No.

In the Supreme Court of the United States

TERRENCE R. YOAST,
Petitioner

v.

POTTSTOWN BOROUGH, Et. al.
Respondents

On Petition for a Writ of Certiorari from the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Terrence R. Yoast, *Petitioner*
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QUESTIONS PRESENTED

1. Under the Fourth Amendment's in-presence requirement, a police officer who conducts a warrantless arrest on a person accused of a misdemeanor, or lesser offense, must be present and personally visual to the alleged crime to have the probable cause necessary to effectuate a lawful seizure.

2. *Heck v. Humphrey* does not bar § 1983 claims for false arrest, false imprisonment or excessive bail, which are unrelated to an outstanding conviction and does not preclude malicious prosecution claims arising from charges that terminated favorably, within the context of a mixed verdict.

3. It is well-established that police officers who warrantlessly enter into a private building-structure, in the absence of consent or exigency, violate the Fourth Amendment and do not enjoy qualified immunity.[1]

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[1] Subsidiary to all (3) questions presented is Petitioner's sharp contention that cognizable § 1983 claims were stated in his Amended Complaint and error was committed by dismissing his Fourth and Eighth Amendment claims on Rule 12 (b) (6) review.

LIST OF PARTIES

Petitioner, Terrence R. Yoast, enumerates the following parties that are pursued herein and privy to this request for certiorari:

1. Respondent, Corporal Jamie O'neill.
2. Respondent, Sergeant Michael Ponto.
3. Respondent, Officer Jacob Martin.
4. Respondent, Officer Jeffrey Portock.
5. Respondent, Officer Chad Hart.
6. Respondent, Officer Corey Pfister.
7. Respondent, Chief Richard Drumheller.
8. Respondent, Corporal Michael Long.

STATEMENT OF RELATED CASES AND PROCEEDINGS

Parallel to this appeal is the pending action of *Yoast v. Pottstown Borough Et. al., Case No. 2020-04151,* commenced in the Montgomery County Court of Common Pleas on March 4th, 2020. The bulk of this case composes the Pennsylvania common law claims origin to Petitioner's Federal Complaint filed in the District Court on February 21st, 2019, brought against the Pottstown Respondents, collectively. Subsequently, these supplemental state law claims were dismissed without prejudice on February 3rd, 2020, when the District Court dismissed Petitioner's Federal § 1983 claims, with prejudice, and declined to exercise supplemental jurisdiction.

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TABLE OF AUTHORITIES

LOWER COURT OPINIONS

The non-precedential Opinion rendered by the Third Circuit Court of Appeals is denominated as *Yoast v. Pottstown Borough Et. al, No. 22-1960 (3rd Cir. 2023)*[1] and the Eastern Districts Opinion is cited as *Yoast v. Pottstown Borough Et. al., 437 F.Supp. 3d 403 (ED. Pa 2020).*[2]

JURISDICTION

Petitioner lodged a timely Petition for En Banc Rehearing on July 24th, 2023, within 14 days of the July 10th, 2023, Opinion rendered by the Third Circuit, affirming the Eastern District's dismissal of Petitioner's § 1983 claims under Fed. R. Civ. P. 12 (b) (6). The Third Circuit denied *en banc* rehearing on August 15th, 2023, commencing the 90-day allotment for this Certiorari Petition.[3] King's Bench jurisdiction flows from the codification promulgated at 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

FOURTH (4TH) AMENDMENT

> "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

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[1] See Appendix "B", A4 through A13.
[2] See Appendix "C", A14 through A75.
[3] See Order annexed as Appendix "A", A1 through A3.

describing the place to be searched, and the persons or things to be seized."

EIGHTH (8TH) AMENDMENT

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

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 of exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

18 Pa.C.S. § 2709.1 STALKING

(a) Offense defined- A person commits the crime of stalking when the person either:

(1) engages in a course of conduct or repeatedly commits acts toward another person, including following the person without proper authority, under circumstances which demonstrate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person; or

(2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

STATEMENT OF THE CASE

The genesis of this controversy arises from the aftermath of an overly officious Pottstown Police Department and their nefarious decisions to joint venture in an escapade of official oppression against Petitioner.

Petitioner is the landlord and owner of real property located at 402 Beech Street, Pottstown, PA 19464, composing a parcel of land with a two (2) unit residential building-structure. On or about November 18th, 2016,

Petitioner entered into a residential lease with Defendant, Aphrodite Hussain, for the purpose of letting the dwelling-unit located at 402 Beech Street 2nd Floor.[4] Defendant Hussain was qualified and privileged to participate in the federally-funded Housing Choice Voucher Program, which was administered by the Montgomery County Housing Authority as the local agency of jurisdiction to subsidize rental payments on her behalf. Petitioner began receiving hostile and threatening text messages from Defendant Hussain starting in December of 2016, regarding the fitness of the apartment that she leased from him. On or about mid-December of 2016, the alleged victim began her machination to subterfuge the term of her lease and exploit the Pottstown Police. Frankly, as far as Petitioner is concerned, the landlord-tenant relationship was only minimally strained prior to intervention of the Pottstown Police Department, who exacerbated the situation with a series of criminal complaints and summary offense citations. Commencing on December 27th, 2016, and concluding on March 2nd, 2017, Petitioner was blitzed by the Pottstown Police with a conglomeration of various charges, including the two (2) stalking charges at issue, which terminated favorably and were the active ingredients to his confinement. Petitioner was warrantlessly arrested not just once, but twice, for misdemeanor crimes that were alleged to have been committed outside the presence of the arresting officers,

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[4] Pertaining to the adverse parties who were named in this action as Defendants in the District Court but are not Respondents or privy to this Writ of Certiorari, Petitioner will identify and reference each of them as a defendant, respectively.

absent any visual observation of the alleged conduct. Notwithstanding this fatal defect, Petitioner was then warehoused in the Montgomery County Correctional Facility (MCCF) for eleven (11) total days as a pretrial detainee. Exacerbating matters further, Petitioner was encumbered with heavy-duty bail amounts of twenty-thousand dollars ($20,000.00) cash on February 26th, 2017, and ninety-nine thousand dollars ($99,000.00) cash on March 2nd, 2017, after one-million dollars ($1,000,000.00) cash was requested, while posing no flight-risk. The Pottstown Police maliciously and wantonly brought a total of five (5) individual cases against Petitioner, consisting of two (2) Summary Offense Citations and three (3) Criminal Complaints.[5]

The first (1st) case was lodged against Petitioner on December 27th, 2016, by Defendant, Officer Fischer, which consisted of a summary offense citation for allegedly having *"unprofessional communications"* within the scope of text messages that were exchanged between Petitioner and Defendant Hussain, who was the alleged victim. The Summary Offense Citation was predicated on Title 18, § 2709 of the Criminal Code, Subsection (A-3), "Harassment". Defendant Fischer's Summary Offense

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[5] Petitioner paragraphs each of the (5) cases independently for the ease of review, *seriatim*. Focally, the fourth and fifth cases go right to the core of this Petition. These proceedings are central to the (3) questions presented on this review, deriving from Petitioner's false arrest/imprisonment and excessive bail on February 26th and March 2nd of 2017. The first three incidents have been narrated only for the sake of procedural history.

Citation was vague, omitting the violative contents within the text message communications that were conveyed by Petitioner to Defendant Hussain and that grounded the filing of his summary harassment charge. Defendant Fischer's summary harassment charge was subsequently withdrawn by Brianna Ringwood, Esquire, who was the Assistant District Attorney (ADA), serving as the prosecutor for the Commonwealth on other successive charges that were brought against Petitioner. Defendant Fischer's summary harassment offense was withdrawn at the Preliminary Hearing before the Honorable Magisterial District Justice, Edward C. Kropp Sr., on March 29th, 2017, but was componentized as an "act" under § 2709 of the Harassment Statute, Subsection (A-3), and merged into a "course of conduct" that was vaguely alleged in a subsequent Criminal Complaint filed by Defendant, Officer John Schmalbach, on January 9th, 2017.

The second (2nd) case that was lodged against Petitioner on January 9th, 2017, by Defendant Schmalbach, instituted a Criminal Complaint against Petitioner that alleged an infraction of 18 Pa.C.S.A. §2709 (A-7), "Harassment Repeatedly in Another Manner", graded as a third-degree misdemeanor (M-3). The gravamen of the Criminal Complaint alleged that Petitioner called Defendant Hussain "*a horrible mother that didn't care if she burned her child*", responsive to her request to raise the temperature on the hot-water-heater. Defendant Schmalbach's Affidavit of Probable Cause baldly alleged a course of conduct through the origin of two (2) prior text message communications that were conveyed from

Petitioner to Defendant Hussain. Petitioner was found not guilty of Defendant Schmalbach's third-degree misdemeanor (M-3) charge after a consolidated bench trial on September 27th, 2017, resulting in a favorable termination to Petitioner.

The third (3rd) case was lodged against Petitioner on February 21st, 2017, by way of summary offense citation issued by Respondent, Officer Jeffrey Portock. Respondent Portock alleged that Petitioner intended to harass, annoy and alarm Defendant Hussain by photographing her mail. Respondent Portock's summary harassment charge was withdrawn at bench trial on September 27th, 2017, resulting in a favorable termination to Petitioner.

The fourth (4th) case was lodged against Petitioner on February 26th, 2017, by way of Criminal Complaint filed by Respondent, Corporal Jamie O'neill, charging him with stalking, graded as a first-degree misdemeanor (M-1), after Petitioner performed yardwork, removed leaves and was legitimately installing a washer/dryer for Defendant Hussain in Petitioner's basement, as provisioned in the residential lease, and either directly or implicitly requested by her on seven (7) separate occasions. Respondent O'neill's stalking charge was subsequently withdrawn at the Preliminary Hearing on March 29th, 2017, by Assistant District Attorney (ADA) Brianna Ringwood, resulting in a favorable termination to Petitioner.

The fifth (5th) case was lodged against Petitioner on March 2nd, 2017, by way of Criminal Complaint filed by

Respondent Portock, charging him with stalking, graded as a first-degree misdemeanor (M-1) and harassment, graded as a third-degree misdemeanor (M-3), after he allegedly kicked Defendant Hussain's vehicle bumper. Petitioner was found not guilty of both misdemeanors, resulting in a favorable termination.

All three (3) criminal court cases were held for court and then consolidated for bench trial on September 27th, 2017. The bench trial lasted almost six (6) hours and concluded well-after closing of the Courthouse. Because the Commonwealth was advantaged from the numerosity of charges and cases brought against Petitioner, in conjunction with their fact-witnesses who were called to the stand with carte blanche to fabricate any inconsistent testimony favorable to prosecution that was found to be credible by the trier-of-fact, who was not cognitive when reaching his credibility determinations, Petitioner was found guilty of two (2) summary offenses. Petitioner appealed to the Superior Court of Pennsylvania on November 30th, 2017, and timely filed his Appellant Brief on June 6th, 2018, raising challenges of legal insufficiency for appellate review. Appellant argued before the Panel on January 8th, 2019, and the Superior Court affirmed the Trial Court's decision in a non-precedential Opinion on May 29th, 2019. Petitioner was then granted panel reconsideration on July 31st, 2019, and ironically, the Merits Panel reaffirmed the lower Court in a second non-precedential Opinion issued on September 19th, 2019. Thereafter, Petitioner sought allocatur and his Petition for

Allowance of Appeal was denied by the Pennsylvania Supreme Court on March 24th, 2020.[6]

REASONS FOR GRANTING CERTIORARI

A. The inferior Circuits are directly in tension with this Court's chain of precedent on the in-presence requirement under the Fourth Amendment (1st question presented)

Prefatorily, it is hornbook that:

> *"Decisions of the Supreme Court regarding federal law and the constitution are binding on the lower courts. There is no room in our system for departure from this principle, for it were otherwise, the law of the land would quickly loose its coherence."* Hutto v. Davis, *454 U.S. 370, 375 (1982) (The Supreme Court with its limited docket would become irrelevant in all but the handful of cases that reached it).*

As the old story goes in this Nation, when it comes to a misdemeanor, or lesser offense, police officers can effectuate a warrantless arrest upon an individual in a *public place,* under the Fourth Amendment, only if they have probable cause that the crime was *committed in their presence.* Visually observing the crime, in person, is the

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[6] The Commonwealth of Pennsylvania was recalcitrant in the filing of their Appellee Brief and was precluded from oral argument before the Superior Court Panel. Nevertheless, the Superior Court still affirmed the lower Court's decision on appeal.

sine qua non to the finding of probable cause and if no such offense was committed in the officer's presence, there is no probable cause to conduct an arrest. *District of Columbia v. Wesby, 138 S. Ct. 577 (2018) (A warrantless arrest is reasonable if the officer has probable cause to believe that the suspect* ***committed a crime in the officer's presence****); Virginia v. Moore, 553 U.S. 164 (2008) ("We reaffirm against a novel challenge what we have signaled for more than half a century. When officers have probable cause to believe that a crime has been* ***committed in their presence****, the Fourth Amendment permits them to make an arrest, and to search the suspect in order to safeguard the evidence and ensure their own safety.") Maryland v. Pringle, 540 U.S. 366 (2003) ("If an officer has probable cause to believe that an individual has committed even a very minor criminal offense* ***in his presence****, he may, without violating the Fourth Amendment, arrest the offender."); Atwater v. Lago Vista, 532 U.S. 318, 345 (2001) ("Atwater's arrest satisfied constitutional requirements. It is undisputed that Turek had probable cause to believe that Atwater* ***committed a crime in his presence.****"); United States v. Watson, 423 U.S. 411 (1976) ("Whether or not a warrant is ordinarily required prior to making an arrest, no warrant is required when exigent circumstances are present. When law enforcement officers have* ***probable cause to believe that an offense is taking place in their presence*** *and that the suspect is at that moment in possession of the evidence, exigent circumstances exist. Delay could cause escape of the suspect or the destruction of evidence."); Draper v. United States, 358 U.S. 307 (1959); Brinegar v. United States, 338 U.S. 160, 164, 170, 175-176 (1949); Carroll v. United States, 267 U.S. 132 (1925) ("The*

usual rule is that a police officer may arrest without warrant one believed by the officer upon reasonable cause to have been guilty of a felony, and that he may only arrest without a warrant one guilty of a misdemeanor ***if committed in his presence.****").* In *Carroll, supra,* this Court further expressed the following common law maxim that was adopted from old English law:

> *"By the common law of England, neither a civil officer nor a private citizen had the right without a warrant to make an arrest for a crime not committed in his presence, except in the case of felony, and then only for the purpose of bringing the offender before a civil magistrate."*

The *Carroll* Panel further explained:

> *"Any law which would place the keeping and safe-conduct of another in the hands of even a conservator of the peace, unless for some breach of the peace committed in his presence, or upon suspicion of felony, would be most oppressive and unjust, and destroy all the rights which our constitution guarantees. These are rights which existed long before our Constitution, and we have taken just pride in their maintenance, making them a part of the fundamental law of the land. If persons can be restrained of their liberty, and assaulted and imprisoned, under such circumstances, without complaint or warrant, then there is*

no limit to the power of a police officer."

Deeply-rooted in this Court's jurisprudence is the bedrock principle that when evaluating the Fourth Amendment's search and seizure clause, the traditional protections afforded by common law when the Constitution was framed are guaranteed. *Wilson v. Arkansas, 514 U.S. 927-931 (1995); citing Watson, supra, at *418-420; Carrol, supra, at *137, 146, 156-157, and 164-165.*[7]

Patently, this ancient pedigree is faltering in the inferior courts and has lost its constitutional potency in the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits. This path of destruction is illuminated in the compilation of cases cited in *Graves v. Mahoning County, 821 F.3d 772, at *778-779 (6th Cir. 2016) ("Other circuits agree with our approach. See, e.g., Budnick v. Barnstable Cty. Bar Advocates, Inc., 989 F.2d 484, at *3 n. 7 (1st Cir.1993) (per curiam) (unpublished); Street v. Surdyka, 492 F.2d 368, 372 (4th Cir.1974) ; Fields v. City of South Houston, 922 F.2d 1183, 1189 (5th Cir.1991) ; 779 *779 Woods v. City of Chicago, 234 F.3d 979, 992– 95 (7th Cir.2000) ; Barry v. Fowler, 902 F.2d 770, 772 (9th Cir.1990); see also, e.g., Vargas–Badillo v. Diaz–Torres, 114 F.3d 3, 5–6 (1st Cir.1997) ; Veatch v. Bartels Lutheran*

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[7] Profoundly, Petitioner believes this is where the source of confusion germinates across the Circuit Courts. The Fourth Amendment's search and seizure clause is a broad writing intended to companion old English common law. If certiorari is granted, this Hierarchy should recast the mechanics of *Carrol* and put to rest any false notions that the in-presence requirement needs to be carved-out, verbatim, in the Constitution.

Home, 627 F.3d 1254, 1258–59 (8th Cir.2010); Knight v. Jacobson, 300 F.3d 1272, 1276 n. 3 (11th Cir.2002)"). Compounding further, the Third Circuit has now adopted the same flagrant approach by affirming the Eastern District in this action. See *Yoast v. Pottstown Borough Et. al., 437 F.Supp. 3d 403, at footnote 130 (ED. Pa 2020); citing Graves, supra,* and *Hartz v. Campbell, 680 F. App'x 703, 707 (10th Cir. 2017).*[8]

Pulling the wheat from the chaff, it is abundantly clear from this Court's continuity of holdings, the in-presence maxim was never overruled by any U.S. Supreme Court Panel. Premiering prior to 1925, this doctrine gained its legal horsepower in *Caroll, supra,* and its momentum continued in this Court as binding precedent through 2018, when this Court opined in *District of Columbia v. Wesby, supra.*[9] Ostensibly, the inferior Circuits have isolated various fragments of this Court's jurisprudence over the years, misconstruing the true holdings that bind all lower Federal Circuits.

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[8] See Appendix "C" at A54-A55, footnote 130. Specifically, the Eastern District based their rejection of Petitioner's Fourth Amendment in-presence argument on the Tenth Circuit's non-precedential opinion in *Hartz, supra,* and their faulty inference of footnote 11 in *Atwater.* Also, see Vol. 1 of Petitioner's Appendices, Appendix "E", at page 33, filed in the Third Circuit. If footnote 11 of *Atwater* spurred any confusion among the Circuits, it was finely resolved when this Court decided *Maryland v. Pringle* in 2003, *Virginia v. Moore* in 2008, and *District of Columbia v. Wesby in 2018.*

[9] Collectively, Petitioner refers to this line of cases as *Caroll* and its progeny. *Carrol* is the polestar case that is most instructive, framing-out the national floor on Fourth Amendment seizures and crafting the bare minimalities that guide an arrest.

Quintessentially, as recently as 2017, the 10th Circuit deviated from the controlling and dominate language of Atwater, *supra,* hinging their decision on footnote 11 of the Opinion. See Hartz, *supra.* Drawing all inferences, there was no abrogation of the in-presence requirement when this Court decided Atwater. Rather, the majority authored an ambiguous statement in a footnote, consisting of *dicta,* which was subordinate to the explicit holding purified throughout the main body of the Opinion.[10] The same

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[10] On page 340 of Atwater, the sentence preceding footnote 11 reads: *"In discussing this authority, we have focused on the circumstance that an offense was committed in the officer's presence, to an omission of any reference to a breach-of-the-peace limitation".* Thereafter, footnote 11 sets forth: *"We need not, and thus do not, speculate whether the Fourth Amendment entails an "in the presence" requirement for purposes of misdemeanor arrests. Cf.* Welsh v. Wisconsin, *466 U.S. 740, 756 (1984) (White, J., dissenting) ("The requirement that a misdemeanor must occur in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment").* Construed in harmony with the main body of the Opinion, it is very deducible that the scrivener was expressing the majority's stern confidence in maintaining the in-presence requirement, as repleted throughout the Opinion, and that particular legal conclusion did not call for speculation. Thus, the Court specifically partitioned from the dissenting Opinion of Judge White in Welsh. Otherwise, this *dicta* would run afoul of the underlying rationale that supported this Court's decision in Atwater. Logically, the Panel did not intend to blow hot and cold in the same Opinion. Unequivocally, the in-presence requirement, as to any crime or offense committed within the personal visuality of the arrestor, was the lifeblood and thrust of Atwater, when this Court refused to restrict an officer's arrest to a "breach of peace" in their presence. Petitioner finds it incomprehensible and troubling that the inferior circuits have boldly departed from such a precious concept of liberty prior to trial. If an arrest can be validated as committed in the presence of the arrestor, it

misconceptions run throughout the body of case law delineated above in the inferior circuits, standing in defiance of the hallmarks enshrined by this Court in Carrol and its progeny. Furthermore, a warrantless arrest is an unlawful detention without legal process and remediable through the tort of false imprisonment. *Wallace v. Kato, 549 U.S. 384 (2007) (at *389).*

B. The Third Circuit's version of the Heck-bar conflicts with this Court's precedent in *Wallace* and *Heck* (2nd question presented)

Starting with the first (1st) component of the second (2nd) question presented, this Court's rubric is that *"a claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983".* See *Wallace at *385; citing Heck v. Humphrey, 512 US 477 (1994).* The District Court found that Petitioner's false arrest/imprisonment and excessive bail claims were Heck-barred, which was affirmed by the Third Circuit. There is no nexus between these claims, which were origin to *pretrial* events, and Petitioner's *post-trial "conviction or sentence".* Thus, Petitioner's § 1983 claims are *dehors* the Heck-bar, which operates to preclude claims that would impugn an existing conviction if successful.

First, as to Petitioner's (2) false arrest and (2) false imprisonment claims under the Fourth Amendment, there

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certainly can be invalidated as alleged to have been committed outside the presence of the arrestor.

is no confliction with the (2) summary harassment convictions because they do not carry a presumption of probable cause for his warrantless seizures because it is mandatory that any crime graded less than a felony, such as a misdemeanor or summary offense, must occur *in the presence* of the arrestor. See *Caroll* and its progeny, *supra.* As this Court pronounced in *Wallace,* there must be a *"relationship to the conviction or sentence."*

Second, pertaining to Petitioner's (2) excessive bail claims under the Eighth Amendment, the affixing of bail has no scintilla of relevance to the Heck-bar and because there is no interplay, there is no potential of invalidating the (2) summary harassment convictions if Petitioner were to prevail under §1983. Irrespective of innocence or guilt, the salutary purpose of fixing bail is to ensure appearance of the defendant at subsequent hearings that are perfunctory to the criminal process and to secure attendance of the accused at trial. *Stack v. Boyle, 342 U.S. 1, 6 (1951); Fields v. Henry County, 701 F.3d 180 (6th Cir. 2012).* The Eighth (8th) Amendment mandates that bail must be assessed pursuant to what amount would be reasonably sufficient and forceful in compelling the answering defendant's presence throughout the criminal proceedings. See *Stack* and *Fields*, *supra.* The test for excessiveness is whether the amount of bail is reasonably calculated to assure the defendant's appearance at trial. *United States v. Beaman 631 F.2d 85, 86 (6th Cir. 1980).* The guarantee of continued confinement, through the imposition of elevated bail, constitutes an impropriety and is unconstitutional under the Eighth (8th) Amendment.

Fields, supra; Wagenmann v. Adams, 829 F.2d 196, 213 (1st Cir. 1987).

Oppressively, Petitioner's bail was affixed at $20,000.00 cash on February 26th, 2017, upon the request of Respondent O'neill, while posing no flight-risk. Outrageously, Petitioner's bail was then assessed at $99,000.00 cash on March 2nd, 2017, upon Respondent Portock's request for $1,000,000.00 cash, while posing no flight risk. The District Court raised the Heck-bar to both excessive bail claims *sua sponte,* relying on the non-precedential case of *James v. York Cty. Police Dept., 160 F. App'x 126, 133 (3rd Cir. 2005).* Precedent set by this Court that formally adopts the First Circuit's seminal and persuasive decision in *Wagenmann, supra,* that a police officer's manipulation of bail constitutes a breach of the Eighth (8th) Amendment's excessive bail clause, would set the tone in this Nation, serving as a flagship in the Eighth (8th) Amendment arena.

Ironically, the District Court never performed a fact-intensive inquiry by carefully reviewing the entire Bench Trial Transcript to determine what factual findings were made on September 27th, 2017, as commanded by the *stare decisis* of the Circuit. This protocol is compulsory in the Third Circuit. See *Sharif v. Piccone, 740 F.3d 263, 269-70 (3rd. Cir. 2014) (Application of the Heck-bar is, of necessity, a fact-intensive inquiry by which a court must determine what essential facts were found by the jury in the criminal trial and what affect those decisions have on the § 1983 claim).* Moreover, these claims derive entirely from

the *pretrial* procedures of affixing bail, pretrial arrest and detention. Therefore, the Bench Trial Transcript wouldn't, and doesn't, establish any factuality that would bar Petitioner's claims by deeming his bail amounts as reasonable or approving the legality of the seizures based on the commission of a crime in the presence of the arrestors. Palpably, the foregoing claims are not *related* to Petitioner's summary harassment convictions and would not cause an impugnment or invalidate a criminal judgment. As reinforced in Wallace, *"a claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983".* See Wallace *at *385; citing* Heck. Foremostly, these claims also do not impose a favorable termination element, such as a malicious prosecution claim.[11]

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[11] It is incomprehensible that the Eastern District held that an excessive bail claim could invalidate an outstanding conviction and is barred by *Heck*. What began as a doctrine to curb § 1983 claims that would infringe upon an "outstanding conviction or sentence," has been so far stretched and expanded to defeat constitutional claims that have no pertinency to favorable termination or which directly contravene the factual findings of a judge or jury. Blatantly, this Court did not envision or intend for such an insensible concept. See Spencer v. Kemna, *523 U.S. 1, 21 (1998) (The primacy of the Heck-bar is to procedurally require the invocation of a petition for habeus corpus, prior to constitutionally challenging the conviction under §1983 malicious prosecution, and rationalizing that habeas recourse is only available to prisoners in custody).*

C. The Third Circuit's version of the Heck-bar conflicts with the Second, Seventh and Eleventh Circuit's version when determining favorable termination under the context of a mixed verdict (2nd question presented)

Turning to the second (2nd) component of the second (2nd) question presented, *inter alia,* when determining whether the favorable termination element of a malicious prosecution claim has been satisfied, the Third Circuit's stricture is that each and every charge, within a series, must be conquered. *Kossler v. Crisanti, 564 F.3d 181, at *193 (3rd Cir. 2009); Noviho v. Lancaster County, 683 F. App'x 160 (3rd Cir. 2017).* Contextually, there is no such thing as a favorable termination when the verdict is mixed within a series of charges. The fundamental unfairness with this hard and fast rule is that Jay the jaywalker can legally languish for months as a pretrial detainee in the county jail, a deprivation of liberty that was not envisioned by the framers of our Constitution.

Contrary to the above boilerplate formula, the appellate courts sitting in the Second, Seventh and Eleventh Circuits, take a crime-specific approach under the ambivalent context of a mixed verdict, See *Holmes v. Village of Hoffman, 511 F.3d 673 (7th Cir. 2007); Uboh v. Reno, 141 F.3d 1000, 1005 (11th Cir. 1998); Posr v. Doherty, 944 F.2d 91, 100 (2nd Cir. 1991);* and *Janetka v. Dabe, 892 F.2d 187 (2nd Cir. 1989).* The Second Circuit has scribed bright-lines between individual charges when determining favorable termination in a mixed verdict setting, underscoring the concern that if they are not approached in

a solitary manner, *"an officer with probable cause as to a lesser offense could tack on more serious, unfounded charges which would support a high bail or lengthy detention, knowing that the probable cause on the lesser offense would insulate him from liability for malicious prosecution on the other offenses."* See *Posr, supra,* and *Janetka, supra.*

At bar, is the same miscarriage of justice that the other Circuits would have negated by employing their crime-specific approach. Here, out of the large conglomeration of charges brought against Petitioner, he was found guilty of two (2) summary offenses, which are petty and *de minimis* in severity. Saliently, in a Pennsylvania summary case, defendants are not jailable prior to trial and there is no criminal procedure for pretrial detention. Starkly contrasting the (2) outstanding summary harassment convictions entered against Petitioner, is the cold sobering fact that he was warrantlessly arrested for stalking on February 26th, 2017, then domiciled in the Montgomery County Correctional Facility with a twenty-thousand-dollar ($20,000.00) cash bail. Once again, on March 2nd, 2017, Petitioner was warrantlessly arrested for stalking and confined as a pretrial detainee with a ninety-nine-thousand-dollar ($99,000.00) cash bail, after one-million dollars ($1,000,000.00) cash was requested, while posing no flight-risk. These episodes stand out like a beacon and do not represent constitutionally sound criminal procedure. The active ingredients to Petitioner's eleven (11) days of pretrial detention were the (2) stalking charges brought against him, which were baseless and terminated

favorably.[12] Unjustly, the Third Circuit fashions the Heck-bar as a trojan horse to defeat malicious prosecution claims predicating on unwarranted charges that were draconian and commenced with evil motive, which terminated favorably. The long saga of criminal proceedings manufactured by the Respondents fall squarely within the constitutional wisdom articulated in *Posr* and *Janetka, supra.* Emphasizing again, the Second Circuit gravely stated that *"an officer with probable cause as to a lesser offense could tack on more serious, unfounded charges which would support a high bail or lengthy detention, knowing that the probable cause on the lesser offense would insulate him from liability for malicious prosecution on the other offenses."* Identically, the dynamics of this controversy equate to the same injustice that the more relaxed version of the Heck-bar accommodates and cures by engaging a crime-specific analysis to determine favorable termination.

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[12] Pursuant to 18 Pa.C.S. § 2709.1 (a)(2), the crime of stalking rigidly requires *"a repetition of communications intended to cause reasonable fear of bodily injury or substantial emotional distress".* As alleged in Petitioner's Amended Complaint, he was not vocal to any communications conveyed to Defendant Hussain on March 2nd, 2017, which was an uncontroverted fact at bench trial on September 27th, 2017. Based on this factual predicate, Respondent Portock had no probable cause or communications to underpin the filing his stalking charge. Likewise, Respondent O'neill was not equipped with any repetition of communications that could synchronize with § 2709.1 (a)(2) and therefore, had no probable cause or factual backing to support his stalking charge brought against Petitioner on February 26th, 2017.

Axiomatically, the inferior Federal Circuits are fractured on the perplexity of whether the favorable termination prong of a malicious prosecution claim has been satisfied when other charges within the same series have not terminated favorably. This national split necessitates the granting of certiorari to cure the existing tension and fine-tune the Heck-bar so the Circuit Courts will be uniform when invoking *Heck*.

D. The Third Circuit's affirmance of qualified immunity contravenes this Court's well-established precedent that police officers who warrantlessly enter a private building-structure, devoid of consent or exigency, violate the Fourth Amendment (3rd question presented)

Last but not least, is the warrantless intrusion of Respondents, O'neill, Ponto and Martin, into Petitioner's basement so they could seize him. Petitioner plainly alleged in his Amended Complaint that on February 26th, 2017, he attended his property at 402 Beech Street, performed yard work in a common area, then began installing a washer in *his* basement that was poised for future access to Defendant Hussain, which was a condition precedent to her entrance.[13] Petitioner underscored and alleged that, at that juncture, Defendant Hussain had no contractual privilege to enter or access his basement. Hence, on February 26th, 2017, Petitioner had exclusivity

[13] See ¶ 481, (a) through (e) of Appellant's Amended Complaint, reproduced on pages 1024-1025 of Appendix "X". Also, see briefing of issue reproduced on page 782 of Appendix "T" and page 825 of Appendix "V".

and full-retention of his basement that was not accessible to Defendant Hussain. Moreover, Petitioner's basement is not connected to, or entered through, the 2nd floor apartment that was leased by Defendant Hussain. Entrance to Petitioner's basement is independently made through an exterior bilco door, not by using the 2nd floor apartment as an easement.[14] In sum, Petitioner further alleged that Defendant Hussain provocatively told him to leave the property and eventually Petitioner conveyed de minimis profanity by calling her a "bitch".[15] Defendant Hussain then called the Pottstown Police who responded by confronting Petitioner in the rear yard, which is a common area. Petitioner was then told to gather his tools and leave the property. Thereafter, Petitioner retreated to his basement, which was *not* a common area of the property, and resumed installation of the washing machine. All three Respondents then entered Petitioner's basement in defiance of his commands to keep out and arrested Petitioner once he refused to leave, eviscerated of a warrant to search or seize.

When ruling on a motion to dismiss under Rule 12 (b) (6), all well-pled allegations of the complaint are accepted as true for the purpose of review and viewed in a light most favorable to the Plaintiff. *Maio v. Aetna, Inc., 221 F.3d 472, 481-82 (3rd Cir. 2000).* The purpose of a Rule

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[14] See the photos and diagram reproduced on pages 791-792 of Appendix "T".

[15] Particularly, verbal utterance of the word "bitch" is protected as free speech under the First Amendment, is not a fighting word or obscenity, and is of no criminality. See *Johnson v. Campbell, 332 F.3d 199, 204 (3d. Cir. 2003).*

12 (b) (6) motion to dismiss is to test the sufficiency of the complaint, not to resolve disputed facts or decide the merits of the case. *Kost v. Kozakiewicz, 1 F.3d 176, 183 (3rd Cir. 1993).* Evaluating a motion to dismiss under Rule 12 (b) (6) requires the court to accept as true all material allegations of the complaint. *Spruill v. Gillis, 372 F.3d 218, 223 (3rd Cir. 2004).*

First, Petitioner's allegations were tendered as the pristine truth but were not accepted in their original format on Rule 12 (b) (6) review. Instead, the allegata was grossly tortured and expanded when the District Court inferred that Petitioner "fled into the home" when Respondents attempted to detain him, granting them qualified immunity at the motion to dismiss stage, *sua sponte.*[16] Subsequently, Respondents then adopted this special edition by authoring the same fictional version in their Response Brief filed in the Third Circuit, which was affirmed. Petitioner's allegata was paramount to the fictitious moments invented by the District Court and then plagiarized by Respondents on appellate review. Put simply, this ultra version of events was hypered-up and created much ado about nothing, sharply competing with the chain of events pled by Petitioner. Thus, the Third Circuit committed an error of fact and law by not accepting Petitioner's Amended Complaint as true.

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[16] See A34 through A36 of Appendix "C". Respondents did not specifically raise or develop a qualified immunity defense to counter Petitioner's false arrest/imprisonment and warrantless entry claims arising on February 26th, 2017. Distinctively, the District Court tailored the allegations pled and quickly immunized Respondents, which waylaid Petitioner.

Second, *arguendo,* even if Petitioners retreat to his basement was genuinely a "hot pursuit" that arose, for this defense to be successful Respondents must demonstrate that the "hot pursuit" commenced on public property and then migrated onto private property, gleaned from the face of the Amended Complaint. Petitioner's allegations include no indicia or averments that an arrest was attempted upon him on public property before descending to his basement *and* there is no modicum of facts alleged that the officers were equipped with the probable cause necessary to perfect an arrest for a misdemeanor crime or any offense whatsoever. The probable cause determination is confined *only* to the information available to the officer at the time of arrest. *Anderson v. Creighton, 483 U.S. 635 (1987).* The officer determines whether probable cause exists by reasonably assessing the facts he knows when arresting the suspect. *Devenpeck v. Alford, 543 U.S. 146, 152 (2004).* As stated, probable cause to arrest for a misdemeanor, or lesser offense, does not exist if the alleged crime was not committed in the presence of the arrestor. See *Carrol, supra,* and its progeny.

Diametrically, Petitioner alleges that he was approached by Respondents on his private property and prior to Petitioner's departure to his basement. Hence, Respondents do not even flirt with the doctrine of qualified immunity and this defense should be rejected outright. Warrantless entry into the sanctity of a home, absent any consent or exigency, is patently unconstitutional. *Groh v. Ramirez, 540 U.S. 551, 564 (2004) (No reasonable officer can deny knowledge of this basic principle and well-established maxim); Hope v. Pelzer, 536 U.S. 730, 741*

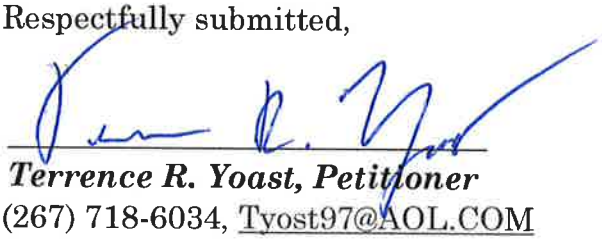
(2002); Payton v. New York, 445 U.S. 573, 590 (1980) (Although police may make a warrantless arrest in a public place if they have probable cause to believe the suspect is a felon, the Fourth Amendment has drawn a firm line at the entrance of the house. Absent exigent circumstances, that threshold may not be crossed without a warrant. The government bears the burden of proving that exigent circumstances existed). It is crystal clear that the attendant circumstances were not heat of the moment and also well-established that exigency is prerequisite to the warrantless intrusion of a dwelling, or it's curtilage, contingent upon factors such as whether the fleeing suspect is: 1) accused as a felon, 2) deemed to be armed and dangerous, 3) likely to destruct evidence or escape, 4) poses a safety threat to the occupants of the structure, and 5) the gravity of the underlying offense at issue. *Collins v. Virginia, 138 S. Court 1663 (2018); Welsh v. Wisconsin, 466 U.S. 740 (1984).*

CONCLUSION

Before this Honorable Supremacy are latitudes that are so vitally important, fundamental and universal to constitutionalism across this Nation. This Supreme Court should grant certiorari to protect these civil liberties that are so sacrosanct and publicly critical to the citizenry situated across the States of this Nation. These precious rights were intended to be safeguarded by the framers of our Constitution. King's Bench review would assemble all Justices to participate in such a delicate decision, yielding the highest quality of results to preserve these freedoms and prevent further decay in the underlying Circuit Courts.

WHEREFORE, Petitioner prays that this honorable Supreme Court grant certiorari and reverse the Third Circuit's affirmance of the Eastern District's Order that dismissed Petitioner's § 1983 claims for false arrest, false imprisonment, failure to intervene, malicious prosecution, civil conspiracy and excessive bail, under the Fourth and Eighth Amendments, against the Respondents outlined above.

Respectfully submitted,



Terrence R. Yoast, Petitioner
(267) 718-6034, Tyost97@AOL.COM

Dated: November 11th, 2023

APPENDIX "A"
A1
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1960

TERRENCE R. YOAST,
Appellant

v.

POTTSTOWN BOROUGH; OFFICER ANTHONY FISCHER, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER JOHN SCHMALBACH, INDIVIDUAL AND OFFICIAL CAPACITY; CORPORAL JAMIE O'NEILL, INDIVIDUAL AND OFFICIAL CAPACITY; SERGEANT MICHAEL PONTO, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER JACOB MARTIN, INDIVIDUAL AND OFFICIAL CAPACITY; T.J. CASCIO; OFFICER JEFFREY PORTOCK, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER BRETT CORTIS, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER CHAD HART, INDIVIDUAL AND OFFICIAL CAPACITY; CHIEF RICHARD DRUMHELLER, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER COREY PFISTER, INDIVIDUAL AND OFFICIAL CAPACITY; CORPORAL MICHAEL LONG, INDIVIDUAL AND OFFICIAL CAPACITY; MONTGOMERY COUNTY, PA d/b/a MCCF; JOHN DOE (#1); RYAN VANDORICK, INDIVIDUAL AND OFFICIAL CAPACITY; TIMOTHY STEIN,

A2

INDIVIDUAL AND OFFICIAL CAPACITY; APHRODITE HUSSAIN; MANJEET SINGH; CATHERINE HALLINGER; LEON SMITH; ANTHONY HOCH; PRIMECARE MEDICAL INC; JUSTIN O'DONOGHUE ESQ., INDIVIDUALLY

(D.C. Civil Action No. 2-19-cv-00720)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERYREEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,
/s/ Tamika R. Montgomery-Reeves
Circuit Judge

A3
Dated: August 15, 2023
Amr/cc: All counsel of record

APPENDIX "B"

A4
NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1960

TERRENCE R. YOAST,
Appellant

v.

POTTSTOWN BOROUGH; OFFICER ANTHONY FISCHER, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER JOHN SCHMALBACH, INDIVIDUAL AND OFFICIAL CAPACITY; CORPORAL JAMIE O'NEILL, INDIVIDUAL AND OFFICIAL CAPACITY; SERGEANT MICHAEL PONTO, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER JACOB MARTIN, INDIVIDUAL AND OFFICIAL CAPACITY; T.J. CASCIO; OFFICER JEFFREY PORTOCK, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER BRETT CORTIS, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER CHAD HART, INDIVIDUAL AND OFFICIAL CAPACITY; CHIEF RICHARD DRUMHELLER, INDIVIDUAL AND OFFICIAL CAPACITY; OFFICER COREY PFISTER, INDIVIDUAL AND OFFICIAL CAPACITY; CORPORAL MICHAEL LONG, INDIVIDUAL AND OFFICIAL

CAPACITY; MONTGOMERY COUNTY, PA d/b/d MCCF; JOHN DOE (#1); RYAN VANDORICK, INDIVIDUAL AND OFFICIAL CAPACITY; TIMOTHY STEIN, INDIVIDUAL AND OFFICIAL CAPACITY; APHRODITE HUSSAIN; MANJEET SINGH; CATHERINE HALLINGER; LEON SMITH; ANTHONY HOCH; PRIMECARE MEDICAL INC; JUSTIN O'DONOGHUE ESQ., INDIVIDUALLY

On Appeal from the
United States District
Court for the Eastern
District of
Pennsylvania
(D.C. Civil Action No. 2-19-cv-00720)
District Judge: Honorable Cynthia M. Rufe

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 26, 2023
Before: SHWARTZ, BIBAS, and MONTGOMERY-REEVES, Circuit Judges

(Opinion filed: July 10, 2023)

OPINION*

PER CURIAM

Terrance Yoast appeals the District Court's orders dismissing several of his claims and granting motions for summary judgment. For the reasons that follow, we will affirm the District Court's orders.

The procedural history of this case and the details of Yoast's claims are well known to the parties, set forth in the District Court's memorandum opinions, and need not be discussed at length. Briefly, Yoast, a landlord, was criminally charged several times as a result of his interactions with his tenant. On two occasions, he was given a citation for harassment.[1] After another interaction with his tenant, while Yoast was attempting to install a washing machine in the basement of the rental property, Yoast was arrested and charged with stalking and two counts of harassment. He was incarcerated for a few days on those charges. The stalking charge was withdrawn at the preliminary hearing, and he was later convicted on one count of harassment arising from that incident.

A few days after making bail and being released from jail, Yoast returned to the rental property. Neighbors reported to police that Yoast angrily kicked the tenant's car several times, was screaming "motherf-cker," and rummaging through the garbage cans. The tenant called police as well and was described by police as visibly upset

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

[1] Yoast was later found not guilty of these charges.

and in fear that Yoast would return.[2] Yoast was arrested for stalking and harassment and incarcerated for several days.[3] He was later convicted of the harassment charge but found not guilty of the stalking charge. During his brief incarcerations, he was not provided with a continuous positive airway pressure (CPAP) machine for his sleep apnea.

Yoast filed a lengthy civil right complaint raising numerous claims arising from his citations, arrests, and incarcerations. The District Court dismissed several claims and later granted summary judgment as to the remaining claims. Yoast filed a timely notice of appeal. We have jurisdiction pursuant to 28 U.S.C. § 1291.

Motion to Dismiss

We first address Yoast's arguments challenging the District Court's dismissal of several claims against the

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[2] Because Yoast attached the affidavits of probable cause to the amended complaint and quoted extensively from them, we will consider them on appeal. See Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 177 n.2 (3d Cir. 2000); see also Pension Benefit Guaranty Corp. v. White Consolidated Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) ("To decide a motion to dismiss, courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.").

[3] The author of the affidavit of probable cause for the criminal complaint noted that the police had been called to the rental property 15 times in the prior months and that Yoast had been cited or arrested four times. The author also noted that the bail conditions from his prior arrest required that Yoast have no contact with the tenant.

Pottstown Appellees in its February 3, 2020 order.[4] We review the District Court's order dismissing these claims de novo. Dique v. N.J. State Police, 603 F.3d 181, 188 (3d Cir. 2010). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation and internal quotation omitted). It is not enough for a plaintiff to offer only conclusory allegations or a simple recital of the elements of a claim. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Terry Stop

Yoast alleged that while he was doing yardwork at the rental property, his tenant questioned him as to when he would be leaving and said he was not supposed to be there. After he told her to mind her business and called her a "bitch," the tenant called the police and asserted that Yoast was harassing her. Yoast alleged that after finishing his yardwork, he was installing a washing machine in the basement of the rental property when the police arrived. As Yoast was walking from his truck to the basement, Appellee Officer Martin stopped and searched him. Yoast

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[4] On appeal, Yoast does not challenge the District Court's dismissal of claims against the other defendants, so we do not consider those rulings. See In re Wettach, 811 F.3d 99, 115 (3d Cir. 2016) (holding that appellants forfeited arguments by failing to develop them in their opening brief).

argued that the search was unreasonable under the Fourth Amendment.

In Terry v. Ohio, 392 U.S. 1, 30 (1968), the Supreme Court held that if a police officer reasonably concludes that criminal activity may be afoot and that the person may be armed and dangerous, the officer may stop the individual and conduct a brief investigation. If this initial questioning does not dispel the officer's fear for his own or other's safety, the officer may conduct a limited search of the person for a weapon. Id.

Yoast argues that there were no legitimate grounds to stop and search him. We disagree. Here, the police had been called to the property over ten times in the previous two months for numerous disturbances, and Yoast already had been charged twice with harassing the tenant. Yoast admitted that he called the tenant a "bitch" and a "bum" and that she called the police to report that Yoast was harassing her. Thus, Officer Martin not only had reasonable suspicion to believe that criminal activity was afoot but also probable cause that Yoast was continuing to commit acts that served no purpose with the intent to harass, annoy, or alarm the tenant. See 18 Pa. C.S.A. § 2709(a)(3) (describing elements of harassment); Wright v. City of Philadelphia, 409 F.3d 595, 603 (3d Cir. 2005) (observing that probable cause standard does not require officers to correctly resolve credibility determinations or conflicting evidence). In fact, Yoast was convicted on this charge of harassment. Thus, the investigatory stop was justified.

Because Officer Martin had probable cause to arrest Yoast for harassment and could have searched him incident to an arrest, we need not determine whether he had reasonable suspicion that Yoast was armed and dangerous. See Arizona v. Johnson, 555 U.S. 323, 326–27 (2009) (noting that "to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous"); cf. United States v. Burnside, 588 F.3d 511, 518 (7th Cir. 2009)(declining to reach argument that officers exceeded the limits of a Terry stop because they had probable cause to arrest the defendant); United States v. Long, 464 F.3d 569, 575 (6th Cir. 2006) (declining to reach argument that handcuffing was not appropriate during a Terry stop because there was probable cause to arrest). The District Court did not err in dismissing this claim.

In all other respects, we will affirm the District Court's February 3, 2020 order for essentially the reasons given by the District Court. See Heck v. Humphrey, 512 U.S. 477, 487 (1994) (holding that a civil action that would impugn a criminal conviction if successful cannot be maintained until that conviction is invalidated);[5] United

[5] Yoast argues that the Supreme Court in Wallace v. Kato, 549 U.S. 384 (2007), held that false arrest claims can never be barred by Heck. He is incorrect. The Court in Wallace determined that the statute of limitations began to run for Wallace's false arrest claims when Wallace was arraigned and held pursuant to legal process. Id. at 397. It rejected Wallace's arguments that his claim did not accrue until his conviction was vacated because the claim would have been barred by Heck. The Court noted that a defendant could file a false-arrest claim before he was convicted and the matter could be stayed pending the resolution of the criminal proceedings. The Court explained that "[i]f

States v.Correa, 653 F.3d 187, 191 (3d Cir. 2011) (holding that "a resident lacks an objectively reasonable expectation of privacy in the common areas of a multi-unit apartment building with a locked exterior door."); Startzell v. City of Phila., 533 F.3d 183, 204 n.14 (3d Cir. 2008) (noting that establishing probable cause on one of multiple charges will defeat a claim of false arrest); DiBella v. Borough of Beachwood, 407 F.3d 599, 603 (3d Cir. 2005) (finding no seizure significant enough to support malicious prosecution claim where plaintiffs "were never arrested; they never posted bail; they were free to travel; and they did not have to report to Pretrial Services.").

Motions for Summary Judgment

We review the District Court's order granting summary judgment de novo and review the facts in the light most favorable to Yoast as the nonmoving party. Burns v. Pa. Dep't of Corr., 642 F.3d 163, 170 (3d Cir. 2011). A grant of summary judgment will be affirmed if our review reveals that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

As noted earlier, Yoast was not provided with a CPAP machine during his brief incarcerations. On appeal, Yoast argues only that Appellees Montgomery County and Primecare Medical violated his 8th and 14th Amendment

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the plaintiff is ultimately convicted, and if the stayed civil suit would impugn that conviction, Heck will require dismissal." Id. at 394.

rights because they failed to adopt a policy requiring that the jail have a CPAP machine immediately available. To state a claim against a county jail system or private medical provider under contract with a county jail system, a plaintiff must allege a policy or custom that resulted in the alleged constitutional violations at issue. See Natale v. Camden Cnty. Corr. Facility, 318 F.3d 575, 583–84 (3d Cir. 2003); Palakovic v. Wetzel, 854 F.3d 209, 232 (3d Cir. 2017) (same).

In granting the motions for summary judgment, the District Court concluded that Yoast had not provided evidence that his failure to receive a CPAP machine was due to Appellees' policies and not the qualified decisions of the medical staff. The District Court noted that a certified registered nurse practitioner (CRNP) who had evaluated Yoast had the authority to order a CPAP machine but had decided not to and that if Yoast had been able to have his own machine delivered to the facility, the CRNP would have requested that it be cleared by the security department. On appeal, Yoast does not dispute these policies or that the CRNP used her medical judgment to decline to order a CPAP for Yoast.

Yoast points to the statement of the CEO of Primecare Medical that there is no specific policy regarding CPAP machines as proof that Primecare Medical failed to have a policy addressing the needs of detainees with sleep apnea. However, he points to no caselaw requiring providers to have detailed policies to address specific medical conditions.

Yoast appears to argue that Pennsylvania's administrative code requires that county jails must keep medical devices such as CPAP machines in their "inventory." The section of the code he quotes states that "[w]ritten local policy must provide that medical and dental instruments, equipment and supplies be controlled and inventoried." 37 Pa. Code § 95.232(11). We see nothing in this regulation that requires jails to keep medical devices in their inventory, just that any such devices must be inventoried, i.e., cataloged. See The Merriam–Webster Dictionary, Inventory (verb), https://www.merriamwebster.com/dictionary/inventory (last visited May 23, 2023). Accepting Yoast's interpretation of this regulation would require that a jail keep any medical device an inmate might possibly need at hand. We reject such an argument.

The District Court did not err in granting Appellees' motions for summary judgment.

Conclusion

For the above reasons, we will affirm the District Court's orders.[6] Yoast's motion to exceed the word count limitations is granted in this instance only. Yoast's motion to supplement his brief is granted.

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[6] We have also considered the other arguments that Yoast makes in his brief and conclude that they are without merit.

APPENDIX "C"

A14

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TERRENCE R. YOAST,
Plaintiff,

v.

POTTSTOWN BOROUGH, *et al.*,
Defendants

CIVIL ACTION NO. 19-720

MEMORANDUM OPINION

Rufe, J. **January 31, 2020**

Plaintiff Terrence Yoast, proceeding *pro se*, filed a 254-page Amended Complaint consisting of ninety three counts against thirty one defendants.[1] The Amended Complaint alleges federal and state claims related to Yoast's landlord-tenant relationship with Aphrodite Hussain, and law enforcement's response to the dispute; federal and state claims based on an alleged lack of medical care while Yoast was a pre-trial detainee in county jail; and

[1] Doc. Nos. 50 & 52. Yoast filed a duplicate Amended Complaint as Doc. No. 52. As Doc. No. 52 contains some exhibits that are missing from Doc. No. 50, at times, this Memorandum Opinion cites to Doc. No. 52.

state law claims against the landlord and tenants of property located near Yoast's rental property.

The thirty one defendants can be divided into three groups: 1) Hussain, the tenants and landlords of a neighboring property, and attorneys and their employers allegedly involved in Yoast's dispute with Hussain; 2) Police officers ("Pottstown Defendants") and the District Attorney's office involved in the dispute; and 3) Defendants associated with the Montgomery County Correctional Facility ("MCCF").

In addition to Hussain, Group 1 consists of Manjeet Singh, Catherine Hallinger, Leon Smith, and Adrian Smith, who are Hussain's neighbors, and Edward and Jeanne Forbes, who own the home in which the Smiths and Hallinger live. Defendant Justin O'Donoghue, a lawyer with Defendant Montgomery County Housing Authority ("MCHA") and a partner with Defendant Wisler Pearlstine LLP, and Defendant Donald Cheetham, an attorney employed by Defendant Legal Aid of Southeastern Pennsylvania ("Legal Aid") are also included in this group.

Within Group 2, the Pottstown Defendants are the Borough of Pottstown, Officer Anthony Fischer, Officer John Schmalbach, Officer Jacob Martin, Officer T.J. Casio, Officer Jeffrey Portock, Officer Brett Cortis, Officer Chad Hart, Officer Corey Pfister, Corporal Jamie O'Neill, Corporal Michael Long, Sergeant Michael Ponto, and former Chief Richard Drumheller. Defendant Montgomery

County, and Defendant District Attorney Robert Steele, are sued based on claims stemming from Yoast's prosecution.

Within Group 3, related to his claim that he was denied medical care, Yoast has sued an unidentified John Doe defendant, Anthony Hoch, PrimeCare Medical, Ryan VanDorick, Timothy Stein, and Montgomery County.

I. BACKGROUND[2]

A. Harassment Charges Related to Text Messages Incidents

Yoast is the owner of a home in Pottstown, Pennsylvania which is a rental property, not his home. On November 18, 2016, Aphrodite Hussain entered into a residential lease for the second-floor unit of the home. Sometime in December 2016, Yoast and Hussain became embroiled in a dispute over the conditions of the home. As part of this dispute, on December 21, 2016, Hussain threatened Yoast with a suit for premises liability based on a slip and fall from a dislodged handrail in the apartment. Hussain notified Yoast that she had contacted a personal injury attorney who informed her that she had a viable claim against Yoast.

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[2] Unless otherwise stated, the background is drawn primarily from the Complaint and at this stage of the proceedings is presumed to be true.

On December 27th, 2016, based on a series of text messages that Yoast sent Hussain, Officer Fischer filed a harassment charge against Yoast. Then, on January 9, 2017, based on new allegations from Hussain of harassing text messages from Yoast, and after determining that Officer Fischer had previously issued a citation against Yoast, Officer Schmalbach filed harassment charges against Yoast. The harassment charge filed by Officer Fischer was withdrawn and added to the charges filed by Officer Schmalbach.

B. Harassment Charges Related to Alleged Mail Theft

On January 13, 2017, Plaintiff provided notice and entered the apartment for a repair. Yoast alleges that Hussain intentionally left out an envelope from her personal injury attorney for him to see. Yoast photographed the envelope, and because he believed that the damage to the handrail had been caused by Hussain, he sent the photo to Defendant Justin O'Donoghue, a lawyer with MCHA. Yoast wanted the MCHA to amend the Complaint Inspection Report to document that Hussain caused this damage. O'Donoghue rejected Yoast's request.

Yoast further alleges that O'Donoghue was also employed as a partner at the law firm of Defendant Wisler Pearlstine LLP and, in this capacity, O'Donoghue contacted another MCHA employee and instructed her to inform Hussain that Yoast had stolen her mail. Hussain then

consulted with Defendant Donald Cheetham, an attorney employed by Legal Aid. Cheetham contacted the Pottstown Police to inform them that Hussain was the victim of mail theft.[3] On February 21, 2017, after interviewing O'Donoghue and Yoast, and after allegedly receiving permission from Sergeant Ponto, Officer Portock filed a harassment charge against Yoast.

C. Harassment and Stalking Charges Related to Washing Machine Incident

On February 26, 2017, based on Hussain's request for a new washing machine, Yoast entered the apartment to install one. While he was removing the broken washing machine from the basement, Hussain informed Yoast than he was not supposed to be on the premises. Yoast called Hussain a "bitch" and a "bum" and told her to "mind her own business." Hussain then called the police. Officer Martin arrived, interrogated Yoast, and searched him for contraband. Corporal O'Neill and Sergeant Ponto then arrived on the scene and were informed by Defendant Manjeet Singh, a friend of Hussain's, that Yoast had said "fuck you" to Hussain. The police then ordered Yoast to leave the premises. Yoast explained that he had not entered her apartment and did not need to provide notice to enter the property, but the officers told him to gather his tools and leave. Yoast ignored the officers and went down to the basement to continue working. Despite Yoast

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[3] Plaintiff refers to this incident as alleged mail fraud.

informing the officers that they did not have permission to enter the basement, they followed him and threatened him with arrest if he did not leave.

After Yoast refused, O'Neill arrested him and transported him to the Pottstown Police Station and charged him with stalking and harassment. Plaintiff was then arraigned, and bail was set at $20,000 as requested by O'Neill. Yoast was then transported to MCCF where he was held until February 28, when he posted bail.

D. Harassment and Stalking Charges Related to Yoast Allegedly Kicking Hussain's Car

On March 2, while picking up copies of the Criminal Complaint that O'Neill filed, Yoast spoke to Officer Casio[4] and told him that he needed to visit the property to take pictures but was worried that Hussain would cause him problems. Yoast asserts that Officer Casio told him that it would not be an issue because he owned the property and that, even though there was a stalking charge filed against him, he would not be arrested. Based on Officer Casio's reassurances, Yoast drove to the property, took some photographs, and then drove away. However, he was pulled over by Officer Portock six block away. When Officer Portock asked Yoast why he was at the property, Yoast explained that he had to take photographs and that Officer

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[4] Although Yoast refers to him as Officer Cascio, his name appears to be Casio.