

Case No. 24-4074

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

DANYALE BLACKMORE,

Plaintiff-Appellant,

and

VINCENT BLACKMORE,

Plaintiff,

v.

JARED CARLSON, ERIC DEMILLE, and HURRICANE CITY,

Defendants-Appellees,

and

LA-NORMA RAMIREZ, WASHINGTON COUNTY,

Defendants.

On appeal from the United States District Court for the District of Utah
Honorable David Nuffer
Case No. 4:21-cv-00026-DN-PK

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Oral Argument Not Requested

TABLE OF CONTENTS

| | |
|--|-----|
| TABLE OF AUTHORITIES..... | i-v |
| STATEMENT OF RELATED CASES..... | x |
| GLOSSARY | xi |
| INTRODUCTION..... | 1 |
| STATEMENT OF THE CASE | 2 |
| <i>Factual Background</i> | 2 |
| <i>Procedural Background</i> | 11 |
| A. The Blackmores File Suit Alleging Civil Rights Violations. | 11 |
| B. The District Court Dismisses the Blackmores’ Claim of Excessive Force. | 12 |
| C. The Justice Court Rules the Officers Had Probable Cause to Arrest Danyale and the Hotel Lobby Was a Public Place..... | 13 |
| D. Defendants Move for Summary Judgment on All Remaining Claims. | 13 |
| E. The Blackmores Assert Danyale’s Acquittal Establishes Lack of Probable Cause. | 15 |
| F. Defendants Move to Supplement Their Motion for Summary Judgment, Asserting the Justice Court’s Probable Cause Ruling Is Preclusive..... | 15 |
| G. The District Court Permits Consideration of the Jury Verdict and the Justice Court’s Probable Cause Ruling, But Rules Neither Is Dispositive. | 16 |
| H. The District Court Grants Summary Judgment for Defendants..... | 16 |
| I. The District Court Certifies Its Ruling as Final, and the Blackmores Appeal. | 17 |
| SUMMARY OF THE ARGUMENT..... | 17 |
| ARGUMENT..... | 18 |
| I. The Justice Court’s Probable Cause Ruling Is Dispositive of Danyale’s Unlawful Seizure Claim..... | 18 |
| A. Justice Court Rulings Have Preclusive Effect. | 19 |

| | | |
|------|---|----|
| B. | The Justice Court’s Ruling Bars Danyale’s Unlawful Seizure Claim..... | 23 |
| II. | The District Court Properly Ruled Danyale’s Unlawful Seizure Claim Lacks Merit and Is Barred under the Doctrine of Qualified Immunity. | 26 |
| A. | Probable Cause Exists If, under the Circumstances, a Reasonable Person May Believe a Crime Has Been Committed. | 27 |
| B. | As the District Court Properly Held, the Officers Had Probable Cause to Conclude Danyale Was Interfering with Her Detention or Arrest. | 27 |
| C. | As the District Court Properly Held, No Clearly Established Authority Prohibited Arrest of Danyale for Interference with a Peace Officer..... | 33 |
| 1. | Danyale Does Not Address This Basis of the District Court’s Ruling, Which Provides an Alternate Basis for Affirmance. | 33 |
| 2. | The District Court Correctly Determined Qualified Immunity Bars Danyale’s Unlawful Seizure Claim. | 35 |
| a. | Qualified Immunity Applies Unless an Officer Violates a Clearly Established Constitutional Right..... | 35 |
| b. | As a Matter of Law, Danyale Has Not Established Violation of a Clearly Established Constitutional Right. | 36 |
| D. | No Clearly Established Authority Prohibited Danyale’s Arrest for Disorderly Conduct. | 37 |
| 1. | Danyale Presented No Authority Clearly Establishing the Hotel Lobby Was Not a Public Place..... | 38 |
| 2. | Danyale Did Not Clearly Establish Lack of a Lawful Order or Lack of Probable Cause She Was Refusing to Comply. | 39 |
| III. | The District Court Properly Dismissed Danyale’s Excessive Force Claim as Barred under the Doctrine of Qualified Immunity. | 41 |
| | CONCLUSION | 44 |
| | CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT | 46 |

CERTIFICATE OF SERVICE.....47

TABLE OF AUTHORITIES

Cases

Adamson v. Dayton Hudson Corp.,
774 P.2d 478 (Okla. Ct. App. 1989) 26

Allen v. Moyer,
2011 UT 44, 259 P.3d 1049 20

Am. Fork City v. Pena-Flores,
2002 UT 131, 63 P.3d 675 28

Anderson v. Patterson,
55 S.E.2d 1 (Va. 1949)..... 22

Ashcroft v. al-Kidd,
563 U.S. 731 (2011)..... 35

Becker v. Bateman,
709 F.3d 1019 (10th Cir. 2013) 32, 43

Blaine Hudson Printing v. Utah State Tax Comm’n,
870 P.2d 291 (Utah Ct. App. 1994) 21

Butts v. Deibler,
No. 4:12-CV-00114-JHM, 2013 WL 3423770 (W.D. Ky. July 8, 2013)..... 25

Casey v. City of Federal Heights,
509 F.3d 1278 (10th Cir. 2007). 43

Christopher v. Circle K Convenience Stores, Inc.,
1997 OK 27, 937 P.2d 77..... 26

City of Monticello v. Christensen,
788 P.2d 513 (Utah 1990)..... 22

Cook v. Aagard,
No. 2:12CV00157, 2012 WL 5903848 (D. Utah Nov. 26, 2012) 25

Cortez v. McCauley,
478 F.3d 1108 (10th Cir. 2007) 43

Cosgrove v. Pettigrew,
No. 21-CV-10379, 2022 WL 14800982 (E.D. Mich. Sept. 26, 2022)..... 25

Cota v. Chapa,
2 F. App'x 621 (8th Cir. 2001) 26

Cronick v. Pryor,
99 F.4th 1262 (10th Cir. 2024) 31

Crumley v. City of St. Paul, Minn.,
324 F.3d 1003 (8th Cir. 2003) 26

Davidson Oil Co. v. City of Albuquerque,
108 F.4th 1226 (10th Cir. 2024) 18

Davis & Sanchez, PLLC v. Univ. of Utah Health Care,
2015 UT 47, 349 P.3d 748 23

Davis Cnty. v. Clearfield City,
756 P.2d 704 (Utah Ct. App. 1988) 21

Devenpeck v. Alford,
543 U.S. 146 (2004) 27

Dunham v. Saratoga Springs City,
No. 219CV00641RJSDBP, 2023 WL 5804345 (D. Utah Sept. 7, 2023) 24

Estate of Redd ex rel. Redd v. Love,
848 F.3d 899 (10th Cir. 2017) 41

Est. of Smart by Smart v. City of Wichita,
951 F.3d 1161, 1168 (10th Cir. 2020) 35

Feinberg v. Comm’r of Internal Revenue,
916 F.3d 1330 (10th Cir. 2019) 19

Fogarty v. Gallegos,
523 F.3d 1147 (10th Cir. 2008) 37

Fontana v. City of Auburn,
No. C13-0245-JCC, 2014 WL 4162528 (W.D. Wash. Aug. 21, 2014) 25

Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne,
698 F.3d 1295 (10th Cir. 2012) 19

Graham v. Connor,
490 U.S. 386 (1989) 41

Guenther v. Holmgreen,
738 F.2d 879 (7th Cir. 1984) 26

Haupt v. Dillard,
17 F.3d 285 (9th Cir. 1994) 26

Hernandez v. Grisham,
No. 20-2176, 2022 WL 16941735 (10th Cir. Nov. 15, 2022) 32

Hubbert v. City of Moore, Okl.,
923 F.2d 769 (10th Cir. 1991) 26

In re Centrix Fin. LLC,
394 F. App’x 485 (10th Cir. 2010) 32, 34

Jiron v. City of Lakewood,
392 F.3d 410 (10th Cir. 2004) 19

Kisela v. Hughes,
584 U.S. 100 (2018) 36

Lloyd Corp., Ltd. v. Tanner,
407 U.S. 551 (1972) 38

Maresca v. Bernalillo Cnty.,
804 F.3d 1301 (10th Cir. 2015) 41

McCarthy v. State,
265 P.2d 387 (Utah 1953) 20

McCowan v. Morales,
945 F.3d 1276 (10th Cir. 2019) 36

McWilliams v. Dinapoli,
40 F.4th 1118 (10th Cir. 2022) 32, 43

Mocek v. City of Albuquerque,
813 F.3d 912 (10th Cir. 2015) 27

Molnar v. Care House,
359 F. App’x 623 (6th Cir. 2009) 25

Morris v. Noe,
672 F.3d 1185 (10th Cir. 2012) 43

Moss v. Parr Waddoups Brown Gee & Loveless,
2012 UT 42, 285 P.3d 1157 23

Oliver v. Woods,
209 F.3d 1179 (10th Cir. 2000) 27, 32

Parkinson v. Sanderson,
No. 215CV00796JNPEJF, 2019 WL 4935513 (D. Utah July 31, 2019)..... 24

Peak Alarm Co. v. Salt Lake City Corp.,
2010 UT 22, 243 P.3d 1221 24

Pearson v. Callahan,
555 U.S. 223 (2009)..... 35

Petersen v. Utah Bd. of Pardons,
907 P.2d 1148 (Utah 1995)..... 21

Provo City Corp. v. Willden,
768 P.2d 455 (Utah 1989)..... 38

Pueblo Neighborhood Health Ctrs., Inc. v. Losavio,
847 F.2d 642 (10th Cir. 1988) 36

Regent v. Town of Cheektowaga,
No. 03-CV-0347A(F), 2007 WL 981771 (W.D.N.Y. Mar. 30, 2007)..... 26

Rivero v. Bd. of Regents of Univ. of New Mexico,
950 F.3d 754 (10th Cir. 2020) 34

Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co.,
846 P.2d 1245 (Utah 1992) 20, 21

Smith v. Hruby-Mills,
2016 UT App 159, 380 P.3d 349 20

Smith v. Thornburg,
136 F.3d 1070 (6th Cir. 1998) 26

State v. Gallegos,
2009 UT 42, 220 P.3d 136 38

State v. Richards,
779 P.2d 689 (Utah Ct. App. 1989) 38

State v. Sommerville,
2013 UT App 40, 297 P.3d 665 20

State v. Trane,
2002 UT 97, 57 P.3d 1052)..... 28

Taylor v. Meacham,
82 F.3d 1556 (10th Cir. 1996) 26

Tompkins v. Spokane Cnty.,
No. CV-07-0195-FVS, 2009 WL 269386 (E.D. Wash. Jan. 30, 2009)..... 25

Utah Dep’t of Admin. Servs. v. Pub. Serv. Comm’n,
658 P.2d 601 (Utah 1983)..... 21

Verrett v. Savoie,
141 So. 854 (La. 1932)..... 22

Vorher v. Henriod,
2011 UT App 199, 262 P.3d 42 21

White v. Martin,
425 F. App’x 736 (10th Cir. 2011) 32

Statutes

28 U.S.C. § 1738 19

Utah Code § 76-8-305(2)..... 28

Utah Code § 76-9-102(1)(b)..... 38, 39

Utah Code § 76-9-102(2)..... 38

Utah Code § 78A-7-101.1 20

Utah Code § 78A-7-105 20

Utah Code § 78A-7-118(2)..... 22

Utah Code § 78A-7-118(5)..... 22

Utah Code § 78A-7-118(6)..... 22

Utah Code § 78A-7-118 (11)..... 22

Other Authorities

Merriam-Webster Online Dictionary 40

Oxford English Dictionary (7th ed. 2012)..... 40

STATEMENT OF RELATED CASES

No prior appeals have been taken in this case and no appeals relating to this case have previously been filed in this Court.

GLOSSARY

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|------------|---|
| App. | Appellant's Appendix |
| CBC | Officer Jared Carlson Body Camera Recording |
| DBC | Officer Eric DeMille Body Camera Recording |
| Defendants | Officer Jared Carlson, Officer Eric DeMille, and Hurricane City |
| Guest | Bret Brangham |
| Officers | Officer Jared Carlson and Officer Eric DeMille |
| Supp. App. | Appellees' Supplemental Appendix |

INTRODUCTION

Danyale Blackmore was arrested for disorderly conduct and interference with a peace officer due to her erratic, hostile, and belligerent behavior and failure to follow directives issued by a police officer. In the course of her criminal proceedings, a justice court ruled the police officers had probable cause to arrest Danyale¹ for both charges and concluded their detention of Danyale was reasonable and justified.

The only force used in Danyale's arrest was when an officer pushed Danyale toward a wall and, with another officer's assistance, pulled Danyale's hands behind her back, placed her in handcuffs, escorted her outside, and placed her in a patrol car, where she proceeded to kick the cage separating the front seat from the back seat. Upon arrival at the jail, the nurse who assisted in Danyale's intake observed her state of intoxication and recommended Danyale be kept overnight for detox observation.

Danyale nevertheless filed suit against the arresting officers and the city that employed them, claiming her arrest was unconstitutional and the force used against her was excessive. The district court properly dismissed the excessive force claim, ruling the officers were entitled to qualified immunity. The officers' body camera recordings established they engaged in no gratuitous use of force, and no authority clearly established the force used by the officers was unlawful.

The district court also properly granted summary judgment on Danyale's claim of unconstitutional arrest. The officers lawfully arrested Danyale because they had probable

¹ For purposes of clarity, Appellees refer to the Blackmores as Danyale and Vincent, with no disrespect intended by the apparent informality.

cause to believe she committed the offense of resisting detention or arrest. The doctrine of qualified immunity also applied, as no authority clearly established Danyale's arrest for resisting detention or arrest was unlawful. Likewise, no authority clearly established the officers acted unlawfully when arresting Danyale for disorderly conduct. As the officers and the city further demonstrated, Danyale's claim is also barred under res judicata principles, given the justice court's determination there was probable cause for the arrest.

Danyale appeals the district court's judgment but demonstrates no error. She fails to engage with multiple bases of the district court's rulings, asserts facts contrary to the undisputed evidence, presents no authority clearly establishing the officers' actions were unlawful, and cannot bring her unlawful seizure claim because the issue of probable cause was previously resolved against her. The district court's judgment should be affirmed.

STATEMENT OF THE CASE

Factual Background

Vincent and Danyale Blackmore reside in Virgin, Utah, and co-own and manage the My Place Hotel in Hurricane City. App. Vol. 1 at 153, 155. The hotel has 46 guest rooms and can accommodate 142 guests. *Id.* at 185; Supp. App. Vol. 1 at 229.

One evening in January 2020, Bret Brangham ("Guest") was staying at the hotel. App. Vol. 1 at 155, 185. In the early morning hours, around 1:30 a.m., Guest attempted to enter his hotel room but discovered he did not have the key. *Id.* at 155, 185. Guest kicked the hotel's sliding glass door open, entered the lobby, and after becoming alarmed that no one appeared to be staffing the hotel, called 911. *Id.* at 155, 185.

Officers Jared Carlson and Eric DeMille of the Hurricane City Police Department were dispatched in response to the call. *Id.* at 155, 184–185. The Officers were wearing body cameras, which recorded the events at the hotel after they arrived. *Id.* at 155, 184; Carlson Body Camera Recording (“CBC”) 01:33:40–02:01:01; DeMille Body Camera Recording (“DBC”) 01:36:19–02:02:12.

When Officer Carlson arrived, he was approached by Guest. CBC at 01:34:34. Officer Carlson asked, “How are you, sir? Did you call us?” *Id.* at 01:34:35–36. Guest described his efforts to contact someone at the hotel, and Officer Carlson asked how he could help. *Id.* at 01:34:45–1:35:03. Guest explained he was locked out of his hotel room and asked for assistance. *Id.* at 01:35:04–25. Officer DeMille, who had arrived in a separate car, indicated there might be a phone number they could call inside the hotel. *Id.* at 01:35:37–50.

The Officers walked with Guest through the open glass door and into the hotel lobby to try to assist Guest in regaining access to his room. *Id.* at 01:35:52–1:36:10. A sign at the entrance stated the hotel is a smoke-free facility, but no sign indicated the hotel was closed. *Id.* at 1:36:05; App. Vol. 1 at 186; Supp. App. Vol. 1 at 229. When they entered the hotel lobby, the Officers found a general common area, computer area, front desk, coffee station, freezer, and fridge. App. Vol. 1 at 186; Supp. App. Vol. 1 at 221, 222, 260.

The lobby is open to guests 24 hours a day, and My Place corporate procedures require that the hotel be staffed with a front desk representative 24 hours a day. App. Vol. 1 at 187; Supp. App. Vol. 1 at 228. But no one was in the lobby or at the front desk when the Officers and Guest entered the area. CBC at 01:36:10. Unbeknownst to the Officers, a

side door to the hotel was also propped open, allowing access to the hotel through the side door as well as through the open door to the lobby. *Id.* at 1:42:35; App. Vol. 1 at 203; Supp. App. Vol. 1 at 233.

A sign at the front desk stated, “We are away from the front desk assisting another guest. For immediate assistance, please dial ‘0’ on the phone in the lounge.” CBC at 01:36:14; App. Vol. 1 at 187; Supp. App. Vol. 1 at 224. Officer Carlson found a lobby phone and called the number listed for the hotel manager. CBC at 01:36:21. The Blackmores were staying in the hotel, and Danyale answered the call. App. Vol. 1 at 47; Supp. App. Vol. 1 at 227.

Officer Carlson asked, “Hi, hey, could you come to the front desk, please?” CBC at 01:36:53–55. Danyale’s response was not recorded. *Id.* at 01:37:00. After confirming he was talking to My Place, Officer Carlson repeated his request, asking, “Yeah, can you come to the front desk? This is the Hurricane Police Department.” *Id.* at 01:37:01–04. Danyale’s response was not recorded. *Id.* at 01:37:08.

Officer Carlson explained, “There is a resident guest here who’s locked out of his room, if you could just come here and help him.” *Id.* at 01:37:05–10. Danyale’s response was not recorded. *Id.* at 01:37:11. Officer Carlson asked again, “Yes, can you please come to the front desk?” *Id.* at 01:37:19–21. Danyale’s response was not recorded. *Id.* at 01:37:22.

Officer Carlson responded, “Just call the Hurricane Police Department—the dispatch center—if you, like seriously there’s a guy here that’s locked out of his room. Um, are you at the hotel?” *Id.* at 01:37:28–38. Danyale’s response was not recorded. *Id.* at

01:37:39. Officer Carlson replied, “Look at the north . . . look at the north parking lot. There’s two police cars in the parking lot.” *Id.* at 01:37:40–44. Danyale’s response was not recorded. *Id.* at 01:37:45.

Officer Carlson explained, regarding Guest, “He called us—he didn’t see the sign over there.” *Id.* at 01:37:52–54. Danyale’s response was not recorded. *Id.* at 01:37:54. Officer Carlson followed up, “Ma’am, can you just—can you just dial 911, then?” *Id.* at 01:38:00–02. Danyale’s response was not recorded. *Id.* at 01:38:03.

Officer Carlson continued, “Yeah, I’m calling from the lobby. I’m looking at the sign right there on the lobby.” *Id.* at 01:38:15–19. Danyale’s response was not recorded. *Id.* at 01:38:20. Officer Carlson replied, “Because the door’s open.” *Id.* at 01:38:20. Danyale’s response was not recorded. *Id.* at 01:38:22.

Officer Carlson replied, “It’s open, Ma’am, and I don’t appreciate you swearing at me.” *Id.* at 01:38:25–28. Danyale’s response was not recorded. *Id.* at 01:38:29. Officer Carlson asked, “Then, how am I ca—then how am I calling you?” *Id.* at 01:38:32–34. Danyale’s response was not recorded. *Id.* at 01:38:35. Officer Carlson responded, “Well, um . . .,” then stopped. *Id.* at 01:38:38–40. Danyale’s response was not recorded. *Id.* at 01:38:40. Officer Carlson then repeated, “In the north parking lot there’s two police cars, I promise you.” *Id.* at 01:38:43–47. Danyale’s response was not recorded. *Id.* at 01:38:48.

Officer Carlson stated again, “There’s a guest that’s locked out of a room.” *Id.* at 01:38:57–58. Danyale’s response was not recorded. *Id.* at 01:39:59. Officer Carlson asked, “You own the hotel?” *Id.* at 01:39:12. Danyale’s response was not recorded. *Id.* at 01:39:13.

Officer Carlson asked again, “Okay, if you could come down, please, we’d appreciate it.” *Id.* at 01:39:17–20. Danyale’s response was not recorded. *Id.* at 01:39:20.

Officer Carlson responded, “I don’t know, Ma’am. But I’d really like to leave, so if you could come down here?” *Id.* at 01:39:22–27. Danyale’s response was not recorded. *Id.* at 01:39:27. Officer Carlson began, “I don’t ...,” but then asked Guest, “What room are you in, Sir?” *Id.* at 01:39:28–30. Guest responded, and Officer Carlson answered Danyale, stating, “He’s—he’s in 111.” *Id.* at 01:39:31–35. Officer Carlson then asked Guest his name and told Danyale, “His name is Bret Brangham.” *Id.* at 01:39:35–37. Danyale’s response was not recorded. *Id.* at 01:39:38.

Officer Carlson then hung up the phone, walked toward Officer DeMille and said, “She’s like cussing me out—saying it’s full of crap, she’s not going to come down, she’s not going to call the police department,” and Officer DeMille shook his head. *Id.* at 01:39:45–53; *see also* App. Vol. 1 at 191; Supp. App. Vol. 1 at 230 (Danyale acknowledging, “I probably swore at him”). Officer Carlson then suggested to Guest, “I would stay somewhere else.” CBC at 01:39:55–56. Guest replied, “I’m sorry to bother you guys.” *Id.* at 01:39:58–1:40:00. He then recounted what had happened, including that he entered the lobby after kicking open the sliding glass door. *Id.* at 01:40:01–44.

Officer Carlson asked, “Do you want to press zero and talk to her? She doesn’t want to talk to me, apparently.” *Id.* at 01:40:50–55. As Guest went to the phone, Officer Carlson repeated to Officer DeMille, “She’s like cussing me out.” *Id.* at 01:41:03–04. Guest then called Danyale and explained he had locked himself out, did not have a key to his room, and had accessed the lobby by kicking the glass door. *Id.* at 01:41:15–1:42:00.

Officer Carlson then moved farther into the lobby, where he could see Danyale holding a phone and walking quickly down a hallway toward the lobby. *Id.* at 01:42:00. As Danyale later recounted, she was clearly upset. App. Vol. 1 at 193; Supp. App. Vol. 1 at 229, 230. When Danyale looked up from her phone, she told Officer Carlson, “I want him gone. Right now.” CBC at 01:42:04–05; DBC at 01:41:55–56. As Danyale entered the lobby, she and Guest began arguing with one another. CBC at 01:42:10–18; DBC at 01:42:00–06. While stepping toward Guest with her arm outstretched, Danyale demanded, “I want him out. Go away. Get your shit.” CBC at 01:42:16–18; DBC at 01:42:06–09.

Given their training and experience, Officer Carlson and Officer DeMille are aware that situations can quickly escalate from verbal arguments to physical altercations, officers cannot be complacent in situations when escalation may occur, officers should keep distance between themselves and others, and officers should keep distance between arguing individuals to avoid escalation to a physical altercation. App. Vol. 1 at 193, 196; Supp. App. Vol. 1 at 155, 170, 176, 183, 289, 290, 294, 295.

As Danyale and Guest were arguing, Officer Carlson had begun saying, “Hold on, hold on, hold on,” to which Danyale replied, “No!” CBC at 01:42:17–20; DBC at 01:42:08–10. Danyale then ordered Guest, “Get your shit,” and said to Officer Carlson, “He kicked my door in.” CBC at 01:42:20–21; DBC at 01:42:11–13.

Meanwhile, Officer Carlson was still saying, “Hold on.” CBC 01:42:20; DBC at 01:42:11. He then said, “Ma’am, let’s go talk over there,” while pointing back toward the hallway. CBC at 01:42:20–23; DBC at 01:42:11–15. Danyale continued to express frustration with Guest, and Officer Carlson asked her to “stop.” CBC at 01:42:23–25. He

then told Guest, who had begun talking again, to “shut up and go over there,” pointing into the lobby. *Id.* at 01:42:26.

Officer Carlson then repeated to Danyale, “Let’s go over there,” pointing to the hallway, while Danyale exclaimed, “Get rid of him,” to which Officer Carlson replied, “No.” *Id.* at 01:42:27–29. Danyale walked a few steps back into the hallway. *Id.* at 01:42:29. While Officer Carlson escorted Danyale into the hallway, Officer DeMille directed Guest back into the lobby, separating Guest from Danyale. DBC at 01:42:17–27.

As Officer Carlson directed Danyale into the hallway, she stopped, turned around, defiantly said, “No,” and again began talking about Guest. CBC 01:42:31–41. Danyale then said, “I have procedures,” and tried to walk past Officer Carlson and back to the lobby, where Guest was standing. *Id.* at 01:42:42–44.

Officer Carlson then repeated, “Hold on, hold on,” and put out his arm to block Danyale’s path. *Id.* at 01:42:43–44. Danyale ignored Officer Carlson and continued trying to reach the lobby, coming into physical contact with Officer Carlson. *Id.* at 01:42:43–44. Officer Carlson pushed Danyale away from him and into an alcove extending from the hallway, stopping Danyale’s movement toward the lobby and creating the necessary safety distance between himself and a confrontational individual. *Id.* at 01:42:44–45. He told her again, “Stop!” Danyale then raised her voice and said, “Can you not touch me!” *Id.* at 01:42:45–46; DBC at 01:42:36. Officer Carlson, standing a few feet away from Danyale with his hand outstretched, told Danyale for the third time, “Just stop!” CBC at 01:42:47; DBC at 01:42:38.

Danyale continued moving in the alcove, screaming at Officer Carlson, “Don’t fucking touch me!” CBC at 01:42:47–48; DBC at 01:42:38–39. Officer Carlson then told Danyale, for the fourth time, “Stop!” CBC at 01:42:48; DBC at 01:42:40. When Danyale continued to move, Officer Carlson stepped forward, put his hand on Danyale’s arm, and turned her toward the wall. CBC at 01:42:49; DBC at 01:42:40–42. Using the wall to stop Danyale’s movement, Officer Carlson, with Officer DeMille’s assistance, attempted to move Danyale’s hands behind her back. CBC at 01:42:49–52; DBC at 01:42:42–45. Officer Carlson said, “Put your hands behind your back.” CBC at 1:42:52–53; DBC at 01:42:44. He repeated, “Put your hands behind your back, now,” and Danyale responded, “No!” CBC at 01:42:54–56; DBC at 01:42:46–48.

Danyale continued shouting, “No! No! Stop! Stop! Stop! Don’t touch me!” as she struggled against the officers, trying to keep her arms in front of her and fighting the Officers’ efforts to put her hands behind her back. CBC at 01:42:57–59; DBC at 1:42:47–52. When later asked “[w]hy were you resisting [the Officers’] efforts to put your arms behind your back and ... put handcuffs on you,” Danyale replied, “Because it was my right. [T]hey don’t have any reason to be touching me right there.... I’m moving my hands ... trying to turn to talk to them and they’re pulling my arm back” App. Vol. 1 at 199; App. Vol. 2 at 229–30; Supp. App. Vol. 1 at 241, 242.

As Danyale struggled against the Officers, Officer Carlson said, “Right now, you’re under arrest, okay?” and placed handcuffs on Danyale, assisted by Officer DeMille. CBC at 01:43:01–02; DBC at 1:42:52–54. Danyale told the officers to “stop it!” and added, “You guys are assholes.” CBC at 01:43:08–10; DBC at 1:42:58–1:43:02. Officer Carlson then

said again, “I’m telling you to stop right now.” CBC at 01:43:21–23; DBC at 1:43:13–14. Danyale responded, for the first time, “Okay.” CBC at 01:43:24; DBC at 1:43:14. Danyale asked why she was being arrested, and Officer Carlson explained, “I told you to stop. I told you not to approach him. I stopped you from going up to him because I was concerned that you were going to confront him.” CBC at 01:43:24–33; DBC at 1:43:15–25.

As Officer Carlson escorted Danyale out of the hotel and to the patrol car, Danyale continued asking him to stop. CBC at 01:43:33–01:44:40; DBC at 01:43:25–1:43:58. She resisted again, struggling against Officer Carlson as he attempted to escort her out of the hotel. CBC at 01:43:33–49; DBC at 01:43:25–39. Danyale later explained she was “trying to get them to slow down” and “stop long enough that [she] could make a phone call.” App. Vol. 1 at 202; Supp. App. Vol. 1 at 243. Officer Carlson, with the assistance of Officer DeMille, moved Danyale to Officer Carlson’s patrol car as she continued to resist. CBC at 1:43:33–1:44:18; DBC at 1:43:39–58. The Officers placed Danyale in the patrol car. CBC at 01:44:18–38; DBC at 1:44:05–28.

Officer Carlson returned to the hotel to assist Guest, and Officer DeMille stayed near the patrol car with Danyale. DBC at 01:45:10. Officer DeMille explained, “You have to listen when we are giving you lawful orders, right?” *Id.* at 01:46:03. Danyale protested having been put in handcuffs, and Officer DeMille responded that handcuffs must be used “when it becomes unsafe, k, and you were making it unsafe.” *Id.* at 01:46:11–18. He subsequently added, “The problem is you not listening to us and that you’re acting stupid, k, that’s the problem. That’s why you’re in a cop car right now.” *Id.* at 01:50:18–28.

Officer Carlson drove Danyale to the Washington County Correctional Facility. CBC at 01:51:10–02:00:57. While en route to the jail, Danyale repeatedly kicked the cage in the patrol car separating the back seat from the front seat. App. Vol. 1 at 205; Supp. App. Vol. 1 at 206. Following Danyale’s arrival at the jail, the nurse who completed Danyale’s medical intake observed her state of intoxication and recommended Danyale be kept overnight for “detox observation.” App. Vol. 1. at 207; Supp. App. Vol. 2 at 66–69, 71.

While Officer Carlson transported Danyale to the jail, Officer DeMille stayed at the hotel, moved the glass lobby door back into position, and explained to Vincent what had occurred. DBC at 1:50:55–2:01:47. When Vincent asked why Danyale was being taken to jail, Officer DeMille explained that Danyale would not listen, would not give the Officers a chance to speak with her, “cuss[ed]” the Officers out, went “ballistic” when the Officers were trying to speak with her, was “extremely intoxicated,” and after being given “multiple chances,” still “would not listen.” *Id.* at 1:59:20–2:01:42.

Procedural Background

A. *The Blackmores File Suit Alleging Civil Rights Violations.*

Following these events, the Blackmores sued several persons and entities, including Officer Carlson, Officer DeMille, and Hurricane City. App. Vol. 1 at 151–81. The Blackmores primarily alleged civil rights violations under the Fourth and Fourteenth Amendments and 42 U.S.C. section 1983. *Id.* at 151–77. The Blackmores claimed the Officers unlawfully detained and arrested Danyale, alleging unconstitutional search and

seizure. *Id.* at 166–68. The Blackmores also claimed the Officers used excessive force during the detention and arrest.² *Id.* at 168–70.

B. *The District Court Dismisses the Blackmores’ Claim of Excessive Force.*

Officer Carlson, Officer DeMille, and Hurricane City (collectively, “Defendants”) moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Supp. App. Vol. 1 at 20–53. In support of their motion, Defendants filed the video recordings from the Officers’ body cameras, as the recordings were referenced in the Blackmores’ complaint. *Id.* at 22.

The Officers demonstrated the Blackmores’ allegations did not establish violation of a clearly established constitutional right, and the Blackmores’ claims against the Officers therefore failed under the doctrine of qualified immunity. *Id.* at 36–37. Moreover, the allegations against Defendants failed to state a claim, given the recordings showing the Officers acted in accordance with Danyale’s constitutional rights. *Id.* at 37–46.

As Defendants established in their motion, Danyale was properly detained based on reasonable suspicion she was engaging in disorderly conduct. *Id.* at 38–40. In addition, Danyale was properly arrested based on probable cause she was engaging in disorderly conduct and interference with a peace officer. *Id.* at 40–42. With respect to the force used in Danyale’s detention and arrest, the body camera footage showed the Officers’ actions were objectively reasonable in light of the circumstances. *Id.* at 43–45.

² The Blackmores raised additional claims against the Officers and Hurricane City, but on appeal the Blackmores do not challenge the district court’s dismissal of those claims.

The district court partially granted Defendants’ motion. With respect to the claim of excessive force, the district court highlighted the lack of legal authority clearly establishing that pushing a person against a wall, handcuffing them (even roughly), and using a small amount of force to place them in a patrol car constitutes excessive force in the context of an arrest. App. Vol. 1 at 118–23.

C. *The Justice Court Rules the Officers Had Probable Cause to Arrest Danyale and the Hotel Lobby Was a Public Place.*

Danyale was criminally charged with disorderly conduct and interference with an arresting officer. Supp. App. Vol. 2 at 141–43. Danyale filed a motion to suppress, asserting the Officers did not have probable cause to arrest her. *Id.* After reviewing the pleadings, watching “the bodycam videos multiple times,” holding an evidentiary hearing, and hearing argument, the justice court ruled (1) the events occurred in a public place for purposes of the disorderly conduct charge, (2) Danyale attempted to create a hazardous or physically offensive condition, and (3) Danyale’s conduct was offensive, violent, tumultuous or threatening. *Id.* The justice court ruled the “decision to detain [Danyale] was reasonable and justified,” and probable cause supported Danyale’s arrest for disorderly conduct and interference with a peace officer. *Id.*

D. *Defendants Move for Summary Judgment on All Remaining Claims.*

Defendants moved for summary judgment on the Blackmores’ remaining claims. *Id.* at 182–230; Supp. App. Vol. 2 at 78–126. Citing the undisputed facts and body camera recordings, the Officers established they had not unlawfully detained or arrested Danyale. App. Vol. 1 at 211–20. The Officers had reasonable suspicion and probable cause to

conclude Danyale was engaging in disorderly conduct, based on multiple unlawful acts. *Id.* at 211–18. Danyale had failed to comply with a lawful order to move from a public place, knowingly created a hazardous or physically offensive condition, and recklessly created a risk of public annoyance or alarm by engaging in tumultuous or threatening behavior. *Id.*

The Officers also had probable cause to conclude Danyale was interfering with a peace officer, as Danyale knew or should have known Officer Carlson was seeking to effect a detention or arrest of her. *Id.* at 218–20. Yet she again engaged in multiple unlawful acts, refusing to act in accordance with a lawful order to effect her detention or arrest and acting in a manner impeding her detention or arrest. *Id.* Accordingly, as the judge overseeing the criminal prosecution had ruled, the Officers had reasonable suspicion to detain Danyale and probable cause to arrest her. *Id.* at 211–20.

The doctrine of qualified immunity also barred the Blackmores' claims. *Id.* at 223–25. The doctrine applies absent plain incompetence or knowing violation of the law. *Id.* at 223–24. The justice court had ruled Danyale's detention was justified and her arrest was supported by probable cause. *Id.* at 209. Moreover, Danyale cited no law clearly establishing (1) a hotel lobby is not a public place; (2) her belligerence, refusal to listen, and refusal to comply with lawful orders did not create a hazardous or physically offensive condition; (3) her erratic, loud, emotional, and belligerent behavior did not create a risk of public annoyance or alarm; or (4) her refusals to follow orders and physical resistance to the Officers' efforts did not impede her detention or arrest. *Id.* at 225. For each of these reasons, qualified immunity barred the Blackmores' claims. *Id.*

E. *The Blackmores Assert Danyale’s Acquittal Establishes Lack of Probable Cause.*

The Blackmores opposed Defendants’ motion, asserting issues of fact precluded summary judgment. App. Vol. 2. at 116–71. In a separate filing, the Blackmores also asked the district court to take judicial notice of the jury verdict issued in the criminal proceeding against Danyale, as the jury had found Danyale not guilty with respect to both disorderly conduct and interference with an arresting officer. *Id.* at 196–209. The Blackmores claimed that because the jury acquitted Danyale of those offenses, the jury necessarily concluded the Officers lacked probable cause to arrest her. *Id.*

F. *Defendants Move to Supplement Their Motion for Summary Judgment, Asserting the Justice Court’s Probable Cause Ruling Is Preclusive.*

Following Danyale’s acquittal, the Defendants moved to supplement their motion for summary judgment. Supp. App. Vol. 2 at 127–40. The justice court’s determinations that Danyale’s detention was justified and that probable cause supported her arrest for disorderly conduct and interference with a peace officer were now final. *Id.* at 128. The justice court’s conclusions were also well founded, having been issued following review of the parties’ memoranda, review of the video recordings, an evidentiary hearing, and oral argument. *Id.* at 129. Defendants asked the district court to apply the doctrine of issue preclusion and conclude the Blackmores’ unlawful search and seizure claims failed as a matter of law. *Id.* at 130–38.

Danyale asserted in response that Defendants should have briefed the issue in their motion for summary judgment, the Federal Rules of Civil Procedure did not permit Defendants’ motion, and the justice court’s determinations were not binding for issue

preclusion purposes. *Id.* at 261–74. On reply, Defendants demonstrated each of Danyale’s arguments was misplaced. *Id.* at 275–83.

G. *The District Court Permits Consideration of the Jury Verdict and the Justice Court’s Probable Cause Ruling, But Rules Neither Is Dispositive.*

The district court granted Defendants’ motion to supplement and the Blackmores’ request to take judicial notice of the acquittal and jury instructions. *Id.* at 284–89. The district court considered the parties’ evidence and arguments in its evaluation of the pending motion for summary judgment. *Id.* at 285. The district court ruled the verdict of not guilty in the criminal proceeding was not controlling on the issue whether the Officers had probable cause. *Id.* at 287. The district court also ruled the justice court’s probable cause ruling did not “foreclose the issue here because a justice court pre-trial determination is not controlling.” *Id.* at 286.

H. *The District Court Grants Summary Judgment for Defendants.*

The district court issued a 48-page opinion granting Defendants’ motion for summary judgment. App. Vol. 2 at 210–58. After reciting in depth the undisputed facts and evidence presented in the body camera recordings, the district court ruled the Officers had probable cause to conclude Danyale was interfering with an arresting officer, and the Officers were entitled to qualified immunity. *Id.*

With respect to the claim of unlawful search and seizure, the district court concluded the undisputed facts showed Danyale “was interfering with [the Officers] attempt to detain and arrest her.” *Id.* at 235. Moreover, the Officers “would also have qualified immunity” against that claim. *Id.* at 249 n.209. “[I]t was not clearly established that [the Officers]

could not arrest [Danyale] for resisting arrest or detainment where [she] 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 her back.” *Id.*

The Officers were also “entitled to qualified immunity for [the] claim of unlawful arrest based on disorderly conduct.” *Id.* at 235–36. “No controlling case law or robust body of case law from other circuits gave notice ... that arresting [Danyale] for disorderly conduct under the circumstances was a clear violation of her rights.” *Id.* at 248. “There is not clear law establishing whether the Hotel lobby was a public place, and the analysis is even more difficult because the front door ... was ajar.” *Id.* “The [i]ncident was quick, fluid, and [the Officers] were forced to act very quickly.” *Id.* at 249. “The Blackmores did not cite case law providing “notice that arresting [Danyale] under these circumstances was a clear violation of her [constitutional] right[s].” *Id.*

I. *The District Court Certifies Its Ruling as Final, and the Blackmores Appeal.*

The Blackmores prematurely filed a notice of appeal from the summary judgment ruling. *See id.* at 259–61. On motion, the district court certified its ruling as final. *Id.* at 262. Following certification, this Court permitted the Blackmores to proceed with their appeal. *8/12/24 Order*, at 1–3.

SUMMARY OF THE ARGUMENT

Danyale’s claim of unlawful arrest is barred under the doctrine of res judicata. The justice court ruled the officers were justified in detaining Danyale and had probable cause to arrest her, both for interference with a peace officer and for disorderly conduct. Those

questions were fully and fairly litigated in Danyale’s criminal proceeding, and the justice court’s ruling bars Danyale from relitigating in this action whether the Officers had probable cause to arrest her.

Danyale’s claim of unlawful arrest was also properly dismissed because the Officers had probable cause to believe she committed the offense of resisting detention or arrest. The doctrine of qualified immunity likewise bars Danyale’s claim, as no authority clearly established the Officers acted unlawfully when arresting Danyale for that offense. Danyale does not engage with the district court’s reasoning regarding qualified immunity, and her failure to do so renders her challenge inadequately briefed. Moreover, as the district court further held, the doctrine of qualified immunity also applies because no authority clearly established the Officers acted unlawfully when arresting Danyale for disorderly conduct.

Finally, the doctrine of qualified immunity bars Danyale’s claim that the Officers used excessive force when arresting her. No authority clearly established the limited force used by the Officers when first detaining and then arresting Danyale violated her constitutional rights. For these reasons, the district court’s judgment should be affirmed.

ARGUMENT

I. The Justice Court’s Probable Cause Ruling Is Dispositive of Danyale’s Unlawful Seizure Claim.

A district court’s grant of summary judgment will be affirmed “if any proper ground exists to support the district court’s ruling.” *Davidson Oil Co. v. City of Albuquerque*, 108 F.4th 1226, 1231 (10th Cir. 2024) (citation and internal quotation marks omitted). Summary judgment may therefore be affirmed on a different basis than relied upon by the

district court, *id.* at 1231 & n.4, particularly when the issue was raised in the underlying proceeding, the parties had a fair opportunity to develop the factual record, and this Court’s ruling would involve only questions of law, *Feinberg v. Comm’r of Internal Revenue*, 916 F.3d 1330, 1334 (10th Cir. 2019).

Affirmance on an alternative ground is appropriate here. The district court properly dismissed Danyale’s unlawful seizure claim on the merits and as barred under the doctrine of qualified immunity.³ But federal law also required the district court to give preclusive effect to the state court’s determination that the Officers had probable cause to arrest Danyale. The dismissal of the unlawful seizure claim should therefore be affirmed on res judicata grounds.

A. Justice Court Rulings Have Preclusive Effect.

Under the Full Faith and Credit Act, judicial proceedings of any State “shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State.” 28 U.S.C. § 1738. Federal courts must “give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so.” *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 698 F.3d 1295, 1302 (10th Cir. 2012) (citation and internal quotation marks omitted); *Jiron v. City of Lakewood*, 392 F.3d 410, 415–16 (10th Cir. 2004) (same).

³ The Blackmores’ complaint alleges unlawful search and seizure, but Danyale focuses her appellate briefing on her unlawful seizure claim, challenging the constitutionality of her arrest. *See Appellant’s Brief*, at pp. 2, 18–50. Defendants therefore also focus their briefing on Danyale’s unlawful seizure claim and the constitutionality of her arrest.

Under Utah law, the doctrine of res judicata is not limited to judgments of district and appellate courts. *Salt Lake Citizens Cong. v. Mountain States Tel. & Tel. Co.*, 846 P.2d 1245, 1251 (Utah 1992). The doctrine applies more generally to decisions by courts and administrative agencies “act[ing] in a judicial capacity in an adversary proceeding to resolve a controversy over legal rights and to apply a remedy.” *Id.* (citation and internal quotation marks omitted); *see also, e.g., Allen v. Moyer*, 2011 UT 44, ¶ 18, 259 P.3d 1049 (holding “claim preclusion applies to small claims judgments because application of the doctrine will promote finality, judicial economy, and consistent judgments”).

In Utah’s court system, justice courts have jurisdiction over certain criminal matters. Utah Code §§ 78A-7-101.1–106. “Justice court judges have the same authority regarding matters within their jurisdiction as judges of courts of record.” *Id.* § 78A-7-105. And they resolve adversarial proceedings through the judicial process. *See id.* §§ 78A-7-101.1–106. Justice court rulings are therefore given preclusive effect under Utah law. *See, e.g., State v. Sommerville*, 2013 UT App 40, ¶¶ 28–34, 297 P.3d 665 (analyzing whether justice court’s dismissal of offense constituted a final judgment on the merits and barred subsequent proceedings based on res judicata principles); *cf. Smith v. Hruby-Mills*, 2016 UT App 159, ¶ 11, 380 P.3d 349 (concluding res judicata doctrine did not apply to hearing de novo in justice court proceeding—not because res judicata principles are inapplicable, but because hearings de novo are part of justice court proceedings).

There is an exception to application of res judicata principles, however. A judgment will not be given preclusive effect unless the issuing court “acquired jurisdiction over the subject matter and the parties.” *McCarthy v. State*, 265 P.2d 387, 389 (Utah 1953). But

whether a party has a right to appeal the judgment is not, under Utah law, similarly a prerequisite. For example, the Utah Legislature has not provided a right to appellate review from many types of administrative rulings. *See Davis Cnty. v. Clearfield City*, 756 P.2d 704, 706–07 (Utah Ct. App. 1988). Yet administrative rulings are regularly given preclusive effect by Utah courts, which have applied the doctrine of res judicata to administrative rulings “since at least 1950.” *Salt Lake Citizens Cong.*, 846 P.2d at 1251.

Moreover, when appellate review of a judicial or administrative ruling is not provided by statute, parties retain the right to seek review by petitioning for extraordinary relief. *See, e.g., Davis Cnty.*, 756 P.2d at 708; *Vorher v. Henriod*, 2011 UT App 199, ¶ 8, 262 P.3d 42; *Petersen v. Utah Bd. of Pardons*, 907 P.2d 1148, 1152 (Utah 1995); *Blaine Hudson Printing v. Utah State Tax Comm’n*, 870 P.2d 291, 294 (Utah Ct. App. 1994). A party who does not petition for extraordinary relief, like a party who does not seek relief on appeal, cannot thereby avoid a ruling’s preclusive effect.

Review on petition for extraordinary relief is more limited than the scope of appellate review often permitted under Utah law. But appellate review of administrative rulings has historically been similarly limited. *See, e.g., Utah Dep’t of Admin. Servs. v. Pub. Serv. Comm’n*, 658 P.2d 601, 609 (Utah 1983) (stating questions of fact will be sustained on review of administrative proceedings if “supported by evidence of any substance whatever” (citation and internal quotation marks omitted)); *Davis Cnty.*, 756 P.2d at 708 (suggesting minimal difference, if any, between standards of review). And administrative rulings have long been given preclusive effect by Utah courts, *Salt Lake Citizens Cong.*, 846 P.2d at 1251, despite the historically limited nature of appellate review.

Moreover, when no right of appeal is provided, as in this case, the limitation reflects a legislative policy judgment that such proceedings will be final without further review. *See* Utah Code § 78A-7-118 (2), (5), (6) (providing no right of appeal to persons acquitted in justice court and limited right to trial de novo for persons convicted and sentenced).⁴ Indeed, even when a person convicted in justice court may seek a de novo proceeding in district court, the Utah Code does not permit appeal from the de novo proceeding except in limited circumstances. Utah Code § 78A-7-118 (11). The limited availability of appellate review has been upheld as constitutional. *City of Monticello v. Christensen*, 788 P.2d 513, 519 (Utah 1990). Accordingly, by legislative directive, in many justice court proceedings and de novo district court proceedings, finality attaches to a single judge’s determinations without appellate review.⁵

The application of res judicata principles in Utah does not run at odds with, but parallel to, legislative policy making regarding the finality of judicial and administrative

⁴ *See also, e.g., Anderson v. Patterson*, 55 S.E.2d 1, 4 (Va. 1949) (“[I]t is universally held that the fact that the amount in controversy in a final judgment is so small that the defeated party has no right of appeal does not affect its operation as res judicata”); *Verrett v. Savoie*, 141 So. 854, 855–56 (La. 1932) (“The Civil Code ... declares that a ‘final judgment,’ which has the force of res judicata, means a judgment of a court of original jurisdiction, from which there is no right of appeal, or one which has been affirmed on appeal.”).

⁵ The absence of a right to appeal, not due to a legislative policy judgment, but because parties were not adversaries in the earlier proceeding raises a different question. *See Ray v. Consol. Freightways*, 4 Utah 2d 137, 143, 289 P.2d 196 (1955) (applying a multi-factor analysis, and considering availability of appellate review as part thereof, when concluding a judgment “against two or more defendants is not res judicata ... in a subsequent action between them unless those rights and liabilities are expressly put in issue ... [and] determined ... in the first action”).

proceedings. Moreover, applying claim preclusion principles to justice court rulings furthers res judicata principles by promoting finality and protecting litigants, ensuring parties will only have to litigate a controversy once. *See Allen*, 2011 UT 44, ¶ 10. Applying claim preclusion to justice court rulings also critically “preserve[s] the integrity of the judicial system by preventing inconsistent judgments.” *See id.* ¶ 12. Permitting courts to render inconsistent judgments “undermine[s] public confidence in the judicial process,” *id.*, as illustrated in this case, in which the district court reached a different conclusion than the justice court upon review of the same evidence and arguments.

B. The Justice Court’s Ruling Bars Danyale’s Unlawful Seizure Claim.

Under Utah law, issue preclusion applies when “the party against whom issue preclusion is asserted was a party to or in privity with a party to the prior adjudication;” “the issue decided in the prior adjudication was identical to the one presented in the instant action;” “the issue in the first action was completely, fully, and fairly litigated;” and “the first suit resulted in a final judgment on the merits.” *Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, ¶ 23, 285 P.3d 1157. The “final judgment on the merits” element merely requires that “the same issue presented in subsequent litigation was finally resolved in an earlier case involving the same parties.” *Davis & Sanchez, PLLC v. Univ. of Utah Health Care*, 2015 UT 47, ¶ 15, 349 P.3d 748.

Each element of Utah’s issue preclusion test is satisfied in this case. First, Defendants assert issue preclusion against Danyale, who was the defendant in the state court action. The party against whom issue preclusion is asserted was thus a party to the

prior adjudication. Second, the justice court addressed and resolved whether the Officers had probable cause to arrest Danyale for disorderly conduct or interference with a peace officer. Those same issues are presented in this case. The issues decided in the prior adjudication are therefore identical to the issues presented in this action.⁶

Third, the justice court addressed the issues in its order denying Danyale's motion to suppress, following review of the parties' memoranda, review of the video recordings, an evidentiary hearing, and oral argument. *Supra* p. 13. The issues in the first action were therefore completely, fully, and fairly litigated. Finally, the ruling on the motion to suppress resolved the questions presented in this proceeding, and following Danyale's acquittal, the ruling was no longer subject to reconsideration or review. The first suit thus finally resolved the issues raised in Danyale's unlawful seizure claim.⁷

⁶ In her briefing to the district court, Danyale asserted *Peak Alarm Co. v. Salt Lake City Corp.* “held that a justice court’s decision in a criminal matter did not estop another fact finder from considering probable cause in a civil matter.” Supp. App. Vol. 2 at 272–73 (citing *Peak Alarm Co.*, 2010 UT 22, 243 P.3d 1221). But Danyale misstates the reasoning and holding in *Peak*, which does not support her argument.

In *Peak*, the Utah Supreme Court held that “[a] result in favor of a defendant in a criminal trial ... does not translate into an automatic conclusion” that the officers “lacked probable cause to proceed against a defendant at the outset.” *Peak Alarm Co.*, 2010 UT 22, ¶ 21. A ruling in favor of a defendant based on a higher standard of proof is not preclusive with respect to issues addressed under a lower standard of proof. *Id.* ¶ 20. A ruling not directly addressing whether probable cause existed based on the facts and circumstances present at the relevant time also has no preclusive effect with respect to that question. *See id.*

⁷ *See, e.g., Dunham v. Saratoga Springs City*, No. 219CV00641RJSDBP, 2023 WL 5804345, at *6 (D. Utah Sept. 7, 2023) (concluding ruling on motion to suppress precluded section 1983 claims); *Parkinson v. Sanderson*, No. 215CV00796JNPEJF, 2019 WL 4935513, at *14 (D. Utah July 31, 2019) (same), *report and recommendation adopted*, No.

The district court saw the issue differently based on a misunderstanding of the finality aspect of claim preclusion principles. Supp. App. Vol. 2 at 291–93. The district court reasoned that if the motion to suppress had been denied, or if Danyale had been convicted and sentenced in justice court, a district court might have re-adjudicated the questions presented in the motion to suppress. *Id.* But that possibility, under a different set of circumstances, does not alter the finality of the justice court’s ruling in Danyale’s case. The proceeding resulted in final resolution on the issues presented in the motion to suppress. A Utah court would give preclusive effect to the justice court’s determination, and the district court was required to do likewise.

The district court also erred when concluding the justice court’s ruling did not bar Danyale’s section 1983 claims because Danyale was ultimately acquitted. *See id.* The district court offered no legal support for its conclusion, which is incorrect. Issue preclusion applies when the *issue* has been litigated to finality, regardless whether the broader claim is ultimately sustained or the suit is ultimately successful.⁸ The district court erroneously

215CV00796JNPEJF, 2019 WL 4746507 (D. Utah Sept. 30, 2019); *Cook v. Aagard*, No. 2:12CV00157, 2012 WL 5903848, at *9 (D. Utah Nov. 26, 2012) (same).

⁸ *See, e.g., Cosgrove v. Pettigrew*, No. 21-CV-10379, 2022 WL 14800982, at *7 (E.D. Mich. Sept. 26, 2022) (holding section 1983 claim precluded by probable cause determination, although charges were dismissed), *report and recommendation adopted*, No. 1:21-CV-10379, 2022 WL 14788881 (E.D. Mich. Oct. 25, 2022); *Fontana v. City of Auburn*, No. C13-0245-JCC, 2014 WL 4162528, at *8 (W.D. Wash. Aug. 21, 2014) (same); *Butts v. Deibler*, No. 4:12-CV-00114-JHM, 2013 WL 3423770, at *8 (W.D. Ky. July 8, 2013) (holding probable cause determination had preclusive effect despite acquittal); *Molnar v. Care House*, 359 F. App’x 623, 627 (6th Cir. 2009) (holding probable cause determination had preclusive effect despite acquittal); *Tompkins v. Spokane Cnty.*, No. CV-07-0195-FVS, 2009 WL 269386, at *3 (E.D. Wash. Jan. 30, 2009) (holding probable cause determination had preclusive effect, although charges were dismissed);

failed to give the justice court's ruling preclusive effect, and the dismissal of Danyale's unlawful seizure claim should be affirmed on that basis.

II. The District Court Properly Ruled Danyale's Unlawful Seizure Claim Lacks Merit and Is Barred under the Doctrine of Qualified Immunity.

To establish her claim for unlawful seizure, Danyale was required to establish the Officers lacked probable cause to believe she had committed or was committing a criminal offense. Moreover, even if she could establish the Officers lacked probable cause, Danyale was required to further establish the Officers were not entitled to qualified immunity for her claim. As the district court properly ruled, Danyale could not meet either requirement.

Based on the undisputed evidence, the Officers had probable cause to arrest Danyale for interference with a peace officer. Moreover, qualified immunity barred Danyale's claim of unlawful arrest on two grounds: interference with a peace officer and disorderly conduct. For each of these reasons, Danyale's claims were properly dismissed.

Regent v. Town of Cheektowaga, No. 03-CV-0347A(F), 2007 WL 981771, at *8 (W.D.N.Y. Mar. 30, 2007) (holding probable cause determination had preclusive effect despite acquittal); *Crumley v. City of St. Paul, Minn.*, 324 F.3d 1003, 1006–07 (8th Cir. 2003) (same); *Cota v. Chapa*, 2 F. App'x 621, 622 (8th Cir. 2001) (same); *Christopher v. Circle K Convenience Stores, Inc.*, 1997 OK 27, ¶ 12, 937 P.2d 77 (same); *Haupt v. Dillard*, 17 F.3d 285, 289 (9th Cir. 1994) (same); *Smith v. Thornburg*, 136 F.3d 1070, 1077 (6th Cir. 1998) (holding section 1983 claim precluded by probable cause determination, although charges were dismissed); *Hubbert v. City of Moore*, Okl., 923 F.2d 769, 773 (10th Cir. 1991) (holding section 1983 claims precluded by probable cause determination despite acquittal); *Adamson v. Dayton Hudson Corp.*, 774 P.2d 478, 480 (Okla. Ct. App. 1989) (holding claims precluded by probable cause determination despite acquittal); *Guenther v. Holmgreen*, 738 F.2d 879, 889 (7th Cir. 1984) (holding section 1983 claims precluded by probable cause determination despite acquittal); *see also Taylor v. Meacham*, 82 F.3d 1556, 1564 n.10 (10th Cir. 1996) (observing, when applying Utah law, that party did not argue probable cause determination “should collaterally estop” litigation of section 1983 claim, noting “some other courts have so held”).

A. Probable Cause Exists If, under the Circumstances, a Reasonable Person May Believe a Crime Has Been Committed.

“[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). “Probable cause exists if facts and circumstances within the arresting officer’s knowledge . . . are sufficient to lead a prudent person to believe that the arrestee has committed or is committing an offense.” *Mocek v. City of Albuquerque*, 813 F.3d 912, 925 (10th Cir. 2015) (citations and internal quotation marks omitted).

In other words, “[w]hether probable cause exists depends upon the reasonable conclusion to be drawn from the facts known to the arresting officer at the time of the arrest.” *Alford*, 543 U.S. at 152. “Probable cause exists if facts and circumstances within the arresting officer’s knowledge and of which he or she has reasonably trustworthy information are sufficient to lead a prudent person to believe that the arrestee has committed or is committing an offense.” *Oliver v. Woods*, 209 F.3d 1179, 1186 (10th Cir. 2000) (citation and internal quotation marks omitted).⁹

B. As the District Court Properly Held, the Officers Had Probable Cause to Conclude Danyale Was Interfering with Her Detention or Arrest.

Under Utah law, interference with a peace officer is committed by a person who (1) “knows, or by the exercise of reasonable care should have known, that a peace officer

⁹ In contrast, an officer may “stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.” *Oliver*, 209 F.3d at 1186.

is seeking to effect a lawful arrest or detention of the actor”; and (2) “interferes with the arrest or detention by” (a) the “use of force,” (b) “refusing to perform an act required by [a] lawful order” made by an arresting officer and “necessary to effect the arrest or detention,” or (c) “refusing to refrain from performing an act that would impede the arrest or detention.” Utah Code § 76-8-305(2).

As the district court observed, “[i]n Utah, a person cannot physically resist an illegal arrest if the officers are within the scope of their authority.” App. Vol. 2 at 245 (citing *State v. Trane*, 2002 UT 97, ¶ 33, 57 P.3d 1052). Interference with a peace officer does not depend on “the lawfulness of [the] officer’s order or arrest.” *Trane*, 2002 UT 97, ¶ 35. The phrase “seeking to effect [a lawful arrest or detention] ... makes it clear that the reach of the statute is not contingent on the lawfulness of the underlying arrest or detention” *Am. Fork City v. Pena-Flores*, 2002 UT 131, ¶ 13, 63 P.3d 675.

Accordingly, “in Utah there is no right to physically resist either an arrest or an order of the police, irrespective of the legality of the arrest or order, so long as the officers are within the scope of their authority.” *Trane*, 2002 UT 97, ¶ 33. “Challenging unlawful detention or arrest ... is permitted only through the court system, not through physical resistance at the time of detention or arrest.” App. Vol. 2 at 245.

Thus, the question presented here is whether the Officers had probable cause to believe Danyale (a) used force, (b) refused to perform an act required by an order of Officer Carlson necessary to detain or arrest her, or (c) refused to refrain from performing an act that would impede her detention or arrest—after she reasonably should have known Officer Carlson and/or Officer DeMille were seeking to detain or arrest her. The district court

readily concluded that was the case. App. Vol. 2 at 244–46. The undisputed evidence established, as a matter of law, the Officers had probable cause to believe Danyale interfered with a peace officer. *See id.*

When directed by Officer Carlson to move into the hallway, Danyale stopped, turned around, defiantly said, “No,” and attempted to walk past Officer Carlson and back into the lobby. *Supra* p. 8. When Officer Carlson stated, “Hold on,” and put out his arm to block Danyale’s path, she ignored him, continued trying to reach the lobby, and came into contact with Officer Carlson. *Supra* p. 8. When Officer Carlson pushed Danyale into an alcove, away from him and away from the lobby, he told her, “Stop.” *Supra* p. 8. With his hand outstretched, Officer Carlson told Danyale again, “Stop.” *Supra* p. 8. When Danyale continued moving, Officer Carlson told her again, “Stop.”

When Danyale continued to move, Officer Carlson stepped forward, put his hand on her arm and turned her toward the wall. *Supra* p. 9. At this point, Officer Carlson was pressing Danyale against the wall to stop her movement, and with Officer DeMille’s assistance, attempted to move Danyale’s hands behind her back. *Supra* p. 9. In his effort to detain Danyale, Officer Carlson ordered, “Put your hands behind your back.” *Supra* p. 9. He repeated, “Put your hands behind your back, now.” *Supra* p. 9. Danyale responded, “No!” and continued shouting, “No! No! Stop! Stop! Stop! Don’t touch me!” as she struggled against the Officers, trying to keep her arms in front of her and fighting the efforts to put her hands behind her back. *Supra* p. 9.

When asked why she was resisting, Danyale replied, “Because it was my right. [T]hey don’t have any reason to be touching me I’m moving my hands ... trying to turn to talk to them” *Supra* p. 9.

As Danyale struggled against the Officers, Officer Carlson said, “Right now, you’re under arrest, okay?” and, assisted by Officer DeMille, placed handcuffs on Danyale. *Supra* p. 9. Danyale repeatedly told the Officers to “stop” and Officer Carlson said again, “I’m telling you to stop right now.” *Supra* p. 9–10. As Officer Carlson escorted Danyale out of the hotel, with Officer DeMille’s assistance, Danyale resisted again. *Supra* p. 10. Danyale later stated she was “trying to get them to ... stop long enough that [she] could make a phone call.” App. Vol. 1 at 202. Danyale continued to resist as the Officers moved her to Officer Carlson’s patrol car. *Supra* p. 10.

The undisputed evidence shows Officer Carlson attempting to detain Danyale outside the lobby, physically pushing Danyale away from the lobby while ordering her to “stop,” and turning Danyale to the wall while telling her to “stop.” The undisputed evidence establishes Danyale acted against Officer Carlson’s orders to remain outside the lobby and to stop moving, interfering with Officer Carlson’s efforts to detain her.

Moreover, as the district court held, when Officer Carlson pushed Danyale toward the wall and began pulling her hands behind her back, Danyale should have known Officer Carlson was attempting to detain or arrest her. App. Vol. 2 at 245. By that time, “at the very latest,” “it would have been clear to a reasonable person that [Officer] Carlson was attempting” detention or arrest. *Id.* at 245–46. “After this point, [Danyale] did not put her hands behind her back, resisted [the Officers’] efforts to pull her hands behind her back,

and tried to turn to face [the Officers].” *Id.* at 246. Her actions “created probable cause that she was interfering with an arresting officer and justified her arrest.” *Id.*

After Officer Carlson told Danyale she was under arrest, Danyale continued to resist. Danyale attempted to physically stop the Officers from moving her out of the hotel and into the patrol car. These actions also created probable cause that Danyale was interfering with an arresting officer and likewise justified her arrest.

On appeal, Danyale does not engage with the basis of the district court’s ruling or the wealth of evidence supporting it. *Appellant’s Br.* at 44–50. Danyale asserts no lawful order was given. *Id.* at 44. But Danyale does not acknowledge the Utah case law cited by the district court, which holds Danyale must comply with an order, detention, or arrest, irrespective of its legality. *See id.* Danyale also asserts the body camera recordings show she did not resist detention or arrest. *Id.* at 44–48. But she does not engage with the portions of the recordings cited by the district court, which capture her resistance. *See id.* Danyale also does not address the district court’s citation to her deposition testimony, in which Danyale states she resisted the Officers’ efforts to detain and arrest her.¹⁰ *See id.*

This Court cannot meaningfully engage in appellate review if an appellant “do[es] not provide ... arguments addressing the district court’s analysis.” *Hernandez v. Grisham*,

¹⁰ Danyale’s citation to *Cronick v. Pryor*, 99 F.4th 1262 (10th Cir. 2024), is also misplaced. *12/31/24 Notice of Supplemental Authority*. In *Cronick*, the procedural posture did not permit review to determine whether genuine issues of material fact existed, and the Court did not review video recordings, could not determine whether the plaintiff’s conduct arguably supported probable cause, did not address the offenses at issue here, and was not presented with undisputed evidence regarding the officers’ instructions or the plaintiff’s conduct and resistance. *Id.* at 1267–72.

No. 20-2176, 2022 WL 16941735, at *12 (10th Cir. Nov. 15, 2022). When a party fails to engage with critical aspects of a district court’s ruling, the party fails to adequately brief their argument on appeal, and this Court will not review the claim of error. *In re Centrix Fin. LLC*, 394 F. App’x 485, 491 (10th Cir. 2010). Danyale does not acknowledge the law applied by the district court or assert it was incorrect. She also does not claim the district court could not consider her deposition testimony or that her testimony was misinterpreted. Danyale mounts no meaningful challenge to the district court’s conclusions.

Moreover, while Danyale asserts she was not resisting detention or arrest, Danyale’s subjective intent is not controlling. The question is whether, given Danyale’s behavior, an officer could reasonably believe she was resisting.¹¹ *See Oliver*, 209 F.3d at 1186 (“Probable cause exists if facts and circumstances within the arresting officer’s knowledge

¹¹ In a similar vein, Danyale claims a juror might conclude her shouting at the Officers did not constitute refusal and her physical resistance was a “reflexive response.” *Appellant’s Br.* at 46 & n.210, 48. But Danyale’s deposition testimony contradicts her suggestion she was not actively resisting. Moreover, the inquiry is not whether a juror could reasonably conclude Danyale was not resisting. The inquiry is whether Danyale’s responses could reasonably be viewed, under the facts and circumstances, as resistance to detention or arrest, for purposes of a probable cause determination.

The cases Danyale cites in support of her argument do not address probable cause. All three address claims of excessive force. *McWilliams v. Dinapoli*, 40 F.4th 1118, 1127 (10th Cir. 2022); *Becker v. Bateman*, 709 F.3d 1019, 1026 (10th Cir. 2013); *White v. Martin*, 425 F. App’x 736, 743 (10th Cir. 2011). *Becker* is clear that even if a juror might reasonably conclude a response was reflexive, a juror could also reasonably conclude the response “indicate[s] a clear resistance of arrest.” 709 F.3d at 1026. Likewise, *White* characterizes the evidence as “leav[ing] open questions about the *degree* of [the] resistance”—not whether any resistance was present. 425 F. App’x at 743 (emphasis added). And even if screaming “no, no, no, stop” and swearing at officers is not resistance, as Danyale suggests, *Appellant’s Br.* at 48, Danyale’s verbal opposition gave the Officers every reason to believe her physical responses were active resistance to detention and arrest.

... are sufficient to lead a prudent person to believe that the arrestee has committed or is committing an offense.” (citation and internal quotation marks omitted)).

Danyale’s conduct, as confirmed by her deposition testimony, supported a reasonable belief she was interfering with a peace officer. As a matter of law, Danyale’s arrest was justified, and her unlawful seizure claim was properly dismissed.

C. As the District Court Properly Held, No Clearly Established Authority Prohibited Arrest of Danyale for Interference with a Peace Officer.

As an alternative ground for its holding, the district court further concluded: “Even if it were determined that [the Officers] did not have probable cause to arrest [Danyale] for interfering with an arresting officer, [the Officers] would also have qualified immunity against this legal claim.” App. Vol. 2 at 249 n.209. “[I]t was not clearly established that [the Officers] could not arrest [Danyale] for resisting arrest or detainment where [she] 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 her back.” *Id.* For this reason as well, the district court’s dismissal of the unlawful seizure claim should be affirmed.

1. Danyale Does Not Address This Basis of the District Court’s Ruling, Which Provides an Alternate Basis for Affirmance.

In her appellate briefing, Danyale does not address this alternate ground for the district court’s holding. Instead, she mistakenly states the district court “granted summary judgment without ever reaching the issue of qualified immunity.” *Appellant’s Br.* at 42.

Despite stating the district court had not reached the issue, Danyale briefly asserts on appeal that qualified immunity is inapplicable. *Id.* at 50. But her reasoning consists of

only three sentences. *Id.* Danyale claims “[t]he video demonstrates the existence of multiple questions of fact regarding [her] alleged refusal to comply and her resistance” *Id.* She then asserts “[t]his eviscerates probable cause.” *Id.* Danyale concludes, “It was clearly established well before January 2020 that officers violate Fourth Amendment rights when they engage in a warrantless arrest without probable cause.” *Id.* Danyale does not address the district court’s conclusion that it was not clearly established the Officers could not arrest Danyale “for resisting arrest or detainment where [she] 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 her back.” App. Vol. 2 at 249 n.209.

“If the district court states multiple alternative grounds for its ruling and the appellant does not challenge all those grounds in the opening brief, then [this Court] may affirm the ruling.” *Rivero v. Bd. of Regents of Univ. of New Mexico*, 950 F.3d 754, 763–64 (10th Cir. 2020). Moreover, as noted above, “[w]hen a party fails to engage with critical aspects of a district court’s ruling, the party fails to adequately brief their argument on appeal, and this Court will not review the claim of error.” *In re Centrix Fin. LLC*, 394 F. App’x at 491. Danyale’s failure to meaningfully address the issue of qualified immunity, including with citations to legal authority, renders her argument inadequately briefed. *See id.* The district court’s dismissal of her unlawful seizure claim should therefore be affirmed.

2. The District Court Correctly Determined Qualified Immunity Bars Danyale’s Unlawful Seizure Claim.

But even were this Court to reach the merits of the issue, the outcome would be the same. The district court properly concluded qualified immunity bars Danyale’s claim, given the absence of authority clearly establishing Danyale’s arrest was unlawful.

a. Qualified Immunity Applies Unless an Officer Violates a Clearly Established Constitutional Right.

“Qualified immunity is designed to shield public officials from liability and ensure that erroneous suits do not even go to trial.” *Oliver*, 209 F.3d at 1185 (citation and internal quotation marks omitted). “The entitlement to qualified immunity is an immunity from suit rather than a mere defense to liability.” *Id.* (citation and internal quotation marks omitted). “Thus, immunity questions should be resolved as early as possible in litigation.” *Id.*

The purpose of qualified immunity is to “give government officials room to make reasonable but mistaken decisions about open legal questions.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). It applies regardless whether an official’s mistake is one of law, one of fact, or a mixed question of law and fact. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). The immunity protects “all but the plainly incompetent or those who knowingly violate the law.” *Ashcroft*, 563 U.S. at 743 (citation and internal quotation marks omitted).

When a defendant asserts qualified immunity as an affirmative defense, it “creates a presumption that the defendant is immune from suit.” *Est. of Smart by Smart v. City of Wichita*, 951 F.3d 1161, 1168 (10th Cir. 2020) (citation and brackets omitted). To overcome this presumption, a plaintiff must demonstrate violation of a statutory or constitutional right clearly established at the time of the challenged conduct. *Id.* Abstractly

alleging violation of a right will not suffice. *Pueblo Neighborhood Health Ctrs., Inc. v. Losavio*, 847 F.2d 642, 645 (10th Cir. 1988). The “contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Id.* (citation omitted).

Ordinarily, “there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains.” *Oliver*, 209 F.3d at 1185 (citation and internal quotation marks omitted). Existing precedent must “place[] the unconstitutionality of the alleged conduct beyond debate.” *McCowan v. Morales*, 945 F.3d 1276, 1285 (10th Cir. 2019) (quoting *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)).

Thus, “[w]hen a claim of qualified immunity is raised in a defendant’s motion for summary judgment, the plaintiff must show the defendant’s actions violated a specific statutory or constitutional right, and the constitutional or statutory rights the defendant allegedly violated were clearly established at the time of the conduct at issue.” *Oliver*, 209 F.3d at 1185 (citation and internal quotation marks omitted). “If the plaintiff fails to show the defendants violated a constitutional or statutory right, or that the asserted violation was clearly established under the law, the defendant is entitled to qualified immunity.” *Id.*

b. As a Matter of Law, Danyale Has Not Established Violation of a Clearly Established Constitutional Right.

As the district court correctly concluded, it was not clearly established the Officers could not arrest Danyale “for resisting arrest or detainment where [she] 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 her back.” App. Vol. 1 at 249 n.209. Nor was it clearly established the Officers could not arrest Danyale for resisting detainment or arrest when she repeatedly violated Officer Carlson’s orders to “stop,” as Officer Carlson attempted to keep Danyale from walking back into the lobby.

Danyale has not cited any case suggesting her arrest under the circumstances violated a clearly established constitutional right—much less authority placing the unconstitutionality of her arrest beyond debate. Danyale does not even attempt to make the requisite showing. Her citation to the abstract principle that “a government official must have probable cause to arrest an individual,” *Fogarty v. Gallegos*, 523 F.3d 1147, 1158–59 (10th Cir. 2008), *Appellant’s Br.* at 50 n.236, does nothing to further her argument. As a matter of law, Danyale failed to establish the Officers are not entitled to qualified immunity on her claim, which was properly dismissed.

D. No Clearly Established Authority Prohibited Danyale’s Arrest for Disorderly Conduct.

Qualified immunity also applies because Danyale did not establish the Officers clearly violated the law when arresting her for disorderly conduct. As the justice court ruled, the Officers had probable cause to believe Danyale was engaged in disorderly conduct. *Supra* p. 13. Applying the even lower standard applicable to qualified immunity, the district court readily concluded Danyale’s claim was barred. App. Vol. 2 at 246–49. As a matter of law, no authority clearly established Danyale’s arrest for disorderly conduct was unlawful.

In Utah, 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 (b) “recklessly creat[es] a risk of public inconvenience, annoyance, or alarm” by engag[ing] in fighting or in violent, tumultuous, or threatening behavior.” Utah Code § 76-9-102(2). Danyale presented no law clearly establishing the Officers could not reasonably believe she was engaging in disorderly conduct based on the facts and circumstances.

1. Danyale Presented No Authority Clearly Establishing the Hotel Lobby Was Not a Public Place.

With respect to disorderly conduct, “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.” Utah Code § 76-9-102(1)(b). As the district court noted, neither party provided “any case law” addressing whether a hotel lobby is a public place for purposes of this offense. App. Vol. 1 at 237.

On appeal, Danyale cites a few cases on the issue of “public place,” *see, e.g., Appellant’s Br.* at 35, but most do not address the definition of public place applicable to disorderly conduct.¹² The cases that do provide no guidance as to whether a hotel lobby is included. *See, e.g., State v. Richards*, 779 P.2d 689, 692 (Utah Ct. App. 1989) (indicating

¹² *See, e.g., Provo City Corp. v. Willden*, 768 P.2d 455, 458 (Utah 1989) (referencing “public park” as demonstrating breadth of ordinance governing “public places”); *State v. Gallegos*, 2009 UT 42, ¶ 27, 220 P.3d 136 (observing, with respect to custody for *Miranda* purposes, that apartment clubhouse “takes on an isolated character” at 4 a.m.); *Lloyd Corp., Ltd. v. Tanner*, 407 U.S. 551, 568 (1972) (addressing free speech rights on privately owned property).

a home is not public); *Trane*, 2002 UT 97, ¶ 38 (concluding area outside convenience store near public telephones was a public place).

The statutory language also makes plain that common areas of privately owned spaces are public places. *See* Utah Code § 76-9-102(1)(b) (including “common areas” of “shops,” “office buildings,” “hospitals,” and “schools”). Common areas of hospitals are generally visited only by those having a reason to be at the hospital. Few would be designed to regularly induce members of the public to pass through. Public and private school premises are often locked, and only persons with school-related interests are allowed to enter. Shops and office buildings may likewise require entry by permission. And shops, office buildings, and schools are often closed in the evening hours. Yet the common areas of all such places are included in the statutory definition of a public place.

The statute likewise does not suggest that a common area becomes private depending on how many people are presently in it or the time of day or night. The definition is categorical. Under the statute, an officer walking into a hotel lobby is not required to assess the nuances of the hotel, how many guests are staying the night or present during the day, how inviting the interior is, etc., to determine whether the common areas are public places in which disorderly conduct may occur. Certainly, no case law clearly establishes otherwise, as the district court properly concluded. App. Vol. 1 at 248.

2. Danyale Did Not Clearly Establish Lack of a Lawful Order or Lack of Probable Cause She Was Refusing to Comply.

The undisputed evidence establishes Danyale attempted to return to the hotel lobby after being asked by Officer Carlson to leave that area, and when Officer Carlson pushed

Danyale away from the lobby and repeatedly told Danyale to “stop,” she did not stop. During her interactions with the Officers and Guest, Danyale was clearly upset, repeatedly cussed at them, abruptly attempted to return to the lobby, verbally protested Officer Carlson’s instructions, moved quickly and shifted positions, attempted to keep the Officers from putting her hands behind her back, and yelled at the Officers. As the district court observed, the situation was “quick” and “fluid.” App. Vol. 1 at 249.

The Officers could reasonably believe Officer Carlson’s directions constituted an order to leave and stay away from a public place—i.e., the hotel lobby. The Officers could also reasonably believe the order was lawful based on reasonable suspicion Danyale was recklessly creating a risk of public inconvenience, annoyance, or alarm by engaging in tumultuous behavior. *Supra* n.9. Tumultuous is not a high bar. It means “loud, excited, and emotional”¹³ or “excited, confused, or disorderly,”¹⁴ and it captures Danyale’s disconcerted conduct.¹⁵ The Officers could also reasonably believe Danyale’s conduct evidenced lack of compliance with Officer Carlson’s orders to leave and stay away from the hotel lobby and to “stop.”

¹³ Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/tumultuous> (last visited February 4, 2025).

¹⁴ Oxford English Dictionary (7th ed. 2012).

¹⁵ Danyale’s conduct not only created reasonable suspicion, but also gave the Officers probable cause to believe Danyale was recklessly creating a risk of public inconvenience, annoyance, or alarm by engaging in tumultuous behavior. The Officers’ arrest of Danyale was constitutional on this basis as well. Moreover, Danyale failed to present law clearly establishing her arrest on this ground violated her constitutional rights. For this reason, too, the Officers are entitled to qualified immunity on Danyale’s unlawful seizure claim.

In any event, as the district court concluded, Danyale did “not cite any caselaw demonstrating a sufficiently similar encounter to provide [the Officers] ... notice that arresting [her] under these circumstances was a clear violation” of her constitutional rights. App. Vol. 2 at 249. The dismissal of Danyale’s unlawful seizure claim should be affirmed.

III. The District Court Properly Dismissed Danyale’s Excessive Force Claim as Barred under the Doctrine of Qualified Immunity.

When analyzing excessive force claims under the Fourth Amendment, courts determine “whether the officers’ actions were objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Estate of Redd ex rel. Redd v. Love*, 848 F.3d 899, 906–07 (10th Cir. 2017) (brackets omitted) (citing *Graham v. Connor*, 490 U.S. 386 (1989)). “[T]o recover on an excessive force claim, a plaintiff must show ... the officers used greater force than would have been reasonably necessary to effect a lawful seizure.” App. Vol. at 1 at 112 (quoting *Maresca v. Bernalillo Cnty.*, 804 F.3d 1301, 1315 (10th Cir. 2015)).

Reasonableness is “judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight,” taking into account that “officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving.” *Graham*, 490 U.S. at 396–97. Relevant factors include ““the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.”” *Estate of Redd*, 848 F.3d at 907 (brackets and citation omitted).

On review of Defendants’ motion to dismiss, the district court accepted the Blackmores’ allegations as true, to the extent not clearly contradicted by the body camera recordings. App. Vol. 1 at 85. Applying this standard, the district court concluded the *Graham* factors favored Danyale, as the severity of the crime was low, the risk posed to the Officers or others was low, and the district court did not view the recordings as clearly establishing Danyale resisted arrest. App. Vol. 1 at 114–16.

In its ruling, the district court erroneously concluded the body camera recordings did not clearly contradict Danyale’s allegations, including her allegations that she did not resist detention and arrest and that the Officers were not attempting to mitigate a risk of Danyale and Guest engaging in a physical altercation. In addition, from the moment Danyale arrived in the hallway, her interactions with the Officers and Guest were combative and volatile. When considering how to effectuate her detention and subsequent arrest, Officer Carlson was making a split-second judgment in circumstances that were tense and uncertain. Danyale’s conduct throughout her interactions with Officer Carlson, including when he attempted to detain her, gave Officer Carlson every reason to believe Danyale would resist further detention and arrest and therefore some degree of force was needed to restrain her.¹⁶

As the district court also acknowledged, some force is allowed when making an arrest. App. Vol. 1 at 117; *see also Graham*, 490 U.S. at 396; *Cortez v. McCauley*, 478

¹⁶ Danyale asserts she was “effectively subdued” after being pushed away into the alcove and argues all further use of force was excessive. *Appellant’s Br.* at 57. But Danyale’s ongoing movement, yelling, and protests, as well as her prior conduct, supported Officer Carlson’s decision to use some force when detaining and then arresting her.

F.3d 1108, 1128 (10th Cir. 2007) (“We have little difficulty concluding that a small amount of force, like grabbing [the suspect] and placing him in the patrol car, is permissible”). The only force used on Danyale was as follows: Officer Carlson stuck out his arm to prevent Danyale from reentering the lobby, pushed Danyale away from him and away from the lobby, and pushed Danyale against the wall to restrict her movement; Officer Carlson and Officer DeMille pulled Danyale’s arms behind her back and put her in handcuffs, moved Danyale to the patrol car, and placed Danyale in the car. None of these actions exceeded what was objectively needed to detain and arrest Danyale.

But even if Danyale had alleged a cognizable claim of excessive force, she failed to demonstrate the Officers were not entitled to qualified immunity. Danyale cited no precedent ““plac[ing] the unconstitutionality of the alleged conduct beyond debate.”” *McCowan*, 945 F.3d at 1285 (citation omitted). “The more obviously egregious the conduct ..., the less specificity is required from prior case law to clearly establish the violation.” *Becker v. Bateman*, 709 F.3d 1019, 1023 (10th Cir. 2013) (quoting *Morris v. Noe*, 672 F.3d 1185, 1196 (10th Cir. 2012)). But no gratuitous use of force was present here. As the district court observed, no punches were thrown, no one was tackled, and handcuffs were the only restraints used. App. Vol. 1 at 121–22.

The few cases Danyale cites do not support her claim, much less clearly establish a constitutional violation. In *Casey v. City of Federal Heights*, this Court suggested a reasonable officer could have “grab[bed]” the misdemeanor suspect “while informing him that he was under arrest.” 509 F.3d 1278, 1282 (10th Cir. 2007). In *McWilliams v. Dinapoli*, 40 F.4th 1118, 1126 (10th Cir. 2022) the suspect was punched, tackled, and put in a

chokehold. Here, the Officers did not tackle or punch Danyale or otherwise engage in an alarming use force. Instead, given Danyale’s combative and volatile behavior, Officer Carlson pushed Danyale against the wall, ordered her to put her hands behind her back, and placed her in handcuffs, informing Danyale that she was under arrest.

As the district court correctly concluded, Danyale cited no caselaw clearly establishing violation of her constitutional rights. App. Vol. 1 at 123. “[I]t was not clearly established at the time of the [i]ncident that pushing a person against a wall, handcuffing that person, and taking them to a police vehicle constitutes excessive force in violation of the Fourth Amendment” *Id.* The Officers are entitled to qualified immunity, and the dismissal of Danyale’s excessive force claim should be affirmed. *Id.* at 119–23.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment dismissing the Blackmores’ claims.

Dated: February 11, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 12,954 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 10th Cir. R. 32(B). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) 10th Cir. R. 32(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman font.

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