

could mitigate the government's interest in prosecution under the first prong of *Sell*.

Dissent

In the dissenting opinion, Chief Judge Traxler wrote that the majority had not addressed the question actually raised by Mr. Watson in his appeal: that the district court erred by not requiring supportive therapy in addition to medication, which would have increased the likelihood that he would be restored to competency. Judge Traxler further believed the case should have been vacated and remanded for additional findings rather than simply reversing the district court's decision.

Discussion

In this case, the majority of the court of appeals ruled that, given the important liberty interests at stake, the government must be held to a high standard of proof before being granted the right to administer forced medication. In addition, the court of appeals concluded that the lower courts must conduct a searching inquiry to ensure that the government has met its burden by clear and convincing evidence. Under the second prong of *Sell*, simply showing that a treatment is "generally effective" is insufficient to meet this requirement.

Therefore, the government must prove that the proposed treatment will be an effective therapy for the defendant's specific disorder. To do so, the analysis of the proposed treatment requires consideration of factors, such as the defendant's age and medical condition, as well as the nature of the defendant's delusions. Such a standard is in place to prevent the government from using the same generalized evidence to prevail in all cases involving the same condition or course of treatment. Thus, forensic psychiatrists must prepare individualized treatment plans when recommending forced medications for defendants.

This case is also important, as it pertains to a condition, delusional disorder, that is difficult to treat and may have limited response to antipsychotic medications. For such disorders, psychiatric experts must be aware of the evidence for treatments of the disorder. Psychiatrists must also provide a treatment plan that is tailored to the specific situation of the defendant being evaluated. They must then be prepared to defend the proposed treatment course with available evidence and present this evidence as it pertains specifically to the individual. Furthermore, the case

highlights the importance of obtaining past records, which can strengthen the argument for use of psychotropic medications if the individual has had prior response to treatment.

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Involuntary Detainment for Mental Health Evaluations

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Detainment for Mental Health Evaluation for Violent Ideation Not Viewed as Violation of Fourth or First Amendment

In *Raub v. Campbell*, 785 F.3d 876 (4th Cir. 2015), the Fourth Circuit Court of Appeals affirmed the United States District Court for the Eastern District of Virginia's decision to grant Michael Campbell qualified immunity after involuntarily detaining Brandon Raub for a mental health evaluation, stating that Mr. Campbell did not violate Mr. Raub's Fourth Amendment rights and Mr. Raub did not provide evidence for a First Amendment violation. Furthermore, the appellate court stated that injunctive relief was not appropriate in this case.

Facts of the Case

In the summer of 2012, Brandon Raub made a series of Facebook posts that drew the attention of two Marine veterans who had served with Mr. Raub during his deployment to Iraq. The veterans were sufficiently concerned by the violent and threatening nature of the posts that one contacted the FBI and provided samples of the posts, stating that Mr. Raub "genuinely believes in this and is not simply looking for attention" (*Raub*, p 879). The FBI sent a special agent accompanied by a local police officer to interview Mr. Raub and they found that he displayed a volatile demeanor, alternating between calm and emotional and intense. He was also paranoid and

questioned the agents about their knowledge of the government-sponsored 9/11 attack on the Pentagon and government exposure of citizens to radiation. Mr. Raub refused to answer questions about his intent to commit violence. The special agent and detective contacted Michael Campbell, a certified mental health provider with a local emergency services agency. After they had presented their findings, Mr. Campbell was concerned that Mr. Raub might be psychotic and recommended he be detained for a mental health evaluation.

After being placed in custody and transported to the local jail, Mr. Raub was evaluated by Mr. Campbell. Mr. Raub was asked about his Facebook posts and beliefs in government conspiracies, but stopped answering questions after 12 minutes. When asked if he felt justified in carrying out his threats, he replied, "I certainly do, wouldn't you?" (*Raub*, p 879). Mr. Campbell described him as internally preoccupied, distracted, paranoid, and delusional. He concluded that Mr. Raub met the statutory standard for involuntary temporary detention and petitioned for and received a temporary detention order from a magistrate judge. Mr. Raub was transferred to a hospital, where he was examined by a psychologist who agreed with Mr. Campbell that Mr. Raub exhibited symptoms of psychosis. Hospital staff subsequently petitioned the state court for an involuntary admission for treatment order. After a hearing, the court ordered that Mr. Raub be admitted for 30 days. But three days later, the court ordered his release, stating that "the petition [was]. . . devoid of any factual allegations" (*Raub*, p 880).

Mr. Raub later filed multiple claims under state and federal laws, but later amended his lawsuit alleging claims against Mr. Campbell under 42 U.S.C. §1983 (2008), providing an avenue to pursue civil action for deprivation of Mr. Raub's constitutional rights. Mr. Raub sued for damages and requested injunctive relief to prevent Mr. Campbell from seizing Mr. Raub in the future or retaliating against him based on the exercise of his constitutional rights. The district court granted Mr. Campbell's motion for summary judgment on the basis of qualified immunity and denied Mr. Raub's request for injunctive relief.

Mr. Raub appealed the decision, challenging the district court's findings based on three arguments. First, he argued that Mr. Campbell violated his Fourth Amendment right to be free from unreasonable seizure by recommending Mr. Raub be taken

into custody for a mental health evaluation and by petitioning the state for a temporary detention order. Second, he claimed that Mr. Campbell violated his First Amendment right of free speech by basing his conclusion that Mr. Raub was delusional on Mr. Raub's Facebook posts and his responses to Mr. Campbell's questions. Third, Mr. Raub argued that even if his constitutional claims failed, he was entitled to injunctive relief.

Ruling and Reasoning

The Fourth Circuit Court of Appeals affirmed the district court's decision to grant Mr. Campbell summary judgment based on qualified immunity and denied Mr. Raub's claim for injunctive relief. The court described the analysis of qualified immunity involving two prongs: "(1) whether the plaintiff has established the violation of a constitutional right, and (2) whether that right was clearly established at the time of the alleged violation" (*Raub*, p 881).

The court first looked at Mr. Raub's Fourth Amendment argument based on his claim that Mr. Campbell did not have probable cause to recommend that Mr. Raub be taken into custody for mental health evaluation. The court applied the second prong of qualified immunity analysis which "turns on the objective legal reasonableness of action, assessed in light of legal rules that were clearly established at the time it was taken" (*Pearson v. Callahan*, 555 U.S. 223 (2009), p 244). The court held that Mr. Campbell's conduct was not proscribed by established law and therefore summary judgment on the basis of qualified immunity was appropriate. The court indicated that its previous decisions concerning seizures for mental health evaluations have involved law enforcement's seizing individuals out of fear that someone might be a danger to himself or herself, and qualified immunity was granted to the officers in most of these cases. The court cited *Gooden v. Howard County*, 954 F.2d 960 (4th Cir. 1992), and *S.P. v. City of Takoma Park*, 134 F.3d 260 (4th Cir. 1998)), as cases in which officers made reasonable decisions to seize individuals based on multiple complaints, observations, and independent investigations that gave concern for danger of suicide.

The court contrasted those cases with *Bailey v. Kennedy*, 349 F.3d 731 (4th Cir. 2003), in which law enforcement officers detained the plaintiff based on a 911 report alone that he was intoxicated, depressed,

and suicidal. This description was in direct contradiction to his presentation to officers; he was sitting in his house eating lunch and denied thoughts of suicide. The court indicated that “none of these cases delineates the appropriate standard where a mental health evaluator must decide whether to recommend a temporary detention on the belief that an individual might be a danger to others” (*Raub*, p 884). Although the court did not find cases that recommended what evidence is needed as probable cause for detention, nor the necessity, length, and content of the resulting psychological evaluation, the court determined that Mr. Campbell acted reasonably under prevailing legal standards and was entitled to qualified immunity.

The court next evaluated Mr. Raub’s claim that Mr. Campbell violated his First Amendment rights by detaining Mr. Raub for his “unorthodox political statements” (*Raub*, p 885), namely, his beliefs concerning 9/11 conspiracies and impending revolution. The court determined that, even if Mr. Raub’s statements were protected speech and a contributing factor to Mr. Campbell’s determination that Mr. Raub must be detained, it was not dispositive. The court reasoned that in addition to considering these statements, Mr. Campbell based his recommendation for detention on personal observations of Mr. Raub’s demeanor, the observations of law enforcement, and information provided by the reporting third party. The court agreed with the district court that there was no First Amendment violation and Mr. Campbell was entitled to qualified immunity.

Finally, the court rejected Mr. Raub’s claim for injunctive relief, stating that to obtain such an injunction under §1983, the plaintiff must demonstrate a “real or immediate threat that [he] will be wronged again in a similar way” (*Simmons v. Poe*, 47 F.3d 1370 (4th Cir. 1995), p 1382). The court concluded that even if Mr. Raub were able to demonstrate a violation of his constitutional rights, “past wrongs do not in themselves amount to that real and immediate threat of injury” (*Simmons*, p 1382).

Discussion

In this ruling, the court determined that the defendant was appropriately granted qualified immu-

nity in his recommendation for detention of the plaintiff on the grounds of risk of violence. This case highlights how individual rights (including those provided by the First and Fourth Amendments) are weighed against the need for community safety. It is vital that psychiatrists who have the responsibility of deciding whether to involuntarily detain an individual understand how courts weigh these competing interests.

In regard to Mr. Raub’s claim that Mr. Campbell did not have probable cause to detain him in violation of his Fourth Amendment rights, the court attempted to determine whether Mr. Campbell’s conduct was in violation of any laws. The court referenced cases that demonstrated either proper or improper decisions by law enforcement to involuntarily detain individuals. The court’s reasoning reveals the importance of collecting, analyzing, and acting on information from multiple sources.

The court rejected Mr. Raub’s claims that Mr. Campbell detained him due to his articulated political beliefs in violation of his First Amendment rights, a decision largely based on the facts of the case. The court noted Mr. Campbell had other evidence (besides Mr. Raub’s political beliefs) that led him to the decision to detain Mr. Raub (including his personal observations, reports of law enforcement, and statements of third parties). The court concluded that Mr. Campbell’s reliance on the other evidence made consideration of whether Mr. Raub’s statements were protected speech and irrelevant in regard to his detention.

The reasoning of the court in this matter highlights the need for psychiatrists conducting such evaluations to gather relevant data from multiple sources, to document the information obtained, to explain their analysis of the information, and to document their decision-making process. As demonstrated in this case, the combination of information gathering, thoughtful analysis, and thorough documentation can provide clinicians with protection against claims of improper detention.

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