disturbance outside his home in rural North Carolina. *Id.* at 219 (citing *Cooper v. Sheehan*, 735 F.3d 153, 160 (4th Cir. 2013).

Defendants' Petition for Writ of Certiorari continues the trend throughout appellate litigation of attempting to argue with the facts that the Court must take as true at this juncture in the litigation. Petition for Writ of Certiorari at 2 ("refuses to drop the weapon when ordered. . . armed individual makes an objective threat"); *Id.* at 6 ("Knibbs refused to comply with his instruction to disarm"); *Id.* at 8 ("[N]o evidence that Knibbs could not, or did not, know that a deputy was at his door.").

The Fourth Circuit, in a meticulously detailed fashion, explained why each conclusion advanced by

Defendants was foreclosed by the Court at the summary judgment stage due to contradictory evidence presented by the Estate:

> As the Estate views the record, Deputy Momphard approached Knibbs' home in the middle of the night to investigate what was, at most, an attempted crime against property. There were no lights on inside or outside the house, and Deputy Momphard never activated the blue emergency lights on his vehicle, so Knibbs could not see who was outside saying "sheriff's office." To protect himself, his wife, his daughter, his son, and his infant grandchild, Knibbs armed himself with a shotgun, loaded it, and stood at his front door with the barrel safely pointed towards the ceiling. The person outside then shouted to drop the gun, and seconds later shined a flashlight on him and shot. **Knibbs never made any verbal threats or movements with the shotgun**. He was shot simply because he stood in his living room holding a shotgun.

Knibbs, 30 F.4th at 214 (emphasis added).

Defendant Sheriff Holland's own testimony confirms the legitimacy of the Estate's theory of the case—Sheriff Holland admitted at his deposition that unless a gun is used in an aggressive manner or pointed at the officer, there would be no basis for deadly force. *Id.* at 225.

Defendants' own cited authority from other Circuit Courts only highlights the importance of the undisputed fact that Scott Knibbs never moved after Defendant Momphard jumped in front of the window.

Every single case cited by Defendants featured the victims making some sort of movement, and these movements were fatal to the victim's claims.

In *Wilson v. Meeks*, the victim, after being instructed to show his hands, **cocked the handgun, and then brought his gun forward**. 52 F.3d 1547, 1549-50 (10th Cir. 1995).

In *Partlow v. Stadler*, the victim **started to raise his gun** after being told to drop the firearm. 774 F.3d 497 (8th Cir. 2014).

In *Ramirez v. Knoulton*, the victim brought his handgun out of his vehicle with him, and when told to drop the handgun, the victim **put his hands on his hips and brought them together near his waist**. 542 F.3d 124, 127 (5th Cir. 2008).

In *Ballard v. Burton*, the victim refused commands to drop his rife, **discharged his rifle in the air, and moved the weapon in the officers' general direction**. 444 F.3d 391, 403 (5th Cir. 2006).

In *Chappel v. City of Cleveland*, the victim exited a closet with a knife held in the air, and then **proceeded towards the officers**. 585 F.3d 901, 904 (6th Cir. 2009); Petition for Writ of Certiorari p 14 ("The Six Circuit, on review, found that the juvenile's refusal to drop the knife, **coupled with his movement toward officers**, justified deadly force") (emphasis added).

In *Blanford v. Sacramento County*, the victim ignored orders to drop a sword, and then attempted to enter the front door of a home, **walked around the home**, and attempted to enter a backyard gate. 406 F.3d 1110, 1112-13 (9th Cir. 2005).

In *Long v. Slaton*, the victim took a deputy's vehicle **and started to drive away**. 508 F.3d 576, 580 (11th Cir. 2007).

Defendants' purported authority supporting their position instead bolsters the Estate's claim, and reinforces the Fourth Circuit Panel's well-reasoned and detailed opinion showcasing why the Estate's claim survives summary judgment and must be decided by a jury.

Defendants take issue with the Fourth Circuit's analysis on whether a reasonable officer in Defendant Momphard's shoes should have realized occupants of the Knibbs' house would have been uncertain about the identity of the man yelling outside their home. Petition for Writ of Certiorari p 16. Defendants claim the Fourth Circuit Panel "analyzed this question from Knibbs' perspective, even though it acknowledged that the question had to be considered from the deputy's viewpoint." *Id.*

This is not accurate. Momphard was aware that he had not activated his emergency blue lights, that he never attempted to call the residents, and otherwise failed to make any effective attempt to identify himself to the residents of a darkened home. Momphard was also aware that there was an ongoing conflict between the Knibbs household, and the Freeman household. Despite Momphard's knowledge of these facts, Momphard brought Freeman back down the hill to the Knibbs' home. A reasonable officer operating under these facts and circumstances would expect that a law-abiding rural homeowner would likely answer the door with a loaded firearm for the protection of his family. A reasonable officer would know that the home is the place "where the need for defense of self, family, and property is most acute." *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008).

The dissenting Judge misapplies the summary judgment in much the same manner as the Trial Court, by applying the factual circumstances of this action in the light most favorable to Defendant Momphard. *Knibbs*, 30 F.4th at 235 ("The moon was full, though, which, **according to Deputy Momphard**, made it easy for anyone to see him or the marked vehicle") (emphasis added).

Defendants did not request review of the Fourth Circuit's decision reversing summary judgment on the North Carolina state tort claims. As a result, regardless of this Court's decision, there will be a trial for damages under North Carolina law against both Defendant Momphard in his individual capacity, and the other Defendants on the Estate's wrongful death claim.

This case raises triable issues of fact that are material to Defendants' liability under 42 U.S.C. § 1983. This Court should deny Defendants' Petition for Writ of Certiorari.

Respectfully submitted,

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