

and that he did not have to give affirmative answers. Mr. Parker was described as playing a “cat-and-mouse game” with detectives (*Parker*, p 799). These facts led the court to rule that Mr. Parker effectively waived his *Miranda* rights and that his statements were admissible.

The Kansas Supreme Court also ruled on the district court’s denial of Mr. Parker’s request for a jury instruction of voluntary manslaughter based on sudden quarrel or heat of passion. The Kansas Supreme Court found no error in the district court’s ruling, as the facts of the case showed “so little evidence of heat of passion” and “so much evidence of calculated decision-making” (*Parker*, p 801).

Discussion

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that an accused deprived of freedom by law enforcement must be informed of the right to counsel and to remain silent, and that statements can be used in court. The purpose is to protect one’s Fifth Amendment right against self-incrimination. The accused must waive *Miranda* rights knowingly, voluntarily, and intelligently. *Miranda* rights evaluations are uncommonly referred to forensic mental health examiners, even when there are notable *Miranda* concerns (Rogers R, Otal T, Drogin EY, *et al.*: Effectiveness of the *Miranda* acquiescence questionnaire for investigating impaired *Miranda* reasoning. *J Am Acad Psychiatry Law* 48:226–36, 2020).

Subsequent case law has expounded on effective *Miranda* rights waivers. In *Colorado v. Connelly*, 479 U.S. 157 (1986), the U.S. Supreme Court ruled that coercive police activity was necessary to conclude that a confession was made involuntarily. In that case, the defendant’s psychosis, which interfered with his ability to make rational choices, did not make his confession involuntary. In *Garner v. Mitchell*, 557 F.3d 257 (6th Cir. 2009), the court said that effective waiver of *Miranda* rights was assessed based on the totality of the circumstances and did not require that the accused understood every potential consequence. In *Berghuis v. Thompkins*, 560 U.S. 370 (2010), the court held that silence during an interrogation did not negate the validity of a *Miranda* waiver. That court cited another case, *Davis v. United States*, 512 U.S. 452 (1994),

which found that *Miranda* rights must be invoked unambiguously.

In the current case of *State v. Parker*, the Kansas Supreme Court essentially addressed the concept of substance versus process of an accused person waiving *Miranda* rights. In this case, the process was disrupted because Mr. Parker refused the offer for his rights to be read aloud and he refused to sign the waiver. The substance, however, was evident based on his actions, namely that Mr. Parker knowingly, voluntarily, and intelligently waived his *Miranda* rights. This case is consistent with case law citing totality of the circumstances as the standard for determining competence to waive *Miranda* rights.

Police Requirements to Perform a Mental Health Seizure

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Police May Not Be Entitled to Governmental Immunity Should They Perform a Mental Health Seizure Without Probable Cause

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Key words: government immunity; mental health seizure; law enforcement

In *Rudolph v. Babinec*, 939 F.3d 742 (6th Cir. 2019), the Sixth Circuit Court of Appeals affirmed a district court’s denial of summary judgment to law enforcement officers on the basis of qualified immunity after they were sued by the plaintiff who alleged that her Fourth Amendment rights had been violated during a mental health seizure and that the officers’ use of force was not objectively reasonable. Police brought the plaintiff for mental health evaluation against her will and argued that circumstances led them to believe she was at risk for suicide. The Sixth Circuit noted that a jury might reasonably determine

that the officers lacked probable cause to believe that the plaintiff posed a threat to herself or others, the established legal standard on which mental health seizures were made.

Facts of the Case

Laticia Rudolph was visited at home by her ex-husband Kyle Rudolph after he received a text message from their son stating, “[S]he has the .22 [firearm] out, will you go over there?” (*Rudolph*, p 748). Mr. and Ms. Rudolph spoke for nearly an hour before she retired to bed; Mr. Rudolph left the home with the .22 firearm (having obtained Ms. Rudolph’s agreement to do so). Later that evening, Mr. Rudolph was stopped by police for speeding. During the stop he explained he was in possession of the firearm out of concern for his ex-wife. He showed officers the aforementioned text message as well as another message from Ms. Rudolph that read “good bye.” The officers then performed a wellness check on Ms. Rudolph based on their sense that this was necessary.

By the time officers arrived at her home sometime after 3 a.m., she did not answer to their banging on the door and Mr. Rudolph was asked to call Ms. Rudolph to wake her. After she opened the door, the officers asked whether she was suicidal, and Ms. Rudolph denied this. Ms. Rudolph cooperated and the officers then discussed her having a mental health evaluation, but indicated she could choose either to go voluntarily or be taken into custody for this purpose.

Ms. Rudolph was forcibly placed in handcuffs that she alleged were too tight and, per her report, was “manhandled” out of her house, leaving her to stumble and injure her ankle so badly that it would later need surgery. She was taken to the hospital where her blood alcohol level was found to be 0.153 percent. When sober, she was evaluated and released by the staff physician, who deemed her to be at “extremely low risk for self-harm” (*Rudolph*, p 746). Ms. Rudolph later sued the arresting officers, citing various constitutional and state law violations. The District Court for the Western District of Michigan at Grand Rapids denied the officers’ motion for summary judgment pertaining to their right to qualified immunity under the law. Such immunity protects government officials from personal liability in performing their functions, unless the plaintiff can show that the official violated a person’s right, about

which a reasonable person similarly situated would have known. The officers appealed this decision to the Sixth Circuit Court of Appeals, and the court reviewed the appeal with inferences about the facts being drawn from Ms. Rudolph’s account.

Ruling and Reasoning

The Sixth Circuit affirmed the district court’s decision to deny summary judgment on the basis of qualified immunity with respect to Mr. Rudolph’s claims of violation of her Fourth Amendment rights in an unlawful mental health seizure. In examining the basis on which a mental health seizure might be legally executed, the court noted the precedent of probable cause wherein an officer must observe circumstances suggesting a probable or substantial chance for harm to self or others. The Sixth Circuit distinguished the actions leading to the wellness check from the actions involved in carrying out the mental health seizure. The court turned to the case of *Fisher v. Harden*, 398 F.3d 837 (6th Cir. 2005), in which a third party called police with concern that a man was tying himself to railroad tracks in an apparent suicide attempt. When police responded to the scene, they found a man wearing hunting attire and carrying a rifle who was not tied to the railroad tracks. He was compliant with police and showed “no other suspicious or threatening behavior” (*Rudolph*, p 747, referencing *Fisher*, pp 843–4). Despite the third party’s concern, no evidence for an impending suicide attempt was found and no seizure was executed. The Sixth Circuit stated that the review of the seizure also considers whether a reasonable officer would question the merits of the suicide report based on what facts are gleaned during the wellness check.

The court concluded that the overall circumstances were potentially insufficient to justify the seizure, and thus the case warranted a jury review and denial of summary judgment for the officers. Specifically, the court reasoned that Ms. Rudolph’s intoxication and text to her son were not sufficient so as to provide probable cause for mental health seizure once they performed the wellness check, given the totality of information. The court also noted the uncertainty in the facts surrounding whether Mr. Rudolph explicitly voiced concern that his ex-wife might attempt suicide, and found it irregular that he did not seek police assistance but rather expressed his concern for Ms. Rudolph only after he himself was involved in a

traffic stop. The court contrasted this situation with the case of *Monday v. Oullette*, 118 F.3d 1099 (6th Cir. 1997), in which a third-party alleged that the plaintiff, recently divorced, was at risk for suicide after having ingested pills with alcohol. When summoned, police found the plaintiff intoxicated and several pills missing from his supply of prescription medication. Despite the plaintiff's denial that he had attempted to die by suicide, the officers elected to execute a mental health seizure based on the available evidence. In the present case, the court noted that Ms. Rudolph had stated she was sleeping when she did not respond to the calls. Although she was observed to be intoxicated, she reported she had been merely cleaning the gun earlier before it was taken by Mr. Rudolph. There was no other questioning by the officers about suicide attempts or why her son was concerned, nor was a breathalyzer test performed to assess her intoxication level. Also, any potential for self-harm was further mitigated with the removal of the firearm from the home. It further noted that the officers essentially made their determination for her seizure based on her intoxication as supporting her ex-husband's claim that she was suicidal. It further noted that the officers had no duty to intervene on legal grounds, even though mental health seizure laws might support their doing so. The court recognized nevertheless that any intervention would then necessitate constitutional protections such as a probable cause determination. The court determined that a jury might reasonably find the officers lacked the probable cause to seize Ms. Rudolph, and by this reasoning upheld the district court's denial of summary judgment sought by the officers.

With regard to her handcuffing and claims of excessive use of force, Ms. Rudolph had photos of injuries and gave accounts that broadly differed from those of the officers; interpreted in the light most favorable to Ms. Rudolph, the court found that the officers were not entitled to summary judgment based on qualified immunity. Regarding an additional claim of violation of state law, the court ruled in favor of the officers because the claim required Ms. Rudolph to demonstrate that the officers acted with reckless indifference, and she did not produce that evidence.

Dissent

In his dissent, Judge Thapar asked whether the officers acted in "plain incompetence" in bringing

Ms. Rudolph to the hospital for evaluation. He concluded the officers who seized Ms. Rudolph were entitled to governmental immunity, as their actions were not grossly unlawful even if they had "err[ed] on the side of caution" (*Rudolph*, p 753).

Discussion

This case concerns what for many people may be the initial interruption in their constitutional rights in the context of mental illness, i.e., involuntary seizure by police to undergo psychiatric evaluation. Seizure offers the possibility of evaluation and subsequent treatment for those whose degree of mental illness might endanger themselves or others, and whose poor insight might otherwise preclude contact with mental health services. The legal standard upon which a seizure might be performed is a matter of crucial importance, with public and psychiatric ramifications. *Rudolph* asks how law enforcement officers operating with limited evidence should discern probable cause for seizure when compromised safety of the individual or others is suspected.

What evidence might give rise to probable cause? The factors by which probable cause might be determined include: the source by which the matter is brought to police attention; the subject's prior history of mental illness and present state and environment, as witnessed by police; the subject's own explanation of recent events; and the acute potential for harm to self or others. Officers in the field will necessarily lack much of this information, but every effort should be made to gather it.

Although it is not the role of law enforcement officers to make diagnoses, they are nonetheless important ancillary members in the state's mission of caring for those with mental illness. At the time of this writing, the roles and responsibilities of law enforcement in handling community needs is subject to much scrutiny. There is a trend to encourage increased responses to mental health crises by social service personnel. Nevertheless, the psychiatric community should consider collaborative strategies to foster opportunities for law enforcement officers to be trained adequately in the recognition of mental illness, basic facts about suicide, the legal provisions that allow for transport to sites where psychiatric evaluation can take place, and techniques to transport individuals safely without excessive use of force. Such training could help officers determine the appropriate disposition of persons suspected of

exhibiting symptoms of mental illness to the degree that safety is threatened, and may also help prevent unnecessary or unlawful detention and injury.

Initiating Federal Civil Commitment Proceedings Following Competency Evaluation

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Determination of Dangerousness for Civil Commitment Proceeding Does Not Need to Be Filed During the Time Period Allotted for Competency Evaluation

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In *Sealed v. Sealed*, 802 Fed. Appx. 138 (5th Cir. 2020), the U.S. Court of Appeals for the Fifth Circuit in an unpublished opinion ruled that a certificate of dangerousness to initiate civil commitment procedures under federal statute 18 U.S.C. § 4246 (1997) need not be filed during the time period established in 18 U.S.C. § 4241 (2006). The provisions of § 4241 establish procedures for determination of mental competence and provide that if a defendant is found mentally incompetent, the court shall commit him to the Attorney General for hospitalization. If the defendant is unlikely to regain competency, the defendant is subject to civil commitment for dangerousness under § 4246.

Facts of the Case

“Appellant” (unnamed in the opinion) was arrested for criminal trespass in April 2017 at a

field office for the Secret Service in Nashville, Tennessee. She returned in October 2017 and was seen spraypainting signs. When asked to stop, she punched an employee in the face. When she entered the building, two Secret Service agents followed her, and she accused the Secret Service of “holding her captive, shooting her in the head, and raping her over 12 years ago” (*Sealed*, p 139). She subsequently punched one of the agents in the face and resisted the other. A federal grand jury in Nashville charged Appellant with one count of assaulting a Special Agent and one count of resisting another Special Agent when he was engaged in the performance of his official duties. She was detained in federal custody.

In January 2018, the district court in Nashville issued a commitment order to determine competency, pursuant to 18 U.S.C. § 4241(a). In February 2018, Appellant was moved to the Federal Medical Center-Carswell (FMC Carswell) in Fort Worth, Texas for determination of competency, the time period of which was later extended with expiration set for September 2018.

In August 2018, prior to the expiration of the order, the district court was notified that, in the opinion of FMC Carswell clinical staff, Appellant displayed symptoms of mental illness that would impair her ability to be competent to stand trial. Furthermore, staff found that Appellant would likely remain incompetent to stand trial without receiving psychotropic medication, which she was unwilling to accept on a regular basis. They felt that medication was an appropriate treatment, but that she could not be forcibly medicated as staff did not consider her a present danger to herself or others. The staff requested the district court determine whether Appellant could be “forcibly medicated for the sole purpose of rendering her competent” under *Sell* criteria (*Sealed*, p 140, citing *Sell v. United States*, 539 U. S. 166 (2003)).

On October 1, 2018, the district court in Nashville denied the government’s motion for involuntary medication to restore Appellant to competency. On October 5, the government filed a notice with the Nashville court that Appellant was subject to civil commitment procedures for dangerousness under 18 U.S.C. § 4246 and that clinical staff at FMC Carswell planned to conduct a risk panel review to determine whether a full dangerousness evaluation was warranted. The government did not