

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CLAYTON HULBERT, *et al.*,

Plaintiffs-Appellees,

v.

SGT. BRIAN POPE,

Defendant-Appellant.

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No. 21-1608

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OPPOSITION TO APPELLEES’ MOTION TO DISMISS APPEAL

Defendant-appellant Sergeant Brian T. Pope, by undersigned counsel, opposes plaintiffs-appellees’ motion to dismiss this appeal. The motion should be denied because this appeal presents only legal issues and does not require the Court to assess the weight of the factual record. Consequently, the appeal falls within the Court’s well-defined jurisdiction to consider interlocutory appeals from orders denying summary judgment on the basis of qualified immunity.

ARGUMENT

As plaintiffs acknowledge in their motion, this Court has jurisdiction over interlocutory appeals from “denials of summary judgment as to qualified immunity” when the appellate issues are “limited to legal questions.” Doc. 32 at 3 (quoting *Hicks v. Ferreyra*, 965 F.3d 302, 308-09 (4th Cir. 2020)). As they further acknowledge, the Court’s jurisdiction extends to a denial of summary judgment as

to qualified immunity “to the extent it turns on an issue of law.” Doc. 32 at 3 (quoting *Hicks*, 965 F.3d at 308 (quoting *Gould v. Davis*, 165 F.3d 265, 268 (4th Cir. 1998))). This appeal falls well within that rule.

In his opening brief, Sgt. Pope presents three purely legal questions, Doc. 28 at 11, none of which asks this Court to reweigh the record evidence or to disagree with the district court’s assessment of the record evidence. *Hicks*, 965 F.3d at 308. Instead, the questions presented ask the Court to “take the facts as the district court gives them” and “view those facts in the light most favorable to the plaintiff[s].” *Id.* at 309. Sgt. Pope’s position is that, even when all factual disputes and inferences are drawn in favor of plaintiffs-appellees, he still is entitled to judgment as a matter of law on the issue of qualified immunity.

Question 1 asks the Court to determine the materiality of a dispute of fact upon which the district court relied to deny summary judgment. The materiality of an alleged fact is a matter of law that may be reviewed on an interlocutory appeal from a denial of qualified immunity. *See, e.g., Maldonado v. Rodriguez*, 932 F.3d 388, 390-91 (5th Cir. 2019) (on appeal from denial of summary judgment “court may consider the materiality of an alleged fact issue as akin to a matter of law but may not review the genuineness of the factual dispute”); *McColley v. County of Rensselaer*, 133 F.3d 189, 195 (2nd Cir. 2014) (observing that jurisdiction over appeal from interlocutory denial of qualified immunity may exist when the

defendant “contests the materiality of the disputed facts”); *Stoudemire v. Michigan Dep’t of Corrections*, 705 F.3d 560, 565 (6th Cir. 2013) (observing that materiality is determined “by reference to the applicable substantive law”); *Carroll v. Rochford*, 71 Fed. App’x 124, 126 (3rd Cir. 2003) (remanding for district court to identify the particular facts in dispute or explain the materiality of those facts in relation to the qualified immunity defense so that Court of Appeals could determine whether it had jurisdiction).

Question 2 asks the Court to consider whether the district court improperly focused on evidence of Sgt. Pope’s subjective reasons for plaintiffs’ arrest and disregarded other, objectively reasonable grounds for the arrest. This question turns on Sgt. Pope’s contention that the district court ignored a governing legal principle—“that an officer’s subjective reason for making the arrest need not be the criminal offense charged when the known facts provide probable cause for other charges.” Doc 28 at 32-33. Question 2 thus also presents a purely legal issue.

Question 3 presents the classic legal issue raised in interlocutory appeals from denials of qualified immunity on summary judgment—whether the right asserted by plaintiffs was clearly established within this Circuit at the time of the plaintiffs’ arrest. *See Johnson v. Jones*, 515 U.S. 304, 311-12 (1995) (explaining why denial of public official’s qualified immunity defense may be immediately appealed under collateral order doctrine when the appeal concerns “not which facts the parties might

be able to prove, but, rather, whether or not certain given facts showed a violation of ‘clearly established law’”) (discussing *Mitchell v. Forsyth*, 472 U.S. 511, 528 (1985)).

Plaintiffs’ motion does not address the questions presented on appeal let alone explain why those questions do not raise legal issues. Instead, plaintiffs rely wholly upon the fact that the district court cited disputes of fact in denying Sgt. Pope’s motion. Doc. 32 at 2-3. But, in his opening brief, Sgt. Pope already identified those disputes of fact and explained why they do not deprive this Court of jurisdiction over this appeal. Doc. 28 at 21-31. Plaintiffs’ motion addresses none of those arguments. In essence, plaintiffs argue that the simple fact that a denial of summary judgment is based on disputes of fact brings the appeal outside the collateral order doctrine. As this Court has recognized in at least one case, that position is untenable. *See Chase v. Grant*, No. 99-7484, 2000 WL 630953, at *2-3 (4th Cir. May 16, 2000).

In *Chase*, the district court denied summary judgment on a qualified immunity defense “[b]y simply concluding that there were disputed questions of fact as to the [d]efendants’ claims of qualified immunity, without identifying what facts were in dispute and explaining how those disputed facts were relevant to its analysis of the [d]efendants’ claim of qualified immunity.” *Id.* at *3. As this Court observed, the district court’s order effectively deprived the defendants of one of the main purposes of the qualified immunity defense: avoidance of trial. *Id.* This Court, therefore,

remanded the case to the district court for further analysis and directed the district court to “recite in detail which facts are in dispute” and “explain the materiality of those disputes as to the qualified immunity defense.” *Id.* That course of action would have been completely unnecessary if the identification of disputes of fact, standing alone, was sufficient to defeat appellate jurisdiction. *See also Forbes v. Township of Lower Merion*, 313 F.3d 144, 146 (3rd Cir. 2002) (announcing supervisory rule requiring district courts “to specify those material facts that are and are not subject to genuine dispute and explain their materiality” in all subsequent cases “in which a summary judgment motion based on qualified immunity is denied on the ground that material facts are subject to genuine dispute”).

Plaintiffs’ motion fails to demonstrate that this appeal falls outside the well-defined boundaries of the collateral order doctrine.

CONCLUSION

The Court should deny the motion to dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on 7th day of March, 2022, the foregoing was filed electronically and served on counsel of record, who are registered CM/ECF users.

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