No. 17-1386

In the Supreme Court of the United States

KYLE WILSON,

Petitioner,

v.

JANELLE BRIDGES, ET AL.

Respondent.

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

RESPONDENTS BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Tenth Circuit Court of Appeals abused its discretion when it disagreed with Petitioner's purely factual argument in an attempt to overrule the lower court.

2. Whether the Tenth Circuit Court of Appeals correctly analyzed Officer Wilson's qualified immunity argument?

PARTIES TO THE PROCEEDING

The following parties were plaintiffs in the district court and appellees in the court of appeals, and are respondents in this Court: Janelle Bridges, Individually and as the surviving spouse of Shane Allen Bridges, deceased, and as the Mother and Next Friend of: A.B., a minor child; B.B., a minor child; S.B. Jr., a minor child; A.C., a minor child; J.S., a minor child; and, J.H., a minor child.

The following party was the defendant in the district court and appellant in the court of appeals, and is the petitioners in this Court: Officer Kyle Wilson, in his individual and official capacity.

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STATEMENT OF THE CASE

Taken directly from the Tenth Circuit's opinion, the following facts were provided:

> "This case arises from the fatal shooting of Shane Bridges by [Kyle Wilson, a deputy sheriff of the Mayes County Sheriff's Office,] on January 1, 2014 . . . . Wilson received a dispatch call notifying him that there was an intoxicated, possibly suicidal person who was possibly threatening harm to a child at the Bridges' residence. Wilson arrived and exited his vehicle and stood by the front, driver's side tire of his patrol car. Shane Bridges was in the front room of the house when Wilson arrived, and went to the door, opening and closing the door. Wilson fired thirteen shots in Bridges' direction, hitting Bridges twice and fatally wounding him . . . .
>
> [V]iewing the evidentiary materials in the light most favorable to the plaintiffs, Wilson did not identify himself as law enforcement officer, order Bridges to drop a weapon, or give Bridges any other commands; ***Bridges did not fire a gun***; and, at the time of the shooting, the distance between Wilson and Bridges was approximately thirty to thirty-five feet."[1]

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[1] Order and Judgment at pg. 2-3 (emphasis added).

Further, the Tenth Circuit cited to the lower court's holding to support its position that Petitioner had committed a clearly established Fourth Amendment violation, consider the following:

> "[T]he court may not simply accept what may be a self-serving account by the police officer." The court "must also look at the circumstantial evidence that, if believed would tend to discredit the police officer's story, and consider whether this evidence could convince a rational factfinder that the officer acted unreasonably." The court concludes a rational factfinder could—based on the testimony of Janelle Bridges and Rex Dale Cowan—conclude Wilson's testimony that Bridges fired a gun was inaccurate, and could, accordingly, discredit Wilson's testimony that Shane Bridges turned to point a gun at him."[2]

At the summary judgment stage at the district court, there was an abundance of evidence from several witnesses that clearly showed that the decedent, Shane Bridges, was shot while he was standing inside of his own home with the door closed. In fact, the facts of this particular matter are so illuminating when viewed in their entirety that Respondents didn't have to rely on the district court "viewing the facts in the light most favorable" to the non-movants.

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2 *Id.* at pg. 4 (internal citations omitted).

Ultimately, the district court held, and the Tenth Circuit agreed, that viewing the facts in the light most favorable to the Respondents, the Petitioner committed a clearly established Fourth Amendment violation and that "summary judgment is not appropriate because genuine issues of material fact remain, including…whether [decedent] pointed or fired a gun at [petitioner] before [petitioner] shot [decedent], and thus whether [petitioner's] use of deadly force was objectively reasonable in light of the circumstances."[3]

REASONS FOR DENYING THE WRIT

I. PETITIONER'S WRIT IS A POOR CONTENDER FOR CERTIORARI BECAUSE IT DEMANDS RE-ALIGNMENT OF THE FACTUAL ISSUES IN ORDER TO HARMONIZE WITH PETITIONER'S VERSION

Ironically, a review of the factual and procedural background of this matter reveals a heightened level of disagreement and discord about all of the material facts that one would need to prevail at the summary judgment stage.[4] In fact, the factual

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[3] *Id.*

[4] *Id.* at pg. 3 ("[Petitioner] argues for a ***different version*** of the facts on appeal, as he did in his summary judgment briefing before the district court."); *Id.* at pg. 7 ("In this appeal from the denial of qualified immunity, [Petitioner] challenges the district court's version of the facts…The type of factual analysis that [Petitioner] urges us to undertake '***would require second-guessing*** the district court's determinations of evidence sufficiency." *Quoting Cox v. Glanz*, 800 F.3d 1231, 1241 (10th Cir. 2015))(emphasis added).

arguments Petitioner continued to advance on appeal was anything but convincing, consider the following:

> "(Petitioner) makes two arguments in support of his contention that the record blatantly contradicts the district court's conclusion that a jury could find (decedent) did not point a gun at (Petitioner). ***We conclude that neither has merit***."[5]

In conclusion, the Tenth Circuit summarized its ruling as follows:

> "Because this appeal focuses on second-guessing the district court's ruling regarding the sufficiency of the evidence, and because the district court's reasoning was sufficiently articulated and is not blatantly contradicted by the record, we conclude that we lack jurisdiction and dismiss this appeal."[6]

Clearly, the Petitioner's evolving contentions had no impact on the appellate court. As illustrated above, and as this Court is well aware, summary judgment may be appropriate if the moving party shows "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). Should the moving party be able to meet this initial burden of demonstrating the absence of a genuine issue of

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5 *Id.* at pg. 8.

6 *Id.* at pg. 11.

material fact, the burden then shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. *See Schneider v. City of Grand Junction Police Dept.,* 717 F.3d 760, 767 (10th Cir. 2013). A "dispute" in this instance is "genuine" only if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

When a defendant moves for summary judgment on the basis of a qualified immunity defense, the Court "still view[s] the facts in the light most favorable to the non-moving party and resolve[s] all factual disputes and reasonable inferences in its favor." *Estate of Booker v. Gomez*, 745 F.3d 405, 411(10th Cir. 2014). Unlike other affirmative defenses, the plaintiff bears the burden of overcoming the defense of qualified immunity. Id. "This is a heavy burden." *Carabajal v. City of Cheyenne, Wyoming*, 847 F.3d 1203, 1208 (10th Cir. 2017).

At the summary judgment stage, the Court "must grant qualified immunity unless the plaintiff can show (1) a reasonable jury could find facts supporting a violation of a constitutional right, which (2) was clearly established at the time of the defendant's conduct." *Estate of Booker*, 745 F.3d at 411.

When the Tenth Circuit ruled that the district court's decision was appropriate, it did so based on clear guidance from the U.S. Supreme Court and the clear weight of the decisions from every circuit. In its order, the Tenth Circuit reminded Petitioner that an appeal under these same circumstances would only be appropriate in the very limited circumstance attendant with "abstract issues of law"…which is clearly not at issue in this matter.

II. PETITIONER'S ARGUMENTS REGARDING "THE QUALIFIED IMMUNITY OVERARCHING STANDARD" IS TROUBLESOME

The road to this point has indeed been long…and there appears to be no immediate end in sight as Petitioner continues to advance his "new-and-improved" summary judgment theory, namely; that entitlement to qualified immunity should be analyzed from the officer's "version" of the events. In fact, the Petitioner's recitation of the facts, the district court's findings, and now the appellate court's findings, continues to change and evolve to the point that it would be far too burdensome to give chase to citing every error and misrepresentation in Petitioner's writ.

It goes without saying, summary judgment is a significant feature in cases involving qualified immunity. In this particular matter, the district court denied Petitioner's motion for summary judgment almost two (2) years ago and both parties have briefed and argued this matter before the Tenth Circuit Court of Appeals. Now, the Petitioner is attempting to invite appellate courts to disregard practical and meaningful summary judgment standards in favor of finding lawsuits against public officials to be patently unfair. While every advocate that files a lawsuit should readily expect to litigate an appeal, they shouldn't have to expect to spend more time on appeal than at the district court especially when the matter hasn't even been to jury trial yet.

That being said, the Court can rest assured that Respondent's stance on the qualified immunity doctrine is favorable. Every citizen appreciates the service and efficiency of their local government which could possibly be placed in jeopardy if those same efficient governmental officials were the constant target of litigious citizens. While I understand and appreciate an individual's right to access the court system to seek remedy, I wouldn't want this threat of litigation to deter our city officials from engaging in lawful and publicly beneficial conduct…like keeping the potholes plugged.

Additionally, those who seek out positions in the public sector shouldn't be punished because they didn't go to law school and/or keep up with the current legal parameters that are interconnected with their specific position. Since the boundaries of constitutional law are sometimes unclear (see Petitioner's Writ), almost every reasonable jurist would agree that there should be some level of protection for those individuals who are performing their discretionary roles in an otherwise lawful and objectively reasonable manner.

In a typical costs-benefit analysis, one could also reasonably argue that the liberal application of the qualified immunity doctrine would greatly benefit society even when other individual losses are fully assessed, for instance, damages associated with a citizen's injury that was caused by a wayward public official. As with every costs-benefit analysis, however, there is a substantial gap in the subjective judgment of those involved in that particular pool of individuals…for example, the present matter.

While Officer Wilson may have been greatly inconvenienced for having to respond to a call from the complete other side of the county, and while he may have been greatly inconvenienced due to him having to replace the thirteen (13) bullets he used when he emptied his gun into the side of Respondent's residence, some might contend that Officer Wilson's troubles are a far cry from the harms associated with either being shot multiple times through the door and/or wall for no reason, or losing one's spouse. Clearly, Officer Wilson (and former co-defendant Sheriff Mike Reed) value the intangibles (like death) far less than the associated marginal costs of travel time and expense associated with responding to a call…and therein lies the rub.

One could reasonably suggest that justifying injurious police actions from a societal cost-benefit analysis is an ineffective tool for decision making. Evaluating and quantifying mutually exclusive sectors, especially when there are intangibles at play, fails to consider the full economic and non-economic effects on the environment being evaluated. The lasting point Respondent intends to make in this section is this; qualified immunity needs to be re-evaluated in terms of its "overarching standard" and the costs it incurs on those members of society who have – and who will – suffer an uncompensated loss due to the illegitimate – yet categorically immune – conduct of a governmental actor.

The case for cost-benefit, however, is bolstered only when its limitations are fully realized and emphasized in future litigation. But that is not the only problem inherent in qualified immunity analysis.

History is replete with examples of citizen's being injured without compensation…which amounts to a harm without a remedy. Further, these citizen's typically go without compensation based on a court's ruling that a governmental actor is entitled to qualified immunity because they did not violate a "clearly established" right. If a district court utilizes qualified immunity in dismissing a case, that may create a vacuum whereby the courts fail to identify and/or clarify the precise parameters of what would constitute a "clearly established" right.

Constitutional doctrine, like common law, evolves and is refined through precedential decision making. However, qualified immunity disrupts and/or interferes with this law-pronouncing evolution of the federal courts and reduces the amount of guidance about the meaning of the Constitution for both government actors and the public at large.

And just in case the messaging hasn't been made clear, the costs associated with litigating potentially meritorious civil rights claims has become increasingly heightened. As qualified immunity cultivates and intensifies into a complex structure, the litigants necessary to bring these claims will suppress over time due to the costs and time associated with litigating multiple interlocutory appeals before they can even reach the trial court. And for those wanting a little salt for their wound, it's ironic that the party seeking to transform qualified immunity into a near "absolute immunity playground" has its own citizens (including the ones injured by the governmental action) to thank for paying for all of its legal fees. In fact, the face of qualified immunity may be different today if government officials were forced to expend a small part of their own resources to advance contentious litigation…in other words…to put some skin in the game.

Anyone with a sense of fairness should be deeply troubled with the prospect of diminishing civil rights claims due to the obstacle qualified immunity sometimes represents…but that could change. Should this Court adopt guidelines that scrutinize interlocutory appeals for the benefit of the ***entire community***, and not just those in power, we could reestablish meaningful and consequential access to the courts. And at the end of the day, those seeking to benefit from qualified immunity have to come to the realization that they don't lose their case if summary judgment is denied. No sir, it just means that they are now going to be evaluated by those individuals who get to decide what type of conduct is appropriate in their very own community, which I believe, is also mentioned somewhere in the Constitution.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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