Legal Standard for Warrantless Mental Health Seizure

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Fourth Amendment Requires Probable Cause of Dangerousness for Warrantless Mental Health Seizure

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In *Graham v. Barnette*, 5 F.4th 872 (8th Cir. 2021), the U.S. Court of Appeals for the Eighth Circuit reconsidered, on remand from the U.S. Supreme Court, the district court's granting of summary judgment for officers and the City of Minneapolis, who had been sued after entering Theresa Graham's home without a warrant, seizing her, and transporting her to a hospital for a mental health evaluation. The Eighth Circuit reaffirmed the district court's judgment, stating that the Fourth Amendment requires only that the person poses an emergent danger to herself or others.

Facts of the Case

On May 25, 2017, Ms. Graham called 911 regarding a man smoking marijuana behind her home. A police officer came to Ms. Graham's home, saw no one, and left without informing Ms. Graham. Ms. Graham called the police again several hours later to make a complaint about the police department's failure to investigate her initial concern. An officer called Ms. Graham and informed her about the outcome of their earlier investigation. An anonymous informant claiming to be Ms. Graham's cousin then called 911 and reported that Ms. Graham had called and threatened him and his family. The caller requested the police conduct a welfare check because he believed Ms. Graham had a history of mental health concerns.

Officers Noor and Sanchez arrived at Ms. Graham's home several hours later to conduct a welfare check. Ms. Graham demanded to know who requested the check, accused the police of harassment, and demanded that the officers leave. The officers complied with her request that they leave and noted that she "appeared to be AOK."

After the officers left her residence, Ms. Graham called 911 to complain about the officers' behavior. The 911 operator described Ms. Graham as agitated and "not making sense." Sergeant Shannon Barnette returned Ms. Graham's call, and they spoke briefly. Ms. Graham subsequently called 911 two more times.

Sergeant Barnette then ordered Officers Noor and Sanchez to take Ms. Graham into custody for an emergency mental health evaluation as authorized under the Minnesota Civil Commitment and Treatment Act (MCCTA), Minn. Stat. § 253B.05 (2)(a) (2017). This Act allows an officer to seize an individual for evaluation if the officer had "reason to believe" the person was "mentally ill . . . and in danger of injuring self or others if not immediately detained" (MCCTA 253B.05(2)(a)). The City's policy in compliance with this statute further stated the "threat does not have to be imminent" (*Graham*, p 890, quoting City of Minneapolis policy).

When officers arrived at Ms. Graham's home, she "appeared angry," told officers she did not call for help, demanded they leave, and slammed the door. She called 911 to complain that officers would not leave. Sergeant Barnette removed an outer screen from the door to allow entry should Ms. Graham reopen the interior door. Following extensive discussion, Ms. Graham reopened the door, at which time officers entered her home and held Ms. Graham by each arm. Ms. Graham did not resist or threaten the officers, though she criticized them and asserted they were kidnapping her.

Officers transported Ms. Graham by ambulance to Southdale Fairview Hospital for an emergency mental health evaluation. Ms. Graham was evaluated and discharged after being assessed as exhibiting "some paranoid behavior" yet not meeting criteria for involuntary hospitalization.

Ms. Graham brought suit under 42 U.S.C. § 1983 (1996), asserting, in part, that officers violated her First and Fourth Amendment rights by conducting an

unreasonable search and seizure in retaliation for protected speech. She brought § 1983 claims against the City of Minneapolis claiming their policy on seizures for emergency health evaluation enabled the officers' unconstitutional conduct. Ms. Graham also 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 Fourth Amendment claims and statutory and official immunity on the state-law claims. The district court also ruled that the City's policy was not facially unconstitutional.

Ms. Graham appealed to the Eighth Circuit, which affirmed the district court's judgment. Ms. Graham then petitioned the U.S. Supreme Court for a writ of *certiorari*, arguing the reasoning used by the Eighth Circuit regarding the "community caretaker exception" to the Fourth Amendment did not apply to the home. While the case was pending, the U.S. Supreme Court decided *Caniglia v. Strom,* 141 S. Ct. 1596 (2021), which determined that the community-caregiving "exception" to the Fourth Amendment was not a "standalone doctrine" to justify "warrantless searches and seizures in the home" (*Graham*, p 881, quoting *Caniglia*). The U.S. Supreme Court vacated the Eighth Circuit's judgment and remanded the case for further consideration in light of *Caniglia*.

Ruling and Reasoning

The Eighth Circuit reaffirmed the district court's rulings. Ms. Graham argued that officers violated her Fourth Amendment right to freedom from unreasonable search and seizure in her home. Pre-*Caniglia*, officers asserted that their entry and seizure was lawful under the community-caregiving exception, but that even if it was not, they were entitled to qualified immunity because their actions were not clearly unreasonable. As in *Graham v. Barnette* 970 F.3d 1075 (8th Cir. 2020), the Eighth Circuit again held that probable cause of dangerousness is the requisite standard for warrantless mental health seizures. At least nine circuits have held that the Fourth Amendment requires probable cause that a person is mentally ill and dangerous for an emergency mental health seizure to be reasonable, since a mental health seizure and a criminal arrest are "equally intrusive." Unlike the lower standard of reasonable belief, only probable cause constitutes sufficient justification for governmental interest to outweigh the individual's liberty interest.

The Eighth Circuit noted that at the time that officers seized Ms. Graham, some legal precedent suggested reasonable belief was the requisite standard. Therefore, probable cause had not been clearly established as the requisite legal standard. The officers' actions did not clearly violate the more lenient reasonable-belief standard. Even if officers lacked probable cause to seize Ms. Graham, they were still entitled to qualified immunity regarding the Fourth Amendment claims given ambiguity in case law regarding the correct standard. The Eighth Circuit affirmed the district court's granting of qualified immunity to the officers regarding Ms. Graham's Fourth Amendment claims.

The Eighth Circuit also ruled that the district court did not err in granting the City summary judgment. The MCCTA was not facially unconstitutional, as the statute's language regarding "reason to believe" is commonly equated with probable cause. The policy's language that a threat need not be imminent was also not facially unconstitutional. The Eighth Circuit also affirmed the district court's granting of summary judgment to the officers on Ms. Graham's First Amendment and state-law claims because Ms. Graham provided insufficient evidence that her seizure was retaliatory or that officers acted with malice or in bad faith.

Discussion

In this case, the U.S. Court of Appeals for the Eighth Circuit reaffirmed probable cause of dangerousness as the requisite standard for warrantless mental health seizures by law enforcement officers. A mental health seizure is as intrusive as a criminal arrest and requires more than reasonable belief. Although the probable cause standard is more protective of individual liberty, law enforcement's effectuation of this standard may result in lack of evaluation of individuals who fail to meet the probable cause standard but could benefit from psychiatric evaluation. In addition, this case highlighted that an individual detained for a psychiatric evaluation may not meet the legal standard for civil commitment, which requires clear and convincing evidence. The case illustrates the longstanding tension in mental health case law between individual liberty interests and the government's interest in mitigating harm.

The case is of particular interest to psychiatrists who treat patients living in the community and who may occasionally request that police officers conduct a wellness check or transport a patient for formal psychiatric evaluation at a hospital. Although treating psy-

chiatrists should offer law enforcement officers only minimum necessary information, the case underscores the importance of communication in providing police officers who conduct mental health seizures relevant information about an individual's dangerousness. In addition, forensic psychiatrists may be asked to opine on whether an individual's behaviors met the threshold of probable cause for dangerousness in an emergency mental health seizure or, contrarily, whether detainment was arguably necessary but was not executed by law enforcement. This case highlights the evolving legal landscape regarding standards for mental health seizures by law enforcement and the importance that psychiatrists be aware of relevant legal standards in their jurisdictions.

Law Enforcement's Application of Excessive Force with Persons with Mental Illness

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Fourth Amendment Protects Citizens from Excessive Use of Force and Law Enforcement Should Consider Mental Illness When Determining Applications of Force

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Key words: excessive force; law enforcement; mental illness; qualified immunity

In *Palma v. Johns*, 27 F.4th 419 (6th Cir. 2022), the U.S. Court of Appeals for the Sixth Circuit ruled that the district court erred in granting summary judgment on qualified immunity grounds to a police deputy where there were sufficient questions of fact as to the deputy's use of lethal force despite knowing Vincent Palma had mental illness, no crime was committed, and the interaction was nonviolent.

Facts of the Case

On February 8, 2017, Vincent Palma's stepmother called 911 and requested that Mr. Palma be removed from the home after he reportedly engaged in a domestic dispute regarding a television show. Dispatch informed the responding Ashtabula County (Ohio) officer, Deputy Matthew Johns, that Mr. Palma had mental illness, which elicited Deputy Johns' reaction to have his firearm readily accessible prior to arrival. At the house, Deputy Johns saw Mr. Palma standing alone on his family's porch with his hood up and his hands in his pockets. Deputy Johns greeted Mr. Palma multiple times, but Mr. Palma did not respond and instead started approaching the officer. Although some of the facts are disputed, Deputy Johns called for backup and displayed his taser after Mr. Palma did not respond and continued walking toward him with his hands in his pockets. After warnings, Deputy Johns tased Mr. Palma a total of three times: the first tase had little impact as Mr. Palma kept walking; the second caused him to fall to the ground for a few minutes; the third was reportedly given after Mr. Palma got up and continued to approach Deputy Johns. Deputy Johns pulled out his baton but exchanged the baton for his firearm as the distance grew closer. After warning shots, he discharged a total of twelve shots, with nine hitting Mr. Palma; data on autopsy indicated some of the shots dispensed at Mr. Palma occurred as he lay possibly in a fetal position. Throughout the encounter, Mr. Palma was silent and did not make threatening gestures toward Deputy Johns. Once backup arrived and Mr. Palma was searched, it was discovered that he was unarmed.

Mr. Palma's family members sued Deputy Johns for damages under 42 U.S.C. § 1983 (1996), alleging that the deputy had violated Mr. Palma's constitutional rights by using excessive force. They also sued the county under Ohio tort laws. The district court granted summary judgment on all claims on qualified immunity grounds as they found Deputy Johns' actions were reasonable, there was insufficient data to suggest excessive force, and he did not violate Mr. Palma's rights under the Fourth Amendment. Mr. Palma's family appealed the decision to the Sixth Circuit Court of Appeals.

Ruling and Reasoning

The U.S. Court of Appeals for the Sixth Circuit reversed and remanded the district court's decision