

suit alleged that this dismissal of self-harm and suicidal thoughts led to an increase in deaths from suicide in prisoners with serious mental illness. Another main complaint was the lack of routine review of prisoners' mental health care treatment plans, leading to an inability to identify major concerns or inadequacies.

While this case did not address the actual factual nature of the specific allegations themselves, it is relevant that the claims about mental health practices, taken as factual for the purpose of this appeal, were found to be sufficiently plausible to constitute cruel and unusual punishment on the part of the prison administration. This case highlights potential caveats that psychiatrists should be aware of when working in the correctional system, particularly when diagnosing and treating mental illness and working with the correctional staff to determine how a prisoner's mental illness should affect their housing and custody status.

Legal Standard for Emergency Mental Health Seizure by Law Enforcement

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Law Enforcement Can Seize Individuals for an Emergency Mental Health Evaluation Only If There Is Probable Cause That the Individual Poses an Emergent Danger to Self or Others

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Key words: emergency mental health seizure; probable cause

In *Graham v. Barnette*, 970 F.3d 1075 (8th Cir. 2020), Teresa Graham appealed the district court's

granting of summary judgment for Sergeant Shannon Barnette, Officer Mohamed Noor, Officer Amanda Sanchez, and the City of Minneapolis (herein referred to as City) after the above-mentioned officers entered Ms. Graham's home without a warrant, seized her, and transported her to a hospital for a mental health evaluation. The Eighth Circuit Court of Appeals affirmed.

Facts of the Case

Around 10 a.m. on May 25, 2017, Ms. Graham called 911 to report an unknown man was smoking marijuana on a retaining wall behind her home. A City police officer went to Ms. Graham's home later that morning, did not see a man, and left without speaking to her. She called 911 several hours later to complain that officers had not responded to her initial call.

Around 6 p.m., a police officer called Ms. Graham and informed her that they had investigated her earlier report. Shortly thereafter, an individual claiming to be Ms. Graham's cousin called 911 to report that Ms. Graham had threatened him and his family; the dispatcher passed this comment to the responding officers. This caller told the 911 dispatcher that "this is not an emergency" and that he did not believe she would "do anything." He requested a "welfare check" because he believed Ms. Graham had a history of mental illness.

Two hours later, Officers Noor and Sanchez went to Ms. Graham's home; this encounter was recorded on Officer Sanchez's body camera. Ms. Graham answered the door, accused the police of harassing her, and demanded they leave. The officers left; they noted in their incident report that she "appeared to be AOK" although they were unable "to check on her welfare" due to her insistence that they leave. Within one hour, a 911 operator reported Ms. Graham had called three more times. The 911 operator described Ms. Graham as agitated, aggressive, and "not making sense." Sergeant Barnette called Ms. Graham to address her concerns. Ms. Graham then called 911 two more times.

Sergeant Barnette ordered Officers Noor and Sanchez to bring Ms. Graham into custody for a mental health evaluation under Minnesota's Civil Commitment and Treatment Act (MCCTA), Minn. Stat. § 253B.05 (2)(a) (2017), on the basis of the officers' interactions with Ms. Graham throughout the day. This Act authorized an officer to seize a

person for an emergency mental health evaluation if the officer has “reason to believe” that the person is mentally ill and a danger to self or others if not immediately detained.

Sergeant Barnette, Officer Noor, and Officer Sanchez went to Ms. Graham’s home and recorded this encounter on their body cameras. Ms. Graham opened her front door, appeared angry, told them she did not call for help, demanded they leave, and then slammed the door closed. Ms. Graham called 911 to complain that the officers would not leave her property. Sergeant Barnette removed the screen from the storm door to allow them entry should she reopen the interior door. After an extended discussion with officers through the door, Ms. Graham opened the interior door again and the officers entered her home through the altered exterior door. They held Ms. Graham by each arm. Ms. Graham threatened to sue the officers, alleging they were kidnapping her because of her previous complaints. She was taken by ambulance to the hospital for a mental health evaluation; she was released after she was evaluated and determined not to meet criteria for involuntary hospitalization.

Ms. Graham brought suit under 42 U.S.C. § 1983, alleging the officers violated her First and Fourth Amendment rights, in part, by conducting an unreasonable search and seizure and arresting her in retaliation for protected speech. She brought suit against the City, alleging the City’s policy regarding emergency mental health seizures resulted in the officers’ “unconstitutional conduct.” Ms. Graham brought Minnesota state law claims against the officers for false imprisonment, battery, assault, and negligence. The district court entered summary judgment in favor of the officers and the City. The district court granted the officers qualified immunity on the plaintiff’s Fourth Amendment claims because the officers had not violated a clearly established constitutional right when they entered her home. The court granted statutory and official immunity on her state law claims. Ms. Graham appealed.

Ruling and Reasoning

The Eighth Circuit affirmed the district court’s rulings. As part of its decision, the Eighth Circuit established that probable cause is the required legal standard for emergency mental health

seizures. Law enforcement must have probable cause to determine that an individual is mentally ill and poses an emergent danger to self or others to take that individual for an emergency mental health evaluation. At least nine Circuit Courts of Appeals had previously established that standard under the Fourth Amendment. Prior to this case, existing Eighth Circuit case law was not clear about the required legal standard. It had suggested that “reasonable belief” was sufficient to justify some seizures under law enforcement’s community caretaking function while intimating that probable cause was required in other cases. The Eighth Circuit discussed its role in creating this confusion. In *United States v. Quintana*, 623 F.3d 1237 (8th Cir. 2010), the appeals court equated reasonable belief and probable cause; however, in *United States v. Quezada*, 448 F.3d 1005 (8th Cir. 2006), it stated that reasonable belief is “a less exacting standard” than probable cause.

As the Eighth Circuit had not established the probable cause standard for mental health seizures prior to this case, it ruled that the district court did not err in granting the officers qualified immunity on Ms. Graham’s unreasonable seizure claim. The MCCTA included a provision that anyone acting in good faith during the civil commitment process, including seizing someone for an emergency mental health evaluation, is entitled to immunity regardless of whether the individual is civilly committed. This provision entitled the officers to statutory immunity as they were acting in “good faith” when they used “reasonable belief” to seize Ms. Graham. In addition to qualified and statutory immunity, the officers were entitled to official immunity because Minnesota state law allowed public officials to exercise “discretion or judgment” as long as they acted in good faith.

The Eighth Circuit ruled that the district court did not err in granting the City summary judgment. Ms. Graham contended that the City’s policy regarding mental health seizures caused the officers to violate her Fourth Amendment rights because the policy was facially unconstitutional; she also contended that the City should be liable because it was deliberately indifferent to her constitutional rights and failed to train the officers properly. The City’s policy, in compliance with MCCTA, allowed an officer to seize an individual with mental illness if there was “reason to

believe” the person posed a threat to self or others; in addition, the policy stated the threat does not have to be imminent. The Eighth Circuit stated the policy was not facially unconstitutional because “reason to believe” was commonly used to mean probable cause. Additionally, it stated the policy’s language that the threat does not have to be imminent does not make the policy unconstitutional. The Eighth Circuit added that Ms. Graham had not shown a history of the City’s officers committing unreasonable seizures to demonstrate that the need for additional training was “plain.” Due to the confusion in case law regarding the appropriate standard to justify a mental health seizure, the Eighth Circuit stated that policy makers could not have exhibited a deliberate indifference to constitutional rights that were not clearly established.

Discussion

The officers did not contend that they had probable cause to arrest Ms. Graham after they entered her home, and the appeals court was “dubious” that the officers could support this contention. On the basis of the available facts, however, the officers had reasonable belief that there was a mental health emergency and they were acting in good faith. Due to the ambiguity in the existing case law regarding the legal standard for mental health seizures, the appeals court ruled that the officers had not violated a clearly established constitutional right and therefore the officers were granted various immunities.

This case is important as it now establishes probable cause as the standard for emergency mental health seizures in the Eighth Circuit. The appeals court stated that the greater the intrusion on a citizen, the greater the justification required to deem that intrusion reasonable. The Eighth Circuit indicated that being detained for a mental health evaluation is no less intrusive than a criminal arrest. The Eighth Circuit concluded that probable cause that a person poses an emergent danger to self or others “can tip the scales” of the Fourth Amendment’s reasonableness balance test in favor of the government’s interest to seize that person.

This ruling placed the Eighth Circuit in alignment with the majority of circuit courts that had already established probable cause as the standard for emergency mental health seizures and provided much

needed clarity on the subject of a legal standard for emergency mental health seizures in the Eighth Circuit.

Public School Policies for Transgender Students

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School Boards Engage in Discrimination When Their Policies Restrict Transgender Students on the Basis of Sex

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In *Grimm v. Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020), the Fourth Circuit Court of Appeals considered whether the school board was in violation of the Equal Protection Clause of the Fourteenth Amendment and Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 (a) (1986)) when it instituted policies restricting a transgender person’s access to bathrooms on the basis of “biological sex” and refused to change his gender on school transcripts.

Facts of the Case

Gavin Grimm was identified as female at birth, but growing up, he always knew he was a boy. He preferred boys’ clothing, related to male characters, and felt joy when others identified him as male. In September 2013, he began attending Gloucester High School, a public high school in Gloucester County, Virginia. He was enrolled as a female.

In April 2014, he disclosed to his mother that he was transgender. At the end of his freshman year, Mr. Grimm changed his first name to Gavin and expressed his male identity in all aspects of his life. After conversations with a school counselor and the