NO. 23-_____

In the Supreme Court of the United States

BOWE MARVIN,

Petitioner,

v.

DAVID HOLCOLMB, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether there is a "*Grab-Him-and-Throw-Him-Out-of-the-House*" exception to requiring probable cause of a felony for in-home arrests without a warrant?

2. Whether excessive force is allowed regardless of whether there was a probable cause to arrest in the first place?

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellants below:

- Bowe Marvin

Respondents and Defendants-Appellees below:

- David Holcomb
- Christopher Lawson-Rulli, Corporal
- Matthew Corban, Patrolman
- St. Joseph County Sheriff's Department

RULE 29.6 STATEMENT

Petitioner Bowe Marvin is not a nongovernment corporation. Consequently, said Petitioner does not have a parent corporation or shares held by a publicly traded company.

LIST OF PROCEEDINGS

U.S. Court of Appeals, Seventh Circuit

No. 22-2757

Bowe Marvin, *Plaintiff-Appellant,* v.
David Holcomb, et al., *Defendants-Appellees.*

Final Opinion: July 11, 2023

U.S. District Court, Northern District of Indiana

No. Case No. 3:20-CV-553-MGG

Bowe Marvin, *Plaintiffs,* v.
David Holcomb, et al., *Defendants.*

Partial Summary Judgment Order: July 25, 2022

Verdict: September 14, 2022

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The Opinion of the U.S. Court of Appeals for the Seventh Circuit is found at the Appendix that is filed with this Petition (hereinafter "App.") 1a-12a. This opinion was not designated for publication.

JURISDICTION

The Court of Appeals entered its Opinion and Judgment on July 11, 2023. App.1a-12a. It issued the Mandate on August 2, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983

> 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.

STATEMENT OF FACTS

A. Police Pull Petitioner Out of His House

In the instant case, on April 3, 2015, Bowe Marvin was 21 years old and living with his father, Greg. That day, Marvin's mother, Michelle, drove to Greg's house to tell Marvin that he needed to move out and come live with her. This led to a heated argument. Marvin told her he would not leave his father's house and became increasingly agitated. In his anger, he broke her sun-glasses, flipped an ashtray, and threw a chair across the room, hitting her in the face and cutting her

lip open. Michelle then left the house and called the police from her truck in the driveway. She asked the police to perform a welfare check on Marvin, as she was worried he might be suicidal. She also told the dispatcher that Marvin regularly carried a box cutter.

When the police arrived, they found Michelle in the car in the driveway. The group included three Sheriff's Deputies: David Holcomb, Matthew Corban, and Christopher Lawson-Rulli. They saw Michelle's split lip and repeatedly asked what had happened to her. She insisted she was fine and asked them to go check on Marvin. The deputies explained that they would not go inside until she told them what had happened to her lip. At that point, Michelle told them that her son had thrown a chair at her. One deputy allegedly said, "I'm taking him down," and all three approached the house.

Deputy Corban knocked on the door and Greg answered. Marvin then came to the door and stood in the doorway. The deputies asked Marvin several times to leave the house, but they did not tell him why they were there, that they had spoken to his mother, or whether he was under arrest. They also repeatedly asked if he had any weapons, and he responded, "What? What do you mean?" Seemingly amidst this discussion of whether Marvin had a weapon, Greg came up behind him and removed a knife from Marvin's back pocket.

Lawson-Rulli and Holcomb grabbed Marvin's hands and pulled him from the doorway of the house. The parties dispute whether Marvin was inside or outside the doorway when this happened—that is, they dispute whether the deputies had to enter the house to pull him out. Marvin fell to the ground outside and

attempted to stand up. Corban wrapped his arms around Marvin's legs, bringing him back to the ground. Holcomb tased Marvin once; and when that did not seem to have an effect, he tased him a second time. Simultaneously, the deputies hit him with open hands and closed fists. When Petitioner stopped moving, Corban placed Petitioner in handcuffs, after which he "was compliant." In the district court, Marvin admitted that "[a]t the time the deputies restrained him, [he] was uncooperative but he was not threatening or violent." Petitioner suffered a concussion and a broken toe from the encounter.

STATEMENT OF THE CASE

A. Proceedings in the District Court Below

On March 12, 2021, Petitioner filed an Amended Complaint ("the Amended Complaint"). App.63a. The Amended Complaint alleged three claims against Respondents St. Joseph County Sheriff Department (the "Department"), David Holcomb ("Holcomb"), Corporal. Christopher Lawson-Rulli ("Lawson-Rulli"), and Patrolman Matthew Corban ("Corban") (collectively "Respondents"). Those claims were as follows: (i) unlawful entry by Respondent Officers in violation of the 4th Amendment to the U.S. Constitution under 42 U.S.C. § 1983; (ii) excessive force by Respondent Officers in violation of the 4th Amendment under 42 U.S.C. § 1983; and (iii) state law claims for trespass, battery, and excessive force under Indiana law. Petitioner's Amended Complaint sought compensatory and punitive damages in the sum of $3.1 million.

On November 12, 2021, Defendants collectively filed a Motion for Summary Judgment pursuant to Federal Rules of Civil Procedure, Rule 56 (the "Motion for Summary Judgment"), contending that (1) not all the officers were personally involved in each of the events that occurred, (2) the Appellees are entitled to qualified immunity because the undisputed material facts show that the Appellees did not violate Appellant's constitutional rights, and (3) even if the facts taken in the light most favorable to Appellant do make out a constitutional violation, the Appellee Officers are still entitled to qualified immunity because the constitutional rights at issue were not clearly established.

On July 25, 2022, the District Court entered the Order Granting in Part Appellees' Motion and made several findings. First, pertaining to the Department, the District Court denied the Department's Motion on the grounds that it is not a suitable entity or the proper entity for this action. The District Court analyzed Appellant's unlawful entry and excessive force claims pursuant to § 1983 against the Officers first by contemplating the "personal involvement" of each officer. In their Motion, Appellees sought summary judgment as to Appellant's excessive force claim against Appellees Lawson-Rulli, Holcomb, and Corban. Accordingly, the District Court granted summary judgment in favor of Defendant for Appellant's unlawful entry claim against Appellee Corban, as well as a summary judgment on Appellant's excessive force claim as it pertains to Defendant Lawson-Rulli, on the grounds that those Defendants did not have sufficient "personal involvement" to subject Defendants to § 1983 liability.

The District Court further granted Appellees' Motion for Appellant's excessive force claim against

Appellees Lawson-Rulli, Holcomb, and Corban. In its analysis of whether Appellees were entitled to the defense of qualified immunity, which Appellees raised, the District Court found that there was no violation of a statutory or constitutional right because Appellees' use of force was reasonable and that there is no genuine dispute of material fact pertaining to this finding.

Furthermore, Appellant's remaining claim, his cause of action for unlawful entry against Appellees Holcomb and Lawson-Rulli, survived Appellees' motion for summary judgment and was litigated at trial. The jury ultimately found in favor of Appellees on all counts.

On October 3, 2022, Petitioner filed a timely Notice of Appeal, seeking review by the Seventh Circuit Court of Appeals of the District Court's Order Granting in Part Summary Judgment dismissing Petitioner's unlawful entry claim against Respondent Corban, excessive force claim against Respondent Officers, and Petitioner's state law claims, and the final jury verdict entered in this action on September 14, 2022.

B. Proceedings in the Court of Appeals Below

On October 4, 2022, the Court of Appeals docketed Petitioners' appeal. App.2a. On May 24, 2023, the cause was argued before a panel consisting of Judges Michael Y. Scudder, Amy J. St. Eve, and Thomas L. Kirsch II. App.1a-12a. On July 11, 2023, the Court of Appeals entered the Opinion, affirming the District Court's rulings. App.1a-12a. The Court of Appeals issued the Mandate on August 2, 2023.

REASONS FOR GRANTING THE PETITION

Two reasons to grant this petition: *First*, conflicting law in other Circuits warrants this Court clarify an individual's privacy rights in the doorway of their home and prevent an exception that an officer can pull an individual from their threshold and execute an arrest without a warrant and without probable cause. And *Second*, to establish the relevance of an unlawful initial seizure in this Court's excessive force analysis.

I. Whether There Is a "*Grab-Him-and-Throw-Him-Out-of-the-House*" Exception to Requiring Probable Cause of a Felony for In-Home Arrests Without a Warrant?

The Court of Appeals' aforementioned analysis of Petitioner's challenge to the final jury instructions and affirmation of the District Court's decision regarding the instruction in question conflicts with decisions by other Circuit Courts because it misstates the law established in other Circuits.

Petitioner argued at the District Court and the Court of Appeals that the language in Jury Instruction No. 8—"the point where the home begins must be identified by inquiry into reasonable expectations of privacy"—so misled the jury because it misstated or insufficiently stated the law as to Petitioner's reasonable expectations of privacy in the doorway of his home.

The Court of Appeals held that whether Petitioner had relinquished his right to privacy – meaning a warrant would ordinarily be required for entry – was irrelevant to the analysis of whether Jury Instruction

No. 8 insufficiently stated the law because the District Court found there were exigent circumstances existed that justified warrantless entry. However, the Court of Appeals fails to address the District Court's diminishment of one's reasonable expectation of privacy in their own home. This holding directly conflicts with several other circuits. Despite this, the Court of Appeals acknowledged the non-ambiguity of the expectation of privacy that exists at the threshold, stating:

> On the other hand, "more recent Fourth Amendment cases have clarified that the test most often associated with legitimate expectations of privacy . . . supplements, rather than displaces, the traditional property-based understanding of the Fourth Amendment." *Byrd v. United States*, 138 S.Ct. 1518, 1526 (2018) (cleaned up); *see also Lange v. California*, 141 S.Ct. 2011, 2018 (2021) (the Fourth Amendment "draws a firm line at the entrance to the house") (cleaned up); *Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("This right would be of little practical value if the State's agents could stand in a home's porch or side garden and trawl for evidence with impunity; the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window."); *Kyllo v. United States*, 533 U.S. 27, 34 (2001) (expressing concerns with Physical intrusion[s] into . . . constitutionally protected area[s]").

The Court of Appeals further admitted that they were "skeptical" that the concept of "the threshold of the home as a malleable concept remains good law."

The Court of Appeals, however, refused to address this essential question.

Under the Fourth Amendment, the people are to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, . . . and no Warrants shall issue, but upon probable cause . . . ." *United States v. Watson*, 423 U.S. 411, 415, 96 S.Ct. 820, 823-24, 46 L.Ed.2d 598 (1976). In essence, officers of the law cannot engage in an unreasonable search and seizure in violation of the privacies afforded by the Fourth Amendment without probable cause. With respect to the Fourth Amendment, the Supreme Court has opined that the "physical entry of the home is the chief evil against which the wording of [that provision] is directed." *United States v. U.S. Dist. Ct. for E.D. Mich., S. Div.*, 407 U.S. 297, 313, 92 S.Ct. 2125, 2134, 32 L.Ed.2d 752 (1972).

"It is a 'basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.'" *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006) (quoting *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S.Ct. 1284, 157 L.Ed.2d 1068 (2004) (internal quotation marks omitted)). This Court, in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), has emphasized the scope of an individual's privacy rights. In *Payton,* police officers had entered the defendants' home to make routine felony arrests without a warrant. The Supreme Court ruled their entry unconstitutional and explained that the "Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined that when bounded by the unambiguous physical dimensions of an individual's home. . . .

In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house." *Id.* at 589-90.

In the Sixth Circuit, the court emphasized an arrestee's expectation of privacy at his threshold. In *Watson v. City of Burton*, 764 F.App'x 539 (6th Cir. 2019), the court found that "Arrestee standing at the threshold of his apartment was seized within the meaning of the Fourth Amendment when police officer reached into apartment, grabbed arrestee's arm, and pulled arrestee out of apartment, without a warrant, and thus officer's action violated the Fourth Amendment, precluding qualified immunity on arrestee's § 1983 claim . . . "

The Eleventh Circuit conflicts with the decision below by the Seventh Circuit as well. In *McClish v. Nugent*, 483 F.3d 1231 (11th Cir.2007), the court held that when an officer, absent a warrant, probable cause, and exigent circumstances, "reached into [a] house, grabbed [the plaintiff], and forcibly pulled him out onto the porch" in order to arrest him, violated the plaintiff's Fourth Amendment rights. *McClish,* 483 F.3d 1231, 1240-41 (11th Cir.2007). Similar to this case, in *McClish*, the defendant officers knocked on the door and McClish, responding to the officers' knock, came to and opened his front door.

Furthermore, the Fourth Circuit concluded that when an arrestee came to the door in response to an officer's knocking, as is the situation in the current case, the arrestee does not "relinquish completely his expectations of privacy." *United States v. McCraw*, 920 F.2d 224, 229 (4th Cir. 1990). In *McCraw*, the Fourth Circuit concluded that "[b]y opening the door

only halfway, [Appellant] did not voluntarily expose himself to the public to the same extent as the arrestee in *Santana*. He certainly did not consent to the officers' entry into his room to arrest him." *Id.*

The Seventh Circuit affirmed jury verdict on the grounds that the District Court's did not err in issuing Jury Instruction No. 8 as to Petitioner's reasonable expectation of privacy.

The Court of Appeal's Opinion affirming the District Court's Order of Dismissal and Judgment directly conflicts with the above-discussed decisions by this Court. This Court should grant review accordingly, pursuant to Rule[1] 10(a) to clarify the robustness of an individual's privacy rights in the doorway of their home and prevent an exception that an officer can pull an individual from their threshold and execute an arrest without a warrant and without probable cause.

II. Whether Excessive Force Is Allowed Regardless of Whether There Was a Probable Cause to Arrest in the First Place?

The Seventh Circuit Court of Appeal's holding also raises the issue of whether the force utilized in an unlawful arrest without probable cause is per se excessive. The Seventh Circuit affirmed the District Court's conclusion that the unlawfulness of an arrest is an insufficient violation of a right under the excessive force analysis.

The Fourth Amendment protects individuals from the government's use of excessive force when detaining or arresting individuals. *See Thomas v. Roach*, 165 F.3d

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[1] All references to "Rule" herein, are to the Rules of the Supreme Court of the United States.

137, 143 (2d Cir. 1999). When determining whether police officers have employed excessive force in the arrest context, the Supreme Court has instructed that courts should examine whether the use of force is objectively unreasonable "in light of the facts and circumstances confronting them, without regard to [the officers'] underlying intent or motivation." *Graham v. Connor*, 490 U.S. 386, 397, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted. *See Wilson v. Layne*, 526 U.S. 603, 615, 119 S.Ct. 1692, 143 L.Ed.2d 818 (1999) ("[A]s we explained in *Anderson*, the right allegedly violated must be defined at the appropriate level of specificity before a court can determine if it was clearly established"). Excessive force claims are necessarily fact-intensive; whether the force used is "excessive" or "unreasonable" depends on "the facts and circumstances of each particular case." *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989); *see also Brosseau v. Haugen*, 543 U.S. 194, 201, 125 S.Ct. 596, 160 L.Ed.2d 583 (2004) (observing that this "area is one in which the result depends very much on the facts of each case").

The Seventh Circuit's ruling in the case allows the unlawfulness of an arrest to be considered irrelevant to the issue of whether the force used in the arrest was unreasonable. This conflicts with the findings of several other courts and the relationship between arrest and excessive force claims is an issue that has been heavily litigated and requires clarification.

District courts in the Third Circuit have found that when law enforcement has no probable cause for an arrest, and engages in an unlawful arrest, then any force applied during the unlawful arrest is unlawful as well. *See Wilder v. Vill. of Amityville*, 288 F.Supp.2d 341, 344 (E.D.N.Y. 2003), aff'd, 111 F.App'x 635 (2d Cir. 2004) ("The use of force is objectively excessive and in violation of the Fourth Amendment, if it is clear to a reasonable police officer that such conduct is unlawful in a given situation (with due recognition of the fact that police officers often face split-second decisions)") (citing *Stephenson v. Doe*, 332 F.3d 68, 77-78 (2d Cir. 2003)); *see also Tate v. W. Norriton Twp.*, 545 F.Supp.2d 480, 487-88 (E.D. Pa. 2008) ("The application of excessive force during arrest violates the Fourth Amendment's protection against unreasonable seizure. Where an arrest is itself unlawful, force applied in the course of the arrest is ordinarily unlawful as well.").

Courts in the Fourth Circuit have arrived at the same conclusion. In *Souter v. Irby*, 593 F. Supp. 3d 270 (E.D. Va. 2022), the court found that where law enforcement did not have probable cause to carry out an arrest, "[t]he illegality of Plaintiffs arrest taints defendant officers' subsequent actions and renders the defendant officers liable for Plaintiff's excessive force claims." Emphasizing the lawfulness of the arrest as a factor in the excessive force analysis, the court stated that "[t]he evaluation of an excessive force claim therefore requires an assessment of the objective reasonableness of the defendant officers' decision to use force against Plaintiff." *Id.*

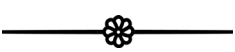
In the present case, Petitioner contends he was entitled to relief for excessive force and that because

Respondent Officers' initial seizure was unlawful, they therefore were not entitled to use any force in their unlawful arrest of Respondent. Where "[t]he excessive-force inquiry is governed by constitutional principles . . . ", the District Court contention that the lawfulness of an arrest is irrelevant to an excessive force analysis is incorrect. *United States v. Brown*, 871 F.3d 532, 536 (7th Cir. 2017).

III. This Case is of Great Public Importance.

Police officers protect our land by bravely facing life-threatening dangers without hesitation every day. As a group, they should be granted defenses by the courts when they act in defense of the public and themselves, including in certain situations when harm or destruction results. However, this deference is not, and must not, be unlimited. Because in the absence of accountability for an officer's unreasonable use of violence causing death, harm or unjust suffering to our citizens, the police become none other than a group of wild west vigilantes.

The Seventh Circuit's ruling in this case indicates a dangerous trajectory of weakening Fourth Amendment protections and granting law enforcement, who have the power to unconstitutionally inflict serious injury in their course of employment, greater liberties under the law to do so.



CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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