

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

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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

was yelling and screaming at the sky and making “very aggressive actions” toward the air as if he were arguing with somebody, but no one else was present. When Officer Johns approached Mr. Towner, Mr. Towner expressed he felt depressed, stated he had been off his medications, and suggested he might want to go to the hospital. Mr. Towner also made a statement regarding invisible wires covering him that would “send [him] to hell.” He denied suicidal and homicidal ideation. Officer Johns asked him if he wanted to go to the hospital, and Mr. Towner said “sure.”

As Officer Johns and Mr. Towner walked toward the patrol car, Mr. Towner indicated he did not want to go to the hospital and needed to get his truck. He stated he needed a ride to the shop and then called someone. Mr. Towner asked Officer Johns if he could give him a ride to his truck; Officer Johns said “probably,” and Mr. Towner ended the phone call. After confirming that Mr. Towner was not under the influence of alcohol or drugs, Officer Johns asked Mr. Towner where he was staying. He reported he was evicted from the place where he was staying, and the motel where he wanted to go was full. While answering this query, Mr. Towner was observed to be moving his hands in the air and mentioned the invisible wires around him.

Officer Johns informed Mr. Towner that he had to put Mr. Towner in handcuffs before he could transport him to the hospital in the patrol car and subsequently placed handcuffs on him. Officer Johns then told Mr. Towner that he was concerned about him because he saw wires that were not present that he believed would send him to hell and because he was not taking his medications, thus he was taking him to the hospital. While patting down Mr. Towner, Officer Johns found a plastic bag containing crystalline powder that Officer Johns identified as methamphetamine. Instead of taking Mr. Towner to a hospital, Officer Johns took him to jail.

The following day, Mr. Towner was charged with possession of a controlled substance. Mr. Towner moved to suppress on the basis that Officer Johns conducted an unreasonable search and seizure. The state argued the search was justified under the law enforcement’s community caretaker function exception, specifically under Idaho Code Ann. § 39–307A (2022) which allows a law enforcement officer to help an individual who appears intoxicated in public.

At the motion to suppress hearing, Officer Johns testified Mr. Towner was a threat to himself because he was responding to unseen others, had a mental health history, was possibly under the influence of substances, had no safe place to go, and believed invisible wires were going to kill him. Officer Johns also testified Mr. Towner was a threat to others because he stepped into the street without checking for oncoming traffic. Officer Johns explained it was common practice to search individuals prior to taking them into custody to ensure that they did not have weapons or items that could harm them or others. The state argued that Officer Johns acted reasonably by searching Mr. Towner to ensure that he had no hazardous items on his person prior to placing him in the patrol car. Citing other Idaho statutes, Mr. Towner argued that there was no substantial evidence to show that he was a danger to himself or others, or that he was gravely disabled, thus there was no basis for Officer Johns’ seizure or subsequent search.

On November 9, 2018, the district court ruled from the bench and denied Mr. Towner’s motion to suppress. The court indicated Idaho Code Ann. § 39–307A did not apply on the basis of Officer Johns’ testimony that his initial concerns were that Mr. Towner was hallucinating because of mental illness and not from alcohol or drug use. The court stated it was required to look at the totality of the circumstances, which Idaho had adopted as the test for analyzing community caretaker function exception cases, and whether the intrusive action of the police was reasonable in view of all the circumstances.

The court ruled that, on the basis of the totality of the circumstances, it was reasonable for Officer Johns to believe that Mr. Towner needed assistance and transport to the hospital to receive help, thus the community caretaker function exception existed. The court indicated the search was reasonable on two alternative rationales: the weapons search for safety of officer and others before placing him in the patrol car, and there could be “other reasons” to conduct a search to see why Mr. Towner was hallucinating.

Mr. Towner’s case proceeded to trial, where the district court admitted the evidence found on his person. On November 19, 2018, he was convicted by a jury for possession of a controlled substance. Mr. Towner appealed to the Idaho Court of Appeals, which affirmed the district court’s denial of his motion to suppress. Mr. Towner appealed to the Supreme Court of Idaho.

Ruling and Reasoning

In a unanimous decision, the Supreme Court of Idaho reversed the district court’s denial of Mr. Towner’s motion to suppress and remanded the case with instructions for the district court to enter findings of fact related to whether the state proved that Mr. Towner was “gravely disabled” or an “imminent danger” to himself or others because of his mental illness as outlined in Idaho Code Ann. § 66–326(1) (2022) before he was taken into protective custody. It ruled that the district court erred in concluding that Officer Johns’ act of taking Mr. Towner into protective custody was within his authority under the community caretaker function exception to the Fourth Amendment of the U.S. Constitution without the district court considering the requirements of Idaho Code Ann. § 66–326(1).

The state supreme court stated Mr. Towner’s initial seizure by Officer Johns, where the officer was calling out and having Mr. Towner walk back to the patrol car to talk, was permissible under the community caretaker function exception because he was concerned about Mr. Towner’s welfare and wanted to see if he needed help. But, prior to placing Mr. Towner in handcuffs and taking him into protective custody, the court ruled Officer Johns had to comply with the requirements of Idaho Code Ann. § 66–326(1), which stated that a law enforcement officer may only take a person into protective custody for mental health evaluation and treatment if the officer has reason to believe that the person is “gravely disabled” due to mental illness or the person is an “imminent danger” to himself or herself or others, as evidenced by a threat of “substantial physical harm.” The Supreme Court of Idaho ruled that the district court erred in not addressing the applicable requirements of Idaho Code Ann. § 66–326(1) and whether they were met. It reversed and remanded the case back to the lower court.

Discussion

The Fourth Amendment prohibits law enforcement from conducting unreasonable searches and seizures. A warrantless search would usually be considered unreasonable unless it falls within an exception to the warrant requirement. Exceptions to the warrant requirement include the plain view doctrine, searches incident to arrest, exigent circumstances, and consent. Once an individual has established that a warrantless search has occurred, the state then has the burden of establishing that a valid exception applied.

The community caretaker function exception, first articulated by the U.S. Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433 (1973), covers warrantless seizure of evidence while officers are performing community caretaker functions, such as rendering aid to individuals in need. But, the Supreme Court of Idaho stated that the community caretaker function exception cannot be used to take an individual into protective custody absent findings consistent with Idaho Code Ann. § 66–326(1). This statute put conditions on when a law enforcement officer can take a person into protective custody for mental health evaluation and treatment without a court order, namely if the person is gravely disabled related to a mental illness, or the person is an imminent danger to himself or herself or others as evidenced by a threat of substantial physical harm; this statute further states the evidence to support either claim must be presented to an authorized court within 24 hours from the time the individual was placed in protective custody. This case highlights the limitation of law enforcement’s ability to use the community caretaker exception to take a person into protective custody for mental health evaluation and treatment and subsequently search that individual, especially when the seizure and search can lead to criminal charges.

Treatment Over Objection and the Right to Refuse Counsel

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Treatment Over Objection Requires Verification That Patients Have Waived Their Right to Counsel

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Key words: treatment over objection; procedural due process; waiver of counsel; *Matthews* balancing test

In *Mercer v. Thomas B. Finan Center*, 265 A.3d 1044 (Md. 2021), the Court of Appeals of Maryland held that