Case No. 24-4074

UNITED STATES COURT OF APPEALS
Tenth Circuit

DANYALE BLACKMORE,

Plaintiff - Appellant,

and

VINCENT BLACKMORE,

Plaintiff,

vs.

JARED CARLSON; ERIC DEMILLE; and **HURRICANE CITY**

Defendants - Appellees,

and

LA-NORMA RAMIREZ; WASHINGTON COUNTY

Defendants.

APPELLANT REPLY BRIEF

Appeal by Blackmore From an Order Granting Motion for Summary Judgment to Carlson, DeMille and Hurricane City Based on a Claim of Qualified Immunity

The United States District Court for the District of Utah
The Hon. David Nuffer, Judge Presiding
Trial Court Case No. 4:21-cv-00026-DN-PK

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~ ORAL ARGUMENT REQUESTED ~

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SUMMARY OF REPLY ARGUMENTS

I. NO PRECLUSION.

Appellees argue that Danyale's appeal is precluded by a municipal Justice Court decision in her criminal case that found probable cause for Carlson's arrest. The district court correctly ruled that the Justice Court decision was "not binding or preclusive" on the federal case. Appellees **did not appeal** this ruling. This Court should therefore reject Appellees' untimely and improper appeal of the district court ruling.

II. UNLAWFUL SEIZURE - CLEARLY ESTABLISHED.

A. Lobby Not Public - No Disorderly Conduct.

The district court held, as a matter of law, that the locked hotel lobby at 1:40 a.m. was not a public place. Appellees **did not appeal** this ruling.

The district court awarded Appellees qualified immunity. This was error because *any* reasonable officer would have known from the *obvious* information clearly before him that a *locked* hotel lobby at 1:40 a.m. was not a public place under the Utah statute. Moreover, it was clearly established that the hotel lobby remained *private* even if an entry door was "ajar" because it was kicked in. Appellees are not entitled to qualified immunity.

B. No Probable Cause for Interference.

Appellees' argument that Danyale interfered or refused to comply with her arrest is *contradicted by the video evidence* showing that she either complied or was *unable to comply* with Carlson's order to put her hands behind her back. Viewed in her favor, the video does not show that Danyale resisted arrest by struggling, turning on her own, or trying to pull her hands away. Whether Danyale *refused* to comply is therefore a question of fact for the jury. The district court erred in ruling the Officers had probable cause.

Contrary to the district court's ruling, clearly established case law prior to January 6, 2020 put the Officers on notice that Danyale did not interfere with her arrest. As such, Appellees are not entitled to qualified immunity.

III. EXCESSIVE FORCE - CLEARLY ESTABLISHED.

Appellees' arguments denying excessive force are contradicted by the video evidence. *Any* reasonable officer would have known that, without *reasonable suspicion* of a crime, there was no justification to detain Danyale, and certainly no justification to unnecessarily escalate the encounter by going "hands on" with her. Danyale was merely a concerned hotel owner, reasonably upset that a guest had kicked in the front door at 1:40 a.m.

It was clearly established that, after Danyale was effectively boxed into the alcove and not a safety threat, continuing to advance aggressively toward her, grabbing her breast and then her arm, shoving her face and body against the wall, and then pushing and pulling on her was excessive force. Appellees are therefore not entitled to qualified immunity.

ARGUMENT

POINT I

~ ***The Justice Court Decision Was Not Preclusive*** ~

THE JUSTICE COURT'S PRE-TRIAL RULING FINDING PROBABLE CAUSE IN DANYALE'S CRIMINAL CASE HAS NO PRECLUSIVE EFFECT ON HER FEDERAL CLAIMS.

A. JUSTICE COURT RULING.

Danyale was acquitted by a jury of all charges on January 25, 2024.[1] In the prior year, the Hurricane Justice Court ruled that Officer Carlson had probable cause to arrest Danyale on disorderly conduct and resisting arrest.[2]

On summary judgment, Appellees argued that the Justice Court's finding on probable cause precluded Danyale's claim that Carlson lacked

[1] App. Vol. 2 at 204-205.
[2] Supp. App. Vol. 2 at 141-144.

probable cause to arrest.[3] The district court **rejected this argument** explaining that the "unique procedures of Utah justice courts make issue preclusion inappropriate here."[4] In so ruling, the district court followed a long line of cases.[5]

B. FAILURE TO TIMELY APPEAL.

Appellees did not appeal this district court ruling. Notwithstanding, they now argue that preclusion presents an *alternative* ground for this Court to affirm dismissal of the unlawful seizure claim.[6] This Court lacks jurisdiction to hear what amounts to an untimely appeal of the district court's ruling.[7] The argument is also wrong under Utah law as explained below.

C. THE DISTRICT COURT RULED PROPERLY.

1. Utah Preclusion Law. Preclusion has four elements:

> (i) the party against whom issue preclusion is asserted was a party to or in privity with a party to the prior adjudication; (ii) the issue decided in the prior adjudication was identical to the one presented in the instant action; (iii) the issue in the first action was ***completely, fully, and fairly litigated***; and (iv) the first suit resulted in a final judgment on the merits.[8]

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[3] Supp. App. Vol. 2 at 127-140.
[4] Supp. App. Vol. 2 at 290-293; *see also* App. Vol. 2 at 248, fn. 204.
[5] *Id.*
[6] Appellee Brief, pp. 18-26.
[7] *Alva v. Teen Help*, 469 F.3d 946, 950-51 (10th Cir. 2006) (holding that failure to file a proper Notice of Appeal results in lack of jurisdiction.).
[8] *Fowler v. Teynor*, 2014 UT App 66, ¶10, 323 P.3d 594 (emphasis added).

2. **Not Fully and Fairly Litigated.** Appellees cite numerous cases to suggest that a decision in a Utah state court supports preclusion in federal court.[9] None of the cases state that a ruling in a *justice court* is *res judicata* at the state or federal court level.

One of the primary reasons for lack of *res judicata* is that municipal justice courts are not courts "of record."[10] Under Utah statute, appeal from a justice court decision is by *trial de novo* at the state court level, giving defendant a "new opportunity to have a trier of fact review the case unfettered by prior factual findings."[11] A defendant may only appeal after conviction *and* sentencing.[12] An interlocutory ruling may not be appealed.[13]

A district court *trial de novo* of a justice court decision is considered "a ***single continuous course*** of judicial proceedings," not two

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[9] Appellee Brief, pp. 19-23.
[10] Utah Code Ann. §78A-7-101(1)(a) creates a court "not of record."
[11] *Taylorsville City v. Adkins*, 2006 UT App 374, ¶6, 145 P.3d 1161; *see also* Utah Code Ann. §78A-7-118(2).
[12] Utah Code Ann. §78A-7-118(2).
[13] *State v. Gardner*, 2002 UT App 362, 2002 WL 3148652, *1, fn. 1 (Unpublished). (holding that there "is no provision for appeal of an interlocutory order issued in a justice court.")

separate cases.[14] For this reason, Utah law holds that "the justice court portion of the proceedings is ***not a prior case for purposes of res judicata***."[15]

If a defendant is acquitted in a Utah justice court, an appeal of any prior ruling is **not** permitted.[16] Tenth and Seventh Circuit law establishes that where there is no opportunity to appeal, there has **not** been a *full and fair opportunity to litigate*.[17]

D. SUMMARY.

Based on Utah, Tenth and Seventh Circuit law, the district court properly rejected Appellees' preclusion argument. This Court should do the same.

[14] *Smith v. Hruby Mills,* 2016 UT App 159, ¶13, 380 P.3d 349 (emphasis and double emphasis added); Supp. App. Vol. 2 at 291-293.
[15] *Id.* (emphasis and double emphasis added).
[16] Utah Code Ann. 78A-7-118(2). In justice court, an appeal may *only* be taken after sentencing.
[17] *Dixon v. Richer*, 922 F.2d 1456, 1459 (10th Cir. 1991); *Gray v. Lacke*, 885 F.2d 399, 406 (7th Cir. 1989); Supp. App. Vol. 2 at 269-275.

POINT II

~ *Clearly Established the Lobby Was Not a Public Place* ~

A REASONABLE OFFICER WOULD HAVE HAD FAIR NOTICE THAT THE *LOCKED* HOTEL LOBBY WAS NOT A PUBLIC PLACE FOR PURPOSES OF DISORDERLY CONDUCT. AS SUCH, APPELLEES ARE NOT ENTITLED TO QUALIFIED IMMUNITY.

A. CONSTITUTIONAL VIOLATION. The district court ruled that the Officers violated Danyale's Fourth Amendment rights by arresting her for Disorderly Conduct *without probable cause*, which ruling was **not appealed**.[18] This satisfies the first prong of qualified immunity.[19]

B. FAIR NOTICE: "NOT PUBLIC."

The district court ruled, as a matter of law, that "the Hotel Lobby was not a public place" according to statute.[20] However, the district court incorrectly ruled that there "was not clear law establishing whether the hotel lobby was a public place" and "the analysis is even more difficult because the

[18] App. Vol. 2 at 247-248. "[T]he summary judgment record does not show grounds for the warrantless arrest of Blackmore for disorderly conduct. Because Blackmore's arrest … lacked probable cause, the arrest was a violation of Blackmore's Fourth Amendment right to be free from warrantless arrest."
[19] *Id.*
[20] App. Vol. 2 at 237. The district court listed multiple statutory reasons the lobby was *not* a public place.

front door, normally locked at that time, was ajar."[21] However, both the Utah disorderly conduct statute and clearly established law gave fair notice to Carlson that the lobby was not public.[22]

1. Private Property Gave Fair Notice. Carlson knew that Danyale was the "owner of the hotel."[23] This gave Carlson and DeMille notice that the hotel lobby was *private* property. The law was clearly established that private business owners have an expectation of privacy on their property under the Fourth Amendment.[24] This would have given the Officers fair notice that the lobby was **not** a "public place."

2. Statute Gave Fair Notice. In *Holmes*, the Tenth Circuit explained that the "***contours of a state's substantive criminal law***" define the "***precise scope of the right***" to be free from arrest without probable cause.[25]

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[21] *Id.* at 248. Here, the district court incorrectly required Danyale to engage in a scavenger hunt for a case with the same "hotel lobby" facts. The correct standard is whether the Officers had *fair notice* that the hotel lobby was not a public place. Appellant Brief, pp. 25-26.

[22] Additionally, Danyale incorporates the arguments articulated in her Appellant Brief, Doc. 45, herein by reference.

[23] App. Vol. 2 at 219; *see also* Appellee Brief, p. 5.

[24] *Big Cats of Serenity Springs, Inc. v. Rhodes*, 843 F.3d 853, 865 (10th Cir. 2016).

[25] Appellant Brief, p. 32 (citing *A.M. v. Holmes*, 830 F.3d 1123, 1140 (10th Cir. 2016) (emphasis added)); *see also Anderson v. Creighton*, 483 U.S. 635, 640 (1987) (holding that the "***contours of the right*** must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." (emphasis added)).

Based on *Holmes,* the Utah statute clearly establishes the "precise scope" of what constitutes a "public place" for purposes of disorderly conduct.[26] Based on the statutory definition, the Officers had fair notice that because the hotel lobby was not accessible to the public at 1:40 a.m., it was **not** a "public place."

Appellees claim that the disorderly conduct statute makes plain that "common areas of privately owned spaces are public places."[27] The statute does not say this. The statute defines the "common areas" of *certain places* as public, but a "hotel lobby" is **not** one of them.[28] Appellees explain that some of these named places lock their doors or require entry by permission and are still defined as "public."[29] However, they fail to explain why the words "hotel lobby," if it *is* truly a "public place," were not included in the *plain language* of the statute.

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[26] Utah Code Ann. §76-9-102(2). "'Public place' means a place to which the public or a substantial group of the public has access."

[27] Appellee Brief, p. 39.

[28] Utah Code Ann. §76-9-102(1)(b)(ii) states that "public place" includes "the common areas of schools, hospitals, apartment houses, office buildings, public buildings, public facilities, transport facilities, and shops."

[29] Appellee Brief, p. 39.

If the Utah legislature considered a "hotel lobby" a public place, it would have included it in the statute.[30] But it is not there. Therefore, a reasonable officer would have had fair notice that the lobby was **not** a "public place."[31]

3. Locked Lobby = Fair Notice. Appellees argue that Carlson was "not required to assess the nuances of the hotel … to determine whether the common areas are public places in which disorderly conduct may occur."[32] To the contrary, that was *exactly* what Carlson's job required. Police officers must observe facts. The Officers had a duty to observe facts and determine whether the lobby was a "public place" in which disorderly conduct might occur.[33] They failed.

There was nothing nuanced here. It was about 1:40 a.m., no one but Brangham was in the lobby, and the lobby door was open. When Carlson asked how Brangham got into the lobby, he explained that he was "hitting on the door,"

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[30] *State v. Anderson*, 2007 UT App 304, ¶11, 169 P.3d 778 ("While examining a statute's plain language, we do so under the presumption that the 'legislature ***used each term advisedly***.'" (emphasis added) (citing *State v. Maestas*, 2002 UT 123, ¶52, 63 P.3d 621). *Anderson* also held that courts "interpret [statutes] as written, leaving to the legislature the task of making corrections when warranted." *Id.* (bracketed word added).

[31] *Kelly v. Borough of Carlisle*, 622 F.3d 248, 258 (3rd Cir. 2010) ("Police officers generally have a duty to know the basic elements of the laws they enforce.").

[32] Appellee Brief, p. 39.

[33] *Kelly,* 622 F.3d at 258.

and then he "kicked it … and it slid open."[34] Any reasonable officer would have understood that "hitting" and "kicking" meant *locked door*. Locked + no "public" present + 1:40 a.m., reasonably means no "public" access under the statute.[35] Based on these easily observable facts, Carlson had fair notice that the lobby was **not** a "public place."

4. "Open" Door Did Not Create Public Place. The district court held, as a matter of law, that the door being kicked in did **not** transform the lobby into a public place.[36] However, there was no case law to warn the Officers, so they had qualified immunity.[37] This is wrong for several reasons.

First, where facts are obvious or "particularly clear," like a locked lobby of a small hotel at 1:40 a.m., "exact facts" case law is not required.[38]

[34] App. Vol. 2, R. 111-1:1:40:12-1:40:28. In Carlson's video, Brangham is seen demonstrating how he pounded on the door and then kicked it open.
[35] *Holmes*, 830 F.3d at 1140.
[36] App. Vol. 2 at 237-238. ("A finding that a locked hotel lobby was turned into a public space through a kicked open door is inconsistent with the general purpose of disorderly conduct statutes. Accordingly, the lobby was not a public place at the time of the Incident.")
[37] App. Vol. 2 at 248
[38] *Casey v. City of Federal Heights*, 509 F.3d 1278, 1284 (10th Cir. 2007) (holding that when a violation is "particularly clear," a second decision is not necessary to clearly establish the law.). Appellant Brief, pp.40-42.

Second, there *is* case law. The U.S. Supreme Court, in *Lloyd Corp., Limited v. Tanner,* addressed the nature of private property open to the public for business:

> [P]roperty [does not] lose its ***private character*** merely because the public is ***generally invited to use it*** for designated purposes.[39]

According to *Lloyd*, even if the lobby door was open, that did not change the *private character* of the lobby.[40] More importantly, based on observed facts, the Officers reasonably knew the public was **not** "generally invited" to use or enter the *locked* lobby for *any* purpose at 1:40 a.m.[41] Thus, the private lobby did not transform into a public space for purposes of disorderly conduct, even if the door was "ajar." "Particularly clear" facts and case law, gave the Officers fair notice that the lobby was **not** a "public place."

5. Unreasonable Belief. Appellees argue that the Officers *reasonably believed* that Danyale "was engaging in disorderly conduct based on the facts and circumstances."[42] The district court ruled contrary to this argument.

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[39] *Lloyd Corp., Limited v. Tanner*, 407 U.S. 551, 569 (1972) (emphasis, bracketed words and double emphasis added). Both *Lloyd* and the instant case address the principle of whether being "open for business" transforms private property into public property. It does not. Appellant Brief, pp. 36-38.
[40] *Id.*; *see also Big Cats,* 843 F.3d at 865.
[41] Appellant Brief, pp. 36-38; *see also*, Point II, ¶3, above.
[42] Appellee Brief, p. 38.

It held that Danyale "did not have a weapon; did not shout, threaten, assault, or act tumultuously, and did not appear to be out of control or on the verge of physical confrontation of anyone."[43] Appellees **did not appeal** this ruling.

The nature of the encounter also debunks "reasonable belief." A reasonable officer would have known there was **no reasonable suspicion** that Danyale had committed or was committing a crime.[44] Thus, a reasonable officer would have known he had no lawful right to detain Danyale, even briefly, in either the lobby or the hallway.[45] *McHugh* put Carlson on notice that detention without reasonable suspicion was not lawful.[46] Similarly, Carlson had no authority to direct or confine Danyale's movements on her own property.[47] Nevertheless, Danyale still complied with his requests, even though she was not obligated to do so.[48] Under these facts, a reasonable jury could find that the

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[43] App. Vol. 2 at 239.
[44] App. Vol. 2, p. 238-239. Appellees, contrary to the district court's ruling, argue that "Danyale's conduct … created reasonable suspicion." Appellee's Brief, p. 40. However, they chose not to appeal the district court's ruling.
[45] App. Vol. 2 at 238-239, citing *United States v. McHugh*, 639 F.3d 1250, 1256 (10th Cir. 2011); *United States v. Pina-Aboite*, 109 F.App'x 227, 235 (10th Cir. 2004) (Unpublished).
[46] *McHugh*, 639 F.3d at 1255-56.
[47] App. Vol. 2 at 238-239 (explaining that Carlson's "request" to move into the hallway did not constitute a "lawful order.").
[48] *Id.* at 240.

Officers had no reasonable belief that Danyale was disorderly, making her detention unlawful.

6. Similar Encounter Not Required. Appellees argue for a quintessential scavenger hunt. They assert that no "similar encounter" put the Officers on notice that arresting Danyale under these circumstances was a violation of her rights.[49] But a "similar encounter" is not required to clearly establish the law.[50] An official must only have "fair notice" that his conduct was unconstitutional.[51] The observable facts, the statute, and established case law all gave "fair notice" to the Officers that detaining and arresting Danyale for disorderly conduct violated her rights.

C. SUMMARY.

The Officers had fair notice that the lobby was **not** a public place for purposes of disorderly conduct. The Officers are not entitled to qualified immunity.

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[49] Appellee Brief, p. 41.
[50] Appellate Brief, pp. 39-42.
[51] *Pierce v. Gilchrist*, 359 F.3d 1279, 1298 (10th Cir. 2004); *see also*, Appellant Brief, pp. 39-42.

POINT III

~ ***No Interference with Arrest*** ~

GENUINELY DISPUTED FACTS AS TO WHETHER DANYALE RESISTED OR REFUSED TO COMPLY WITH HER ARREST MADE SUMMARY JUDGMENT ON INTERFERENCE INAPPROPRIATE.

Appellees argue "undisputed evidence established, as a matter of law, that the Officers had probable cause to believe Danyale interfered with a police officer."[52] They also argue that Danyale failed to "engage" the district court's opinion on this matter.[53] Both claims are incorrect. A reasonable jury, viewing the Videos in Danyale's favor, could easily find that Danyale did **not** interfere. She did not *resist, refuse* to comply, *pull her hands* away, *turn around* on her own, or *struggle* with the Officers.[54] Danyale fully engaged these issues.

Appellees forget that on summary judgment, video evidence must be viewed in the light most favorable to Danyale,[55] as long as it does not blatantly contradict her version of events.[56] As such, the district court was required to

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[52] Appellee Brief, pp. 26, 29.
[53] *Id*, pp. 18, 31-32.
[54] Appellant Brief, pp. 44-48.
[55] *Emmett v. Armstrong*, 973 F.3d 1127, 1135 (10th Cir. 2020); Appellant Brief, p. 26.
[56] *Id.*, *see also* App. Vol. 2, R-111-1 and R-111-2 (Carlson and DeMille videos, respectively) ("Videos").

accept Danyale's version of events, corroborated by a reasonable interpretation of the Videos.[57]

A. CARLSON'S ESCALATION.

Prior to going "hands on," Carlson reasonably knew (1) the lobby was ***private***;[58] (2) the lobby had been ***locked***;[59] (3) he was there on a ***citizen's assist*** call;[60] (4) he was ***not*** there to ***investigate a crime***;[61] (5) there was ***no reasonable suspicion*** to suspect Danyale had committed or was committing a crime;[62] (6) he had ***no legal authority to detain*** Danyale;[63] and (7) he had ***no legal authority to direct or confine her movement*** either in the hotel lobby or the hallway.[64] All of the above references fully "engaged" the district court's ruling, contrary to Appellees' inferences.

When Danyale tried to return to the lobby to deal with the vandalized door, Carlson unreasonably and without warning went "hands-on"

[57] *Emmett,* 973 F.3d at 1135.
[58] Point II.B, ¶1, above.
[59] *Id.* ¶3, above.
[60] App. Vol. 2 at 213, ¶¶1-2.
[61] *Id.* at 238-239.
[62] *Id.*
[63] *Id.*
[64] *Id.*

as shown in the Videos.[65] "Hands on" included grabbing Danyale's breast.[66] Reasonable jurors could view the Videos and find Carlson's conduct was escalatory, reckless, deliberate, and wholly unnecessary.[67]

B. PROBABLE CAUSE IS DISPUTED.

Probable cause for interference required that Danyale ***resisted*** or ***refused*** to perform Carlson's order to put her hands behind her back.[68] Appellees claim Danyale "did not put her hands behind her back, resisted [the Officers'] efforts to put her hands behind her back and tried to turn to face [the Officers]."[69] The Videos disprove this.

1. Compliant or Unable to Comply. The Videos show, and a jury could find, that Danyale was either *compliant* with Carlson's order to put her hands behind her back or *unable to comply* because of *his* actions.[70]

2. Turning Not Voluntary. The Videos show that Danyale did not resist because she was *turned involuntarily* by the Officers.[71]

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[65] App. Vol. 2, R. 111-1:1:42:44-1:43:00; R. 111-2:1:42:35-1:42:53; *see also* Appellant Brief, p. 44-45.
[66] *Id.*
[67] *Fogarty v. Gallegos*, 523 F.3d 1147, 1159-60 (10th Cir. 2008).
[68] Utah Code Ann. §76-8-305(2).
[69] Appellee Brief pp. 30-31.
[70] Appellant Brief, pp. 45-46 (Right hand controlled, left hand pinned against the wall).
[71] Appellant Brief, pp. 47.

3. No Struggling or Pulling Hands Away. The Videos show that Danyale did not try to pull her hands away, ball up her fists, or struggle with the Officers.[72]

4. Genuinely Disputed Facts. Viewing the Videos in Danyale's favor, whether she resisted or refused to comply with Carlson's order to put her hands behind her back or interfered with the arrest is genuinely disputed. Appellants failed to address these disputed facts. A reasonable jury could find that Danyale did not resist or refuse to comply.

C. DANYALE'S TESTIMONY.

Appellees argue that Danyale's **deposition** confirms that Officers had "a reasonable belief she was interfering," justifying her arrest.[73] Danyale's deposition does not support such a "reasonable belief."

It should be noted that the district court relied almost entirely on the Videos to assess interference.[74] The ruling made only one passing reference to Danyale's deposition regarding alleged "resistance."[75] On the other hand,

[72] Appellant Brief, pp. 45-48.
[73] Appellee Brief, p. 33.
[74] App. Vol. 2 at 228-230, ¶¶47-51; *see also* at 245-247.
[75] App. Vol. 2 at 219, ¶47.

Danyale testified that she (1) was terrified;[76] (2) believed it was her right to know why the Officers were handcuffing her;[77] (3) believed she had done nothing wrong;[78] (4) didn't understand why they were putting handcuffs on her;[79] (5) moved her hands because the Officers were pulling her arms back;[80] and (6) tried to turn to talk to them because she wanted to know why they were arresting her.[81]

Danyale never admits, as claimed by Appellees, that she voluntarily resisted arrest. She moved her hands because the Officers were "pulling my arm[s] back," not because she was trying to resist. The videos show that Danyale did not try "to turn to talk to [the Officers]." Her recollection years later may have been confused by the Officers *forcefully turning* *<u>her</u>* to get at her left hand as the video clearly shows.[82] The district court never stated that Danyale "admitted" that she actively resisted arrest.[83]

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[76] App. Vol. 1 at 272, 157:1.
[77] *Id.* at 271, 156:14-21; *Casey* supports her right to be informed of a pending arrest. *See*, Point III.E, ¶2.
[78] *Id.*
[79] *Id.* at 272, 157:7-12. Danyale specifically states "Of course, I don't want you to …" arrest me. This did not constitute resistance. *See*, Section E, ¶3 below.
[80] *Id.* at 272, 157:25-158:2.
[81] *Id.* at 272, 158:6-11.
[82] Appellant Brief, p. 46.
[83] App. Vol. 2, p. 229, ¶47. The district court stated "Danyale later explained that she was moving her hands and trying to turn to talk to Carlson and DeMille because she did not understand what was happening and did not believe they had a reason to be touching her."

Danyale is not a lawyer able to understand that the words "resist" or "resisting" are legal terms defined by the law. Her counsel properly objected to Mr. Hoole's "resistance" questions that required legal "conclusions" and were "contrary to the evidence" shown in the Videos.[84] During trial, such objections would be sustained. Danyale's deposition statements do not amount to an admission.

Because the Videos dispute Appellees' characterization of Danyale's testimony and because Appellees draw inferences from her testimony *most favorable to them*, their "reasonable belief" argument fails.

D. NOT ENTITLED TO QUALIFIED IMMUNITY.

The district court ruled that if Carlson's arrest was conducted without probable cause, it would have been a violation of Danyale's constitutional rights.[85] However, the district court explained it was not clearly established that the Officers "could not arrest her for resisting arrest where Danyale was ***screaming***, ***trying to turn around,*** and ***attempting to keep her arms from being pulled behind her after being told to put her hands behind***

[84] App. Vol. 1 at 271-272, 156:9-158:21.
[85] App. Vol. 2 at 249, fn. 209.

her back."[86] But, these facts are disputed, particularly when construed in Danyale's favor.

1. <u>No Justification to Detain</u>. On January 6, 2020, it was clearly established that an investigative detention must be supported by reasonable suspicion.[87] The district court found that Carlson did not have reasonable suspicion to detain Danyale for any reason.[88] She was not a suspect in an investigation or suspected of having committed a crime.[89] Nevertheless, Carlson seized Danyale when he grabbed her breast and shoved her into the alcove.[90] In *Cortez*, seizure was unjustified against a woman who, like Danyale, was not a suspect nor suspected of committing a crime.[91] Under *Cortez,* Carlson's seizing of Danyale, without reasonable suspicion, violated her rights.

2. <u>Must Inform</u>. Under Utah and federal law, a person must be informed that they are under arrest.[92] Carlson therefore had notice that he was required to <u>alert</u> Danyale prior to arresting her. A reasonable jury could find that

[86] App. Vol. 2 at 249, fn. 209 (emphasis added).
[87] *Cortez v. McCauley*, 478 F.3d 1108, 1123 (10th Cir. 2007).
[88] App. Vol. 2, at 235-236, 238-240.
[89] *Id.*
[90] *Id.*
[91] *Cortez,* 478 F.3d at 1130.
[92] Utah Code Ann. §77-7-6; *McWilliams,* 40 F.4th at 1127 (citing *Casey,* 509 F.3d at 1282).

Danyale did not interfere because she was not informed she was being placed under arrest until Carlson fully controlled her hands, a full 12 seconds after he had slammed Danyale into the wall.[93]

3. <u>Saying "No" is Not Resistance or Refusal</u>. Appellees argue that "screaming" the words "stop," "no," and "don't touch me," was resisting. "Screaming" is disputed.[94] Further, under *Becker, saying "no"* or similar such words does not amount to resistance.[95] *McWilliams* established that *arguing* with an officer does not rise to resistance.[96] Finally, *Bryan* informed reasonable officers that an arrestee may *shout*, but that does not necessarily constitute resistance.[97] Accordingly, the Officers had fair notice that Danyale's saying "no" or being loud in response to Carlson's unnecessary and reckless escalation, did not constitute resistance.

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[93] Appellant Brief, pp. 49-50; *see also McWilliams*, 40 F.4th at 1127 ("McWilliams couldn't have been resisting arrest if he hadn't even been told he was under arrest.").
[94] App. Vol. 2 at 239 (Danyale "did not shout.").
[95] Appellate Brief, p. 48; citing *Becker v. Bateman*, 709 F.3d 1019, 1026 (10th Cir. 2013). Like *Becker*, a reasonable jury could infer Danyale's words were not resistance, but a plea not to be arrested. Danyale's statement "Of course, I don't want you to …[handcuff me]" is supported by *Becker's* ruling. App. Vol. 1 at 272, 158:7-12 (brackets added).
[96] Appellate Brief, p. 48; citing *McWilliams,* 40 F.4th at 1127. Like *McWilliams*, Danyale had been fully compliant, prior to Carlson going "hands on."
[97] *Bryan v. McPherson*, 630 F.3d 805, 829-30 (9th Cir. 2010) (finding that although subject shouted gibberish at the officer, his conduct did not constitute resistance.).

4. <u>Reflexive Tightening is Not Resistance</u>. Appellees argue that Danyale resisted by "attempting to keep her arms from being pulled behind her."[98] While she may have tightened her arms during the handcuffing process, it was a reflexive response to being arrested for the first time.[99] *Becker* clearly established that "withdrawing" or "tightening" arms is not resistance.[100] Carlson had fair notice that Danyale's actions were not resistance.

Appellees misinterpret Danyale's application of *Becker* and *McWilliams* to probable cause.[101]

E. <u>NOT "QUICK" OR "FLUID</u>."

The district court stated that the "incident was quick … [and] fluid," forcing Carlson and DeMille to act very quickly.[102] This is contrary to the facts. *First*, Carlson did not have reasonable suspicion to detain Danyale in the first place.[103] *Second*, without reasonable suspicion, Carlson could not go "hands on,"

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[98] Appellee Brief, pp. 36-37.
[99] Like *Becker*, viewed in the light most favorable to her, Danyale may have *reflexively* tried to pull back her wrists. Appellant Brief, p. 46.
[100] *Becker,* 709 F.3d at 1026.
[101] Appellee Brief, p. 32, fn.11.
[102] App. Vol. 2, at 249 (brackets added). Appellees restate this argument as one of their own. Appellee Brief, p. 40.
[103] App. Vol. 2, at 239-240; *see also* Point III.A.

grabbing and shoving Danyale.[104] Carlson's unnecessary escalation of the encounter, was then improperly used to justify the arrest.[105]

The so-called "fluid" situation was a Carlson construct to justify his improper conduct. *Fogarty* clearly established that Danyale's startled response to Carlson's escalation cannot be used to justify use of force or her arrest.[106]

F. "ENGAGED" WITH DISTRICT COURT.

Appellees wrongly argue that Danyale did not "engage with the district court's reasoning," rendering her appeal "inadequately briefed."[107] For example, Appellees claim that Danyale did not acknowledge Utah case law regarding resistance to detention or arrest.[108] However, Danyale cited facts, pointed to specific video segments, and referenced case law to dispute resistance to detention or arrest.[109] Appellees argue that Danyale does not engage the video recordings "which capture her resistance."[110] To the contrary, she cited video

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[104] *See*, Section A, above.
[105] *Fogarty,* 523 F.3d at 1159-60.
[106] *Fogarty*, 523 F.3d at 1159-60.
[107] Appellee Brief, pp. 18, 31-32.
[108] *Id.*
[109] Appellant Brief, p. 44, 54; App. Vol. 2 at 238-240.
[110] Appellee Brief, p. 31.

evidence to dispute "resistance" facts relied on by the district court.[111] Appellees argue that Danyale fails to "engage" the district court's use of her deposition testimony.[112] However, the district court relied almost exclusively on the Officers' videos.[113] Danyale cited those same videos to refute the court's rulings and its interpretation of her deposition.[114] Danyale thus fully engaged the district court's opinion.

G. SUMMARY.

A reasonable jury could find that Danyale did not resist or refuse, but reasonably complied with Carlson's orders, even in the face of his unreasonable escalation. The Officers are not entitled to qualified immunity.

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[111] Appellant Brief, pp. 9-15, 45-48. Danyale did not address Appellees' post-arrest allegations. Appellee Brief, p. 31. The district court ruled they had no bearing on her unlawful seizure claims. App. Vol. 2 at 245.

[112] Appellee Brief, p. 31. Appellees argue that Danyale testified that "she resisted the Officers' efforts to detain and arrest her." Danyale did not say that. Point III.C, above.

[113] App. Vol. 2 at 229-230, 245-246. The district court cited ¶¶47-51 in its ruling on resistance, only referencing Danyale's deposition in ¶47.

[114] Appellant Brief, p. 43-50; Point III.C, above.

POINT IV

~ *Clearly Established – Use of Excessive Force* ~

IT WAS CLEARLY ESTABLISHED THAT THE FORCE USED BY THE OFFICERS TO ARREST DANYALE WAS UNREASONABLE AND EXCESSIVE WHEN ALL THREE GRAHAM FACTORS WEIGHED IN HER FAVOR.

The district court ruled that all three *Graham* factors weighed in Danyale's favor.[115] This established that Carlson's use of force was unreasonable.[116] Danyale therefore meets the first prong of qualified immunity.[117]

The district court also ruled, however, that Carlson and DeMille were entitled to qualified immunity because whether the force used was excessive was not clearly established.[118] The district court erred.

A. NOT COMBATIVE OR VOLATILE.

Appellees renew their argument that Danyale was "combative and volatile" from the beginning of the encounter, requiring Carlson to make a "split

[115] App. Vol. 1, p. 116; *see also* Appellant Brief, pp. 52-55.
[116] App. Vol. 1, p. 113 (citing *Graham v. Conner*, 490 U.S. 386, 396 (1989)).
[117] App. Vol. 1, p. 117-118.
[118] App. Vol. 1, p. 118.

second judgment in circumstances that were tense and uncertain."[119] This is simply another attempt by Appellees to improperly appeal the district court's finding which does not support their narrative. The district court found that Danyale "while upset, did not have a weapon, yell, threaten, physically touch, or appear to be about to do anything similar" during the encounter."[120] As to Danyale's conduct in the lobby and hallway, the district court found that "there were no circumstances that raised safety concerns."[121] The Officers had no right to lawfully detain Danyale.[122] Carlson's going "hands on" constituted an unnecessary and reckless escalation of the encounter.[123]

B. EFFECTIVELY SUBDUED.

Danyale argues that, after Carlson shoved her into the alcove, she was boxed in and effectively subdued. There was no further need for force.[124] Viewed in her favor, her "ongoing movement, yelling, and protests" were not

[119] Appellees Brief, p. 40. As explained above, if the situation was "tense and uncertain," it was due to Carlson's escalatory conduct, not anything Danyale did. *See*, Point III.A and E, above.
[120] App. Vol. 1, pp. 91-92; App. Vol. 2, p. 242.
[121] App. Vol. 2, p. 239.
[122] Point III.D, ¶1, above.
[123] Point III.A, above.
[124] Appellant Brief, pp. 57-60.

aggressive, but defensive.[125] A reasonable jury could find that Danyale was simply trying to avoid further abuse from Carlson.

A reasonable officer would have known he had no legal right to seize and shove Danyale into the alcove in the first place. But, having realized his mistake, a reasonable officer would have stopped in the entry to the alcove, talked with Danyale, and reestablished calm.[126]

C. NOT ENTITLED TO QUALIFIED IMMUNITY.

The Officers argue that the "only force used on Danyale" was minimal and consistent with handcuffing.[127] This is a gross exaggeration and contrary to the Videos. Viewed in the light most favorable to Danyale, Carlson's use of force was (1) excessive, i.e., much more than necessary to detain; and (2) was constitutionally unjustified.[128]

1. Not Given Chance to Submit Peacefully. The Videos prove the Officers failed to give Danyale notice of pending arrest or a chance to surrender peacefully. Clearly established law required that Danyale be given an

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[125] Appellee Brief, p. 42, fn. 16.
[126] Appellant Brief, p 60.
[127] Appellee Brief, p. 43. Appellees argued Carlson's force did not "exceed what was objectively needed to detain and arrest Danyale."
[128] Appellant Brief, pp. 20, 53.

"indication that [she] was, or soon would be, under arrest" and "given an opportunity to submit peacefully."[129] The Officers had ample time to do this. They did not. They violated Danyale's clearly established rights.

2. Effectively Subdued. When Danyale was shoved into the enclosed alcove, she was cornered with no means of escaping.[130] She no longer "posed [a] threat or [was] subdued."[131] It was therefore clearly established that "the justification for using force ceased" because Danyale was "not making any aggressive moves or threats."[132] The district court found that Danyale was never a safety threat.[133] There was no justification for further use of force.[134] The Officers' continued aggressive use of force violated Danyale's clearly established rights. Appellees fail to address this argument.

3. No Officer Safety Concerns. In *Cortez*, police arrived at the Cortez home to investigate Mr. Cortez for alleged child abuse. His wife, also at

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[129] *Casey*, 509 F.3d at 1283 (bracketed word added); *McWilliams,* 40 F.4th at 1129. Utah law also requires notice prior to arrest. *See*, Point III.D, ¶2, above.
[130] Appellant Brief, pp. 57-60; *see also*, R. 111-2, 01:42:35-01:42:43.
[131] Appellant Brief, p. 58 (citing *McCoy v. Meyers*, 837 F.3d 1034, 1052 (10th Cir. 2018). The district court found that Danyale was not a safety risk at any time. App. Vol. 2, pp. 239.
[132] Appellant Brief. p. 59.
[133] App. Vol. 2 at. 239.
[134] Appellant Brief, pp. 57-60.

the home, was seized, taken by the arm and led to a police car and left there. Like Danyale, the wife was not the subject of the investigation and there was no reasonable suspicion for officers to believe she had committed or was committing a crime. The wife sued the officers for illegal seizure and excessive use of force.[135] The Tenth Circuit found that, viewing the facts in the light most favorable to Cortez, "the level of force the Appellees used against her was unreasonable in comparison to the threat she presented."[136] The court explained:

> Although it is generally permissible to hold a person by the arm during an investigative detention, the defendants have not articulated any reasonable ***safety concerns or flight concerns that would justify the extra force*** they used against Tina Cortez.[137]
>
> The court continued:
>
> We also hold that the law was clearly established. With respect to Mrs. Cortez, the officers involved should have known that they were permitted to use only as much force as was necessary to ***secure their own safety and maintain the status quo***.[138]

The force used by Carlson and DeMille to unjustifiably detain Danyale was "unreasonable in comparison to the threat she presented."[139] There

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[135] *Cortez*, 478 F.3d at 1114
[136] *Id.,* at 1131.
[137] *Id.* (emphasis added).
[138] *Id.* (emphasis added).
[139] *Cortez,* 478 F.3d at 1131 (emphasis added). In fact, the Officers' use of force against Danyale went well beyond what the officers used against Mrs. Cortez.

was no relationship between the amount of force used and the Officers' need to "secure their own safety and maintain the status quo."[140] The observable facts would have informed any reasonable officer that he did not have authority to reach out, grab Danyale's breast, push her into the alcove, and then aggressively advance toward her, hand outstretched, grab her by the arm and then slam her body and face into the wall, grabbing at her hands.

Cortez put Carlson on notice that using more force than "taking [Danyale] by the arm" during the unlawful detention was a violation of her clearly established Fourth Amendment rights to be free from excessive force.[141] The Officers are not entitled to qualified immunity.

D. <u>SUMMARY</u>.

A reasonable jury could find that the Officers' use of force was unreasonable and excessive. The Officers are not entitled to qualified immunity.

[140] *Id.*

[141] *Cortez,* 478 F.3d at 1131

CONCLUSION

For all the reasons stated above and in her Appellant Brief, Danyale respectfully requests this Court to overturn the district court's erroneous decisions and remand the case to the district court for a jury trial.

DATED this 26th day of March 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Appellant Reply Brief was filed on this 26th day of March 2025, and served via the Court's CM/ECF system and by e-mail on the following:

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CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that with respect to the foregoing:

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ADDENDUM

Appellate Case: 24-4074 Document: 68 Date Filed: 03/26/2025 Page: 43

Chapter 7
Justice Court

Part 1
Creation, Jurisdiction, and Procedure

78A-7-101 Creation of justice court -- Not of record -- Independent branch of local government -- Classes of justice courts.

(1)
  (a) Under Article VIII, Section 1, Utah Constitution, there is created a court not of record known as the justice court.
  (b) The judges of this court are justice court judges.
(2) A justice court is:
  (a) a court of this state in accordance with Section 78A-1-101;
  (b) a part of the state judiciary even though the justice court is funded and staffed by a municipality or county; and
  (c) independent from the other branches of government for a municipality or county.
(3) A justice court may not be treated as part of the executive or legislative branches or offices of a municipality or county.
(4) A municipality or county may only operate a justice court as authorized by this chapter.
(5) Justice courts shall be divided into the following classes:
  (a) Class I: 501 or more case filings per month;
  (b) Class II: 201-500 case filings per month;
  (c) Class III: 61-200 case filings per month; and
  (d) Class IV: 60 or fewer case filings per month.

Amended by Chapter 475, 2023 General Session

78A-7-102 Establishment of justice courts.

(1)
  (a) As used in this section, to "create a justice court" means to:
    (i) establish a justice court; or
    (ii) establish a justice court under Title 11, Chapter 13, Interlocal Cooperation Act.
  (b) For the purposes of this section, if more than one municipality or county is collectively proposing to create a justice court, the class of the justice court shall be determined by the total citations or cases filed within the territorial jurisdiction of the proposed justice court.
(2) A municipality or county of the first or second class may create a justice court by filing a written declaration with the Judicial Council on or before July 1 at least two years before the effective date of the election. Upon demonstration of compliance with operating standards as established by statute and the Judicial Council, the Judicial Council shall certify the creation of the justice court under Section 78A-7-103.
(3)
  (a) A municipality or county of the third, fourth, or fifth class may create a justice court by demonstrating the need for the justice court and filing a written declaration with the Judicial Council on or before July 1 at least one year before the effective date of the election.
  (b) A municipality or county creating a justice court shall demonstrate to the Judicial Council that a justice court is needed. In evaluating the need for a justice court, the Judicial Council

Effective 5/3/2023

78A-7-118 Appeals from justice court -- Trial or hearing de novo in district court.

(1) As used in this section:
(a) "Restitution" means the same as that term is defined in Section 77-38b-102.
(b) "Victim" means the same as that term is defined in Section 77-38b-102.
(2) In a criminal case, a defendant is entitled to a trial de novo in the district court only if the defendant files a notice of appeal within 28 days after the day on which:
(a) except as provided in Subsection (5)(a)(ii), the justice court sentences the defendant; or
(b) the defendant enters a plea of guilty or no contest in the justice court that is held in abeyance.
(3) Upon filing a proper notice of appeal, any term of a sentence imposed by the justice court is stayed as provided for in Section 77-20-302 and the Utah Rules of Criminal Procedure.
(4) If an appeal under Subsection (2) is of a plea entered pursuant to negotiation with the prosecutor, and the defendant did not reserve the right to appeal as part of the plea negotiation, the negotiation is voided by the appeal.
(5)
(a) A defendant convicted and sentenced in the justice court is entitled to a hearing de novo in the district court regarding:
(i) an order revoking probation;
(ii) a sentence after a determination that a defendant failed to fulfill the terms of a plea in abeyance agreement;
(iii) an order denying a motion to withdraw a plea if the plea is being held in abeyance and the motion to withdraw the plea is filed within 28 days after the day on which the plea is entered;
(iv) an order for restitution; or
(v) an order denying expungement.
(b) A defendant seeking an appeal under Subsection (5)(a) shall file a notice of appeal within 28 days after the day on which the justice court enters the order or sentence.
(6)
(a) A defendant who has entered into a plea in abeyance in the justice court is entitled to a hearing de novo in the district court on the determination by the justice court as to the amount of restitution owed by the defendant as a part of the plea in abeyance agreement.
(b) A defendant seeking an appeal under Subsection (6)(a) shall file a notice of appeal within 28 days after the day on which the justice court enters the order for restitution.
(7)
(a) A prosecutor is entitled to a hearing de novo in the district court regarding:
(i) a final judgment of dismissal;
(ii) an order arresting judgment;
(iii) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;
(iv) a judgment holding invalid any part of a statute or ordinance;
(v) a pretrial order excluding evidence when the prosecutor certifies that exclusion of that evidence prevents continued prosecution of an infraction or class C misdemeanor;
(vi) a pretrial order excluding evidence when the prosecutor certifies that exclusion of that evidence impairs continued prosecution of a class B misdemeanor;
(vii) an order granting a motion to withdraw a plea of guilty or no contest; or
(viii) an order granting an expungement if the expungement was opposed by the prosecution or a victim before the order was entered.
(b) A prosecutor seeking an appeal under Subsection (7)(a) shall file a notice of appeal within 28 days after the day on which the justice court enters the order or judgment.

(8)
(a) A prosecutor or a victim is entitled to a restitution hearing de novo in the district court regarding restitution if:
(i) a request for restitution was made in the justice court; and
(ii) the justice court:
(A) failed to order the defendant to pay restitution to the victim; or
(B) ordered the defendant to pay restitution in an amount less than requested.
(b) A prosecutor or victim seeking an appeal under Subsection (8)(a) shall file a notice of appeal within 28 days after the day on which the justice court:
(i) failed to order the defendant to pay restitution; or
(ii) ordered the defendant to pay restitution in an amount less than requested.
(9) Upon entering a decision in a hearing de novo, the district court shall remand the case to the justice court unless:
(a) the decision results in immediate dismissal of the case; or
(b) the hearing de novo was on a pretrial order and the parties and the district court agree to have the district court retain jurisdiction.
(10) The district court shall retain jurisdiction over the case on trial de novo.
(11) The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance.

Amended by Chapter 113, 2023 General Session

Effective 5/12/2020

76-9-102 Disorderly conduct.

(1) As used in this section:
(a) "Official meeting" means:
(i) a meeting, as defined in Section 52-4-103;
(ii) a meeting of the Legislature, the Utah Senate, the Utah House of Representatives, a legislative caucus, or any committee, task force, working group, or other organization in the state legislative branch; or
(iii) a meeting of an entity created by the Utah Constitution, Utah Code, Utah administrative rule, legislative rule, or a written rule or policy of the Legislative Management Committee.
(b) "Public place" means a place to which the public or a substantial group of the public has access, including:
(i) streets or highways; and
(ii) the common areas of schools, hospitals, apartment houses, office buildings, public buildings, public facilities, transport facilities, and shops.
(2) An individual is guilty of disorderly conduct if:
(a) the individual refuses to comply with the lawful order of a law enforcement officer to move from a public place or an official meeting, or knowingly creates a hazardous or physically offensive condition, by any act that serves no legitimate purpose; or
(b) intending to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk of public inconvenience, annoyance, or alarm, the person:
(i) engages in fighting or in violent, tumultuous, or threatening behavior;
(ii) makes unreasonable noises in a public place or an official meeting;
(iii) makes unreasonable noises in a private place which can be heard in a public place or an official meeting; or
(iv) obstructs vehicular or pedestrian traffic in a public place or an official meeting.
(3) The mere carrying or possession of a holstered or encased firearm, whether visible or concealed, without additional behavior or circumstances that would cause a reasonable person to believe the holstered or encased firearm was carried or possessed with criminal intent, does not constitute a violation of this section. Nothing in this Subsection (3) may limit or prohibit a law enforcement officer from approaching or engaging any person in a voluntary conversation.
(4) An individual who violates this section is guilty of:
(a) except as provided in Subsection (4)(b), (c), or (d), an infraction;
(b) except as provided in Subsection (4)(c) or (d), a class C misdemeanor, if the violation occurs after the individual has been asked to cease conduct prohibited under this section;
(c) except as provided in Subsection (4)(d), a class B misdemeanor, if:
(i) the violation occurs after the individual has been asked to cease conduct prohibited under this section; and
(ii) within five years before the day on which the individual violates this section, the individual was previously convicted of a violation of this section; or
(d) a class A misdemeanor, if:
(i) the violation occurs after the individual has been asked to cease conduct prohibited under this section; and
(ii) within five years before the day on which the individual violates this section, the individual was previously convicted of two or more violations of this section.

Amended by Chapter 394, 2020 General Session

Effective 5/9/2017

77-7-6 Manner of making arrest.

(1) The person making the arrest shall inform the person being arrested of his intention, cause, and authority to arrest him. Such notice shall not be required when:

(a) there is reason to believe the notice will endanger the life or safety of the officer or another person or will likely enable the party being arrested to escape;

(b) the person being arrested is actually engaged in the commission of, or an attempt to commit, an offense; or

(c) the person being arrested is pursued immediately after the commission of an offense or an escape.

(2)

(a) If a deaf or hard of hearing person, as defined in Subsection 78B-1-201(2), is arrested for an alleged violation of a criminal law, including a local ordinance, the arresting officer shall assess the communicative abilities of the deaf or hard of hearing person and conduct this notification, and any further notifications of rights, warnings, interrogations, or taking of statements, in a manner that accurately and effectively communicates with the deaf or hard of hearing person, including qualified interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and telecommunications devices for the deaf.

(b) Compliance with this Subsection (2) is a factor to be considered by any court when evaluating whether statements of a deaf or hard of hearing person were made knowingly, voluntarily, and intelligently.

Amended by Chapter 43, 2017 General Session

Effective 5/1/2024

76-8-305 Interference with a peace officer.

(1) Terms defined in Sections 76-1-101.5 and 76-8-101 apply to this section.
(2) An actor commits interference with a peace officer if the actor:
  (a) knows, or by the exercise of reasonable care should have known, that a peace officer is seeking to effect a lawful arrest or detention of the actor or another individual; and
  (b) interferes with the arrest or detention by:
    (i) use of force or a weapon;
    (ii) refusing to perform an act required by lawful order:
      (A) necessary to effect the arrest or detention; and
      (B) made by a peace officer involved in the arrest or detention; or
    (iii) refusing to refrain from performing an act that would impede the arrest or detention.
(3) A violation of Subsection (2) is a class B misdemeanor.
(4) Recording the actions of a peace officer with a camera, mobile phone, or other photographic device, while the peace officer is performing official duties in plain view, does not by itself constitute:
  (a) interference with the peace officer;
  (b) willful resistance;
  (c) disorderly conduct; or
  (d) obstruction of justice.

Amended by Chapter 96, 2024 General Session