FIFTH CIRCUIT HOLDS NON-CONSENSUAL WITNESS DETENTION IS A FOURTH AMENDMENT SEIZURE

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On April 20, 2017, the Fifth Circuit Court of Appeals decided *Lincoln v. Barnes*[i], in which the court discussed the whether the non-consensual detention of a witness to a police involved shooting violated her rights under the Fourth Amendment. The relevant facts of *Lincoln*, taken directly from the case, are as follows:

> In December 2013, John ran out of his medication and for reasons unknown was unable to refill his prescription. On December 26, 2013, John had been dining with his father when he took one of his father's guns and left the house. John's father believed that he was headed to the home of his mother, Kathleen Lincoln, and that he was a threat to her life.
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> When John arrived at his mother's house, she was not there, but John's eighteen-year-old daughter, Erin Lincoln, who lived with her grandmother, was at home and let him into the house. After John left for Kathleen's house, John's father called John's sisters and one of them, Kelly Lincoln, called the Colleyville police. A large SWAT team, including officers from both the Colleyville and North Richland Hills police departments arrived and surrounded Kathleen's house.
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> A police dispatcher contacted Erin inside the house and asked if she was in harm's way. Erin replied that she was not and that her father would not harm her. She also told the dispatcher that she was talking to her father to try to calm him down and that the police's presence was upsetting him. When the phone rang again, Erin told her father not to pick it up because it would just upset him. Despite her advice, John picked up the phone and spoke with the police. The call upset him greatly.
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> John then began to open the front door to the house and to shout at the police, while holding his father's gun. Every time he opened the door, Erin was standing immediately

> next to him. The last time John opened the door, three officers opened fire, killing him and narrowly missing Erin, who was standing by his side.
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> Erin fell to the ground next to her father's body. She was then forcibly removed, placed in handcuffs, and put in the backseat of a police vehicle. Although she did not fight, struggle, or resist, she did ask the officer why she was being taken into custody and made it known that she wanted to remain with her father.
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> While Erin was being held in the patrol car, her aunt Kelly, an Arlington Police Department officer, who was on the scene in uniform, informed one of the Colleyville officers that her niece had severe social anxiety disorder and was emotionally distraught and she requested that Erin be released into her care. The Colleyville officer told Kelly that they would not release Erin because they needed to get a statement. Kelly demanded to speak with a supervisor. After about thirty minutes, a Colleyville Sergeant came over and reiterated that they were holding Erin to get a statement. Kelly responded that they were outside their authority by holding Erin as a witness against her will. The Sergeant refused to release Erin.
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> After being held in the back of the patrol car for about two hours, Erin was transported to the police station. Kelly went to the station to get Erin, but she was not allowed to see her. At the station, Erin was interrogated for five hours by Ranger Barnes and Officer Kyle Meeks and she was forced to write out a statement. After the officers obtained her statement, Erin was permitted to leave with Kelly. Erin was never charged with any crime.[ii]

Erin filed suit against the involved officers and the involved cities for, among other things, violating her Fourth Amendment rights by detaining her involuntarily, without probable cause, for five hours, as a witness to the shooting of her father. The district court dismissed all claims against the defendants except that they denied qualified immunity for Barnes regarding the Fourth Amendment claim for detaining Erin as a witness without consent or probable cause to believe she committed a crime. Barnes appealed the denial of qualified immunity to the Fifth Circuit Court of Appeals.

The issue on appeal was whether Barnes violated the Fourth Amendment when he detained Erin, handcuffed in the back of a police car for two hours, then at the police station for five hours, without consent, to question her and obtain a statement as a witness to her father's shooting.

The court of appeals first examined the U.S. Supreme Court case, *Dunaway v. New York*[iii], in which officers picked up Dunaway, who they had reason to believe possessed knowledge about a crime, and transported him to the police station for questioning. It was undisputed that the officers did not have probable cause to believe Dunaway committed a crime. The court stated

> The State argued that his detention at the police station for questioning was justified on the grounds that police believed he possessed "intimate knowledge about a serious and unsolved crime." *Id*. at 207 (internal quotations and citation omitted). In holding petitioner's seizure illegal, the Supreme Court emphasized that "detention for custodial interrogation—regardless of its label—intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against illegal arrest." *Id*. at 216. *Dunaway*, in fact, merely reaffirmed this principle, which the Court had

> made clear ten years earlier in *Davis v*. *Mississippi*, 394 U.S. 721 (1969)—namely, that **an investigatory detention that, for all intents and purposes, is indistinguishable from custodial interrogation, requires no less probable cause than a traditional arrest**. *Id*. at 726-27 ("Nothing is more clear than that the Fourth Amendment was meant to prevent wholesale intrusions upon the personal security of our citizenry, whether these intrusions be termed 'arrests' or 'investigatory detentions.'"); *see also Hayes v*. *Florida*, 470 U.S. 811, 815 (1985) ("None of our later cases have undercut the holding in *Davis* that transportation to and investigative detention at the station house without probable cause or judicial authorization together violate the Fourth Amendment."). Accordingly, **police violate the Fourth Amendment when, absent probable cause or the individual's consent, they seize and transport a person to the police station and subject her to prolonged interrogation.** *Dunaway*, 442 U.S. at 216.[iv] [emphasis added]

Thus, the court of appeals held that Barnes did in fact violate Erin's Fourth Amendment rights by detaining her without consent in the car two hours and at the police station for five hours, when there was no probable cause that she had committed a crime.

The court next set out to determine if the law was clearly established such that a reasonable officer in Barnes situation would have known that that conduct violated the Fourth Amendment. If the law was not clearly established, then Barnes would still be entitled to qualified immunity from suit. After examining cases and noting that they were *not* similar to Lincoln's case, the court held that the Supreme Court's decision in *Dunaway* was sufficient to put a reasonable officer on notice that his conduct violated the Fourth Amendment in Lincoln's case. Thus, Barnes was not entitled to qualified immunity.

The court then summed up the law as follows:

> **While "the law ordinarily permits police to seek the <u>voluntary</u> cooperation of members of the public in the investigation of a crime**," *Lidster*, 540 U.S. at 425, **"[a]bsent special circumstances, the person approached may not be detained . . . but may refuse to cooperate and go on his way**," *Terry v*. *Ohio*, 392 U.S. 1, 34 (1968) (White, J., concurring); *see also Florida v*. *Royer*, 460 U.S. 491, 497-98 (1983). **Any further detention of such individual constitutes a seizure under the Fourth Amendment, which must satisfy the Fourth Amendment's "reasonableness" requirement**. *Lidster*, 540 U.S. at 426-27. **As a general matter, the detention of a witness that is indistinguishable from custodial interrogation requires no less probable cause than a traditional arrest**. *Dunaway*, 442 U.S. at 216; *Davis*, 394 U.S. at 726-28.[v] [emphasis added]

Thus, the court of appeals affirmed the decision of the district court.

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[i] No. 16-10327 (5th Cir. Decided April 20, 2017)
[ii] Id. at 2-3
[iii] 442 U.S. 200 (1979)
[iv] Lincoln at 7-8
[v] Id. at 11