of a defendant's mental impairment because of a mental illness at the time of the alleged offense in an evaluation for a mental illness defense.

Eighth Amendment Rights of Homeless Individuals

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Involuntarily Homeless Individuals Not Protected Under Cruel and Unusual Punishments Clause

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Key words: homelessness; shelter; Eighth Amendment; cruel and unusual; status crime

In *City of Grants Pass v. Johnson,* 144 S. Ct. 2202 (2024), the U.S. Supreme Court rejected claims that enforcement of local ordinances prohibiting camping in public places, which could result in fines and incarceration, were a violation of the Eighth Amendment's Cruel and Unusual Punishments Clause.

Facts of the Case

A class action suit was filed against Grants Pass, Oregon, alleging that five local ordinances were implemented to criminalize homelessness and were unconstitutional under the Eighth and Fourteenth Amendments. The ordinances involved prohibition of sleeping and camping on public property, public park exclusion orders following specific violations, and the possibility of criminal trespassing charges. Penalties ranged from fines up to $295 to incarceration for 30 days.

The original complaint was filed six weeks after the decision was issued in *Martin v. City of Boise,* 92F.3d 584 (9th Cir. 2019). In *Martin*, the Ninth Circuit Court of Appeals held that charging a homeless individual for the crime of sleeping in a public place, when no other sleeping space is otherwise "practically available," would be a violation of the Eighth Amendment's Cruel and Unusual Punishments Clause. The holding was based on the U.S. Supreme Court's ruling in *Robinson* v. *California,* 370 U.S. 660 (1962), which stated that an individual's status alone cannot be criminalized.

Central to this case and *Martin* was the concept of "involuntary homelessness." This term was applied when the total population of homeless individuals exceeded the number of "practically available" shelter beds in a defined municipality. The specifier "practically available" was not clearly defined but determined to be afffected by "restrictions based on gender, age, income, sexuality, religious practice, curfews that conflict with employment obligations, and time limits on stays" (*City of Grants Pass*, p 2231). But a precise definition was inconsequential, as point-in-time counts of homeless individuals in Boise, Idaho and Grants Pass at the time of the initial complaints far exceeded the total number of shelter beds, regardless of practicality.

The district court in *City of Grants Pass* largely ruled in favor of the plaintiffs, citing violations of both the Eighth and Fourteenth Amendments and subsequently enjoined Grants Pass from enforcing the ordinances in question. The holding was narrow and included a provision allowing Grants Pass to limit public camping or sleeping in specific places at specified times. On appeal, the Ninth Circuit Court of Appeals held that the ordinances were a violation of the Eighth Amendment's Cruel and Unusual Punishments Clause, consistent with *Martin*. The Ninth Circuit further narrowed the injunction to ordinances banning camping on public property as applied only to "involuntarily homeless" individuals. Grants Pass filed a writ of *certiorari*.

Ruling and Reasoning

The U.S. Supreme Court granted *certiorari*. In a six to three decision, the Court reversed the Ninth Circuit's holding that the Eighth Amendment applied to the enforcement of Grants Pass ordinances banning camping in public places. The Court's legal reasoning began with a criticism of such an application of the Eighth Amendment, then proceeded to discuss the relevance of *Robinson*, and concluded by rejecting the use of *Robinson* based on the holding of the U.S. Supreme Court case *Powell v. Texas,* 392 U.S. 514 (1968). In addition, the Court addressed concerns related to enforcement and future litigation that may have arisen if the Ninth Circuit holdings were maintained.

The Court stated that, although many aspects of the Constitution limit what can be criminalized by

the government, the Eighth Amendment's Cruel and Unusual Punishments Clause addresses government actions after conviction of a crime. It contrasted the original purpose of the clause, to outlaw barbaric 18th century English punishments like "disemboweling, quartering, public dissection, and burning alive," with the punishments imposed by Grants Pass, a stepwise system of widely utilized practices, including fines, barred entry, and incarceration (*City of Grants Pass*, p 2215). The Court stated that the Cruel and Unusual Punishments Clause does not extend to what a municipality may criminalize and the punishments utilized by Grants Pass were far from cruel or unusual.

The Court went on to address the applicability of *Robinson* to this case. In *Robinson*, the Court considered a challenge to a law prohibiting addiction to narcotics, rather than possession, intoxication, use, or any other specified behavior. Because the plaintiff had not committed any act, the Court held that a statute outlawing "mere status" could not be enforced because of the Eighth Amendment's Cruel and Unusual Punishments Clause. It remarked, "even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." (*Robinson*, p 667).

In the Court's opinion on this case, it asserted that it is not the status of homelessness that is in question but the specific act of camping on public property. The Court provided the following rationale: "it makes no difference whether the charged defendant is homeless, a backpacker on vacation passing through town, or a student who abandons his dorm room to camp out in protest" (*City of Grants Pass*, p 2218).

The Court then addressed the argument used to connect *Robinson* to this case: that to criminalize a behavior made involuntary by a status is to criminalize the status. The Court rejected this argument based on *Powell*. In *Powell*, the Court considered whether a statute prohibiting public intoxication amounted to criminalization based on the status of being an alcoholic. Weary of application to more serious crimes and unwilling to develop a constitutional standard of criminal responsibility with regard to intoxication or compulsions, the Court rejected the plaintiff's position and limited *Robinson* to "pure status crimes." In applying that interpretation to this case, the Court stated that neither *Robinson* nor the Eighth Amendment supports prohibiting ordinances outlawing a behavior, even if it is "in some sense involuntary" (*City of Grants Pass*, p 2219).

Having rejected the Eighth Amendment claims, the Court addressed several practical concerns with limiting enforcement to involuntarily homeless individuals. The Court questioned how a municipality would determine when an individual is involuntarily homeless. It remarked that this would require real-time knowledge of the number of homeless individuals and the number of "practically available" shelter beds on any given night. Further, the Court suggested that the determination of "practically available" shelter beds may be difficult to prove in later litigation.

Dissent

The dissent argued that the majority erred in separating the status of homelessness from the act of sleeping in public when no other option is available because sleep is a "biological necessity." It applied this reasoning to *Robinson* by asserting that, if the California law had criminalized "being an addict and breathing," it would have been deemed constitutional under the logic provided by the majority in this case (*City of Grants Pass*, p 2236).

The dissent also critiqued the majority's use of *Powell*. It stated that the central question in *Powell* was whether the government could criminalize voluntary conduct rendered involuntary by a status. In contrast, the dissent asserted that this case questioned criminalization of "conduct (sleeping outside) that defines a particular status (homelessness)" (*City of Grants Pass*, p 2240). The dissent argued that the act of sleeping or camping in public cannot be separated from the status of homelessness because they are one in the same. Therefore, the ordinances did criminalize the status of homelessness and *Powell* does not negate the application of *Robinson*.

Discussion

The U.S. Supreme Court reversed the Ninth Circuit's decision to enjoin Grants Pass from enforcing certain ordinances related to camping in public places against "involuntarily homeless" individuals. Although *Robinson* was not rejected, the Court limited it by extending *Powell* to distinguish between criminalizing "mere status" and criminalizing involuntary conduct related to, or that defines, a status. In doing so, the Court further narrowed the application of the Eighth Amendment's Cruel and Unusual Punishments Clause.

Homelessness has reached crisis levels in the United States, with estimates exceeding 600,000 individuals

according to the U.S. Department of Housing and Urban Development (de Sousa T, Andrichik A, Prestera E, *et al.* The 2023 Annual Homelessness Assessment Report (AHAR) to Congress. Washington, DC: The U.S. Department of Housing and Urban Development; 2023, p 10). Furthermore, studies have shown that over two-thirds of homeless individuals have a current mental health disorder (Barry R, Anderson J, Tran L, *et al.* Prevalence of mental health disorders among individuals experiencing homelessness . . . JAMA Psychiatry. 2024;81(7):691–9). Any law affecting homeless individuals will have downstream effects on a large percentage of the population of individuals treated and evaluated by psychiatrists.

The holding in this case allows cities and other municipalities to impose sanctions on homeless individuals without an indoor place to sleep. Regardless of one's view on the legal reasoning offered by the Court or the dissent, the holding is likely to result in additional burdens placed on already struggling homeless individuals. In its application to a complex problem like homelessness, this relatively narrow U.S. Supreme Court holding answers one question but leaves many more unanswered in its wake.

The Use of Medical Records in Life Insurance Litigation

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Court Considers Whether Physician-Patient Privilege Can Be Waived During Discovery and as Part of Revoking a Life Insurance Policy

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In *Frohn v. Globe Life and Accident Insurance Company*, 99 F.4th 882 (6th Cir. 2024), the U.S. Court of Appeals for the Sixth Circuit reviewed whether the district court had erred in allowing medical records obtained during discovery, rescinding a life insurance policy based on contrary information found in those records, and publishing an order without redactions of medical information.

Facts of the Case

In January 2018, Karen Frohn applied for a life insurance policy for her husband, Greg Frohn, from Globe Life and Accident Insurance. The application asked about medical history, including whether Mr. Frohn was "currently disabled due to illness," if he had been "diagnosed or treated for. . . any disease or disorder of the heart, brain, or liver or. . . mental or nervous disorder, chronic obstructive lung disease, drug or alcohol abuse, or hospitalized for diabetes" in the last three years, or if he had "any chronic illness or condition which requires periodic medical care or may require future surgery" (*Frohn*, p 887). Ms. Frohn answered "yes" to the question about disability but answered "no" to other questions. A Globe representative called Ms. Frohn to discuss the application, at which time Ms. Frohn noted her husband suffered from neck and back pain and that she had applied for social security disability benefits on behalf of her husband. Based on the added information, the representative changed only the answer concerning chronic illness to "yes" and issued a "Sub-Standard A" life insurance policy. The policy became effective February 2018, and Ms. Frohn was named beneficiary. The policy included a two-year contestable period, and Globe indicated medical records would not be necessary to process claims.

Mr. Frohn died in September 2018, and Ms. Frohn submitted a claim. Because the claim occurred during the contestable period, Globe notified her it would be requesting additional medical information, including an "Authorization for Release of Health Information," and a "Physician's Statement" (*Frohn*, p 888). Ms. Frohn signed the release of information and worked to expedite the production of medical records. Mr. Frohn's primary care provider, Dr. Budke, completed the physician's statement, noting he had treated Mr. Frohn "since 2009 for hypertension, cervical spine stenosis, alcohol abuse, and depression" (*Frohn*, p 888). Globe subsequently denied the claim, explaining that records "indicate[d] prior medical conditions which include[d] but may not be limited to a history of alcohol abuse