PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1082

ADAM ARMSTRONG,

Plaintiff – Appellant,

v.

BRYAN HUTCHESON, Sheriff, Rockingham County, in his Personal Capacity; DANIEL L. CONLEY, in His Personal Capacity; BRADLEY SMITH, in His Personal Capacity,

Defendants – Appellees,

and

THOMAS JAMES, in His Personal Capacity; KRISTY MARIE ROADCAP,

Defendants.

Appeal from the United States District Court for the Western District of Virginia, at Harrisonburg. Elizabeth Kay Dillon, District Judge. **(**5:19−cv−00040−EKD−RSB)

Submitted: March 8, 2023 Decided: September 13, 2023

Before DIAZ, Chief Judge, and KING and QUATTLEBAUM, Circuit Judges.

Affirmed by published opinion. Judge Quattlebaum wrote the opinion, in which Judge King joined. Chief Judge Diaz wrote a dissenting opinion.

ARGUED: Wyatt B. Durrette, Jr., DURRETTE, ARKEMA, GERSON & GILL PC, Richmond, Virginia, for Appellant. Brittany E. Shipley, TIMBERLAKE SMITH, Staunton, Virginia, for Appellees. **ON BRIEF:** Christine A. Williams, DURRETTE, ARKEMA, GERSON & GILL PC, Richmond, Virginia, for Appellant. Rosalie Fessier, TIMBERLAKE SMITH, Staunton, Virginia, for Appellees.

QUATTLEBAUM, Circuit Judge:

Sometimes important constitutional issues are found in surprising places. This case, in a sense, is about a marital squabble. But embedded within it is the Fourth Amendment question of whether police officers' reliance on an alleged co-tenant's consent to enter a home without a warrant was reasonable under the circumstances. And resolving that issue requires us to examine the role of judges and juries in Fourth Amendment cases brought under 42 U.S.C. § 1983.

Adam Armstrong alleges two sheriff deputies unlawfully entered his home. The deputies claim Armstrong's then-wife, Kristy Marie Roadcap, invited them in. But although they disagree on whether the deputies' conduct was reasonable, they do not dispute the historical facts as to what happened. The deputies moved for summary judgment on the merits claiming that, even construing the facts in the light most favorable to Armstrong, their conduct was objectively reasonable. Alternatively, the deputies claimed they should be granted summary judgment based on qualified immunity. The district court agreed with the deputies on the merits, finding the deputies reasonably believed that Roadcap had the authority to consent to the deputies' entry.

We agree. When the facts are settled, as they are here, the question of objective reasonableness is for the court. And considering the totality of the circumstances, the deputies' conduct was reasonable. So we affirm the district court's order granting summary judgment to the deputies as to Armstrong's constitutional claims as well as his state-law claims.

I.

Early in the morning of June 9, 2017, Roadcap[1] called 911 to request police assistance in obtaining some of her personal belongings from inside Armstrong's home. She said that her husband, Armstrong, refused to allow her to enter the home. The 911 dispatcher asked whether there was "any kind of paperwork in place." J.A., Ex. F at 00:17–00:21. Roadcap denied the existence of any paperwork[2] and told the dispatcher, "I live here, I left last night to get ice cream and he won't let me back in the house." *Id.* at 00:21–00:27. Roadcap informed the dispatcher that she was outside the home, that Armstrong was inside and that the disagreement between them was verbal, not physical. The dispatcher asked Roadcap whether Armstrong had any weapons. Roadcap informed her that "there are guns in the home," but Armstrong had not been using them. *Id.* at 2:00–2:08.

The dispatcher then made an announcement for deputies to respond to Roadcap's 911 call. The dispatcher described the situation as "a domestic in progress" that was "verbal between husband and wife." J.A., Ex. G, Dispatcher Call at 00:15–00:19. The dispatcher

[1] At that time, Roadcap still used the last name "Armstrong." J.A. 42.

[2] It turns out Roadcap was lying. Prior to their marriage, Armstrong and Roadcap entered into a Premarital Agreement which listed the residence at issue as separate property to which Roadcap had no rights. On January 11, 2017, after Armstrong and Roadcap separated, Roadcap entered into a one-year lease agreement for a residence located in Rockingham, Virginia. Armstrong and Roadcap entered into a Separation and Property Settlement Agreement on January 20, 2017, affirming that the residence at issue belonged to Armstrong. On January 8, 2019, the Circuit Court of Rockingham County entered a Final Decree of Divorce between Armstrong and Roadcap. The Final Decree of Divorce provides that the parties lived separate and apart continually and without cohabitation from January 20, 2017, forward. The deputies, however, did not know this information.

stated, "[w]e have the wife on the line advising she wants to get her stuff from the property. The husband is being argumentative and won't let her into the residence. She did advise that there are guns inside the household, but he hasn't been using anything." *Id.* at 00:19–00:34.

Deputies Daniel Conley and Bradley Smith responded to the dispatcher's report of Roadcap's 911 call. Smith arrived first and went to the rear of the residence where Roadcap was sitting. He asked Roadcap for "her side of the story." J.A. 122. She "advised that her husband had locked her out of the home and would not allow her to get in, and she wanted to collect her belongings." *Id.* Smith then requested that dispatch run a check on Roadcap's driver's license to see if there were any outstanding warrants or protective orders. The dispatcher did not report any, but the address on Roadcap's driver's license did not match the address of Armstrong's residence.

Conley arrived shortly after Smith. This was not his first encounter with Roadcap and Armstrong. Two years earlier, Conley responded to a call by meeting Armstrong at his residence. He provided Armstrong with trespass notices to serve on Roadcap so that she could not come back on Armstrong's property.

Roadcap told Conley and Smith that, although she and Armstrong had separated, they had recently reconciled, and she had moved back into the residence. She also told the deputies that she had multiple vehicles at the residence.

Conley and Smith testified that they knocked on the back door of the house and announced their presence. They maintain there was no response. Roadcap then used a key[3] to cut a hole in an exterior screen located on the back door. After that, she pulled back the screen and used the key to unlock the back door.

Conley and Smith followed Roadcap into the residence and claim that they again announced their presence. Once inside, Conley observed several pictures of Roadcap on the walls. Roadcap took garbage bags from the kitchen and went upstairs to pack her belongings. The deputies followed Roadcap upstairs.

Armstrong was in his bedroom upstairs with their eleven-month-old daughter when he first heard the deputies and Roadcap. He exited his bedroom and, seeing the deputies and Roadcap upstairs in his home, said, "[c]an I help you?" J.A., Ex. H at 00:16–00:20. The deputies stated that they were helping Roadcap gather her belongings. Armstrong repeatedly told the deputies "[y]ou all have no right to be in here." *Id.* at 00:20–00:50. The deputies told Armstrong that they had a right to be there because Roadcap lived in the residence and Roadcap and Armstrong were legally married. *Id.* at 00:50–01:10. Armstrong insisted that Roadcap did not live in the residence. He explained that they were separated and had filed for divorce. And he asked the deputies to check Roadcap's ID to prove she did not live there. One of the deputies responded that "she lives here, the ID is meaningless." *Id.* at 01:10–01:11. After Armstrong continued to insist that Roadcap did

[3] Roadcap testified that she had retrieved the key that unlocked the back door from underneath a rock located next to the door. It is unclear from the record whether she retrieved the key before or after the deputies arrived.

not live in the residence, the deputies asked why Roadcap would store all her belongings at Armstrong's residence if she did not live there.

Conley then directed Smith to "hold" Armstrong at the bottom of the stairs while Roadcap continued gathering her belongings. J.A. 156. Armstrong testified that Conley told him, "you need to stay there with [Smith]." J.A. 158. Neither of the deputies physically restrained Armstrong, but the deputies were armed and in uniform.

After gathering her and their daughter's clothes, Roadcap personally carried the belongings out of the residence. The deputies escorted Roadcap but did not help her carry anything.

Armstrong testified that, after the incident, he could not find his passport and key fob. Roadcap denied taking those items.

II.

Armstrong sued Conley, Smith and Roadcap[4] under 42 U.S.C. § 1983 for violating the Fourth Amendment by entering his home and detaining him after they were inside. He also asserted Virginia state law claims against those same defendants plus Sheriff Bryan Hutcheson[5] for false imprisonment, trespass, unlawful search in violation of Virginia Code

[4] Armstrong also sued Deputy Thomas James, who arrived at the residence while Armstrong and Deputy Smith were still downstairs. James stayed at the residence very briefly, spoke with Conley and Smith, and then left. However, prior to the court's decision on the defendants' motion for summary judgment, the parties stipulated to the dismissal of James as a defendant.

[5] Armstrong named Sheriff Hutcheson only in the state law claims.

§ 19.2-59, conversion and gross negligence.[6] After discovery, the sheriff and his deputies moved for summary judgment on all counts.[7]

The district court granted the motion. As to the initial entry into Armstrong's home, the court concluded that "the totality of the circumstances known to deputies Conley and Smith at the time they entered the residence support a reasonable belief by the deputies that Roadcap had authority to allow the deputies to enter the residence." J.A. 655. The court also dismissed Armstrong's Fourth Amendment seizure of his person claim. The court concluded that the seizure of Armstrong was reasonable because the deputies did not touch or handcuff him, and the 911 dispatcher described the situation as "a domestic in progress" and told the deputies that there were firearms in the home. J.A. 659. Because the district court found that Armstrong's claims failed on the merits, it declined to reach the issue of qualified immunity.

And for essentially the same reasons that it granted summary judgment on the Fourth Amendment claims, the district court granted the defendants' motion as to

[6] Armstrong also brought a civil conspiracy claim against all parties but, along with stipulating dismissal of James as a defendant, the parties also agreed to the dismissal of that claim.

[7] Armstrong moved for partial summary judgment against Roadcap. Roadcap, proceeding pro se, did not respond. The court granted Armstrong's motion for partial summary judgment against Roadcap on the common law trespass and conversion claims. But it denied the motion as to (1) the Fourth Amendment claims because Roadcap was not acting under color of state law; (2) the false imprisonment claim because there was no evidence that she restrained him; and (3) the gross negligence claim because Armstrong failed to plead or argue the existence of a legal duty. Armstrong does not appeal any of these rulings.

Armstrong's state law claims for common law false imprisonment, unlawful search in violation of Virginia Code § 19.2-59, common law trespass and gross negligence. As to the common law conversion claim, the court held there was no evidence the deputies removed, or even touched, any of Armstrong's property.[8]

III.

A.

1.

We begin with Armstrong's § 1983 claim that the deputies violated his Fourth Amendment rights when they entered his home, without a warrant, with Roadcap. The Fourth Amendment generally prohibits the warrantless entry of a person's home. *Payton v. New York*, 445 U.S. 573, 586 (1980). Yet, "[t]he prohibition does not apply, [], to situations in which voluntary consent has been obtained, either from the individual whose property is searched or from a third party who possesses common authority over the premises." *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990) (cleaned up) (internal citations omitted). This exception "extends even to entries and searches with permission of a co-occupant whom the police reasonably, but erroneously, believe to possess shared authority as an occupant." *Georgia v. Randolph*, 547 U.S. 103, 109 (2006) (citing *Rodriguez*, 497 U.S. at 186). The determination of whether the police reasonably believed that an

[8] Armstrong timely appealed and we have jurisdiction under 28 U.S.C § 1291.

individual possessed authority to "consent to [their] enter[ing] must be judged against an objective standard: would the facts available to the officer at the moment . . . 'warrant a man of reasonable caution in the belief' that the consenting party had authority over the premises?" *Rodriguez*, 497 U.S. at 189 (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968)) (cleaned up).

But who decides whether the officers' conduct was objectively reasonable? The judge or the jury? Those familiar with tort law might instinctively say the jury. After all, in negligence cases, juries are called on to decide issues of reasonableness under objective standards every day in courtrooms across the country. That, in fact, is a hallmark of the Seventh Amendment. *See* U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.").

Objective reasonableness under the Fourth Amendment, however, is handled differently from reasonableness under tort law. When there is no dispute about the historical facts—the who, what, where and when of what happened—the objective reasonableness of officers' conduct is a matter of law to be decided by the court. In *Scott v. Harris*, the Supreme Court said "[a]t the summary judgment stage, [] 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, [] 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." 550 U.S. 372, 381 n.8 (2007)

(cleaned up). And since *Scott*, we have repeated that principle several times. *See Cloaninger ex rel. Cloaninger v. McDevitt*, 555 F.3d 324, 333 (4th Cir. 2009) ("The officers' conduct is thus established beyond genuine dispute. The only remaining question is whether that conduct was objectively reasonable, which is a question of law, not fact."); *Henry v. Purnell*, 652 F.3d 524, 531 (4th Cir. 2011) ("At the summary judgment stage, once we have viewed the evidence in the light most favorable to the nonmovant, the question of whether the officer's actions were reasonable is a question of pure law."); *Putman v. Harris*, 66 F.4th 181, 186 (4th Cir. 2023) ("To determine whether the force used was excessive, we apply a standard of objective reasonableness. This is a question of law, which we judge from the perspective of a reasonable officer on the scene." (internal quotation marks and citations omitted)).

Why the difference? Justice Scalia provided at least one reason. "I frankly do not know why we treat some of these questions as matters of fact and others as matters of law—though I imagine that their relative importance to our liberties has much to do with it." Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1182 (1989). Academics have also offered explanations. *See* Michael L. Wells, *Scott v. Harris and the Role of the Jury in Constitutional Litigation*, 29 REV. LITIG. 65, 66 (2009) (arguing that judges should decide Fourth Amendment reasonableness because, unlike juries, they can establish rules needed to "clearly establish[]" rights); Randall H. Warner, *All Mixed Up About Mixed Questions*, 7 J. APP. PRAC. & PROCESS 101, 143–44 (2005) (suggesting that unlike reasonable care in negligence cases, probable cause and reasonable suspicion

are "constitutional terms that define the scope of a suspect's Fourth Amendment rights," making the varied ways juries might define those rights ill-advised).[9]

Readers may or may not find these explanations persuasive. But under the Supreme Court's *Scott* decision and our precedent, when the historical facts are settled, the question of the objective reasonableness of officers' conduct is a question of law to be decided by the court.

2.

Even so, how does the rule that the objective reasonableness of the officers' conduct is a question of law fit with how we resolve motions for summary judgment? To answer that, start with the standard for summary judgment. As we all know, the party seeking summary judgment bears the initial burden of demonstrating that there is no genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "A fact is 'material' if proof of its existence or non-existence would affect disposition of the case under applicable law. An issue of material fact is 'genuine' if the evidence offered is such that a reasonable jury might return a verdict for the non-movant." *Wai Man Tom v. Hosp.*

[9] The Sixth Circuit, in *Gerics v. Trevino*, identified Justice Scalia's and Professor Warner's justifications for treating Fourth Amendment reasonableness as a question of law when the law treats reasonable care in the tort context as a matter of fact. But that court also noted that "the founders believed that juries safeguard our constitutional rights." 974 F.3d 798, 804–05 (6th Cir. 2020) (citing the Seventh Amendment and writings of the Federalists and Anti-Federalists). Ultimately, relying heavily on *Ornelas v. United States*, 517 U.S. 690 (1996), the Sixth Circuit held that reasonableness in the probable cause context was a matter for the court. *Gerics*, 974 F.3d at 805–07; *see also id*. at 808–10 (Thapar, J., concurring) (citing early cases from England and the United States to conclude that history also supports treating objective reasonableness under the Fourth Amendment as a question of law).

Ventures LLC, 980 F.3d 1027, 1037 (4th Cir. 2020) (citations omitted). But "courts must view the evidence in the light most favorable to the nonmoving party []." *Variety Stores, Inc. v. Wal-Mart Stores, Inc.*, 888 F.3d 651, 659 (4th Cir. 2018) (cleaned up). These basic principles apply in Fourth Amendment cases, like in all civil cases. *Tolan v. Cotton*, 572 U.S. 650, 656–56 (2014) (per curiam).

In Fourth Amendment cases, disputes over historical facts can be material. So, if there are genuine disputes over what happened factually, courts must construe all historical facts in favor of the non-moving party to determine whether the dispute affects the outcome of the claim under the governing law. That is no different in Fourth Amendment cases than in any other civil case. But unlike in tort law, in Fourth Amendment cases, objective reasonableness is not a jury question—it is a question of law. Said differently, the court must decide, under the nonmovant's version of the facts, the purely legal issue of whether a constitutional violation has occurred. *See Scott*, 550 U.S. at 381 n.8; *Putman*, 66 F.4th at 186–87; *Henry*, 652 F.3d at 531; *Cloaninger*, 555 F.3d at 333.[10]

[10] One might question whether *Scott* and our cases really approach summary judgment differently in Fourth Amendment cases. Are they not, one might ask, merely holding that under the records of those cases, a reasonable jury could not conclude the officers violated the Fourth Amendment? While that is a fair question, the answer is no. Take a close look at *Scott*. There, the Supreme Court construed the facts in the light most favorable to the plaintiff but then decided it had to "slosh our way through the factbound morass of 'reasonableness.'" *Scott*, 550 U.S. at 383. In doing that, the Court weighed the various factors related to whether the force used by the officer was excessive in a way that, in tort law, a jury would do. What's more, in dissent, Justice Stevens argued that not only were the historical facts unsettled but also the jury should decide the reasonableness of officers' conduct. Even so, all eight of the other justices disagreed. Thus, for Fourth Amendment claims, the mixed question of applying the facts to the law to determine reasonableness, a question that goes to the jury in most other areas of the law, is assigned to judges.

That means that if, after construing the historical facts in favor of the non-moving party, the court determines the officers' conduct was unreasonable, summary judgment for the officers is improper. The case would then proceed to trial for a jury to resolve not the ultimate question of the conduct's reasonableness—because that is a question for the court—but the disputes over any material historical facts.[11] Then, after the jury resolves those disputes, the court decides the objective reasonableness of the officers' conduct. On the other hand, if at the summary judgment stage, the court decides the officers' conduct was reasonable—even when construing the historical facts in favor of the non-moving party—summary judgment is appropriate. In that situation, the factual dispute is not material because, even if the jury believes the nonmovant's version of events, no constitutional violation occurred.

[11] While we have not squarely addressed the proper way for juries to do this, some other circuits and commentators have. *See Cavanaugh v. Woods Cross City*, 718 F.3d 1244, 1255 (10th Cir. 2013) (recognizing that in submitting a "constitutional violation question to a jury where there are disputed historical facts," the trial court should "use special interrogatories"); *Simmons v. Bradshaw,* 879 F.3d 1157, 1164 (11th Cir. 2018) ("Where the defendant's pretrial motions are denied because there are genuine issues of fact that are determinative of [Fourth Amendment reasonableness], special jury interrogatories may be used to resolve those factual issues." (internal quotation marks omitted)); s*ee also* Catherine T. Struve, *Constitutional Decision Rules for Juries*, 37 COLUM. HUM. RTS. L. REV. 659, 702–13 (2006) (suggesting juries be given general verdict forms in constitutional cases in some cases but when qualified immunity hinges on disputes about historical facts, special interrogatories is the better course); M. Blum, *Scott v. Harris: Death Knell for Deadly Force Policies and Garner Jury Instructions*, 58 SYRACUSE L. REV. 45, 72 (2007) ("The logical implication of *Scott* is that if there are material issues of fact to be sent to the jury, the jury should decide those issues by way of special interrogatories and the court should decide the legal question of the objective reasonableness . . . .").

That said, here, there is no genuine dispute of material fact. The parties agree as to what occurred leading up to the deputies entering Armstrong's home. Their disagreement lies only with the ramifications of those facts. In other words, the parties disagree about whether the deputies reasonably believed that Roadcap possessed common authority over the premises. That again is a question of law for the court.

3.

With that background in hand, we return to the deputies' entry into Armstrong's home. The undisputed record here establishes that it was reasonable for the deputies to believe that Roadcap possessed authority to permit them to enter the residence. Roadcap told the deputies that she was married to Armstrong. She said they had previously separated but had since reconciled. She said that she stayed at the house the previous night, that she had personal belongings in the house and that two of the vehicles parked at the property were hers. Of course, we know in hindsight that Roadcap was lying. But, as the district court noted, "there is no evidence that the deputies knew the information [provided by Roadcap] to be false." J.A. 655.

Further, there was evidence corroborating some of what Roadcap said. There were multiple cars parked outside the house. And Roadcap's driver's license indicated, at that time, she and Armstrong still shared the same last name.

True, Conley had previously provided Armstrong with trespass notices to serve on Roadcap to prevent her from coming back on his property. But as the district court pointed out, that was two years earlier. And Roadcap told the deputies that they had reconciled. Couples—even those with rocky relationships—often reconcile.

Also, the deputies did not rely solely on information from Roadcap. They asked dispatch to use her driver's license to check for any current outstanding arrests and protection orders and learned there were not any. This prior episode does not render the deputies' conduct unreasonable.

Nor does the fact that Roadcap's driver's license listed a different address. Again, Roadcap acknowledged that they had previously separated. She told the deputies that despite that, they had reconciled. And the deputies did not know she was lying.

Finally, that Roadcap had to cut the screen door to gain entry may, at first blush, support Armstrong's argument. But it is also consistent with Roadcap's story that she was living at the house—how else did she have a key?—and that Armstrong locked her out. So it is not enough to overcome the other evidence that the deputies' conduct was reasonable. After all, we review the reasonableness of the deputies' conduct under the totality of the circumstances. *Ohio v. Robinette*, 519 U.S. 33, 39 (1996). And under the totality of the circumstances here, the deputies' conduct was objectively reasonable.[12]

B.

Next, Armstrong argues that a reasonable jury could find that the deputies seized his person in violation of the Fourth Amendment by holding him at the bottom of the stairs

[12] Because of our conclusion that the deputies reasonably believed that Roadcap possessed common authority over the premises, we need not address their alternative qualified immunity argument that the Fourth Amendment right allegedly violated was not clearly established when they entered Armstrong's home. Thus, although we plainly disagree with our dissenting colleague's position that a Fourth Amendment violation occurred, we state no view on the dissent's further assertion that the right at issue was clearly established.

during the search. "A [Fourth Amendment] seizure of the person . . . occurs when, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Kaupp v. Texas*, 538 U.S. 626, 629 (2003) (internal quotation marks omitted) (citations omitted).

Whether a seizure violates the Fourth Amendment turns on how it is conducted. *See Scott*, 550 U.S. at 381. More specifically, was it carried out in an "objectively reasonable" manner? *Id.* In determining whether a particular seizure is reasonable, courts "must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *United States v. Place*, 462 U.S. 696, 703 (1983).

Construing the evidence in the light most favorable to Armstrong, the deputies did, as the district court concluded, briefly detain Armstrong. But we agree with the district court that the deputies acted reasonably as a matter of law because they were responding to a domestic situation, there were guns in the house and Armstrong was argumentative. Accordingly, we affirm the district court's order granting summary judgment on the seizure of person claim as well.

C.

Finally, we turn to Armstrong's state law claims. The issues in Armstrong's false imprisonment, trespass and Virginia Code §19.2-59[13] unlawful search claims largely track his § 1983 Fourth Amendment claims. So, we affirm the district court's order granting summary judgment on those claims for the reasons described in III. A above. And likewise, we find no error in the district court's grant of summary judgment to the defendants on Armstrong's conversion and gross negligence claims. Under Virginia law, gross negligence involves "the utter disregard of prudence amounting to the complete neglect of the safety of another." *Volpe v. City of Lexington*, 708 S.E.2d 824, 828 (Va. 2011) (citation and quotation marks omitted). Construing the evidence in the light most favorable to Armstrong, the deputies exercised some care. Thus, the district court properly dismissed the gross negligence claim. Last, as to the conversion claim, the district court properly explained that there is no evidence in the record that the deputies possessed, touched or exercised any authority over Armstrong's personal property. *See Condo. Servs., Inc. v. First Owner's Ass'n of Forty Six Hundred Condo., Inc.*, 709 S.E.2d 163, 171 (Va. 2011) (stating that conversion requires the "'wrongful exercise or assumption of authority'" over another person's property that amounts to depriving of possession). Thus, there is no genuine dispute of material fact as to that claim.

[13] Virginia Code § 19.2-59 "affords only the same substantive protection as that provided by the Fourth Amendment." *Buonocore v. Chesapeake & Potomac Tel. Co. of Va.*, 492 S.E.2d 439, 441 (Va. 1997) (collecting cases).

IV.

For these reasons, the district court's order granting summary judgment to the deputies is

AFFIRMED.

DIAZ, Chief Judge, dissenting:

I agree with the majority that whether the conduct of the deputies here was objectively reasonable is a pure question of law for the court.[1]

But I'm compelled to conclude that the deputies acted unreasonably and violated Adam Armstrong's Fourth Amendment rights. And although not ruled on by the district court, I would also hold that the deputies aren't entitled to qualified immunity.

Accordingly, I dissent.

I.

In ruling for the deputies on the Fourth Amendment issue, the district court relied on six undisputed facts: (1) Kristy Roadcap told the deputies she was married to Armstrong but separated, yet she had moved back into the residence; (2) Roadcap and Armstrong shared a surname then; (3) Deputy Conley had responded before to a call at the residence in which he provided Armstrong "with trespass notices to serve on Roadcap so that she could not come back on Armstrong's property," but that occurred two years earlier and Roadcap said they'd since reconciled; (4) the deputies ran Roadcap's license, which showed a different address, and found no warrants or orders and that she lived in the county; (5) Roadcap told the deputies she had two vehicles at the residence; and (6) she

[1] I also agree that the district court correctly entered judgment against Armstrong's gross-negligence and conversion claims.

"produced a key that unlocked an exterior door to the residence." *Armstrong v. Hutcheson*, No. 5:19-cv-00040, 2021 WL 4487134, at *7 (W.D. Va. Sept. 30, 2021).

The Fourth Amendment doctrine of third-party consent informs us about what kind of information can create a reasonable belief that Roadcap had authority—and what kind of information can't. Taking each fact in turn and under the totality of the circumstances, I would hold that the deputies acted objectively unreasonably and violated the Fourth Amendment.

On the first fact, Roadcap told the deputies she was married to Armstrong, but separated, and yet had recently moved back into the home. The district court suggests this fact supports a reasonable belief that Roadcap had apparent authority to consent to the deputies' entry into the home. But the Supreme Court has warned that even when an "invitation is accompanied by an explicit assertion that the person lives there, the surrounding circumstances could conceivably be such that a reasonable person would doubt its truth and not act upon it without further inquiry." *Rodriguez*, 497 U.S. at 188; *see also Georgia v. Randolph*, 547 U.S. 103, 112 (2006) (officers can't rely on social assumptions if there's "reason to doubt" that a typical living situation was in place).

Here, the district court misapplied the doctrine in concluding that Roadcap's explanation supported the deputies' decision to enter the home. If anything, that the couple had separated but that Roadcap still claimed she had recently moved back into the home should have put the deputies on notice that something might be amiss. Even more so given that Armstrong was refusing to allow Roadcap to enter the home.

The second fact, that Armstrong and Roadcap had the same surname then, is undisputed. Standing alone, that fact might support a social expectation that married people with the same surname live together. But here, that fact isn't enough to outweigh the other red flags under the totality of the circumstances. *See Randolph*, 547 U.S. at 112.

In my view, the third fact (the earlier incident in which Deputy Conley gave Armstrong trespass notices he could give to Roadcap) is the primary place the district court went astray. Conley testified he understood Armstrong and Roadcap to be married based on that prior incident, and that he remembered serving trespass citations for Roadcap.

But this history of Armstrong trying to bar Roadcap from his home was a "reason [for Conley] to doubt" Roadcap's suggestion that she and Armstrong lived together in a "regular" arrangement for married couples. *Id.* The district court's conclusion—that it was reasonable for the deputies to simply credit Roadcap's assertion that she and Armstrong had reconciled—goes against *Rodriguez* and *Randolph* because it ignores the deputies' duty to investigate whenever there are "surrounding circumstances . . . such that a reasonable person would doubt" Roadcap's assertions and not take them at face value. *Rodriguez*, 497 U.S. at 188.

The same is true for the fourth fact, where the district court suggested it was understandable that Roadcap produced a license with a different address because she could explain that away, too. It's especially questionable that the district court decided that the fact that Roadcap lived in the county—at a different address—could *support* the deputies' belief that she lived in Armstrong's home. To the contrary, it's yet another reason to doubt Roadcap's authority to grant consent to enter.

Fifth, the district court suggested (and the majority appears to accept) that the deputies knew, before they entered the home, that Roadcap had cars at the residence. But as Armstrong argued in the district court, there's no evidence to support that timing.

Sixth, the district court credited the deputies' testimony that Roadcap "produced a key that unlocked an exterior door to the residence." *Armstrong*, 2021 WL 4487134, at *7. But the undisputed evidence is that Roadcap used the key to cut through the screen of the exterior door!

The district court suggests that Roadcap's need to cut through the screen, "standing alone," didn't "negate" her apparent authority, since she could explain it away. *Id.* But that doesn't fly, for the reasons I've explained. Rather, this fact is yet another red flag that should've prompted the deputies to do more than take Roadcap's word for it.

On the undisputed facts, the deputies acted unreasonably in concluding that Roadcap could consent to their entry. And given that legal conclusion, the deputies' seizure of Armstrong inside the home would also—for the same reason—be unreasonable.

II.

Nor are the deputies entitled to qualified immunity. While the district court didn't reach this issue, the deputies pressed for qualified immunity in their motion for summary judgment (and therefore built a record for it it). And they've asked us to affirm on this alternative ground. Since this too presents only a pure legal issue, I would reach the question and hold that the deputies aren't entitled to immunity. *See, e.g.*, *Scinto v. Stansberry*, 841 F.3d 219, 235–36 (4th Cir. 2016).

That officers may not enter a person's home absent a warrant or valid consent is clearly established,[2] and the apparent-authority doctrine is nothing new. *See Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (even if there's no case on point, qualified immunity doesn't attach if the "contours of the right" are "sufficiently clear that a reasonable official would understand that what he is doing violates that right"); *see also, e.g.*, *Turmon v. Jordan*, 405 F.3d 202, 206 (4th Cir. 2005) ("Although we have found no case exactly like this one, . . . [a] reasonable police officer would have realized that there was no basis for reasonable suspicion of criminal activity and that seizing Turmon would be unlawful.").

That the deputies acted unreasonably under the Fourth Amendment doesn't automatically compel the conclusion that they aren't entitled to qualified immunity. But in my view, this case isn't particularly close.

I'm persuaded by a case Armstrong cites suggesting that facts like these don't present a close call for qualified-immunity purposes. In *Boyer v. Petersen*, the court denied an officer's motion for summary judgment, holding that he violated the Fourth Amendment and wasn't entitled to qualified immunity for his warrantless entry into the plaintiff's home. 221 F. Supp. 3d 943, 948 (W.D. Mich. 2016).[3]

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[2] Aside from consent, there are other "jealously and carefully drawn" exceptions to the requirement that officers obtain a warrant before entering a home, such as exigent circumstances. *See Lange v. California*, 141 S. Ct. 2011, 2017–18 (2021) (cleaned up) (describing the varieties of exigent circumstances that justify warrantless home entry without consent). This case implicates none of those other exceptions.

[3] *Boyer* doesn't clearly establish rights in our circuit. But it does explain why the settled law on valid consent should have led the deputies to reject Roadcap's claims.

The officer relied on the plaintiff's estranged wife's consent to enter the home, although the officer knew she didn't live there and that her marriage to the plaintiff was on the rocks. *Id.* The officer also knew that the plaintiff had cancelled an "appointment" for his estranged wife to come to the home to retrieve belongings: In doing that, he withheld consent to her (or the police's) entry. *Id.* In fact, the officer's only basis for entering the home without a warrant was that the estranged wife consented, and her name was on the deed. *Id.*

These facts were enough for the court to hold that the officer's warrantless home entry "was so clearly wrong under established law that every reasonable officer would have understood that what he was doing violated [the plaintiff's Fourth Amendment] right." *Id.* (cleaned up). The court noted that "the Supreme Court surveyed and mapped the legal landscape with respect to third-party consent" over "forty years ago." *Id.* at 955. And no reasonable officer would have viewed the situation "as even a close call," even though the plaintiff's wife was an owner and deed-holder. *Id.* at 957.

The same result follows here, where the deputies knew or should have known that Roadcap had been barred from Armstrong's home in the past, that she lived at a different address, and that she was being refused entry again and had to use a key to cut through a screen door. On these facts, no reasonable officer could conclude that the Fourth Amendment would tolerate a warrantless entry without more investigation.

* * *

I respectfully dissent.