No. 22-2281

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

TIMOTHY ROCHELL CARAWAY
Plaintiff-Appellant,

v.

CITY OF PINEVILLE; ADAM ROBERTS, Officer; JAMON GRIFFIN, Officer; NICHOLAS FRENCH, Officer; LESLIE GLADDEN, Officer,
Defendants-Appellees.

On Appeal from the Summary Judgment and Partial Summary Judgment Order
Dated November 3, 2022
No. 3:21-cv-00454-FDW-DSC

BRIEF OF NATIONAL POLICE ACCOUNTABILITY PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

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INTEREST OF AMICUS CURIAE[1]

The National Police Accountability Project (NPAP) was founded in 1999 by members of the National Lawyers Guild to address misconduct by law enforcement officers through coordinating and assisting civil rights lawyers. NPAP has approximately 550 attorney members practicing in every region of the United States, including a number of members who represent clients who experience police brutality, including the use of excessive force and deadly force.

Every year, NPAP members litigate the thousands of egregious cases of law enforcement abuse that do not make news headlines as well as the high-profile cases that capture national attention. NPAP provides training and support for these attorneys and resources for non-profit organizations and community groups working on police and corrections officer accountability issues. NPAP also advocates for legislation to increase police accountability and appears regularly as *amicus curiae* in cases, such as this one, presenting issues of particular importance for its members and their clients.

[1] Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting this brief, and no person other than *amicus curiae*, their members, or their counsel contributed money intended to fund preparing or submitting this brief.

INTRODUCTION

Plaintiff-Appellant brought this 42 U.S.C. § 1983 ("Section 1983") action against the City of Pineville and Pineville Police Department ("PPD") Officers Adam Roberts, Jamon Griffin, Nicholas French, and Leslie Gladden, alleging excessive force, malicious prosecution, fabrication of evidence, and failure to train and/or supervise in violation of Mr. Caraway's constitutional rights, along with other state law claims. The District Court granted summary judgment in favor of the Defendants-Appellees, finding there were no genuine issues of material fact precluding summary judgment as to the excessive force claim. In reaching its decision on summary judgment, the District Court framed self-serving statements made by the police officers involved in the shooting as the true narrative, treating their statements as fact, and disregarded evidence—including video footage— that contradicted their version of events. Because the District Court inappropriately credited the defendants' version of the facts, notwithstanding conflicting evidence in the record, this Court should reverse the District Court's Order and Opinion granting summary judgment for Defendants-Appellees.

SUMMARY OF THE ARGUMENT

Police officers who provide statements during internal affairs investigations or in the wake of a critical incident may be incentivized to protect themselves and their fellow officers from suffering the consequences of their misconduct by

constructing a narrative in which their actions were justified. Research has shown that there are some officers who not only misrepresent facts when giving unsworn statements, but do so when giving sworn testimony, including when they apply for warrants and testify during depositions and at trial. Often, an officer's statement is the only narrative available following an excessive force incident, and when contradictory evidence such as video footage and witness statements are unavailable, it can become the dominant narrative. In a number of recent high-profile cases of police killings and excessive force, evidence released after the critical incident proved that the police statements made right after the incident were completely or partially false. Due to the prevalence of police dishonesty, police statements should not be categorically accepted and trusted. Rather, they should be viewed with the same level of scrutiny as any other witness statement.

Defendant officers are not entitled to summary judgment just because their use of excessive force may seem reasonable under their version of events if there is evidence that supports the plaintiff's alternative version of events. Courts must consider whether a rational fact-finder could disbelieve the officer's statements and believe the plaintiff's allegations based on all of the evidence. Here, the District Court accepted the officers' self-serving statements in the PPD's Officer-Involved Shooting Internal Investigation ("OISII") Report as fact despite conflicting record evidence. In some instances, the District Court wholly disregarded

Plaintiff-Appellant's version of events, in violation of the summary judgment standard. Accordingly, the District Court's grant of summary judgment to Defendants-Appellees should be reversed.

ARGUMENT

I. Research and Recent High-Profile Police Killings Show Law Enforcement Officers May Lie and Misrepresent Facts in Excessive Force and Deadly Force Incidents.

Some police officers manage their evidence-gathering, interrogation, and reporting responsibilities without neutrality and impartiality.[2] This is particularly true where police are investigating a critical incident or a situation that involves alleged wrongdoing by an officer.[3] Officers who give statements during internal affairs investigations may be prompted to provide narratives that exonerate themselves and other officers, and have little incentive to provide an account of the situation that would expose their misconduct or that of their colleagues.[4] Even in more formal settings, such as when testifying under oath, the benefits of lying or embellishing may outweigh the potential costs of telling the truth for many officers. Although police officers may occasionally be held accountable for perjury

[2] Sandra Guerra Thompson, *Judicial Gatekeeping of Police-Generated Witness Testimony*, 102 J. Crim. L. & Criminology 329, 342–343 (2013).
[3] Walter Katz, *Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force*, 128 Harv. L. Rev. Forum 235, 238 (2015).
[4] *Id.* at 238-39; Rachel Moran, *Contesting Police Credibility*, 93 Wash. L. Rev. 1339, 1366 (2018) ("[I]nternal affairs review is often biased—implicitly or, not uncommonly, overtly—in favor of the officers, and conducted with the intent to justify the officers' behavior.").

through prosecution and for misrepresenting the facts through institutional discipline, the vast majority of misrepresentations advanced by police likely go undiscovered.[5] Therefore, courts reviewing and considering the veracity of police statements must scrupulously question the statements and carefully consider arguments raised by plaintiffs that may indicate inconsistencies and misrepresentations. When courts accept police statements without recognizing the potential for self-serving embellishments or misrepresentations, there is a significant risk that officers will skirt accountability for constitutional violations.

A. Critical Incident and Internal Affairs Investigations May Be Biased in Favor of Law Enforcement and Not Produce Accurate, Truthful Accounts of Officer Conduct.

The structure of most critical incident investigations has the potential to prompt officers to misrepresent the facts in their initial statements following a use of force incident. First, officers typically benefit from a sympathetic investigator seeking and taking their statement in a critical incident investigation. Most deadly force incidents are investigated internally by the officer's own department or a law enforcement officer from another agency.[6] For example, in this case, an internal

[5] Morgan Cloud, *The Dirty Little Secret*, 43 Emory L.J. 1311, 1313 (1994).
[6] Moran, *supra* n. 4, at 1365 ("[I]n most police departments, complaints of police misconduct are reviewed by internal affairs units with the same police department."); Richard Rosenthal, *Independent Critical Incident Agencies: A Unique Form of Police Oversight*, 83 Alb. L. Rev. 855, 923-924 (2020) (noting prevalence of independent investigative bodies staffed by former or current police).

investigation and an investigation by a consulting firm were conducted.[7] Police investigators from different departments often have close ties to the agency of the officer they are investigating and will be generally inclined to view an incident through the lens of the officer they are tasked with investigating due to their background in law enforcement.[8] In all, police investigators are far from objective, let alone adversarial, when they are taking officer statements. The inherent bias of some police officer investigators makes it unlikely that they will lead the conversation in a direction that will expose the officer's misconduct or press on inconsistencies.[9]

Additionally, officers are usually accorded significant protections in these investigations, including a cool down period of several days before they are required to provide a statement, the assistance of counsel in preparing any statement, and the opportunity to review other evidence prior to making a

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[7] *See, e.g., Lawsuit filed against Pineville Police Department following officer-involved shooting*, WBTV (Aug. 3, 2021), https://www.wbtv.com/2021/08/03/lawsuit-filed-against-pineville-police-department-following-officer-involved-shooting/ ("a separate administrative investigation [was] conducted by an outside law enforcement consulting firm"); *Man in critical condition following officer-involved shooting in Pineville*, WBTV (Feb. 1, 2020), https://www.wbtv.com/2020/02/01/police-investigating-officer-involved-shooting-pineville/ ("The State Bureau of Investigation has been called to help investigate the shooting").

[8] Rosenthal, *supra* n. 6, at 924-925; Moran, *supra* n. 4, at 1366.

[9] *See, e.g.,* Merrick Bobb, *Civilian Oversight of the Police in the United States*, 22 St. Louis U. Pub. L. Rev. 151, 156-57 (2003) ("[M]ore troubling still, investigators, at times, may use leading questions that seem to signal to the officer what he is supposed to say in order to get off the hook."); Katz, *supra* n. 3, at 238.

statement.[10] The combination of these factors facilitates an officer's ability to construct a favorable narrative that will help them avoid accountability.[11]

B. Data and High-Profile Incidents Reveal the Prevalence of Police Dishonesty.

Police dishonesty is a prevalent issue across the United States with prosecutors and judges estimating officers committed perjury in up to 20% of the cases in which they testify.[12] They also may make misrepresentations in their statements to obtain warrants,[13] as demonstrated by the four officers who were

[10] *See e.g.,* Stephen Rushin, *Police Union Contracts*, 66 Duke L.J. 1191, 1209 (2017); Eli Hager, *Blue Shield: Did you know police have their own Bill of Rights*, The Marshall Project (Apr. 27, 2015), https://www.themarshallproject.org/2015/04/27/blueshield?utm_medium=email&utm_campaign=newsletter&utm_source=openingstatement&utm_term=newsletter-20150428-168.

[11] Hager, *supra* n. 10.

[12] Myron W. Orfield, Jr., *Deterrence, Perjury, and the Heater Factor: An Exclusionary Rule in the Chicago Criminal Courts*, 63 U. Colo. L. Rev. 75, 107 (1992) ("In Chicago, a survey of prosecutors, judges, and defense attorneys estimated that police officers commit perjury in 20% of the cases in which they testify."); Joseph Goldstein, *'Testilying' by Police: A Stubborn Problem*, N.Y. Times (Mar. 18, 2018), https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html ("As part of a recent New York Times investigation, New York City judges and prosecutors identified more than twenty-five occasions between 2015 and 2018 where critical testimony from New York City police officers in trials, grand jury proceedings, and investigations was "'probably untrue.'"); John Kelly and Mark Nichols, *We found 85,000 cops who've been investigated for misconduct. Now you can reach their records.*, USA Today (Apr. 24, 2019), https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/ (records obtained from thousands of law enforcement agencies and prosecutors across the country found "at least 2,227 instances of perjury, tampering with evidence or witnesses or falsifying reports" and "418 reports of officers obstructing investigations, most often when they or someone they knew were targets").

[13] Stephen W. Gard, *Bearing False Witness: Perjured Affidavits and the Fourth Amendment*, 41 Suffolk U. L. Rev. 445, 448 (2008) ("[M]any of the same empirical investigations upon which scholars base their conclusion that police perjury constitutes a serious problem in these other contexts also document widespread perjury by law enforcement officers in warrant affidavits.") (citing studies commissioned by the White House, Congress, Department of Justice, New York City, and Los Angeles on law enforcement lying to obtain warrants).

recently indicted for providing false statements to conduct the no-knock raid that killed Breonna Taylor.[14] Though the problem exists in both criminal and civil contexts and at every stage of legal proceedings, it is particularly rampant in the wake of an excessive force or deadly force incident where an officer's conduct is the focal point of the investigation.

There are a number of high-profile examples of an initial police statement in a deadly force incident being disproven by video footage. Following the 2015 killing of Walter Scott in North Charleston, South Carolina, Officer Michael Slager claimed that Mr. Scott "grabbed [his] Taser" and that he responded to this alleged threat by shooting Mr. Scott in the chest.[15] The North Charleston Police Department initially supported and amplified the officer's account of the facts.[16] It was not until civilian video footage of the incident surfaced that the officer's lies were exposed. As the video revealed, Officer Slager shot Mr. Scott in the back while he was running away and then planted the taser near Mr. Scott's body.[17]

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[14] Nicholas Bogel-Burroughs, *Federal Officials Charge Four Officers in Breonna Taylor Raid*, N.Y. Times (Aug. 4, 2022), https://www.nytimes.com/2022/08/04/us/breonna-taylor-officers-charged.html.

[15] Michael E. Miller, Lindsey Beter, & Sarah Kaplan, *How a Cellphone Video Led to Murder Charges Against a Cop in North Charleston, S.C.*, Washington Post (Apr. 8, 2015), https://www.washingtonpost.com/news/morning-mix/wp/2015/04/08/how-a-cell-phone-video-led-to-murder-charges-against-a-cop-in-north-charleston-s-c/.

[16] *Id.*

[17] *Id.*

In Chicago, five separate police officers provided statements that Laquan McDonald lunged aggressively towards Officer Jason Van Dyke before Mr. McDonald was shot 16 times. However, dashboard camera footage released 13 months after the incident showed Mr. McDonald made no movements in the direction of any officer at the scene.[18] In fact, Mr. McDonald was trying to walk past the officers and even veered away from them as he passed.[19] Similarly, the Minneapolis Police Department's ("MPD") initial statement following the murder of George Floyd was proven false. MPD characterized Mr. Floyd's death as a "Man Dies After Medical Incident During Police Interaction."[20] The statement did not mention that officers had been restraining Mr. Floyd on the ground, let alone the knee Officer Derek Chauvin forced upon Mr. Floyd's neck and back for over nine minutes. Body camera and witness footage later exposed that MPD's initial statement drastically mischaracterized the officers' misconduct.

The existence of video footage does not always prevent law enforcement officers from distorting the truth after deadly force or excessive force incidents. Many law enforcement agencies have a policy and practice of allowing officers to

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[18] Monica Davey, *Officers' Statements Differ from Video in Death of Laquan McDonald*, N.Y. Times (Dec. 5, 2015), https://www.nytimes.com/2015/12/06/us/officers-statements-differ-from-video-in-death-of-laquan-mcdonald.html.

[19] *Id.*

[20] Eric Levenson, *How Minneapolis Police First Described the Murder of George Floyd, and What We Know Now*, CNN (Apr. 21, 2021), https://www.cnn.com/2021/04/21/us/minneapolis-police-george-floyd-death/index.html.

review video evidence before writing a report, giving a statement, or participating in an internal interview. If an officer is inclined to lie, reviewing the video evidence enables them to "lie more effectively" and describe their version of events "in ways that the video evidence won't contradict."[21] For instance, if the subject of the video steps out of frame or is obscured by an object, an officer may use that as an opportunity to lie about what happened during that time to paint themselves or other officers in a more favorable light.[22] Further, viewing video evidence can alter an officer's recollection of the incident such that the most favorable video evidence—which may be from an angle the officer could not have seen at the time—becomes the dominant narrative while details that were not captured on video are left out of the narrative completely.[23] Here, the District Court relied on an investigatory report that included statements about what multiple officers perceived during the incident to form the basis of the facts section rather than analyze what each officer knew at the time. Appellant's Brief (ECF 18) at 23. Further, although video footage of the incident exists in this case, certain camera views were obscured. *Id.*

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[21] Jay Stanley and Peter Bibring, *Should Officers Be Permitted to View Body Camera Footage Before Writing Their Reports?*, ACLU (Jan. 13, 2015), https://www.aclu.org/news/free-future/should-officers-be-permitted-view-body-camera-footage-writing-their-reports.

[22] *Id.*

[23] *Id.* After reviewing the Los Angeles County Sheriff's Department's policy of allowing deputies to review video footage before making a statement, the Los Angeles County Office of Independent Review "found ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event."

While law enforcement is a profession that demands integrity, police officers regularly fall short of the job's expectations for honesty. The prevalence of police dishonesty reveals that police statements should not be unconditionally trusted, particularly when they are made in the context of an internal affairs investigation or critical incident review. Instead, police statements should be held to equal scrutiny to any other witness or party statement, especially where conflicting evidence exists or the officers had opportunity to alter their statements after reviewing video evidence.

II. An Officer Cannot Prevail on Summary Judgment Based on Their Version of Disputed Facts

A defendant's motion for summary judgment must be denied if there is a genuine dispute of fact. *Brooks v. Johnson*, 924 F.3d 104, 111 (4th Cir. 2019). In determining whether a dispute of fact exists, the court reviews the record as a whole and draws all reasonable inferences in favor of the plaintiff. *Id.* In a police shooting case, an officer is not entitled to summary judgment when their use of force would be reasonable under their version of the events, but evidence exists that could arguably support the plaintiff's version of facts as well. *See*, *e.g.*, *Smith v. Finkley*, 10 F.4th 725, 730 (7th Cir. 2021); *Emmett v. Armstrong*, 973 F.3d 1127, 1135 (10th Cir. 2020); *Kelley v. O'Malley*, 787 F. App'x 102, 105 (3d Cir. 2019).

A. Officers Making Statements After Excessive Force and Deadly Force Incidents May Have Questionable Credibility and Their Statements Should Not Be Instinctively Accepted at Summary Judgment.

On summary judgment, "a court may not simply accept what may be a self-serving account by the police officer" where there is contrary evidence. *Ingle v. Yelton*, 439 F.3d 191, 195 (4th Cir. 2006) (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)). As discussed in Section I, *supra*, because police officers may not always be telling the whole truth in their statements, courts have incorporated that reality into their summary judgment jurisprudence. *See Stanton v. Elliott*, 25 F.4th 227, 234 (4th Cir. 2022) ("[I]n [deadly force] cases, it would be easy to overvalue the narrative testimony of an officer and to undervalue potentially contradictory physical evidence....So we should be cautious to avoid simply accepting officer testimony as true.").

This Court recently considered the veracity of police statements regarding whether an individual posed a threat to officers at the summary judgment stage in *Stanton v. Elliott*, 25 F.4th 227, 229 (4th Cir. 2022). In *Stanton*, a West Virginia state trooper shot and killed a man during a foot chase. In the trooper's version of events, deadly force was justified because he thought the man had found a gun in a couch and was turning around to face the trooper after making threats and behaving erratically earlier in the encounter. *Id.* at 235. However, this Court

explained that it "cannot simply accept the trooper's statements as true given potentially contradictory physical evidence," including forensic evidence showing the decedent was shot in the back; physical evidence, such as a number of missed shots (indicating it was hard for the trooper to hit a moving target) and the absence of a hiding place in the couch; and inconsistencies in the trooper's initial report and later testimony about what happened during and after the shooting. *Id.* at 235-37. This Court found that there could be no summary judgment on qualified immunity because the totality of the circumstances created a genuine fact question about whether the trooper lied about shooting the decedent as he ran away. *Id.* at 237.

This Court and district courts in this circuit have come to similar conclusions in prior cases. In *Ingle v. Yelton*, this Court found that the trial court prematurely granted summary judgment where it "relied almost exclusively" on officer statements claiming that an individual aimed his weapon at them in conflict with forensic evidence. 439 F.3d 191, 195 (4th Cir. 2006). In *Koon v. Prince George's Cty.*, the court found that defendants failed to support their version of events with sufficient independent evidence and it remained unclear whether the decedent was reaching toward his waistband when he was shot and whether he was shot while he was still falling down or after he was already on the ground. Civil Action No. DKC 17-2799, 2019 U.S. Dist. LEXIS 47698, at *11 (D. Md. Mar. 22, 2019). The court stated that although defendants were "attempting to meet their burden for summary

judgment by having the court credit Officer Edwards' statement,...credibility determinations are jury functions, not those of a judge." *Id.* (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (internal citations omitted)). *See also Blakely v. Kershaw Cty. Sheriff's Office*, No. 3:10-cv-707-JFA, 2012 U.S. Dist. LEXIS 113215, at *7-8 (D.S.C. Aug. 13, 2012) (finding genuine issues of material fact where a properly charged jury could reasonably reject the officers' testimony in light of ballistic evidence indicating decedent was shot in the back of the head); *Nolan v. Grim*, Civil Action No. 5:09CV00039, 2010 U.S. Dist. LEXIS 125906, at *25 (W.D. Va. Nov. 30, 2010) (finding evidence proffered by plaintiff sufficient to place the deputy's account of the incident in dispute and that a jury could discredit the deputy's testimony).

Other circuits have applied similar scrutiny to officer statements in deadly force cases. *See, e.g., Lamont v. New Jersey*. 637 F.3d 177, 184 (3d Cir. 2011) (finding genuine issue of disputed fact where New Jersey state troopers' statements claiming they shot and killed a man because they perceived him making a threatening, sudden movement to grab a weapon was contradicted by ballistic evidence showing they shot the man's backside); *O'Bert v. Vargo*, 331 F.3d 29, 40 (2d Cir. 2003)

(rejecting multiple self-serving officer accounts that a man's hand was not visible when they fatally shot him in favor of circumstantial evidence showing it

was not feasible for the decedent to acquire a weapon between when he was initially observed unarmed and when the officer fired the shots).

When determining whether to grant summary judgment in light of officer statements, courts consider whether a rational fact-finder could disbelieve the officer's testimony based on direct or circumstantial evidence. *See Stanton* at 236-37 ("[A] reasonable jury might…embrace Trooper Elliott as credible and his story as *the* story. But that same jury might also consider his story alongside the physical evidence and conclude that a different version of events took place.") (emphasis in original); *Ingle*, 439 F.3d at 195 ("a court must undertake a fairly critical assessment of the forensic evidence, the officer's original reports or statements and the opinions of experts to decide whether the officer's testimony could reasonably be rejected at a trial."); *see also Lamont* at 181-82 (quoting *Scott* at 915) (internal citation omitted) (same); *O'Bert* at 37 (same); *Elix v. Synder*, No. CIV-09-170-C, 2011 U.S. Dist. LEXIS 115185, at *16-18 (W.D. Okla. July 22, 2011) (circuit courts have embraced "the importance of circumstantial evidence at the summary judgment stage to determine whether a rational fact-finder could disbelieve part or all of the officer's version of events"). For example, the court may review medical reports, contemporaneous witness statements, physical evidence, expert testimony proffered by the plaintiff, and any other evidence in the record in the light most favorable to the plaintiff to determine whether a reasonable

fact-finder would disbelieve the officer's testimony. *See Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994).

Further, a court must consider the various ways in which an officer's statements may benefit the officer, fellow officers, or the officer's agency. *See Koon* at *11-12 (explaining that defendants were relying upon officer statements based on an internal interview that was "led by another officer, included no cross examination, and could have been done for the specific purpose of limiting legal exposure."); *see also Stephens v. N.J. State Police (In re Gibbons)*, 969 F.3d 419, 433 n.134 (3d Cir. 2020) (McKee, J., dissenting) (finding officer's testimony to be self-serving even though it undermined his qualified immunity claim because it was given "to establish that he exercised reasonable care before shooting").

Here, as in *Stanton* and *Ingle*, officer statements must be acknowledged for what they are: self-serving accounts that present the defendant's version of the facts. Moreover, circumstantial evidence that casts doubt on the defendants' version of the events must be credited. The summary judgment record in the District Court included evidence pointing to inconsistencies in the officers' statements, including forensic evidence and video footage, that could lead a reasonable jury to conclude that Plaintiff-Appellant did not pose an immediate threat to safety when he was shot.

B. The Lower Court Incorrectly Favored Defendants Version of the Facts.

The District Court erred by acting as fact-finder when making credibility determinations about the disputed self-serving officer statements. When considering the summary judgment motion, the District Court erroneously determined that the evidence presented—self-serving statements made during officer interviews—was more credible than conflicting evidence presented by Plaintiff. At summary judgment, courts are supposed to accept facts and draw inferences in favor of the nonmovant plaintiff. In this case, the District Court's opinion presents Defendants' version of the facts as true and only references Plaintiffs' alternative version of the facts as a less credible afterthought. Whether an officer's version of events is considered more or less plausible than the plaintiff's version of events should be determined by the jury. *See*, *e.g.*, *Suarez v. City of Bayonne*, 566 F. App'x 181, 186 (3d Cir. 2014) (finding that the district court's grant of summary judgment "amounted to a determination that [the plaintiff's] deposition testimony was not credible and that the evidence in the Detectives' favor outweighed that in favor of [the plaintiff], two determinations that it was not permitted to make at summary judgment."); *Elix* at *20 (plausibility of plaintiff's version of events will depend "on the believability of the witnesses when they testify"); *Darchak v. City of Chicago Board of Education*, 580 F.3d 622,

631 (7th Cir. 2009) ("[The plaintiff's] testimony presents specific facts, even if that testimony may be less plausible than the opposing litigant's conflicting testimony (a question we need not-nay, cannot-reach)."); *Washington v. Haupert*, 481 F.3d 543, 549 (7th Cir. 2007) (stating that "whether the [plaintiffs'] story is 'implausible' rests on whether they are credible, and we are not in a position to make that assessment"); *Abraham v. Raso*, 183 F.3d 279, 287 (3d Cir. 1999) ("a court should not prevent a case from reaching a jury simply because the court favors one of several reasonable views of the evidence. The judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." (internal citation omitted)).

It is clear from the District Court's recitation of the facts that it determined that the officers' self-serving statements were credible and gave them undue weight in making its decision. *See*, *e.g.*, Order of November 3, 2022 (ECF 22) at 2-5 (relying on the Pineville Police Department's Officer-Involved Shooting Internal Investigation ("OISII Report") (Doc. No. 16-7) in recitation of facts). The District Court improperly applied the summary judgment standard by accepting officer statements as true and framing its analysis from that lens.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Plaintiff-Appellant's brief, this Court should reverse the District Court's Order.

Respectfully submitted this 22nd day of March, 2023.

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CERTIFICATE OF COMPLIANCE

This brief complies with the applicable type-volume limit and typeface requirements. Excluding the parts of the document exempted by Fed. R. App. P. 32(f), this brief contains 4,662 words, and has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: March 22, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on March 16, 2023. I certify that all participants in the case that require service are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: March 22, 2023

/s/J. Christopher Mills
J. Christopher Mills