

No. 17-1234

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN ZIMMERMAN,
Petitioner,

v.

THOMAS CORBETT, LINDA KELLY, FRANK FINA,
KENNETH BROWN, MICHAEL SPROW, ANTHONY FIORE,
AND GARRY SPEAKS,
Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Did the Third Circuit apply the correct probable cause standard?

Yes.

Did Defendants have probable cause to believe that John Zimmerman attempted to thwart a grand jury subpoena to the House Republican Caucus for campaign material when 1) a man called the House Republican Campaign Committee from Zimmerman's phone line to tell the HRCC to expect a delivery of boxes of campaign material; 2) Zimmerman was normally at his desk; and 3) campaign material was then moved to HRCC?

Yes.

Are Defendants entitled to qualified immunity in any event as two state Judges and three Court of Appeals Judges have found probable cause based upon the undisputed facts?

Yes.

REASONS FOR DENYING THE PETITION

ISSUE ONE:

THE THIRD CIRCUIT APPLIED THE CORRECT STANDARD.

As part of the so-called “Computergate” investigation into elected state officials’ use of state funds for campaign efforts, the grand jury subpoenaed campaign material from the House Republican Campaign Committee. To dodge the subpoena, a number of boxes of campaign materials were moved from legislative offices.

Defendants believed that John Zimmerman was involved in the attempt to thwart a grand jury subpoena because 1) a man called the HRCC from Zimmerman’s phone line to tell the HRCC to expect a delivery of boxes of campaign material; 2) Zimmerman was normally at his desk; and 3) and campaign material was then moved to HRCC.

Zimmerman distorts the Third Circuit opinion to argue that the Third Circuit did not consider whether Defendants had probable cause to believe that *he* committed a crime; rather, Zimmerman argues that the Third Circuit only considered whether Defendants had probable cause to believe that *someone* committed a crime.

Respectfully, this is nonsense. To the extent Zimmerman faults the Third Circuit for not explicitly

stating that an officer needs probable cause to believe that the suspect committed an offense, he is mistaken. App'x 9a-10a n. 28 (“*See Michigan v. DeFillippo*, 443 U.S. 31, 36, 99 S. Ct. 2627, 61 L. Ed. 2d 343 (1979) (“[T]he Constitution permits an officer to arrest a suspect without a warrant if there is probable cause to believe that the suspect has committed or is committing an offense. . . . [T]he mere fact that the suspect is later acquitted of the offense for which he is arrested is irrelevant to the validity of the arrest.”)).

Moreover, as explained in the next section, the entire Third Circuit opinion from corner to corner focused on whether Defendants reasonably believed that Zimmerman participated in the efforts to obstruct the grand jury subpoena. It is frivolous to argue otherwise.

ISSUE TWO:
DEFENDANTS REASONABLY BELIEVED THAT
ZIMMERMAN COMMITTED THE CRIME.

The Third Circuit explained: “Zimmerman does not dispute any of the following: (1) a man called the HRCC from Zimmerman’s phone line [within the legislative office suite of Representative John Perzel] and told the HRCC to expect a delivery of boxes of campaign material; (2) Zimmerman was usually at his desk; [and] (3) boxes containing campaign

material were moved to the HRCC as promised in the call from Zimmerman's phone line." App'x 8a.

The Third Circuit went on to address Zimmerman's argument at some length that many other persons had access to his office desk phone line. *See* App'x 8a-10a. The Third Circuit correctly rejected Zimmerman's argument:

[G]iven the uncontested facts, while Zimmerman's arguments may well have been sufficient to raise a reasonable doubt that would have resulted in an acquittal at trial, they do not negate the fact that Appellants had probable cause to prosecute him.

App'x 9a. While it's theoretically possible that some other man made the call from Zimmerman's office line, Defendants reasonably believed that Zimmerman is the man who made the call from his office line as "Zimmerman was normally at his desk." App'x 9a-10a.

ISSUE THREE:
DEFENDANTS ARE ENTITLED TO
QUALIFIED IMMUNITY.

Defendants would be entitled to qualified immunity even if this Court held that they lacked probable cause. As a result, this Court should deny

the writ of certiorari because, quite frankly, Zimmerman has no path to victory.

Three Circuit Court Judges have now held that Defendants had probable cause. Before that, a state court Magisterial District Judge found probable cause for the arrest warrant and sustained the sufficient basis to proceed after a preliminary hearing; then a state Court of Common Pleas Judge reconsidered the matter and again found sufficient evidence to prosecute Zimmerman.

Defendants are entitled to qualified immunity even if this Court holds that all five Judges erred. This Court has explained: “If judges thus disagree on a constitutional question, it is unfair to subject police to money damages for picking the losing side of the controversy.” *Reichle v. Howards*, 132 S. Ct. 2088, 2096 (2012).

Qualified immunity shields officers from liability when, as here, the clearly established law did not forbid their actions. *Anderson v. Creighton*, 483 U.S. 635, 649 (1987). The law is “clearly established” when “[t]he contours of the right [are] sufficiently clear that a reasonable official would understand that [his conduct] violates that right.” *Id.* To defeat qualified immunity, “existing precedent must have placed the statutory or constitutional question beyond debate.” *Carroll v. Carman*, 135 S.Ct. 348, 350 (2014) (per curiam) (unanimous). No precedent by this Court or

the Third Circuit forbade Zimmerman's arrest under the circumstances—much less placed the question beyond debate as shown by the repeated judicial rulings that confirm the basis for Zimmerman's arrest and prosecution.

Because Defendants did not violate clearly established law, they are shielded from liability. This Court should deny the writ of certiorari because Zimmerman would lose even if this Court agrees with him.

It is not enough to say that, under this Court's precedent, Defendants should have known they needed probable cause to arrest him. This Court has explained: "[T]he right allegedly violated must be established, 'not as a broad general proposition,' *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam), but in a 'particularized' sense so that the 'contours' of the right are clear to a reasonable official, [*Anderson*, 483 U.S. at 640]." *Reichle*, 132 S.Ct. at 2094. **In other words, the law must not simply be clear to officers that they need probable cause, but that they lack it.** Even if all five Judges to confirm the basis for Zimmerman's arrest were somehow wrong, Defendants reasonably reached the same conclusion as five learned Judges.

This Court has routinely found officials entitled to qualified immunity when the binding precedent is unclear on the point. *See Kisela v. Hughes*, 138 S.Ct.

1148 (2018) (per curiam) (7-2); *DC v. Wesby*, 138 S.Ct. 577 (2018) (unanimous as to qualified immunity); *White v. Pauly*, 137 S.Ct. 548 (2017) (per curiam) (unanimous) (“In the last five years, this Court has issued a number of opinions reversing federal courts in qualified immunity cases.”); *Mullenix v. Luna*, 136 S.Ct. 305, 308-12 (2015); *Taylor v. Barkes*, 135 S.Ct. 2042 (2015) (per curiam) (unanimous); *San Francisco v. Sheehan*, 135 S.Ct. 1765 (2015); *Carroll*, 135 S.Ct. at 350 (per curiam) (unanimous); *Lane v. Franks*, 134 S.Ct. 2369, 2383 (2014) (unanimous); *Wood v. Moss*, 134 S.Ct. 2056, 2070 (2014) (unanimous); *Plumhoff v. Rickard*, 134 S.Ct. 2012 at 2024 (2014); *Stanton v. Sims*, 134 S.Ct. 3, 7 (2013) (per curiam) (unanimous); *Messerschmidt v. Millender*, 565 U.S. 535, 556 (2012); *Reichle*, 132 S.Ct. at 2094; *Ashcroft v. al-Kidd*, 563 U.S. 731, 744 (2011); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 378–79 (2009); *Pearson v. Callahan*, 555 U.S. 223, 244 (2009) (unanimous); *Brosseau*, 543 U.S. at 201 (per curiam) (8-1).

Because Zimmerman cites no clearly established law that would have forbade his arrest in 2009, Defendants would be entitled to qualified immunity even if Zimmerman prevailed before this Court. It would waste this Court’s valuable time to grant Zimmerman’s petition writ of certiorari.

CONCLUSION

For these reasons, Defendants request that this Court deny the petition for the writ of certiorari.

Respectfully submitted,

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