IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Court of Appeals Docket 05-4038

DAVID WALKER, et al.,

Plaintiffs/Appellants,

vs.

UTAH COUNTY, et al.,

Defendants/Appellees.

APPELLANTS' BRIEF

Oral Argument Requested

Appeal from the District Court of Utah, Central Division
Honorable Ted Stewart
District Judge
No. 2:02-CV-253 TS

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STATEMENT OF PRIOR OR RELATED APPEALS

There are several prior or related appeals in this case. The first appeal was filed by Defendants Jerry Monson and Lance McDaniel; they appealed the district court's denial of their motion to dismiss on the basis of qualified immunity. The appeal is fully briefed. *Walker, et al. v. City of Orem, et al.*, Case No. 04-4140, United States Court of Appeals for the Tenth Circuit.

Defendants Harold Peterson and John Clayton separately appealed the district court's Order of January 28, 2005, denying their respective motions for summary judgment. (Appendix ("App.") 775.) Briefing is ongoing. *Walker, et al. v. City of Orem, et al.,* Case No. 05-4016, United States Court of Appeals for the Tenth Circuit (Peterson Appeal); *Walker, et al. v. City of Orem, et al.*, Case No. 05-4025, United States Court of Appeals for the Tenth Circuit (Clayton Appeal).

STATEMENT OF JURISDICTION

Appellants, David Walker ("David Sr."), Debbie Walker ("Debbie"), Tyree Lamph ("Tyree"), Amy Melissa Lamph ("Amy"), Patti Stratton Walker ("Patti"), and Chad Stratton ("Chad") (collectively "the Walker Family" or "the Family"), appeal from an Order by the United States district court for the District of Utah, entered January 28, 2005 (App. 775), which denied in part and granted in part

Defendants' Motions for Summary Judgment. Specifically, the Walker Family appeals the district court's Order granting qualified immunity and summary judgment to defendants Jerry Monson and Lance McDaniel and the grant of summary judgment to the Utah County Sheriff's Office. (App. 775.) On February 25, 2005, the Walker Family filed their Notice of Appeal, within the time frame prescribed by Federal Rule of Civil Procedure 4(a). (App. 787.) The Walker Family also moved the district court to enter final judgment, pursuant to Federal Rule of Civil Procedure 54(b). (App. 787.) Entry of Final Judgment was granted March 31, 2005.[1] (App. 800.)

The district court's jurisdiction was invoked under 28 U.S.C. § 1343 and 28 U.S.C. § 1331. This Court's jurisdiction is invoked under 28 U.S.C. § 1291, which grants federal appellate courts jurisdiction to review "all final decisions of the district courts of the United States." This is a final decision based on the district court's certification of the ruling as a final judgment. *See* Fed. R. Civ. P. 54(b). Although the Notice of Appeal was filed before this certification, this Court has held that a premature notice of appeal from an order disposing of less

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[1]Appellants, the Walker Family, filed an Unopposed Motion to Extend Time for Filing the Docketing Statement, Entry of Appearance, and Transcript Order Form with this Court on March 17, 2005. In an Order dated March 22, 2005, Appellants were granted until April 1, 2005 to file these documents, which Appellants did.

than all the claims may be cured by a subsequent certification order under Rule 54(b). *See Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 645 (10th Cir. 1988).

STATEMENT OF THE ISSUE

Whether the district court erred in granting Defendants Utah County's, Jerry Monson's, and Lance McDaniel's Motions for Summary Judgment on the Walker Family's claims of illegal detention in violation of their Fourth Amendment rights.

STATEMENT OF THE CASE

The Walker 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. 8.) The Complaint alleged violations of the Walker Family's Fourth Amendment right to be free from unreasonable seizure. 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., ("David Jr.") by Officers Harold Petersen and John Clayton.[2] The Walker Family had previously filed a Complaint against the other involved entities and officers on March 29, 2002 alleging the unconstitutional use of deadly

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[2]As noted above, both Officer Clayton and Petersen have appealed the district court's denial of their motions for summary judgment. *See* Case Numbers 05-4016 and 05-4025.

force as well as illegal detention. (Complaint 2:02CV0253, App. 44.) These cases were consolidated on July 14, 2003, upon the Walker Family's Motion, which was not opposed. (Order on Motion to Consolidate, App. 89.)

The individual Utah County Defendants[3] 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. 149.) Utah County Defendants' qualified immunity was initially denied after a hearing on January 23, 2004. (App. 158.) The district 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. 168.) On June 23, 2004, Sergeant Jerry Monson ("Monson") and Deputy Lance McDaniel ("McDaniel") filed a Notice of Appeal to this Court. This appeal has been fully briefed and is pending before this Court. *See* Case Number 04-4140.

All Defendants (from Utah County, Pleasant Grove, and Orem) then filed Motions for Summary Judgment on all of Plaintiffs' claims. (App. 187.) The

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

district court heard oral argument on Defendants' Motions for Summary Judgment on October 21, 2004. (App. 699.) The district court made an initial oral ruling from the bench (App. 765-73), and then entered a written Order on January 28, 2005, denying in part and granting in part Defendants' Motions for Summary Judgment (App. 775). The district court denied Defendants Peterson's and Clayton's motion for summary judgment (based on qualified immunity grounds) with regard to the excessive force claim. The district court granted summary judgment on all of Plaintiffs' remaining claims, and later entered final judgment with regard to the illegal detention claims against Utah County Defendants set forth in the Order, pursuant to Fed. R. Civ. P. 54(b), because no claims were left to proceed to trial. (App. 800.)

STATEMENT OF FACTS

David Walker, Jr. was twenty five (25) years old when he was shot by law enforcement officers at his family's residence on the night of December 29, 1998. He had three children at the time of his death and was living with his parents, David Sr., Debbie and his sister Patti in rural Utah County, Utah. Several members of David Jr.'s family were home on the night of the shooting, although only Debbie, Patti, and Tyree (David Jr.'s brother-in-law and neighbor at the time) witnessed the shooting. Nevertheless, officers detained all members of the Walker

Family who were home during the shooting, and David Sr. and Chad upon their return to the home after the shooting.

The detention was not initiated by officers from Utah County, however McDaniel and Monson were key participants in the detention.[4] Shortly after Debbie and Patti were forced in the home by officer B.J. Robinson, McDaniel entered the home. During the same time frame, Tyree, was brought inside the Walker home and prevented from leaving by the officers at the scene. (Deposition

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[4]The actions of officers Clayton and Robinson, who initiated the detention, are not at issue in this appeal. Immediately after the shooting, the two officers questioned Debbie and Patti about what they had witnessed. (Deposition of Debbie Walker (App. 228)). Debbie and Patti responded that they had seen Clayton shoot David Jr., and were then frisked by Clayton. (Deposition of B.J. Robinson at App. 571; Debbie at App. 417, 427.) After determining that Debbie and Patti were not a threat, Robinson forced Debbie and Patti into their home at gun point. (App. 425.) Debbie and Patti came back out onto the porch, asking if they could go to David Jr. who lay dying in the driveway. Robinson and Clayton ordered them to get back into the house and stay there. (App. 426.) Robinson then went into the Walker home to question the family. (App. 572; 472.) He returned at least two more times in an attempt to obtain information from them, and remained at the scene until after the family left.

The next officer to enter the home is also not at issue in this appeal. Officer Smith entered the Walker home without knocking and without receiving permission to enter. (App. 415; Deposition of Gordon Smith App. 578.) Everyone in the house gave Smith their names and dates of birth. (App. 577.) However, after he entered the Walker residence, Smith refused to allow the family to leave. (App. 415; 430.) When questioned about David Jr.'s condition, Smith told Debbie, "you need to go in and take care of what is left of your family." (App. 411.)

of Tyree Lamph (App. 469.)) Also during these events, David Sr. and Chad returned home, and were escorted into the home by officers. Once inside the home, they were told they could not leave. (Deposition of David Walker Sr. (App. 433, 434.)) Neighbors came into the Walker home to take the young children who had been present in the home during the shooting. (App. 431.)

At no time did the Walker Family consent to being detained in their home. In fact, McDaniel detained the family despite repeated requests that they be allowed to leave. (App. 429.) Debbie testified specifically that she asked the officers to leave her home:

> Q: No I asked—let me ask you this. Did you ask these officers who came into your home to leave your home?
> A: Yes, I did.
> Q: What was their response?
> A: No.

(App. 415.)

Once Monson reached the scene, he understood he was in charge of the scene and subsequent investigation. (Deposition of Jerry Monson (App. 489.)) Monson assigned McDaniel the task of ensuring the family stayed in the house. (App. 493, 498.) Debbie testified:

> Q: When did you first notice him [McDaniel] there?
> A: He came in and I asked him what he needed and he said, I'm supposed to stay here and keep you here.

(App. 428.) Monson testified:

> Q: You said that you had assigned people to stay with the witnesses. Were there folks with the witnesses when you arrived?
> A: Yes.
> Q: Okay. And were those the same people that continued to stay with them?
> A: Not all the time, no. I believe -- I remember I assigned Lance McDaniel, who is a patrolman, to stay in the house with them, and I recall assigning Detective Patty Johnston to try to get some statements from them, and other than that, I don't recall exactly what I -- you know, what I assigned people to do with the witnesses.

(App. 493.)

Monson refused to let the family leave until they gave his detectives statements. (App. 494.) However, even after another officer told him that the family would not give the detectives statements, but that they only wanted to be with David Jr., who had been taken to the American Fork Hospital, Monson still refused to let the family leave the house. (App. 494.) Monson ordered the family's continued detention even though he knew the family wanted to leave. (App. 493.)

Monson believed that he was following the training Utah County had provided him when he continued to detain the family in the home and that it was reasonable to do so. (App. 496, 504.) Monson testified that he knew the members

of the Walker Family were witnesses to the incident, but that he had no knowledge of their involvement in the shooting.

> Q: What was -- I mean, you said you were interested in protecting the evidence to make sure nothing had been disturbed. Was it your understanding that the witnesses were in any way participating in what went on?
>
> A: It was my understanding they were eye witnesses to the incident.
>
> Q: Other than that, were they -- did you understand that they had thrown David Walker the knife that he was holding or anything like that?
>
> A: No. I never did know that they had any involvement.

(App. 493.) The family was detained in their home for over an hour. (App. 426.) It is undisputed that the family repeatedly asked to be able to leave their home in order to go to the hospital to be with David Jr. Monson knew, prior to officially assigning some one to detain the family, that there was an officer in the house with a gun preventing them from leaving. (App. 504.) Even after another officer, Patty Johnston, told him that the family would not give the detectives statements, but only wanted to be with David Jr., Monson refused to let the family leave the house. (App. 494.) He ordered the family's continued detention despite knowing that the family wanted to leave. (App. 493.) Tragically, when the family was finally allowed to go to the hospital, David Jr. had already been pronounced dead. (App. 410.)

This action was brought to vindicate the rights guaranteed to the Plaintiffs by the United States Constitution to be free from unlawful state action. As argued to the court below, and outlined in the argument section of this brief, there are numerous disputed material facts which, combined with the relevant law, demonstrate that the district court's grant of summary judgment was inappropriate and should be reversed.

SUMMARY OF THE ARGUMENT

Utah County Defendants were not entitled to qualified immunity and summary judgment with regard to the Walker Family's illegal detention claims. (App. 775.) 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, Utah County Defendants McDaniel and Monson violated the Walker Family's Fourth Amendment rights, and those rights were clearly established at the time of detention.

Members of the Walker Family were illegally and unreasonable detained in their home for more than an hour while David Jr. lay dying, first on their driveway

and later at American Fork Hospital which was a mere eight minute drive from their house. The district court erred because the Walker Family's right to be free from this type of unreasonable detention was clearly established at the time of the Walker shooting and each officer violated those rights on the night of December 29, 1998.

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* established 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, there was no probable cause, reasonable suspicion, or consent and, therefore, the detention was unreasonable, regardless of its duration. Because the Walker Family's Fourth Amendment rights were violated, and because the right was clearly established at the time, McDaniel and Monson are not entitled to qualified immunity and this Court should reverse the district court's decision.

Based on these long-standing rights established by the Fourth Amendment, and the clearly established case law outlining the contours of the Fourth Amendment, McDaniel and Monson are not entitled to qualified immunity and summary judgment. McDaniel and Monson did not properly detain the members of the Walker Family–even under standards established for investigating criminal activity, because those standards do not apply where there was no reasonable suspicion of criminal activity by the Walker Family.

Further, Utah County is liable for the unconstitutional detention of the Walker Family. A governmental entity may be held liable when it has an unconstitutional policy or custom. *See City of Canton v. Harris*, 489 U.S. 378, 385 (1989). In this case, Utah County Defendants were trained to detain witnesses, in spite of the clear parameters of the Fourth Amendment. Utah County is also liable for Monson's and McDaniel's detention of the Walker Family because it made the final decision regarding the illegal detention. A governmental entity may be held liable, based even on a single incident, if the particular illegal course of action was taken pursuant to a decision made by a person with final policy-making authority over the subject matter of the alleged deprivation. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-85 (1986); *Meade v. Grubbs*, 841 F.2d 1512, 1529 (10th Cir. 1988). The evidence regarding Monson's final policymaking authority is disputed in this case, further demonstrating that the district court's grant of summary judgment was inappropriate.

ARGUMENT

STANDARD OF REVIEW

This Court reviews a grant of summary judgment based on qualified immunity *de novo*, "considering all evidence in the light most favorable to the

nonmoving parties under Rule 56(c), Federal Rules of Civil Procedure." *Olsen v. Layton Hills Mall*, 312 F.3d 1304, 1311 (10th Cir. 2002) (citation omitted). The moving party is entitled to judgment as a matter of law when there is "no genuine issue as to any material fact." *Id.* Because the summary judgment decision in this case decided qualified immunity, this Court reviews the order "differently from other summary judgment decisions because of the purposes of qualified immunity." *Id.* When the Utah County Defendants raised the qualified immunity defense on summary judgment, the burden shifted to the Walker Family to show that "1) the official violated a constitutional or statutory right; and 2) the constitutional or statutory right was clearly established when the alleged violation occurred." *Id.* at 1312 (citing *Farmer v. Perrill*, 288 F.3d 1254, 1259 (10th Cir. 2002)).

In this case, the Walker Family has satisfied both prongs of this qualified immunity test and thereby should withstand a grant of qualified immunity to Utah County Defendants. Because the Walker Family presented evidence that the Defendants violated a clearly established constitutional right, the burden shifted to Defendants to prove that "'no genuine issues of material fact' exist and that the defendant 'is entitled to judgment as a matter of law.'" *Id.* (internal citations omitted). Accordingly, "the defendant still bears the normal summary judgment

burden of showing that no material facts remain in dispute that would defeat the qualified immunity defense." *Id.* (citing *Farmer v. Perrill*, 288 F.3d 1254, 1259 (10th Cir. 2002)). The Utah County Defendants have not met this burden in this case, and "the record shows an unresolved dispute of historical fact relevant to this immunity analysis." *Id.* Therefore, the motion for summary judgment, based on the Defendants' request for qualified immunity, should be denied. *Id.* (citations omitted).

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

When Utah County Defendants raised the qualified immunity defense on summary judgment, the burden shifted to the Walker Family to show the threshold inquiry in the qualified immunity analysis: "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. This right was violated in this case when McDaniel and Monson detained the Walker Family in their home, despite their repeated requests to leave. During this time David Jr. lay dying on their driveway, until he was moved to American Fork Hospital a short drive away, where he died.

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 undisputed facts in this case show that each of the officers was aware that the Walker Family wanted to leave the home where they were detained, and go to David Jr.’s side. Each of the officers refused the Family’s requests to leave. The facts alleged 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. 19 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."). Debbie testified that McDaniel detained the family despite repeated requests that they be allowed to leave. (App. 429.) Debbie testified specifically that the officers’ response to her request to leave her home was, simply, “no.” (App. 415.)

Monson testified that he assigned officers to stay with the witnesses. (App. 493.) Even after being told by another officer that the family would not give the detectives statements, but that they only wanted to be with David Jr., Monson refused to let the family leave the house. (App. 494.) Monson ordered the family’s continued detention even though it was clear that he knew the family wanted to leave. (App. 493.)

Even if Monson's and McDaniel's individual actions in detaining the Family were less than the duration of the entire detention, they are each individually liable for the specific duration that they detained the Family. Moreover, an officer is not permitted to simply watch another violate the Constitution's mandates. *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). Based on this testimony, the Walker Family was seized by McDaniel and Monson.

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

None of the parties to this appeal have ever argued that the Walker Family was arrested in violation of the Fourth Amendment. Accordingly, the probable cause requirement for a legal arrest is not relevant, and will not be discussed. However, none of the exceptions recognized by the Supreme Court, including detentions that are less intrusive than arrests, such as investigative stops, or consensual encounters between law enforcement and individuals, are at issue in this case. *See Terry,* 392 U.S. at 16. 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 facts to justify reasonable suspicion that would warrant the continued detention of the Walker Family after it became apparent that none of them were involved in any criminal activity.

In fact, Monson testified that he knew the members of the Walker Family were witnesses to the incident, but that he had no knowledge of their involvement in the shooting.

Q: What was -- I mean, you said you were interested in protecting the evidence to make sure nothing had been disturbed. Was it your understanding that the witnesses were in any way participating in what went on?
A: It was my understanding they were eye witnesses to the incident.
Q: Other than that, were they -- did you understand that they had thrown David Walker the knife that he was holding or anything like that?
A: No. I never did know that they had any involvement.

(App. 493.)

Moreover, the facts do not support a lawful investigative detention. Despite the fact that the Walker Family did not take part in the shooting, but were merely innocent witnesses, law enforcement officers detained them at their home against their consent. These facts do not amount to those necessary to support a lawful investigative detention. The fact that some Family members witnessed the shooting does not amount to a reasonable suspicion of possible involvement in David Jr.'s shooting, or in any other criminal activity.

Finally, the detention was not 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). Effective crime prevention is the governmental interest which "'allegedly justifies official intrusion upon the constitutionally

protected interests of the private citizen.'" *Terry*, 392 U.S. at 21 (citation omitted). However, 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. Moreover, it was clear that the crime at issue, the shooting of David Jr. by law enforcement, had already been committed – thus, there was no crime to prevent.

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 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, 524 U.S. 177 (2002). In this case, no legitimate governmental interest outweighed the Walker Family's Fourth Amendment rights. 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, 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.**[5]

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's 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.

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[5]This is the specific issue on appeal to this Court in case 04-4140. The district court denied Utah County Defendants' Motion to Dismiss as to all claims related to the detention issue, stating, "the right these Defendants are alleged to have violated was clearly established at the time of the incident in question." (App. 184.) Based on that appeal, the Walker Family argued in its Motion in Opposition to Summary Judgment that the district court was divested of jurisdiction over Monson and McDaniel. *See Lancaster v. Independent School Dist. No. 5*, 149 F.3d 1228, 1237 (10th Cir. 1998). Nevertheless, the district court's Order on the Summary Judgment issue addressed Monson and McDaniel, and found they were entitled to qualified immunity. (App. 779.)

Utah County Defendants maintained in the district court 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. 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).

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. A reasonable officer should have known that this was the case.

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 make it abundantly clear that officers are not allowed to detain people, even momentarily, without probable cause, reasonable suspicion, or consent.[6]

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[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

III. UTAH COUNTY IS LIABLE FOR THE UNCONSTITUTIONAL DETENTION OF THE WALKER FAMILY.

The district court's grant of summary judgement to Utah County was improper and its analysis of the underlying constitutionality was flawed because the district court brushed aside "factually intensive" disputes that make a finding of summary judgment inappropriate. The district court granted the Utah County Sheriff's Office summary judgment because "Plaintiffs have failed to establish any facts which show that either Deputies [sic] deliberate indifference towards the rights of citizens by not adequately training its officers, or even that a constitutional violation occurred as a result of their detention." (App. 780.) However, the Walker Family did not allege, and does not now allege, that Utah County failed to adequately train its officers regarding their responsibilities and limitations under the Fourth Amendment. To the contrary, the Walker Family argued that Utah County actually trained its officers to violate the Fourth Amendment by illegally detaining witnesses to a crime.

The district court also held that the Walker Family failed to establish liability against Utah County because it was "reasonable for [Utah County] to

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of police/citizen encounters: consensual encounters, investigative *Terry* stops, and arrests).

conclude that their officers perceived a real threat to their own safety and acted out of self defense and that their conduct is reasonable." (App. 781.) However, this finding is unrelated to Utah County's liability for the illegal detention and therefore should not be considered; even if it were meant to apply to the illegal detention, there is no evidence that the detention was due to a perceived threat to the officers. This Court should reverse the district court's grant of summary judgment on this issue because, as argued above, a constitutional violation did occur, and the officers' conduct was not reasonable.

Utah County is liable for Monson's and McDaniel's detention of the Walker family because a governmental entity may be held liable when it has an unconstitutional policy or custom. *See City of Canton v. Harris*, 489 U.S. 378, 385 (1989). It is clear that Monson carried out his duties with respect to the detention in compliance with Utah County's training and custom. Specifically, Monson testified that he had been trained and that it was Utah County's custom to "locate, identify, detain, statementize and sequester witnesses as well as possible." (30(b)(6) Deposition of Utah County (App. 627.)) The training materials likewise confirm that this is how Monson was trained to handle witnesses when investigating officer involved fatal shootings. *See* Training Materials (App. 630, 631-32). He also confirmed that he had been trained that "prompt, aggressive and

thorough attempts needed to locate witnesses, then obtain meaningful statements." (App. 628.)

Monson went on to testify that Utah County's "custom would be to responsibly identify and detain [witnesses], you know, in a reasonable manner, enough to determine what information they may have." (App. 628.) He confirmed that this was "customary, my experience with the department, that that's how we do business. That's how – you know, I'm a supervisor. That's how I was trained." (App. 628.) Monson said that he was following all of his training when he was detaining the witnesses. (App. 496; 628.)

Utah County is also liable for Monson's and McDaniel's detention of the Walker Family because it made the final decision regarding the illegal detention. A governmental entity may be held liable, based even on a single incident, if the particular illegal course of action was taken pursuant to a decision made by a person with final policy-making authority over the subject matter of the alleged deprivation. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-85 (1986); *Meade v. Grubbs*, 841 F.2d 1512, 1529 (10th Cir. 1988).

Final decision making authority can be delegated. *See City of St. Louis v. Praprotinik*, 485 U.S. 112, 130 (1998). This is so that lawfully empowered decision makers do not insulate themselves from liability by knowingly allowing a

subordinate to exercise final policymaking authority vested by law in the decision makers. *See id.* at 126-27. Once the authority has been delegated, it does not matter that the individual may have chosen, "a course of action tailored to a particular situation and not intended to control decisions in later situations," if the decision maker adopted a particular course of action, "it surely represents an act of official government policy" and "the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly." *Id.* at 170.

The evidence is disputed regarding whether Monson was a final policymaker for Utah County. However, the evidence viewed in the light most favorable to the Walker Family amply demonstrates that Monson was delegated full and complete authority to exercise control over the investigation and crime scene, which included the Plaintiffs' detention.

The Utah County Sheriff routinely had Monson conduct investigations with full discretion. (App. 489.) When Monson first arrived at the scene he met with County Attorney Kay Bryson in order to determine which agency was going to be in charge of the investigation. (App. 490.) It was determined that Utah County would be in charge of the investigation. (App. 490.) When Monson was sent to the scene, he contacted the Sheriff, who made it clear that Monson was to head up the investigation into to the Walker shooting. (App. 491.) Monson confirmed that

he was to make the necessary decisions in conducting the investigation and that the other agencies (Orem and Pleasant Grove), who were also conducting internal investigations, had no authority over his investigation. (App. 491.) Monson had "full discretion" in securing witnesses and getting their statements. (App. 495.) Based on the above law regarding delegation of final decision making authority and the undisputed facts, Utah County can be held liable for the Family's illegal detention.

The district court here clearly erred in finding that there was no constitutional violation and that the officer's conduct was reasonable as a matter of law, and that no fact disputes were presented on that score.[7]

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[7]Even if Monson and McDaniel were entitled to qualified immunity, Utah County as an entity may still be liable because the combined actions gave rise to a violation of the Walker Family's constitutional rights. *See, e.g., Speer v. City of Wynne, Arkansas*, 276 F.3d 980 (8th Cir. 2002) (("[S]ituations may arise where the combined actions of multiple officials or employees may give rise to a constitutional violation, supporting municipal liability, but where no one individual's actions are sufficient to establish personal liability for the violation.") (citing *Garcia v. Salt Lake County*, 768 F.2d 303, 310 (10th Cir. 1985) (further citation omitted)).

CONCLUSION

Based on the authorities and arguments cited above, the Walker Family respectfully requests this Court grant their appeal and remand this matter to the district court for further hearing or for the entry of summary judgment in their favor.

Dated this ____ day of May, 2005.

By: ______________________________________

Margaret Plane
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CERTIFICATE OF SERVICE

I, Margaret Plane, hereby certify that on May 23rd, 2005 I sent a copy of the foregoing **Appellant's Brief,** to the last known address, by way of United States mail and email.

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