Case No. 04-4140

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DAVID and DEBBIE WALKER, *et. al.*,

Plaintiffs/Appellees,

vs.

UTAH COUNTY, *et. al.,*

Defendants/Appellants.

APPELLEES' BRIEF

Oral Argument Not Requested

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISON
The Honorable Ted Stewart, District Judge
District Court No. 2:02-CV-1427-TS

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STATEMENT OF THE ISSUE

Are Utah County Officers Meret Lance McDaniel and Jerry Monson entitled to qualified immunity for their participation in detaining the Walker Family, Appellees, in their home for almost one and a half hours, despite the fact that the detention violated the Walker Family's Fourth Amendment right to be free from this type of unreasonable detention, and the fact that this right was clearly established the night of the Walker detention, December 29, 1998?

STATEMENT OF THE CASE

David Walker, Sr., Debbie Walker, Tyree Lamph, Amy Melissa Lamph, and Patti Stratton Walker (collectively "the Walker Family" or "the Family"), through their former counsel, filed a lawsuit against Utah County and certain named individuals including Utah County Sheriff's deputies/detectives (collectively "Utah County Defendants") on December 30, 2002. (Complaint 2:02CV1427, App. 96.) The Complaint alleged violations of the Walker Family's Fourth Amendment right to be free from unreasonable seizures. The Walker Family's claims arose from Utah County Defendants' detention of the Walker family immediately following the fatal shooting of their family member, David Walker, Jr., by two police officers

(of entities not involved in this appeal). The Walker Family previously filed a Complaint against the other involved entities and officers on March 29, 2002 alleging the unconstitutional use of deadly force as well as illegal detention. (Complaint 2:02CV0253, App. 41.) These cases were consolidated on July 14, 2003, upon the Walker Family's Motion, which was not opposed. (Order on Motion to Consolidate, App. 139.)

The individual Utah County Defendants[1] filed a motion to dismiss on the basis of the qualified immunity defense on July 1, 2003 alleging that their "actions did not rise to the level of violating any clearly established federal constitutional right at the time of David Walker's death." (Reply in Support of Utah County Defendants' Motion to Dismiss, App. 241.) Defendants' qualified immunity was initially denied after a hearing on January 23, 2004. The Court denied Utah County's Motion to Dismiss a second time, on May 24, 2004, after oral argument. (Order on Utah County's Motion to Dismiss, App. 249.) On June 23, 2004, Sergeant Jerry Monson ("Monson") and Deputy Meret Lance McDaniel ("McDaniel") filed

[1] Initially the Walker Family used eight individual Utah Count Officers related to their illegal detention. The Walker Family voluntarily dismissed all Utah County Officers except M. Lance McDaniel and Jerry Monson. Thus, the only two officers before the court on this appeal are McDaniel and Monson.

a Notice of Appeal to this Court.[2]

STATEMENT OF FACTS

This appeal was brought after the District Court denied Utah County's Motion to Dismiss Utah County Officers McDaniel and Monson based on qualified immunity. When reviewing a motion to dismiss, the Court examines only the allegations made in the Complaint. *See* Fed. Rules Civ. Proc. Rule 12(b). The Court "accept[s] as true all well-pleaded facts, liberally construe[s] the pleadings, and make[s] all reasonable inferences in favor of the plaintiff." *Gonzales v. City of Castle Rock*, 366 F.3d 1093, 1096 (10th Cir. 2004) (citation omitted). Despite this clear standard, McDaniel and Monson set forth a Statement of Facts in their Opening Brief based almost entirely on facts that are not alleged in the Complaint. Further demonstrating their misunderstanding of what facts this Court may consider, McDaniel and Monson reproduced almost 200 pages of deposition testimony in the Appendix to their Brief. This Court cannot consider any of these

[2] The Family also filed illegal detention claims against Utah County, the entity, and other officers from Pleasant Grove City and Orem City who participated in their detention. After Officers Monson and McDaniel filed their Notice of Appeal, the remaining Defendants filed motions for summary judgment on the Family's detention claims. The issues were fully briefed and the District Court heard oral argument on October 21, 2004. The District Court ruled from the bench, dismissing all of the Family's remaining illegal detention claims. A final order has not yet been entered. However, upon entry of a final order, the Family anticipates appealing the District Court's dismissal of these related claims.

disputed facts in reviewing a motion to dismiss. Further, McDaniel's and Monson's over-broad and over-inclusive Statement of Facts containing numerous disputed facts must be disregarded.

In this case, two Complaints were filed by the Walker Family and subsequently consolidated. (Order on Motion to Consolidate, App. 139.) The second Complaint named McDaniel and Monson. (Complaint, December 30, 2002, Civil No. 2:02-CV-1427, App. 96.) Therefore, the facts alleged in the second Complaint are the subject of this appeal, and the statement of facts below is taken from that Complaint.

Law enforcement officers shot David Walker, Jr. at his family's residence on the night of December 29, 1998. (Complaint ¶ 1, App. 97.) Although several members of the Family were home on the night of the shooting, only Debbie Walker, Patty Stratton Walker, and Tyree Lamph actually witnessed the shooting. (Complaint ¶ 15, App. 100.) Nevertheless, officers detained all members of the Walker Family who were at home during the shooting.[3] Officers McDaniel and Monson, acting under the color of state law, were involved in detaining and questioning the Walker Family on the night of the shooting. (Complaint ¶ 8, App. 8.)

[3] The other family members detained included David Walker, Sr., Amy Lamph, Chad Stratton, and Dakota Lamph.

The Family members did not consent to their detention. (Complaint ¶ 16, App. 100.) Indeed, uniformed officers pointed their guns at both Debbie Walker's and Patty Stratton Walker's heads, and required them to remain in the residence. (Complaint ¶ 16, App. 100.) The detention in the house lasted approximately one and a half hours. (Complaint ¶ 17, App. 100.) During the detention, David Walker, Jr. remained where he fell in the driveway after being shot, and was eventually transported to the hospital, where he was pronounced dead. (Complaint ¶ 18, App. 100-101.) This detention of the Walker Family violated the Fourth and Fourteenth Amendments to the United States Constitution. (Complaint ¶ 23, App. 101.) The Family was unlawfully detained while their family member died as the result of a police shooting. (Complaint ¶ 23, App. 101.)

The allegations in the Complaint establish the presence of McDaniel and Monson in the Walker residence on the night of the shooting. Further, the allegations establish that McDaniel and Monson, acting under the color of law, detained the Family in their house for questioning and prohibited them from seeing David Walker, Jr. who died as a result of the shooting.

SUMMARY OF THE ARGUMENT

Officers McDaniel and Monson are not entitled to qualified immunity and the District Court properly denied their Motion to Dismiss. (Order, App. 250.) The Supreme Court has established a two-part inquiry to decide whether qualified immunity applies. *See Saucier v. Katz*, 533 U.S. 194, 200 (2001). The threshold question is "whether a constitutional right would have been violated on the facts alleged." *Id.* If a violation is established, the Court next considers whether the right violated was clearly established at the time. *See id.* In this case, McDaniel and Monson violated the Walker Family's Fourth Amendment rights, and those rights were clearly established at the time of detention.

The Complaint alleges that the Walker Family was detained in their home, without their consent, for almost an hour and a half, in violation of the Fourth Amendment. (Complaint, ¶ 15, 16, 23, App. 100-101.) The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. const. amend. IV. This right "shall not be violated," *see id.*, and any seizure or detention must be reasonable to be constitutional. *See Vernonia Sch. Dist. v. Action*, 515 U.S. 646, 653 (1995). In *Terry v. Ohio*, 392 U.S. 1 (1968), the Supreme Court quoted *Union Pacific Railroad Company v.*

Botsford, stating that "'[n]o right is held more sacred, or is more carefully guarded . . . than the right of every individual to . . . [be] free from all restraint or interference of others, unless by clear and unquestionable authority of the law.'" *Id.* at 9 (quoting *Union Pacific*, 141 U.S. 250, 251 (1891)). The Supreme Court has identified three circumstances under which seizures are reasonable: law enforcement officers must have probable cause for arrest, reasonable suspicion of criminal activity, or the consent of the detained individual. *See Terry*, 392 U.S. at 16-19. Because the detention at issue in this case does not meet any of these three standards, it was not reasonable, and violated the protections established by the Fourth Amendment.

At the time of the shooting, the right to be free from unreasonable detentions had been clear for over a century. *See Union Pac. Ry. Co.*, 141 U.S. at 251. *Terry* establishes that even a brief detention, short of a traditional arrest, without reasonable articulable suspicion, violates this right. *See Terry,* 392 U.S. at 16-19. In this case, the detention was not reasonable from its inception, as there was no probable cause, reasonable suspicion, or consent. Because the Walker Family's Fourth Amendment right was violated, and because the right was clearly established at the time, McDaniel

and Monson are not entitled to qualified immunity and the Court should affirm the District Court's decision.

Despite the long-standing rights established by the Fourth Amendment, and despite the clearly established case law outlining the contours of the Fourth Amendment, McDaniel and Monson argue that no right was violated and, even if one were, it was not clearly established at the time. (Brief p. 36.) McDaniel and Monson argue that no Fourth Amendment right was violated because witnesses to a police shooting have fewer rights than do criminal suspects. (Brief p. 4, fn. 3.) This novel argument misunderstands the basic premise of the Fourth Amendment–that all people have a right to be free from unreasonable seizure. *See* U.S. const. amend. IV.

Further, McDaniel and Monson argue, under the standards established for investigating criminal activity, the Walker Family was properly detained. (Brief p. 40.) However, those standards do not apply where there was no reasonable suspicion of criminal activity by the Walker Family. They also maintain that because they found no Supreme Court or Tenth Circuit case law concerning the detention of innocent witnesses to a police shooting, there was no clearly established right to be free from this type of detention.

This argument turns the Fourth Amendment, and generations of case law discussing it, on its head. This Court should follow precedent defining the Fourth Amendment, and affirm the District Court's refusal to dismiss McDaniel and Monson based on qualified immunity.

ARGUMENT

STANDARD OF REVIEW

This Court reviews a district court's denial of a motion to dismiss under Federal Rule of Civil Procedure 12(b) *de novo*. *See Gonzales,* 366 F.3d at 1096 (*quoting Ruiz v. McDonnell*, 299 F.3d 1173, 1181 (10th Cir. 2002), *cert. denied*, 538 U.S. 999, (2003)). The court "accept[s] as true all well-pleaded facts, liberally construe[s] the pleadings, and make[s] all reasonable inferences in favor of the plaintiff." *Id.* Under this standard, a motion to dismiss can be granted "only where it appears beyond a doubt that a plaintiff cannot prove any set of facts entitling her to relief." *Id.* (citation omitted). Based on this standard, the District Court properly refused to dismiss McDaniel and Monson on qualified immunity grounds. The qualified immunity analysis requires a two-part inquiry, clarified by the Supreme Court in *Saucier*, 533 U.S. 194, and applied by this Court repeatedly. *See, e.g., Gonzales,* 366 F.3d 1093; *Olsen v. Layton Hills Mall*,

312 F.3d 1304 (10th Cir. 2002); *Romero v. Fay*, 45 F.3d 1472 (10th Cir. 1995). The first inquiry in the qualified immunity analysis is "whether a constitutional right would have been violated on the facts alleged." *Saucier*, 533 U.S. at 200. Once a violation is established, the Court must next consider whether the right violated was clearly established at the time. *See id.*

I. MCDANIEL AND MONSON VIOLATED THE WALKER FAMILY'S FOURTH AMENDMENT RIGHTS.

As noted above, the threshold inquiry in the qualified immunity analysis is "whether a constitutional right would have been violated on the facts alleged." *Saucier*, 533 U.S. at 200. Each member of the Walker Family has a right, under the Fourth Amendment, to be free from "unreasonable searches and seizures." U.S. const. am. IV. The Complaint states that McDaniel and Monson violates this right by unreasonably detaining the Walker Family in the residence, after the shooting of David Walker, for approximately one and a half hours. (Complaint ¶¶ 15, 17, App. 100.)

The Fourth Amendment gives every individual the right "to the possession and control of his own person, free from all restraint . . . unless by clear and unquestionable authority of law." *Terry*, 392 U.S. at 9

(quotations and citations omitted). The "central requirement" of the Fourth Amendment "is one of reasonableness." *Illinois v. McArthur*, 531 U.S. 326, 330 (2001) (quotations and citations omitted); *see also Elkins v. United States,* 364 U.S. 206, 222 (1960) ("[W]hat the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures."). Therefore, in order for a seizure to be lawful under the Fourth Amendment, it must be reasonable. It is not reasonable for law enforcement officers to seize a person absent probable cause, unless the seizure falls under one of the limited, well-defined exceptions to this rule. *See Skinner v. Railway Labor Execs. Ass'n*, 489 U.S. 602, 619-620 (1989).

The seizure of the Walker Family in this case does not fall under any of the well-defined exceptions. The facts in the Complaint include: 1) that law enforcement officers shot David Walker, Jr. (Complaint ¶ 1, App. 97); 2) the shooting occured in close proximity to the Walker Family's residence (Complaint ¶ 1, App. 97); 3) some, but not all, of the Family members present witnessed the shooting (Complaint ¶15, App. 100); 4) Officers McDaniel and Monson, among others, detained the Walker Family in the house, in spite of the Family's requests to leave (Complaint ¶ 16, App. 100); and 5) the detention lasted approximately an hour and a half (Complaint ¶

17, App. 100). These facts do not amount to those necessary for a *Terry* stop, insofar as there was never reasonable suspicion that the Family was involved in criminal activity. (*See* section B., p. 13 below.) Moreover, these facts do not amount to a reasonable seizure under any of the defined circumstances allowing law enforcement to seize individuals.

A. The Walker Family was seized or detained.

The detention of the Walker Family was a "seizure" under Fourth Amendment principles. Under the Fourth Amendment, a person is "seized" if, according to the totality of the circumstances, a reasonable person would have believed that he or she was not free to leave. *See generally, California v. Hodari D.*, 499 U.S. 621 (1991); *Terry,* 392 U.S. at 16 ("[W]henever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."). According to the allegations in the Complaint, the Walker Family was "required to remain in the Walker home for questioning by Defendants . . . Monson . . . [and] McDaniel . . . prior to, during, and after the conveyance of David Walker to the American Fork Hospital." (Complaint ¶ 15, App. 100.) The Complaint also states that Debbie Walker and Patty Stratton Walker "had weapons pointed at their heads [and] were ordered into the Walker home at gun point" by armed and

uniformed officers. (Complaint ¶ 16, App. 100.) Their requests to leave were denied by the Officers. (Complaint ¶ 16, App. 100.) Based on these allegations, the Walker Family was seized by McDaniel and Monson.

B. None of the Limited Exceptions to Fourth Amendment Protections Apply.

The Walker Family does not argue that they were arrested in violation of the Fourth Amendment. Accordingly, the probable cause requirement for a legal arrest is not relevant, and will not be discussed. Further, none of the limited and well-defined exceptions to the probable cause requirement for detentions applies either.

The exceptions recognized by the Supreme Court include detentions that are less intrusive than arrests, such as investigative stops, or consensual encounters between law enforcement and individuals. *See Terry,* 392 U.S. at 16. The facts in the Complaint make clear that the encounter between law enforcement officers McDaniel and Monson and the Walker Family was not consensual. The Complaint states, "at no time did the Plaintiffs consent to their detention." (Complaint ¶ 16, App. 100.) Because the Family did not consent to the detention, and there was no probable cause for arrest, McDaniel and Monson needed at least reasonable suspicion of criminal activity for the detention of the Family to be lawful.

A law enforcement officer must have reasonable suspicion that an individual may be involved in criminal activity in order for the officer to briefly stop the individual and investigate further. *See Terry*, 392 U.S. 1; *see also INS v. Delgado*, 466 U.S. 210, 216 (1984). Under *Terry* and its progeny, an investigative detention must be "'justified at its inception, and . . . reasonably related in scope to the circumstances which justified the interference in the first place.'" *United States v. Sharpe*, 470 U.S. 675, 682 (1985) (*quoting Terry*, 392 U.S. at 20). *Terry* also makes clear that the detention must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* 392 U.S. at 21. Here there is nothing in the Complaint to justify reasonable suspicion that would warrant detention of the Walker Family.

There was never reasonable suspicion that the Family was involved in criminal activity. According to the facts alleged in the Complaint, David Walker, Jr. was shot by law enforcement officers. The shooting took place at the Walker Family's residence, and some, but not all, of the Family members present witnessed the shooting. Despite the fact that the Family members did not take place in the shooting, but were merely innocent

witnesses, law enforcement officers detained them at their home against their consent. McDaniel and Monson, among other law enforcement officers, participated in the approximately one and a half hour detention. These facts do not amount to those necessary to support a lawful investigative detention.

McDaniel's and Monson's argument that the Walker Family's Fourth Amendment rights were not violated because of the role the Family played in David Walker's death is misguided. (*See* Brief p. 40.) The fact that some Family members witnessed the shooting, or requested law enforcement's assistance to find David Walker, does not amount to a reasonable suspicion of possible involvement in David Walker, Jr.'s shooting.[4] Therefore, this limited exception to the Fourth Amendment's prohibition on unreasonable seizures, is inapplicable in this case.

Finally, McDaniel and Monson argue that the detention was reasonable based on the balance of the "intrusion on the individual's Fourth Amendment interests against [the Fourth Amendment's] promotion of legitimate government interests." *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). (*See* Brief p. 38-40.) However, in the cases cited by McDaniel and

[4] Additionally, McDaniel and Monson, in their brief on page 40, continue to inappropriately argue disputed facts that are not alleged in the Complaint.

Monson, the governmental interest which "'allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,'" was effective crime prevention. *Terry*, 392 U.S. at 21 (citation omitted). Effective crime prevention is not at issue in this case, because McDaniel and Monson did not have specific, objective, and articulable facts of criminal activity by the Walker Family. Therefore, the governmental objective of effective crime prevention could not justify the detention of the Family.

In fact, *Terry* and the decades of case law that follow it, including the more recent Supreme Court decision, *Hiibel v. Sixth Judicial District*, make clear that a stop or detention must be based, at its inception, on a reasonable suspicion that the person(s) detained were involved in criminal activity. *See Terry*, 392 U.S. 1, (1968); *Hiibel*, 124 S. Ct. 2451, __ U.S. __ (2002). In this case, no legitimate governmental interest outweighed the Walker Family's Fourth Amendment rights.[5] The detention was not reasonable at its inception, and therefore, the reasonableness of the scope is irrelevant.

McDaniel and Monson detained the Walker Family, in violation of their Fourth Amendment rights. The Family was not detained under probable cause for an arrest, under reasonable suspicion of criminal activity,

[5] Although McDaniel and Monson seem to assert that investigating the crime was the governmental interest at stake, this argument is not entirely clear from their Brief.

or due to their consent. The detention was not reasonable and violated the Family's Fourth Amendment rights.

II. THE RIGHT TO BE FREE FROM UNREASONABLE SEIZURES WAS CLEARLY ESTABLISHED AT THE TIME OF THE SHOOTING.

Once a violation of the Walker Family's right to be free from unreasonable seizures under the Fourth Amendment has been established, the Court considers whether the right violated was clearly established at the time. *See Saucier*, 533 U.S. at 200. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* at 202 (quotations and citations omitted). It was clearly established at the time of the Walker detention that law enforcement officers violate the Fourth Amendment right to be free from unreasonable seizures unless the seizure in question falls under one of the well-defined exceptions to probable cause. None of the clearly established exceptions applies in this case.

McDaniel and Monson argue that the right in question was not clearly established because they could not identify any Tenth Circuit or Supreme Court case law concerning detentions of witnesses to a police shooting. (*See* Brief p. 37.) This argument ignores the general principle behind the Fourth

Amendment –seizures must be reasonable to be legal, and reasonable seizures must fall under one of the limited exceptions. The standard does not require, as McDaniel and Monson seem to argue, that a factually identical case exist for a right to be clearly established. The Supreme Court, in *United States v. Lanier*, 520 U.S. 259 (1997), "expressly rejected a requirement that previous cases be "'fundamentally similar.'" *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (stating that the "salient question" is whether the state of the law gives fair notice that the actions in question are unconstitutional).

McDaniel and Monson also maintain that "the standard for detaining witnesses to a homicide is a much lower standard" than "the standard for detentions to investigate possible criminal activity." (*See* Brief p. 4, n.3.) Nowhere in their Brief do they cite authority for this counter intutive or nonsensical statement. It is clearly established that the Fourth Amendment applies to <u>all</u> people, not just to criminal suspects. The argument that the standards are somehow lower when the governmental interest is information gathering from innocent citizens, rather than effective crime investigation or prevention, is in direct contrast to the Fourth Amendment and the caselaw established under the Fourth Amendment.

A. The Fourth Amendment requires probable cause, reasonable suspicion, or consent for a detention.

It is clear that the Fourth Amendment applies generally to the public and is not only limited to situations "when the individual is suspected of criminal behavior." *O'Connor v. Ortega*, 480 U.S.709, 715 (1987) (quotations and citations omitted); *see also, Dubbs v. Head Start, Inc.*, 336 F.3d 1194 (10th Cir. 2003) (rejecting notion that Fourth Amendment does not apply in 'noncriminal' and 'noninvestigatory' context). Moreover, at the time of the shooting it had been clear for over 30 years that even a brief detention, short of a traditional arrest, without reasonable articulable suspicion violates this right. *See Terry,* 392 U.S. at 16-19.

Starting with *Terry*, the Supreme Court created a limited exception to the requirement that any seizure of a person be justified by probable cause. *Terry* recognized that even a brief seizure and pat-down search is a "severe . . . intrusion upon cherished personal security." *Id.* at 24-25. A year later, in *Davis v. Mississippi*, 394 U.S. 721, 726-27 (1969), the Supreme Court rejected the argument that the Fourth Amendment does not apply to police investigations recognizing that:

> Investigatory seizures would subject unlimited numbers of innocent persons to the harassment and ignominy incident to involuntary detention. Nothing is more clear than that the

> Fourth Amendment was meant to prevent wholesale intrusions upon the person security of our citizenry, whether these intrusions be termed 'arrests' or 'investigatory detentions.'

(Emphasis added.) The Supreme Court further noted that it is a "settled principle that while the police have the right to request citizens to voluntarily answer questions concerning unresolved crimes they have no right to compel them to answer." *Id.* at 727, n.6 (emphasis added).

Ten years later, in *Brown v. Texas*, 443 U.S. 47, 52 (1979), the Supreme Court held that a statute allowing officers to stop individuals and demand their identification, even if it advances a "weighty social objective" of preventing crime, was unconstitutional because, "in the absence of any basis for suspecting appellant of misconduct, the balance between the public interest and appellant's right to personal security and privacy tilts in favor of freedom from police interference." *Id.*

Likewise, in *Florida v. Royer*, 460 U.S. 491 (1983), the Supreme Court held that plaintiff's detention for approximately 15 minutes prior to his arrest for possession of drugs violated the Fourth Amendment. Officers are free to approach people and ask questions, but, "the person approached, however, need not answer any question put to him; indeed, he may decline to listen to the questions at all and may go on his way." *Id.* at 497-98; *see*

also Oliver v. Woods, 209 F.3d 1179, 1186 (10th Cir. 2000) (reaffirming *Royer*). These are but a few of the cases (prior to the Walker Family's detention) which constitute a vast Supreme Court jurisprudence, which makes it abundantly clear that officers are not allowed to detain people, even momentarily, without probable cause, reasonable suspicion, or consent.[6]

B. Cases cited by McDaniel and Monson are inapplicable.

McDaniel and Monson cite to several cases to justify their position that the detention was reasonable, or, in the alternative, that the detention did not violate clearly established law. However, each of these cases is distinguishable. First, in *United States v. Sharpe*, 470 U.S. 675 (1985), the Supreme Court held that an individual reasonably suspected of engaging in criminal activity may be detained for a period of 20 minutes when the detention is necessary for law enforcement officers to conduct a limited investigation of the suspected criminal activity to confirm or dispel this suspicion. The same can be said of the Eleventh Circuit's opinions in *United States v. Willis* 759 F.2d 1486, 1496 (11th Cir. 1985) (finding that the officer had articulable grounds for reasonably suspecting Willis of

[6] Needless to say, Tenth Circuit law on this point at the time of the shooting was equally well-established. *See United States v. Cooper*, 733 F.2d 1360, 1363 (10th Cir. 1984), *cert. denied*, 467 U.S. 1255 (1984) (recognizing three categories of police/citizen encounters; consensual encounters, investigative *Terry* stops, and arrests).

criminal activity), and *Courson v. McMillian*, 939 F.2d 1479, 1493 (11th Cir. 1991) (finding the officer had sufficient reasonable suspicion to conduct an investigatory stop).

McDaniel and Monson also argue that there was no Fourth Amendment violation because they were only involved in the detention of the Walker Family for 29 minutes (*See* Brief p.22, fn. 12). This argument not only relies on facts not alleged in the Complaint, but it also ignores that the length of a detention is not a determinative factor in whether a constitutional violation has occurred.[7] In *United States v. Mendenhall*, 446 U.S. 544, 556 (1980), the United States Supreme Court affirmed that a person may not be detained even momentarily without reasonable, objective grounds for doing so. Even if the detention was reasonable at its inception,

[7] Further, every law enforcement officer has an obligation to intervene when an individual's rights are being violated. *See Mick v. Brewer*, 76 F.3d 1127, 1136 (10th Cir. 1996) (holding Tenth Circuit precedent clearly established that a law enforcement official who fails to intervene to prevent another officer's use of excessive force may be liable under § 1983). An officer is liable under § 1983 if that officer: "(1) knows that a fellow officer is violating an individual's constitutional rights; (2) has a reasonable opportunity to prevent the harm; and (3) chooses not to act." *Randall v. Prince George's County*, 302 F.3d 188, 204 (4th Cir. 2002); *see also Jenkins v. Wood*, 81 F.3d 988, 995 (10th Cir. 1996). A causal connection can be established by "setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict unconstitutional injury." *Specht v. Jensen*, 832 F.2d 1516, 1524 (10th Cir. 1987). That causation element is satisfied if the defendant's conduct was a substantial factor in bringing about the injury. *See Northington v. Marin*, 102 F.3d 1564, 1569 (10th Cir. 1996).

this Court has held that a 30 minute detention after a permissible stop is unreasonable. *See United States v. Edwards,* 103 F.3d 90, 94 (10th Cir. 1996).

Further, McDaniel and Monson argue that the recent Supreme Court decision in *Hiibel v. Sixth Judicial District Court*, __ U.S. __ , 124 S. Ct. 2451 (2004), is illustrative in the case before this Court. (*See* Brief p. 43-45.) It is not. *Hiibel* does not change the holding in *Brown*, 443 U.S. 47, as McDaniel and Monson suggest. Rather, *Hiibel* merely continues where *Brown* left off. In *Hiibel*, the Supreme Court considered the arrest of an individual who refused to identify himself to a police officer during a *Terry* investigative stop. *See id.* at __, 124 S. Ct. at 2455. The arrest was based on a Nevada statute, referred to as a "stop and identify" statute, which requires an individual who is detained by law enforcement under "'circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime,'" to identify herself. *See id.* (citation omitted).

The detention in *Hiibel* was legal, in part, because it was based on reasonable suspicion that the detained individual had engaged in criminal activity, and therefore the detention did not violate the Fourth Amendment. Even under Utah's "stop and identify statute," *see* Utah Code Ann. § 77-7-

15 (2003), the detention of the Walker Family would not have been legal under Fourth Amendment principles, because McDaniel and Monson did not have "a reasonable suspicion to believe" that any member of the Family had committed or was "in the act of committing or [was] attempting to commit a public offense." *Id.*

Accordingly, none of the cases cited by McDaniel and Monson gives law enforcement the right to detain innocent bystanders, no matter how briefly, for any reason. Here, McDaniel and Monson detained the Walker Family in their home without probable cause, reasonable suspicion, or consent. These actions violated the Walker Family's well-established rights guaranteed by the Fourth Amendment.

CONCLUSION

As outlined above, this Court should uphold the District Court's denial of McDaniel's and Monson's Motion to Dismiss. The Walker Family's Fourth

Amendment rights were violated by their detention, and the right to be free from unreasonable detentions was clearly established at the time.

DATED this 22nd day of November, 2004.

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