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ANTHONY V. CITY OF NEW YORK
(decided August 8, 2003)

ROY G. LOCKE, JR.*

Under the Fourth Amendment of the United States Constitution, a person should expect to rest in the sanctity of her home without unreasonable government intrusion.1 However, the U.S. Court of Appeals for the Second Circuit, in Anthony v. City of New York,2 recently stripped away some of the very protections guaranteed by the Fourth Amendment by granting qualified immunity against liability to two police officers. Without deciding whether or not probable cause existed, the court held it was reasonable for two police officers to forcibly remove a 34-year old female immigrant, diagnosed with Down Syndrome, from her apartment, for psychiatric evaluation.3 While the court properly applied the law pertaining to qualified immunity, the grant of immunity in this case unnecessarily broadened the power of the police to remove a person from her home with only the slightest indicia of abnormality. This holding could have far-reaching negative effects on the mentally facile, or even some elderly citizens, who could also be forcibly removed from their homes, despite their Fourth Amendment protection against unreasonable seizures.

In Anthony v. City of New York, two police officers, Gerald Migliaro (“Migliaro”) and Richard Collegio (“Collegio”), arrived at the apartment of Myra Anthony (“Anthony”) in response to a request for back-up to a 911 call.4 The 911 call was from a female caller

1. U.S. CONST. amend. IV: “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches or seizures, shall not be violated, and no warrants shall issue, but upon PROBABLE CAUSE, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” (emphasis added). The issue for discussion here involves the unreasonable seizure of a person by police officers.
3. Id. at 138.
4. Id. at 133. It was established in the court's opinion that by the time officers Migliaro and Collegio arrived to Anthony's apartment, other police units were already present and had verified that no assault, as reported, had taken place.
who sounded incoherent and possibly emotionally disturbed. The caller alleged that she was five-years-old, and that her husband beat on her, and had a knife and a gun. When Officers Migliaro and Collegio arrived at the apartment, Anthony, a 34-year-old immigrant female, was home alone. Although she was diagnosed with Down Syndrome and had mild hearing loss, Anthony was capable of cooking, cleaning, and caring for herself. After ascertaining that no assault as reported had occurred, the officers tried to question Anthony, who was calmly seated on a chair, and did not speak to any of the officers or explain why a 911 call was made. According to officer Migliaro, Anthony “appeared to be slow.” With the help of a neighbor, the police attempted to contact co-plaintiff, Magdalene Wright, who was Anthony’s legal guardian. However, after six failed attempts to contact Wright, the two officers, at the instruction of a supervisor, handcuffed Anthony and took her to Kings County Hospital for psychiatric evaluation. This occurred even though Anthony was capable of caring for herself and showed no indicia of mental illness, other than a refusal to answer police questions and possibly placing a 911 call inappropriately. The officers left a note for Wright letting her know that Anthony was taken to the hospital. After one day of evaluation, Anthony was released from the hospital.

Wright and Anthony sued Migliaro and Collegio individually under 42 U.S.C. § 1983, which imposes liability upon government

5. Id.
6. Id.
7. Id. at 131.
8. Id. at 132.
9. Anthony, 339 F.3d. at 133. Testimony from Officer Collegio stated that Anthony was “running about”, “crying” and “screaming” and that he felt threatened by her. In reviewing the lower court’s ruling on defendants’ motion for summary judgment, the appellate court accepted Migliaro’s testimony as the facts most favorable to the plaintiff.
10. Id. at 132.
11. Id.
12. Id.
13. Id.
14. Id. at 133.
15. Anthony 339 F.3d at134.
16. Id.
17. Anthony v. City of New York, No. 00 Civ. 4688, 2001 U.S. Dist. Lexis 8923 (S.D.N.Y. July 2001). Anthony also sued the City of New York, the Health & Hospitals
officials who “under the color of any statute. . .subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction. . .to the deprivation of rights, privileges, or immunities secured by the Constitution and its laws.” The purpose of the statute is to deter government officials from abusing their authority and to provide a remedy, where deterrence fails, for individuals who are victims of such abuse. Anthony claimed that the officers, while operating “under the color of law,” violated her Fourth Amendment rights against unreasonable searches or seizures.

The Southern District Court of New York held that the officers’ seizure of Anthony was permissible because they had probable cause to believe that Anthony would be “a danger to herself or to others.” The District Court based its decision on the fact that Anthony had Down Syndrome and allegedly placed a 911 call detailing an assault against her by her husband. The court found it reasonable for the officers to believe that “if left alone, [Anthony would] conduct herself in a manner likely to result in serious harm to herself.” Relying on a holding from Monday v. Oullette, the district court in Anthony held that the officers’ decision to seize Anthony was reasonable even though she appeared calm. The Corp. of New York, and the officers individually and in their official capacity for violating the American with Disabilities Acts and various state tort law causes of action. Wright also brought a Fourth Amendment claim pertaining to the warrantless entry into her apartment. Only Anthony’s Fourth Amendment violation claim pertaining to her personal seizure is considered in this case comment.

21. Id. at *17.
22. Anthony, 339 F.3d at 137 n.2. It was definitely ascertained that the call was placed from Anthony’s apartment. There is no evidence cited in the case that Anthony herself placed the call.
24. Monday v. Oullette, 118 F.3d 1099 (6th Cir. 1997). The court in Monday held that even where plaintiff appeared coherent and denied attempting to commit suicide, there was an unreasonable risk that plaintiff was deceiving officers and so the officers’ had probable cause to seize plaintiff. Anthony v. City of New York, 2001 U.S. Dist. Lexis 8923, *18.
District Court also ruled that even if the officers had violated Anthony’s constitutional rights, they would be entitled to qualified immunity from liability because of Anthony’s statements in the 911 call and “the officers’ observation of Anthony.”

The grant of qualified immunity is given to insulate government officials from liability for carrying out their discretionary functions. The goal of the immunity is to alleviate the fear of frivolous civil lawsuits for every discretionary function performed by a government official. However, the grant of immunity is qualified, rather than absolute, so as to prevent a gross abuse of governmental powers. Whether an official may be held personally liable for an allegedly unlawful official action generally turns on the “objective legal reasonableness” of the action, assessed in light of the legal rules that were “clearly established” at the time the action was taken. Thus, if an officer knew or reasonably should have known, that at the time he was arresting a person, the officer was violating that person’s right – for example, failing to read the perpetrator her Miranda warnings – the officer would not qualify for immunity for the violation because that right is clearly established by law and by practice. The police officer presumably could not argue that he did not know of the existence of that right since it is common and mandatory in all police training. Neither could the officer argue that he believed his actions were objectively reasonable given the fact that no other reasonable officer would or could have assumed the same. As it pertains to seizure of a person, a police officer is entitled to summary judgment on qualified immunity grounds if he can establish as a matter of law that a reasonable of-

26. Id.
28. Id.
31. Miranda warnings are the standard rights that every arresting police officer in the U.S. must read to arrestees upon apprehension in order to preserve the individuals Fifth Amendment right against self-incrimination. Miranda v. Arizona, 384 U.S. 436 (1966).”
32. Id.
ficer could have believed that [his conduct] comported with the Fourth Amendment even though it actually did not. 33

Anthony and Wright appealed the District Court’s decision to the United States Court of Appeals for the Second Circuit which affirmed the lower court’s ruling. In her decision for the Second Circuit, Judge Sotomayer declined to determine whether or not the two officers had probable cause to seize Anthony under the Fourth Amendment. Rather, the court simply upheld the lower court decision, that the officers were entitled to qualified immunity from any Fourth Amendment violation. 34 Citing the case of Lennon v. Miller 35 to justify its holding, the court stated:

We have explained that ‘even where the plaintiff’s federal rights and the scope of the official’s permissible conduct are clearly established, the qualified immunity defense protects a government actor if it was “objectively reasonable’ for him to believe that his actions were lawful at the time of the challenged act.” 36

Referencing nothing more than the “circumstances of which [the officers] were aware from . . . the 911 dispatch,” 37 their personal observations inside the apartment, and their response to the command of a superior officer, the court found that the officers’ actions were objectively reasonable. 38

By summarily granting the police officers qualified immunity without considering the merits of plaintiffs’ Fourth Amendment violation claim under 42 U.S.C. § 1983, the court broadened the discretion of the police to seize people with slight mental retardation or diminished reasoning capacity without a clear definition of what constitutes probable cause under such circumstances. Since the en-

33. Creighton, 483 U.S. at 635. See also, Lennon v. Miller, 66 F.3d 416 (2d Cir. 1995), where the court granted a qualified immunity to a police officer who unlawfully arrested plaintiff under the belief that plaintiff was interfering with a governmental administration. The court held it was reasonable for the officer to believe that plaintiff’s refusal to comply with police orders constituted obstruction of governmental administration even though the officer was not performing a government function at the time of the arrest.
34. Anthony, 339 at 137.
35. Lennon, 66 F.3d at 420.
36. Anthony, 339 F.3d at 137 (citing Lennon, 66 F.3d at 420).
37. Id.
38. Id.
titlement of qualified immunity depends on what an officer believed to be a lawful act 39 (i.e., seizing a person under probable cause) absent a clear definition of what constitutes probable cause for seizing a potentially mentally ill person, an officer’s discretion to seize such a person will continue to be protected regardless of whether the person is really in need of psychiatric evaluation. Under this ruling, police officers may continue to forcibly seize any person perceived to be mentally ill with impunity because qualified immunity will always be granted where the officer’s actions did not violate a clearly established right of a person 40 or if an officer’s actions were deemed objectionably reasonable under the circumstances. 41 The absence of a bright line rule supporting probable cause to seize a potentially mentally ill person will ensure that there is no clearly established right to be violated when seizing mentally facile or even some elderly citizens. In cases involving potentially mentally ill patients, a requirement that there be some type of outward manifestation indicative of a person’s need for psychiatric evaluation should be the basis for determining probable cause.

Some courts have implicitly adopted this standard for an outward manifestation supporting probable cause without stating it as a rule of law. 42 In the case of Monday v. Oullette, 43 which the court relies on to sustain the officers’ basis for seizing Anthony, the case references a number of examples in which officers were deemed to have probable cause for their seizure. 44 In Sherman, the court said that “probable cause supported the involuntary commitment given plaintiff’s multiple threats against others and odd public behavior.” 45 In Harris, the court granted qualified immunity to an officer who detained plaintiff for emergency valuation because the plaintiff became angry when questioned and plaintiff showed officer a

40. Creighton, 483 U.S. at 635.
41. Id.
43. Monday, 118 F.3d at 1103.
44. Sherman v. Four County Counseling Ctr., 987 F.2d 397 (7th Cir. 1993); Harris v. Pirch, 677 F.2d 681 (8th Cir. 1982); and Glass v. Mayas, 984 F.2d 55 (4th Cir. 1993).
45. Sherman, 987 F.2d at 397.
partially empty bottle of pills. In *Glass*, the court granted qualified immunity to government health administrators who involuntarily committed a patient accused of threatening other patients with a gun. The court cited plaintiff’s history of violent and hostile behavior as a sufficient basis for finding that probable cause existed to seize plaintiff. In each case, the person seized had an outward physical and/or verbal manifestation which the court found to be a sufficient basis supporting the seizure.

In *Monday v. Oullette*, the United States Court of Appeals for the Sixth Circuit held that officer John Oullette (“Oullette”) was entitled to qualified immunity for the seizure of plaintiff, Daryl Monday (“Monday”), where Oullette believed that Monday had overdosed on some prescription pills while intoxicated. Monday was undergoing a divorce and had a history of alcohol and drug abuse. At the time of his seizure, the officers knew that he would more likely than not attempt to commit suicide based on a discussion with Monday’s psychiatrist and a half empty bottle of prescription drugs. When the officers insisted that he go with them to the hospital, Monday verbally refused to go with the police officers and sat down to drink another beer. Under those circumstances, there was a known danger and a very probable risk that Monday would cause injury to himself. In *Anthony*, however, there is no statement by Anthony upon which the police rely to make their assessment to seize her. One of the key distinctions between *Monday* and *Anthony* is the presence of physical evidence, i.e., the half-empty prescription bottle that further supports the officers’ reasonable basis for seizing Monday. The court in *Anthony* alludes to no evidentiary support other than the vague references to “the officers’ personal observations” at the time. If the officers had observed Anthony to be volatile and excitable at the time they arrived, there would have been a clearer “objectively reasonable” basis to seize Anthony under the probable cause standard. However, Anthony

46. *Harris*, 677 F.2d at 681.
47. *Glass*, 984 F.2d at 55.
49. Id. at 1100.
50. Id. at 1103.
51. Id.
52. *Anthony*, 339 F.3d at 138.
sat calmly on the chair refusing to answer questions. The requirement of an outward manifestation that a person may pose a danger to herself or others would have enabled the court to find that no objectively reasonable basis existed to justify Anthony’s seizure. The court’s reliance on *Monday v. Oullette* and its internal case references, underscores the argument that there should be an outward manifestation such as words or actions to provide a probable cause for the seizure.

Although there are circumstances under which a person would welcome the intrusion of law enforcement into the privacy of his or her own home – e.g., in the case of an assault in progress – the fundamental expectation is that where no such danger exists in one’s home, the government should not intrude. An extension of that principle would be that where such dangers do exist in one’s home, the expectation would be that the government would remain only as long as is necessary to ensure that the danger ceases. Any overstepping of that boundary tramples upon the fundamental guarantee of the U.S. Constitution against unreasonable search or seizure. The imposition of a bright-line rule regarding when a potentially mentally ill person should be seized would remove the subjectivity behind the officer’s determination for seizure of an individual that may or may not warrant a psychiatric evaluation. This outward manifestation standard would adequately protect the

53. There is a general expectation of privacy recognized by the Fourth Amendment where, absent exigent circumstances, the police must obtain a warrant before entering a home or conducting a search of person or place.

54. See, e.g., Cohen v. Norris, 300 F.2d 24 (C.A. Cal 1962) (“...the only legitimate purpose of a search is to ascertain whether articles which the officers have a right to seize are on the person or premises being searched. Any search is unauthorized and so becomes unreasonable in the constitutional sense when it goes beyond that purpose.”); see, also United States v. Gooch, 6 F.3d 673 (9th Cir. 1993) (holding that where “no actual ongoing threat” existed, police officers erred in warrantless search and seizure even though witnesses reported gunfire by defendant).

55. Interestingly enough, under Mental Hygiene Law § 9.41, in July 2004, New York State will now require that a person must “appear to be mentally ill and is conducting himself in a manner...likely to result in serious harm to himself or others” before a police officer can make an emergency admission for immediate observation and treatment. Likelihood of serious harm is defined as “a substantial risk of physical harm to himself as manifested by threats of or attempts at suicide or serious bodily harm or other conduct demonstrating that he is dangerous to himself” or homicidal or violent behavior which causes others to have a reasonable fear of serious physical harm. (emphasis added).
officer from unnecessary liability for errors in his judgment while upholding the right of even the mentally disabled to be free from unwarranted government seizure. In circumstances involving the forcible seizure of a person for the purpose of a psychiatric evaluation an objective basis for determining a person’s danger to herself or to others must be established before a court can grant qualified immunity. As stated by one law review author, "when courts . . . grant qualified immunity without first wrestling with difficult Fourth Amendment issues, the line between constitutional and unconstitutional searches and seizures remains unclear."56

56. Carey, supra note 20, at 518.