No. 10-701

IN THE

Supreme Court of the United States

FRANK S. EVANSON, individually and in his official capacity as a police officer of the Township of Cranberry,

Petitioner,

v.

SARA R. REEDY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY BRIEF

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REPLY BRIEF FOR PETITIONER

Petitioner Frank Evanson respectfully submits the following points in reply to respondent Sara Reedy's brief in opposition to Evanson's certiorari petition.

1. Reedy's counterstatement of the case reflects the one-sided, "deliberately slanted" (Appendix A at 31a n. 24) view of the facts that led the Court of Appeals to depart completely and unjustifiably from established law. Instead of viewing the facts known to Evanson from the objective perspective of a reasonable police officer to determine the existence of probable cause and qualified immunity, as cases decided by this Court and prior cases decided by the Court of Appeals require, Reedy's brief in opposition, like the Court of Appeals' opinion, states the case and interprets the conclusions which may be drawn from those facts solely from Reedy's own, diametrically opposed perspective. That approach dramatically reverses the approach applied under established law and forecloses the grant of summary judgment whenever the arrestee's view of the facts differs, as it usually does, from the view of an objectively reasonable arresting officer, thus requiring this Court's intervention.

2. Reedy's argument further demonstrates that this Court should grant Evanson's petition for certiorari.

As Evanson's petition discussed, consideration of an arresting officer's motion for summary judgment under established law hitherto has involved a two-step process. First, the court determines the historical facts known to the officer by viewing the evidence in the light most favorable to the arrestee. In the second step, the court

determines the existence of probable cause or qualified immunity by interpreting the conclusions which could be drawn from those historical facts from the perspective of a reasonable investigating police officer, not by judging the significance of those facts in the light most favorable to the arrestee. This is precisely what the Court of Appeals has done, quite purposefully, in its reported opinion.

Reedy's argument mistakenly recasts Evanson's position as one asserting that the determination of the historical facts is never done by viewing the evidence in the light most favorable to the arrestee. (Br. Opp., p. 12-15.) However, beyond that unavailing distraction, Reedy's argument actually, albeit inadvertently, reinforces Evanson's position and destroys the Court of Appeals' analytical approach.

On that crucial point, Reedy's case-law discussion quotes prior opinions demonstrating the accepted application of the two-step process as recognized by the Court of Appeals in *Merkle v. Upper Dublin Sch. Dist.*, 211 F.3d 782, 788-790 (3d Cir. 2000): "that '[i]n addressing a motion for summary judgment, **the facts must be viewed in the light most favorable to [the non-moving party], and she is entitled to every reasonable inference that can be drawn from the record"** *and that after"[v]iewing the facts in the light most favorable to [the non-moving party]…[,t]he question therefore becomes* **whether a reasonable person in [the officer's] position could have concluded, based on this knowledge, that [the non-moving party] had committed a crime***[.]***"** (Br. Opp. p. 12; italics added; otherwise as provided in Reedy's brief.)

Reedy's brief also quotes the two-step process as recognized by the Court of Appeals in *Wilson v. Russo*, 212 F.3d 781, 786 (3d Cir. 2000), "that in an unlawful arrest case, **when deciding whether qualified immunity applies at summary judgment, courts 'arrange the facts in the light most favorable to the plaintiff, *and then* determine whether, given precedent, those 'facts,' if true, would constitute a deprivation of a right[.]**'" (Br. Opp., p. 14; emphasis and brackets added.)

Reedy's case-law discussion also mentions other cases that employ the two-step process from which the Court of Appeals departed, such as *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987) (facts as alleged by plaintiffs and actions that a reasonable officer could have believed lawful) [Br. Opp., p. 14]; *Reardon v. Wroan*, 811 F.2d 1025, 1030 (7th Cir. 1987) (facts viewed favorably to plaintiff and objective reasonableness) [Br. Opp., p. 15].

Additionally, Reedy's brief mentions (and chastises Evanson for not citing) *Scott v. Harris*, 550 U.S. 372 (2007), with respect to adopting the plaintiff's version of the facts as the "first step" in assessing the constitutionality of the officer's actions. (Br. Opp., p. 13-14; citing *Scott*, 550 U.S. at 378.) Tellingly, however, Reedy's brief fails to mention that the **second step** outlined and undertaken in *Scott* was to determine the objective reasonableness of the officer's actions as a matter of law, not as a question of fact for the jury, as the Court of Appeals did in this case. *Scott*, 550 U.S. at 381 text and n. 8 ("Justice Stevens incorrectly declares this to be 'a question of fact best reserved for a jury,' and complains we are 'usurp[ing] the jury's factfinding function.' **At the summary judgment stage, however, once we have determined the relevant set of facts and**

drawn all inferences in favor of the nonmoving party to the extent supportable by the record, see Part III-A, *supra*, **the reasonableness of Scott's actions**--or, in Justice Stevens' parlance, '[w]hether [respondent's] actions have risen to a level warranting deadly force,' --**is a pure question of law**.") (citations omitted; emphasis added).

3. Contrary to Reedy's brief, the Court of Appeals' opinion unquestionably justified its denial of qualified immunity to Evanson based on its unique and mistaken view that qualified immunity was unavailable to Evanson, because "qualified immunity exists, in part, to protect police officers in situations where they are forced to make difficult, split-second decisions," and no such situation existed in this case. Appendix A at 56a n. 37.

4. As to Reedy's Fourth Amendment blood-test claim, Reedy's brief, like the Court of Appeals' opinion, overlooks the fact that Reedy did not question the legality of the drawing of her blood sample or the legality of the warrant under which Evanson obtained the test results along with Reedy's other hospital records.

Moreover, Reedy's brief and the Court of Appeals' opinion also ignore the critical fact that Reedy willingly gave the blood sample for police use, and the plain language of consent forms willingly signed by Reedy, which not only allowed her blood to be drawn and tested by the hospital, and but also allowed the blood sample and test results to be furnished to the police.

By asking the hospital to perform a drug-screen on the blood sample that Reedy gave to the police for their use, Evanson did not infringe Reedy's privacy or her Fourth Amendment rights as a matter of established law.

This Court should grant Evanson's petition for writ of certiorari, vacate the Court of Appeals' decision as to Evanson, and reverse the Court of Appeals' judgment against him.

Respectfully submitted,

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