

tain employment. Well-documented clinical encounters will minimize the risk of confusing minor improvements with complete recovery.

The dissenting judge suggested that there is a distinction between claims of disability based on physical versus mental impairment, in that psychological disabilities are based mainly on claimant self-report. The dissent raises the concern of fraudulent claims based on self-report of feigned or exaggerated symptoms. Although malingering should be considered a possibility in the context of disability assessments, it should not be assumed that a claimant reporting a mental disorder is more likely to file a fraudulent claim than one alleging a physical disability. Furthermore, as in this case, it is important to review the record as a whole, rather than pointing to minor indicia of improvement, especially in the setting of persistent severe symptoms.

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## The Right of Individuals with Mental Illness to Keep and Bear Arms

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### Federal Gun Law Prohibition From Possessing Firearms for Persons Committed to a Mental Institution and Second Amendment Rights

In *Tyler v. Hillsdale County Sheriff's Department*, 775 F.3d 308 (6th Cir. 2014), the Sixth Circuit Court of Appeals reversed and remanded the United States District Court for the Western District of Michigan's decision to dismiss a claim by Clifford Charles Tyler, stating that the federal statute that prohibits individuals who have been committed to a mental institution from possessing firearms was unconstitutional as applied to him. Mr. Tyler resided in Michigan, where there is no relief-from-disabilities program that would give him the opportunity to

challenge prohibition of firearms for persons who have been adjudicated intellectually disabled or have been committed to a mental institution under 18 U.S.C. § 922(g)(4) (2012).

#### *Facts of the Case*

Under federal law, defined by 18 U.S.C. § 922(g)(4) (2012), "It shall be unlawful for any person . . . who has been adjudicated as a mental defective or who has been committed to a mental institution" to possess a firearm. In accordance with federal law, an individual may be eligible for relief from this prohibition through a relief-from-disability program after an application to the Attorney General, who had delegated the authority of this program to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The application requires medical records, a copy of the court order mandating commitment, and other documentation supporting restoration. In 1992, Congress defunded the federal relief-from-disabilities program, but after the Virginia Tech shooting in 2008 and the passage of the National Instant Criminal Background Check System (NICS) Improvement Act of 2007, (NIAA), Pub. L. No. 110-180 (2008), Congress authorized federal grants to states to assist them in complying with providing accurate information in databases that help identify prohibited purchasers of firearms. The federal grants required certification that the state had a relief-from-disabilities program in place.

Mr. Tyler, now 73 years old, had been involuntarily committed in 1986 after his daughter called the police while he was having a difficult time during his divorce. At the time, he was reportedly sobbing, depressed, and suicidal, with difficulty sleeping. His family called the police and he was ultimately involuntarily committed to the Ypsilanti Regional Center. Thirty-five years later, in February 2011, Mr. Tyler attempted to buy a firearm and was informed by the Hillsdale County Sheriff's Office that he was ineligible because of his previous commitment to a mental institution, in accordance with 18 U.S.C. § 922(g)(4) (2012). On August 2011, he appealed the denial. In January 2012, NICS informed Mr. Tyler that his appeal was denied with a letter that included a statement indicating that until his state had an ATF-approved relief-from-disabilities program his federal firearm rights would not be restored. In May 2012, Mr. Tyler filed a federal lawsuit alleging that enforcement of § 922(g)(4) violated his Constitutional

rights. He alleged that the federal disability construct is over-reaching and constituted an excessive infringement of his Second and Fourteenth Amendment Rights and that the scheme violates equal protection under the Due Process Clause of the Fifth Amendment. After various granted motions to dismiss some of the claims, county and federal defendants appealed, and the Sixth Circuit Court of Appeals conducted a *de novo* review of the district court's dismissal of the case for failure to state a claim.

#### *Ruling and Reasoning*

The Sixth Circuit Court of Appeals reversed and remanded the decision of the United States District Court for the Western District of Michigan to dismiss Mr. Tyler's claim against the Hillsdale County Sheriff's Department *et al.*, stating that Mr. Tyler had cited a valid Second Amendment violation complaint as applied to him. The court also decided that strict scrutiny, as opposed to intermediate scrutiny, applied to the case, especially given the Second Amendment rights at stake and the earlier foothold that upheld these rights in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

The court reviewed in its decision that the Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Although the text was originally penned in 1791, the Supreme Court has determined that the amendment, with a structure "unique in our Constitution," confers "an individual right to keep and bear arms" (*Heller*, p 577). The court in *Heller* determined that the Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home" (*Heller*, p 635). The Court also recognized that the right is not unlimited and that, to regulate it, Congress has placed certain restrictions on possession of guns for different groups of people, stating that the prohibition of firearms possession in § 922(g)(4) is not just for an individual who is "presently mentally ill" but is for anybody "who has been committed to a mental institution" (18 U.S.C. § 922(g)(4)), even though these distinct populations could overlap in some cases.

In making its decision, the court reviewed the level of scrutiny needed to determine the government's justification for restricting the exercise of Second Amendment rights. The court noted that across the circuits, the level of scrutiny that applies to Second

Amendment claims is a "highly contested question." The rationale in this case for the use of strict scrutiny included the Supreme Court's suggestion that there is a presumption in favor of strict scrutiny when a fundamental right is involved, and a reason for downgrading the level of scrutiny would otherwise be in order. Thus, the court determined that a strict-scrutiny analysis was needed.

In this case, the government had two interests regarding limiting who had access to guns: protecting the community from violent crime and suicide prevention. The court noted that "not all previously institutionalized persons are mentally ill at a later time, so the law is, at least somewhat, overbroad" (*Tyler*, p 332), referring to the prohibition in § 922(g)(4) on possession by persons previously committed to a mental institution. So the court of appeals asked the question: "Are previously institutionalized persons sufficiently dangerous, as a class, that it is permissible to deprive permanently all such persons of the Second Amendment right to bear arms?" (*Tyler*, p 333).

With the NICS Improvement Amendments Act of 2007 (2008), Congress offered grants to those states that cooperated in "upgrad[ing] information and identification technologies for firearms eligibility determinations" (§ 103(a)(1), 122 Stat., p 2567), but withheld anticrime funding to those states that did not cooperate. The court identified this penalty and commented that Congress "has actively encouraged a system in which dangerous class members are treated differently from non-dangerous members and in which non-dangerous members may regain their constitutional right" (*Tyler*, p 335).

The court opined that Mr. Tyler should be able to exercise his right to bear arms in any state in which he wishes to live, and it should not depend on whether the state has "chosen to accept the carrot of federal grant money and has implemented a relief program" (*Tyler*, p 334). It mentioned that an individual's ability to exercise a "fundamental righ[t] necessary to our system of ordered liberty" (*McDonald v. City of Chicago*, 561 U.S. 742 (2010), p 778) cannot turn on such a distinction. The court further pointed out that § 922(g)(3) makes it unlawful for drug users and drug addicts to bear arms, but Congress designed the law specifically to cover only the period during which it deemed the persons subject to it to be dangerous. Unlike § 922(g)(4), it did not impose a

lifelong prohibition. The ruling stressed that “Congress cannot condition individual constitutionally protected rights on states’ participation” (*Tyler*, p 343). The court opined that “the government’s interest in keeping firearms out of the hands of the mentally ill is not sufficiently related to depriving the mentally healthy, who had a distant episode of commitment, of their constitutional rights” (*Tyler*, p 344). It held that Mr. Tyler’s complaint, as alleged, stated a violation of the Second Amendment and it reversed and remanded for further proceedings, consistent with the opinion.

*Discussion*

In this case, the court ruled that laws imposing controls on the right to keep and bear arms must fulfill the most thorough constitutional test balanced in favor of upholding fundamental rights, and in this circuit, such a test must be judged by a strict-scrutiny analysis. The court’s opinion comprehensively narrated what has been occurring in the courts since the Supreme Court’s decision in *Heller* in 2008. The Sixth Circuit did not rule that Mr. Tyler must have his Second Amendment right restored immediately, but it provided him the opportunity to prove that he had regained mental stability and no longer posed a risk to himself or others because of mental illness.

Although not precedential for all jurisdictions, the case marks another ruling on the jurisprudence of gun rights. Contrary to popular belief and the media’s promulgation after tragic events, most incidents of gun violence are not caused by mental illness (American Psychiatric Association Position Statement on Firearm Access, Acts of Violence and the Relationship to Mental Illness and Mental Health Services, 2014). The matter of the relation of firearms laws and mental illness has nonetheless become blurry. Without careful consideration, restoring Second Amendment rights across the nation to a class of individuals who are already stigmatized could easily be overlooked in the complex and political landscape related to access to firearms. Regardless of one’s views on firearms, the critical importance of having an equitable and just system in which rights are applied fairly to all individuals cannot be overlooked.

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## Due Process Rights: Considerations for Child Witness Testimony

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### Defendant’s Due Process Rights Were Not Violated in Child Witness Credibility Considerations

In *Moreland v. Bradshaw*, 699 F.3d 908 (6th Cir. 2012), the petitioner, Samuel Moreland, sought a writ of *habeas corpus* after the state’s affirmance of his conviction and death penalty sentence for the murder of five individuals (*State v. Moreland*, 552 N.E.2d 894 (Ohio 1990)). The Sixth Circuit of the United States Court of Appeals upheld the decision of the lower court and denied Mr. Moreland’s petition, holding that neither the lack of an evidentiary hearing on the child victim’s competence nor the exclusion of expert witness testimony about child suggestibility regarding the child witness violated due process.

*Facts of the Case*

In November of 1985, Mr. Moreland argued with his girlfriend, Glenna Green over her refusal to give him money to purchase alcohol. He left and came back twice over the course of the evening. When he returned the second time, he had a rifle and proceeded to shoot Ms. Green twice in the head, killing her. He then reportedly shot other members of her extended family, including 11-year-old Dayron, who survived and was the only eyewitness to testify at trial. Mr. Moreland was tried by a three-judge panel that found him guilty of five counts of aggravated murder and sentenced him to death. He appealed to the Ohio Court of Appeals, which affirmed the trial court’s decision.

After initial appeals were denied, Mr. Moreland filed a petition for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254 (2006) raising nine claims. Five of the claims were certified for appeal, including two particularly relevant to forensic practitioners: that