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 WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY BRIEF FOR PETITIONER

The Fourth Circuit decided that two fact disputes – where Knibbs aimed his shotgun and whether Deputy Momphard was "readily recognizable" as law enforcement – precluded qualified immunity. Knibbs maintains that the decision is sound. The opinion, however, strayed from precedent by viewing the case from Knibbs' perspective; not a reasonable officer in Deputy Momphard's shoes.

I. The Fourth Circuit erred in judging the facts from Knibbs' vantage and not Deputy Momphard's perspective

Knibbs claims that the Fourth Circuit judged the events from Deputy Momphard's viewpoint. (Respondent's Brief p. 4). Knibbs then quotes from the opinion to prove his point. (*Id.* at 2). But that quote shows that, in truth, the Fourth Circuit fashioned its fact disputes by looking at the case from Knibbs' perspective.

For starters, the Fourth Circuit wrote that lighting conditions were such that "Knibbs could not see who was outside saying 'sheriff's office.' " *Knibbs v. Momphard*, 30 F.4th 200, 214 (4th Cir. 2022). Setting aside, for a moment, that what Knibbs could see (or not see) is anecdotal, it is irrelevant to what Deputy Momphard knew. Deputy Momphard was in uniform. He displayed a badge. He announced himself as law enforcement. Indeed, he announced his presence loud enough that Knibbs heard him[1], came to the door, and racked a shotgun. Those were the facts available to Deputy Momphard. Those facts would not lead a reasonable officer to think that

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[1] Knibbs even told his wife "anybody can say they are a sheriff."

Knibbs doubted his identity. *Cf Rogers v. Carter,* 133 F.3d 1114, 1118 (8th Cir. 1998) (plainclothes officer's identity called into question by suspect); *see e.g. Rogers v. Carter,* 133 F.3d 1114, 1118 (8th Cir. 1998) (uniformed officers ventured into dark area and did not identify themselves).

The Fourth Circuit's counterpoint is that the porch was dark and Deputy Momphard did not leave his squad lights on. These facts, it found, would cause a reasonable officer to question if they could be recognized as law enforcement. But this Court has never denied qualified immunity on secondary disputes about lighting. Especially when uniformed officers identified themselves and the suspect heard the identification.

Next, the Fourth Circuit turned to the shotgun's position. "To protect himself [and his family]," the Court wrote, "Knibbs armed himself with a shotgun, loaded it, and stood at his front door with the barrel safely pointed towards the ceiling." *Knibbs,* 30 F.4th at 214. That sentence reflects how Knibbs saw it. But that is not what Deputy Momphard encountered. He announced his presence in unform and badge. A person hidden behind a door responded by racking a shotgun. Deputy Momphard directed that person to drop the weapon. The person did not respond. Deputy Momphard was alone in a rural setting. He could not see the person with the shotgun. And he had no shelter from the person with the shotgun. So when Deputy Momphard moved to the window and saw Knibbs holding the shotgun, he knew two things: the weapon had a shell in the chamber and Knibbs declined to disarm. No reasonable officer, on these facts, would think that Knibbs meant no harm.

Knibbs' narrative[2] even concedes that an officer would need to be in his head to know his intent. According to Knibbs, he brought a loaded shotgun to the door in case his neighbor was pretending to be an officer and he needed to use deadly force. But then, just in case it was a real officer and not the neighbor, he shouldered the shotgun so that the officer would know he meant no harm. No reasonable officer would make these deductions. By rewriting the narrative from Knibbs' perspective, the panel turned qualified immunity on its head in the Fourth Circuit. *Wilson v. Meeks*, 52 F.3d 1547, 1549-50 (10th Cir. 1995) (*Wilson I*) *abrogated in part and on other grounds by Saucier v. Katz,* 533 U.S. 194 (2001)) (recognizing that "[q]ualified immunity does not require that the police officer know what is in the heart or mind of his assailant. It requires that he react reasonably to a threat"); *Partlow v. Stadler*, 774 F.3d 497 (8th Cir. 2014) (a plaintiff's mindset does not determine how a reasonable officer would perceive a "tense, uncertain, and rapidly evolving" situation that warranted a "split-second decision to apply deadly force").

Last, Knibbs sides with the Fourth Circuit's conclusion that a suspect must make a "furtive movement" before lethal force is warranted. This Court has never held as much. Neither has any circuit court. Still, Knibbs argues that the only reason qualified immunity attached in the cases cited by Deputy Momphard was because the suspects made a movement toward the officer. (Respondent's Brief pp. 3-4). Not so. In each case, the officers directed a suspect to disarm and the suspect refused. That refusal, coupled with facts like the space between the

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[2] Knibbs' narrative comes from the estate's attorney and its expert.

officer and suspect and the weapon the suspect possessed, dictated whether a reasonable officer would have feared for their life. Those courts did not say that an officer must wait for the suspect to make a move before qualified immunity is available. But the Fourth Circuit did. And that holding diverges from precedent. Deputy Momphard knew that Knibbs had a loaded weapon. Knibbs would not respond to his command. Knibbs was hidden behind a door. Deputy Momphard had no cover from a shotgun blast. And when Deputy Momphard attempted to move off the porch, he saw that Knibbs was mere feet away and still holding the shotgun. In that tense and uncertain situation, the Fourth Circuit would have an officer wait for Knibbs to make a movement before lethal force could be justified. This Court has never second-guessed an officer like that. And now, law enforcement in the Fourth Circuit must exercise "unwarranted timidity" to get qualified immunity. *Richardson v. McKnight,* 521 U.S. 399, 408 (1997).

II. The cases cited by the Fourth Circuit do not clearly establish a Constitutional violation

Certiorari review is warranted here because the Fourth Circuit defined Knibbs' constitutional rights in general terms. *See*, *e.g., City and County of San Francisco v. Sheehan,* 575 U.S. 600, 617 (2015). Knibbs does not even argue this point in his brief.

Deputy Momphard will not belabor this argument in his reply, other than to point out that the two cases the Fourth Circuit relied on – *Cooper v. Sheehan*, 735 F.3d 153 (4th Cir. 2013) and *Hensley on behalf of North Carolina v. Price*, 876 F.3d 573, 578 (4th Cir. 2017) – are distinct in every material way and "hardly inform reasonable officers standing in Deputy

Momphard's circumstances. Indeed," Judge Niemeyer wrote in dissent, "reasonable officers would more likely have recognized the distinguishing facts in them and concluded that they do not inform the circumstances." *Knibbs*, 30 F.4th at 238 (Niemeyer, J., dissenting)

CONCLUSION

This Court should grant Deputy Momphard's petition on both questions presented or, in the alternative, summarily reverse the Fourth Circuit.

Respectfully submitted, this the 20th day of September 2022.

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