

# 21-2047

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*In the United States Court of Appeals  
For the Second Circuit*

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Basel M. Soukaneh,  
*Plaintiff-Appellee,*

v.

Nicholas Andrzejewski,  
*Defendant-Appellant,*

David Andrzejewski,  
*Defendant*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CONNECTICUT

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REPLY BRIEF OF DEFENDANT-APPELLANT,

Nicholas Andrzejewski

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## **SUMMARY OF THE ARGUMENT**

The District Court held that the Defendant was not entitled to qualified immunity for handcuffing and detaining the Plaintiff and for searching the Plaintiff's vehicle, because it held that "no reasonable officer could conclude that Plaintiff posed a meaningful threat of being 'armed *and* dangerous' simply because he disclosed that he had a pistol and a license to possess it," and because it held that "no reasonable officer would believe he or she had probable cause to believe Plaintiff was committing or had committed the crime of unlawful possession of the firearm in a vehicle . . . ." Ruling at 13 (JA97) (emphasis in original citation omitted).

No Supreme Court or Second Circuit decision existed at the time of the subject incident holding that an individual had a clearly established right to prohibit the search of his motor vehicle passenger compartment and trunk when he admittedly was in possession of a handgun in his vehicle and was in possession of a facially valid pistol permit, the validity of which was unknown prior to verification. Therefore, the Defendant did not and could not have violated the Plaintiff's clearly established rights.

## **ARGUMENT**

### **I. The District Court Erred by Denying in Part the Defendant’s Motion for Summary Judgment because the Defendant Did Not Violate Any Clearly Established Statutory or Constitutional Right of which a Reasonable Person Would Have Known**

#### **A. Any Right Allegedly Violated by the Defendant Was Not Clearly Established in this Circuit**

As this Court has held, “[w]hen neither the Supreme Court nor this court has recognized a right, the law of our sister circuits and the holdings of district courts cannot act to render that right clearly established within the Second Circuit.”

Pabon v. Wright, 459 F.3d 241, 255 (2d Cir. 2006). Neither the Plaintiff nor the Amicus Curiae cites any authority from this Circuit holding that a person found in possession of a firearm may not be detained to permit police to confirm the validity of that person’s pistol permit.

The Plaintiff asserts that “[a] constitutional violation that is so patent that no violator has even attempted to obtain an appellate ruling on it can be regarded as clearly established even in the absence of precedent.” Pl’s. Br. at 14 (citation omitted). This principle is inapplicable here. The Plaintiff need look no further than the Ruling from which this appeal is taken to see that the issue presented to this Court has been addressed in written opinions by courts of appeal in several other jurisdictions. See Ruling at 9 (JA93) (citations omitted). Indeed, most of those decisions prompted concurring opinions. See United States v. Black, 707

F.3d 531 (4<sup>th</sup> Cir. 2013) (Traxler, J. concurring); United States v. King, 990 F.2d 1552 (10<sup>th</sup> Cir. 1993) (Anderson, J. concurring); Commonwealth v. Hicks, 652 Pa. 353 (2019) (Baer, Dougherty, and Mundy, Js., concurring).

In the absence of case law on point from this Circuit or the Supreme Court, a reasonable officer could believe that he or she was justified in detaining an armed individual, who had been lawfully pulled over for a traffic violation, long enough to confirm that the individual had a valid pistol permit. The District Court therefore erred in denying the Defendant's Motion for Partial Summary Judgment with respect to his detention of the Plaintiff.

**B. Knowles v. Iowa is Irrelevant to the Present Case**

The Plaintiff cites Knowles v. Iowa, 525 U.S. 113 (1998), for the proposition that “[t]he law has been clearly established for a very long time that conduct such as that engaged in by the defendant-appell[ant] violates the Fourth Amendment.” Pl's. Br. at 9; see also id. at 13 (asserting that the Defendant's argument “completely ignores a case, cited by the district court in its opinion, which directly refutes his claim although it did not involve a firearms permit”). Knowles is irrelevant to the present case.

The opening sentences of Knowles identify the question before the Court in that case. As the Court stated, “[a]n Iowa police officer stopped petitioner

Knowles for speeding, but issued him a citation rather than arresting him. The question presented is whether such a procedure authorizes the officer, consistently with the Fourth Amendment, to conduct a full search of the car.” Knowles, 525 U.S. at 114. The Court answered that question in the negative. Id.

As the Plaintiff concedes, Knowles did not involve a firearms permit. Pl.’s Br. at 13. Knowles therefore provides no guidance as to whether a police officer may detain an individual found in possession of a firearm while confirming that the individual’s firearms permit is valid.

A police officer, such as the Defendant, confronted with a motorist carrying a deadly weapon in a high-crime area<sup>1</sup> could reasonably have believed that it was appropriate not to let that person go off into the night without first confirming that his firearms permit was valid. No existing law from this Court or the Supreme Court established or establishes otherwise. The Defendant was therefore entitled to qualified immunity in this case, and the District Court erred by denying in part his Motion for Summary Judgment.

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<sup>1</sup> See Ruling at 2 (JA86) (“The dark and high-crime area where Plaintiff stopped his vehicle was well-known for prostitution, drug transactions, and other criminal activity.”).

**CONCLUSION**

For the foregoing reasons, and those set forth in his principal Brief, the Defendant-Appellant respectfully requests that the Ruling of the District Court on the Defendant's Motion for Summary Judgment be reversed as to that portion of that Ruling denying that Motion, and that the matter be remanded with direction to grant the Defendant's Motion for Summary Judgment in its entirety.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE UNDER RULE 32(a)(7)**

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32 (a)(7)(B) because this brief contains 1290 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32 (a)(5) and the type-style requirements of Fed. R. App. P. 32 (a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14-point font.

Dated March 28, 2022.

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