Commitment and Gun Rights Restrictions

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Involuntary Emergency Admission Without Judicial Commitment Is Not Sufficient to Restrict Gun Rights

DOI:10.29158/JAAPL.230033-23

Key words: gun rights; commitment; involuntary emergency hospitalization; false statement; adjudication

In United States v. Tucker, 47 F.4th 258 (5th Cir. 2022), the U.S. Court of Appeals for the Fifth Circuit reversed the district court’s convictions under 18 U.S.C. § 922(a)(6) (2015) and 18 U.S.C. § 922(g)(4) (2015) on the basis that there was insufficient evidence to show that the defendant underwent an adjudication declaring him a “mental defective” or committed to a “mental institution,” and thus did not support convictions for making false statements to federally licensed firearms dealers or illegally possessing a firearm.

Facts of the Case

A decade prior to the case, Robert Earl Tucker, Jr., was involuntary transported to a local emergency department under an order of protective custody issued by local law enforcement. At the hospital, a physician issued an emergency certificate on the basis that he presented a danger to himself and others. Mr. Tucker was involuntary hospitalized for up to 15 days. Two weeks after release, a new order for protective custody was issued at the request of Mr. Tucker’s mother to “determine if [Mr. Tucker] should be voluntarily admitted, admitted by emergency certificate, admitted as a noncontested admission, or discharged” (Tucker, p 259). Once again, an emergency physician saw Mr. Tucker and determined that he was a danger to himself or others and issued a physician emergency certificate. Mr. Tucker was subsequently hospitalized for 13 days. During this hospitalization, paranoid schizophrenia was diagnosed, and medications were prescribed.

In 2019, Mr. Tucker purchased a pistol from a firearms dealer. On the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) form, he stated that he had neither been adjudicated as a “mental defective” nor “committed to a mental institution.”

A short time later, Mr. Tucker was identified as a suspect in an active-shooter investigation. Law enforcement detained him and discovered that he had a loaded firearm and an extra magazine in his possession. During the interrogation, in which ATF was also present, Mr. Tucker reported he had been hospitalized and held for a 72-hour observation period. He later admitted to lying about the length of his prior hospitalizations because of fear of losing his right to carry a firearm.

One year later, Mr. Tucker again tried to purchase a firearm and noted that he had never been adjudicated as a mental defective or committed to a mental institution on the ATF form. An ATF agent served a warning to Mr. Tucker that he was prohibited from possessing firearms or ammunition because he had been “admitted into a mental institution for a lengthy period of time” (Tucker, p 260). After being served, Mr. Tucker called the agent to ask if he could rent guns to shoot at a range and if he could purchase a firearm if he stated he was adjudicated as a mental defective. The agent answered “no” to both questions. Later that week, Mr. Tucker texted the ATF agent that he was “buying a weapon this week.” He told the ATF agent that “I am not prohibited from purchasing or possessing a firearm” (Tucker, p 260). He proceeded to purchase a firearm and once more completed the ATF form indicating that he had never been adjudicated as a mental defective or committed to a mental institution.

Mr. Tucker was arrested and later indicted for three counts of false statements to a federally licensed firearms dealer for representing “that he had not been adjudicated as a mental defective” (Tucker, p 260) in violation
of § 922(a)(6) and two counts of possession in violation of § 922(g)(4). Mr. Tucker appealed.

Ruling and Reasoning

The Fifth Circuit reversed the district court’s convictions, and the sentence was vacated. Using de novo judicial review, the court of appeals found that his convictions were not supported by sufficient evidence. The court of appeals defined adjudicate as commonly meaning “[t]o rule on judicially.” The records did not demonstrate that Mr. Tucker underwent a judicial process, like a civil commitment hearing, during his hospitalizations. They further stated that the physician emergency certificate process does not constitute an adjudication. Physician opinions regarding emergency hospitalization are ex parte and do not involve due process. Therefore, Mr. Tucker’s convictions for possession and false statements were reversed and his sentence was vacated.

Discussion

There are no specific laws passed by Congress that remove gun rights from those who were or are mentally ill and dangerous according to United States v. Rehlander, 666 F.3d 45 (1st Cir. 2012). But, when a person has undergone an “adjudication” with a finding of “mental defect” as the disabling circumstance, then the person is prohibited from future gun ownership according to United States v. Vertz, 40 F. App’x 69 (6th Cir. 2002). Following this, the Fifth Circuit Court of Appeals ruled that for persons to have their gun rights restricted on the basis of “mental defectiveness” or having been committed to “mental institution,” they should first undergo “adjudication” which provides the “involvement of a judicial-decision maker, the resolution of a dispute after consideration of argument by the parties involved, and a deliberative proceeding with some form of due process” (Tucker, p 260, citing Wilborn v. Barr, 401 F. Supp. 3d 501 (E.D. Pa. 2019), p 510).

Although Mr. Tucker was involuntary hospitalized under an order of protective custody issued by local law enforcement and was found by two physicians to be “a danger to himself and others” and in need of “immediate psychiatric treatment,” he never underwent official adjudication. He never appeared before a judicial decision-maker such as a court, board, or commission and thus evidence was insufficient to support his conviction. The Fifth Circuit held that the interpretation of the physician emergency certificate process as “determination by a lawful authority” is flawed, and that “often-unreviewed opinions of medical professionals” (Tucker, p 261) cannot be interpreted as such. This decision is significant for forensic psychiatrists because patients and evaluatees frequently have questions about firearm rights. It is useful for forensic psychiatrists to have an understanding of the laws and procedures governing forfeiture of firearm rights.

Protective Custody for Mental Health Evaluation and Treatment

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Community Caretaker Function Exception to Fourth Amendment Requires Specific Findings to Take Person into Protective Custody

DOI:10.29158/JAAPL.230033L1-23

Key words: community caretaker function; mental health; gravely disabled; imminent threat to self or others; Fourth Amendment

In State v. Towner, 503 P.3d 989 (Idaho 2022), Gregory Towner appealed the district court’s denial of his motion to suppress after it concluded an officer’s seizure and subsequent search of Mr. Towner was a reasonable exercise of the officer’s community caretaker function exception. The Supreme Court of Idaho reversed and remanded.

Facts of the Case

On August 9, 2018, Officer Johns, while on patrol, received a call that someone, who was standing on the side of the road, appeared to be hallucinating. Officer Johns arrived on the scene and identified the person to be Gregory Wade Towner Sr., from prior interactions he had with Mr. Towner. He testified Mr. Towner