A large, faint graphic of a pair of scales of justice is centered in the background. The scales are blue and white, with a central vertical pillar and two pans hanging from a horizontal beam. The text is overlaid on this graphic.

# Major Court Cases and Legal Issues that Impact Interaction with Persons who Have a Mental Illness

**Crisis Intervention Team (CIT)  
Supplemental Instruction**

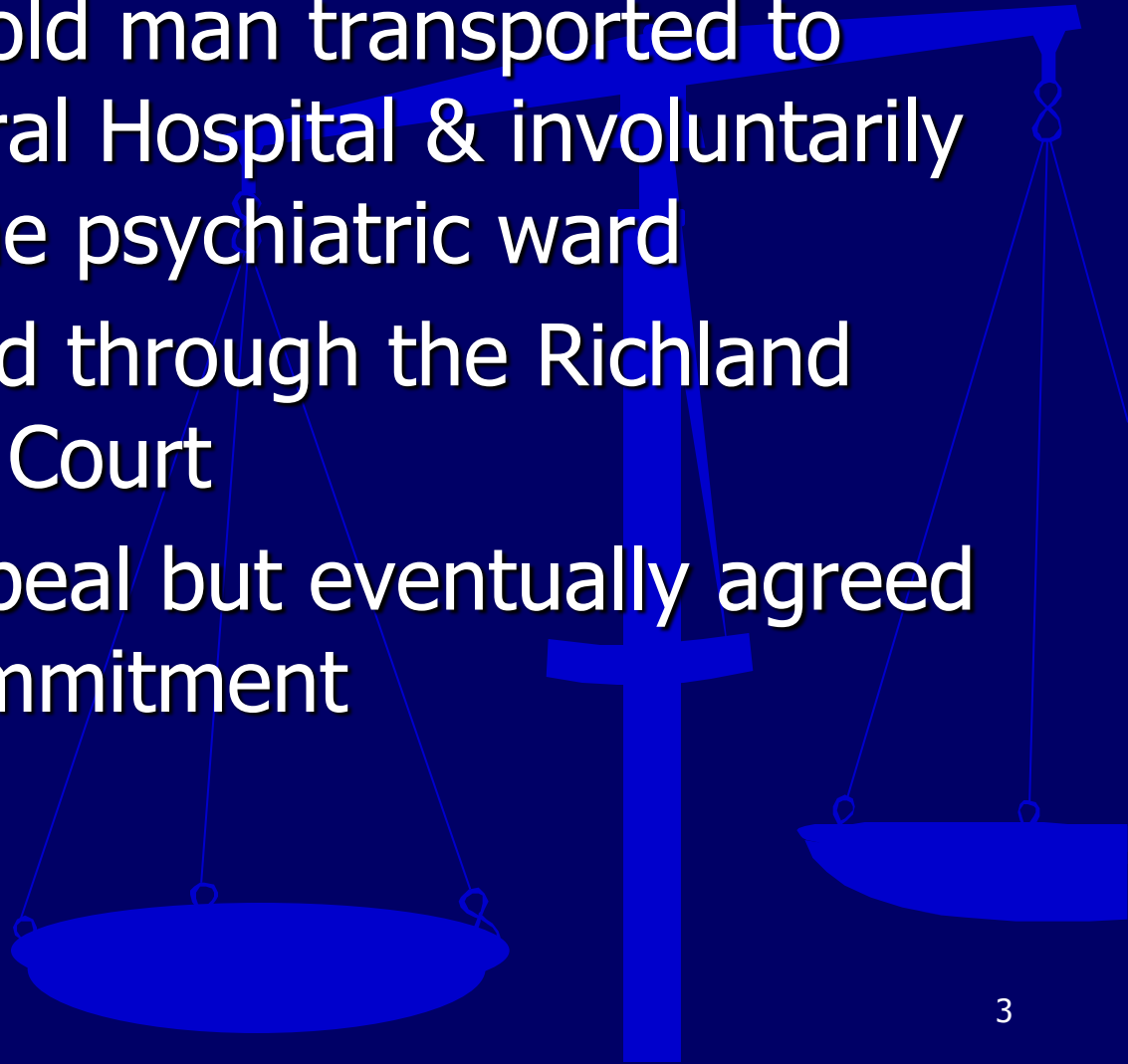
# Ohio Supreme Court Decision

- *In re Miller* (1992), 63 Ohio St.3d 99, 585 N.E.2d 396.



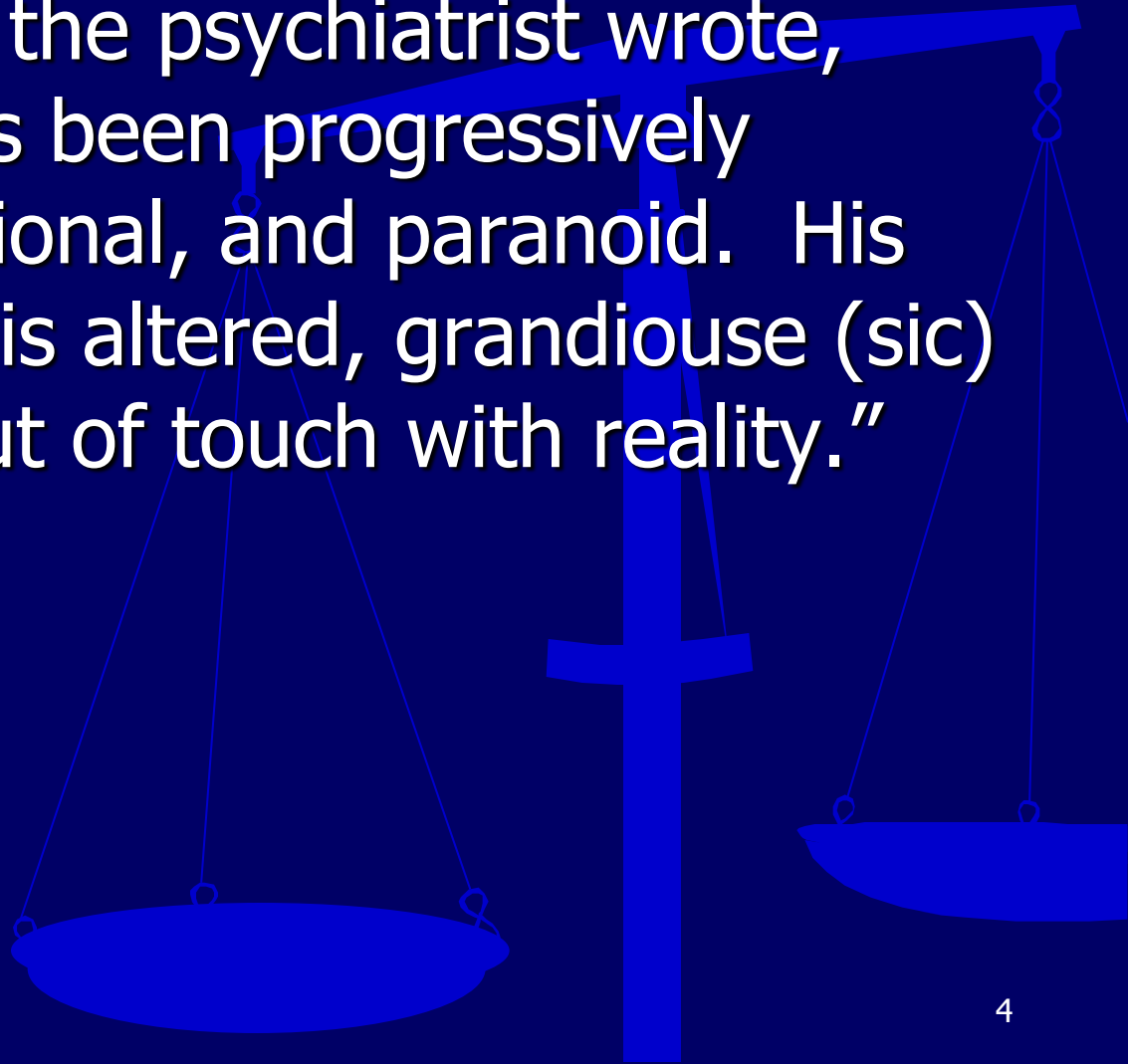
# *In re Miller*—Facts

- 1989—38-year old man transported to Mansfield General Hospital & involuntarily committed to the psychiatric ward
- Civilly committed through the Richland County Probate Court
- Man tried to appeal but eventually agreed to voluntary commitment



## *In re Miller*—Facts

- In the affidavit, the psychiatrist wrote, “The patient has been progressively confused, delusional, and paranoid. His sense of reality is altered, grandiose (sic) and at times, out of touch with reality.”



# *In re Miller*—Court Says...

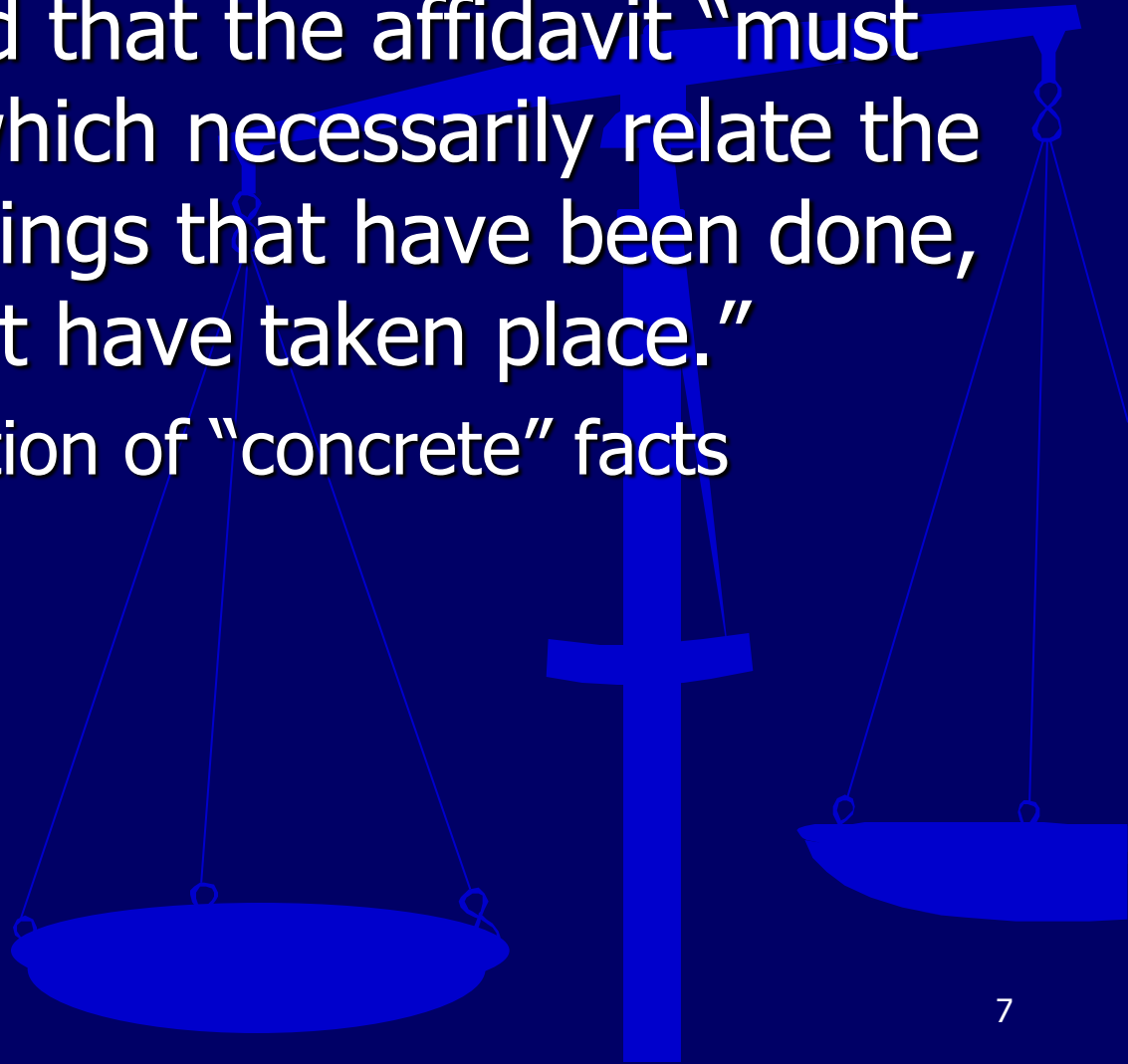
- “When commitment is against a person’s will, it is particularly important that the statutory scheme be followed, so that a patient’s due-process rights receive adequate protection.”
  - Statutes in question are O.R.C § 5122.10 and 5122.11, with definitions from 5122.01 (B)

## *In re Miller*—Court Says...

- Court noted that § 5122.10 requires that a written statement must be given to such hospital (or alternative crisis center) by the police officer stating the circumstances under which such person was taken into custody and the reasons for the police officer's belief
  - Court said that statement would "ensure a minimal level of probable cause exists..."

## *In re Miller*—Court Says...

- Court also noted that the affidavit “must contain ‘facts’ which necessarily relate the happening of things that have been done, or of events that have taken place.”
  - Additional mention of “concrete” facts



## *In re Miller*—Court Says...

- Court listed facts as defined in *Black's Law Dictionary* (6<sup>th</sup> Ed., 1990)
  - “[a] thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence; an actual happening in time or space or an event mental or physical; that which has taken place

# *In re Miller*—Take Away

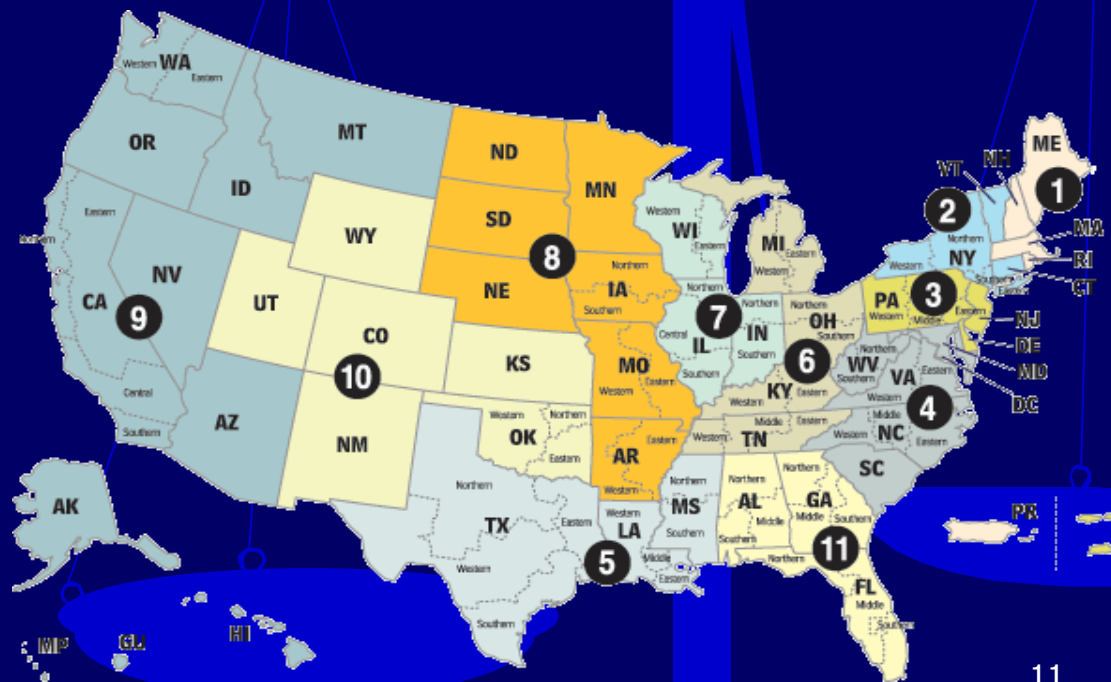
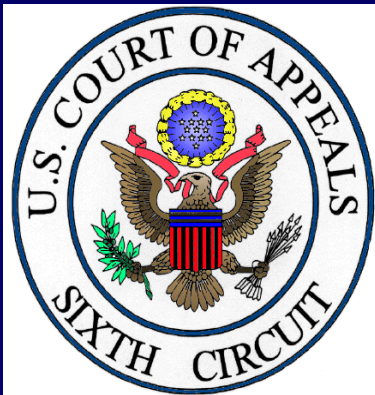
- If you take a person into custody pursuant to ORC § 5122.10 and it is against the person's will:
  - Must provide a statement of fact of some sort (in Columbus, the method is to use the ODMH DMH-0025 Application for Emergency Admission form—"Pink Slip" along with an "Aid and Transport" incident report)
  - Must also provide facts and not use diagnostic terms in the statement of belief

## *In re Miller*—Take Away

- Side Issue—May have to complete a new “pink slip” if you locate a person who has “eloped” from a psychiatric crisis center
  - Short time frame—use existing “pink slip” or use previous “pink slip” as a reference and add new facts based on your observations
  - Longer time frame—may need to articulate new facts to establish probable cause to take custody and complete new “pink slip”

# U.S. Sixth Circuit Court of Appeals Decision

- ***Fisher v. Harden*, 398 F.3d 837, 841 (6th Circuit 2005)**



# *Fisher v. Harden*—Facts

- 77-year old man took his rifle, a tripod, and a folding chair to go and shoot groundhogs eating the area crops
  - On a railroad grade about 250 yards from a county road
- A passer-by saw the man and thought it might be a suicide attempt
  - Called into the sheriff's office and reported a possible suicide attempt—said man had his feet tied to the tracks

## *Fisher v. Harden*—Facts

- Two deputies arrived and used overhead speaker to get man's attention
- Man stood up, gathered his items, and walked towards deputies along tracks
- Deputies noticed man was carrying rifle and ordered him to lay down the weapon
- Initially man didn't acknowledge, but did finally cooperate at about 200 yards

## *Fisher v. Harden*—Facts

- Deputies acknowledged they recognized that man was older, and that he didn't do or say anything out of the ordinary
- Kept weapons trained on him and then ordered him to lie face down on the roadway and handcuffed him
- Man goes into immediate cardiac arrest
  - Life flighted to hospital—Lived but was permanently disabled

## *Fisher v. Harden*—Facts

- 42 USC §1983 suit filed in Federal Court
- Defendants did not contest that man was seized, but advocated that the seizure was valid as part of a *Terry* stop
- Also conceded that they were not responding to a report of criminal conduct and that they never suspected that the man was engaged in or about to be engaged in a crime

# *Fisher v. Harden*— Court Says...

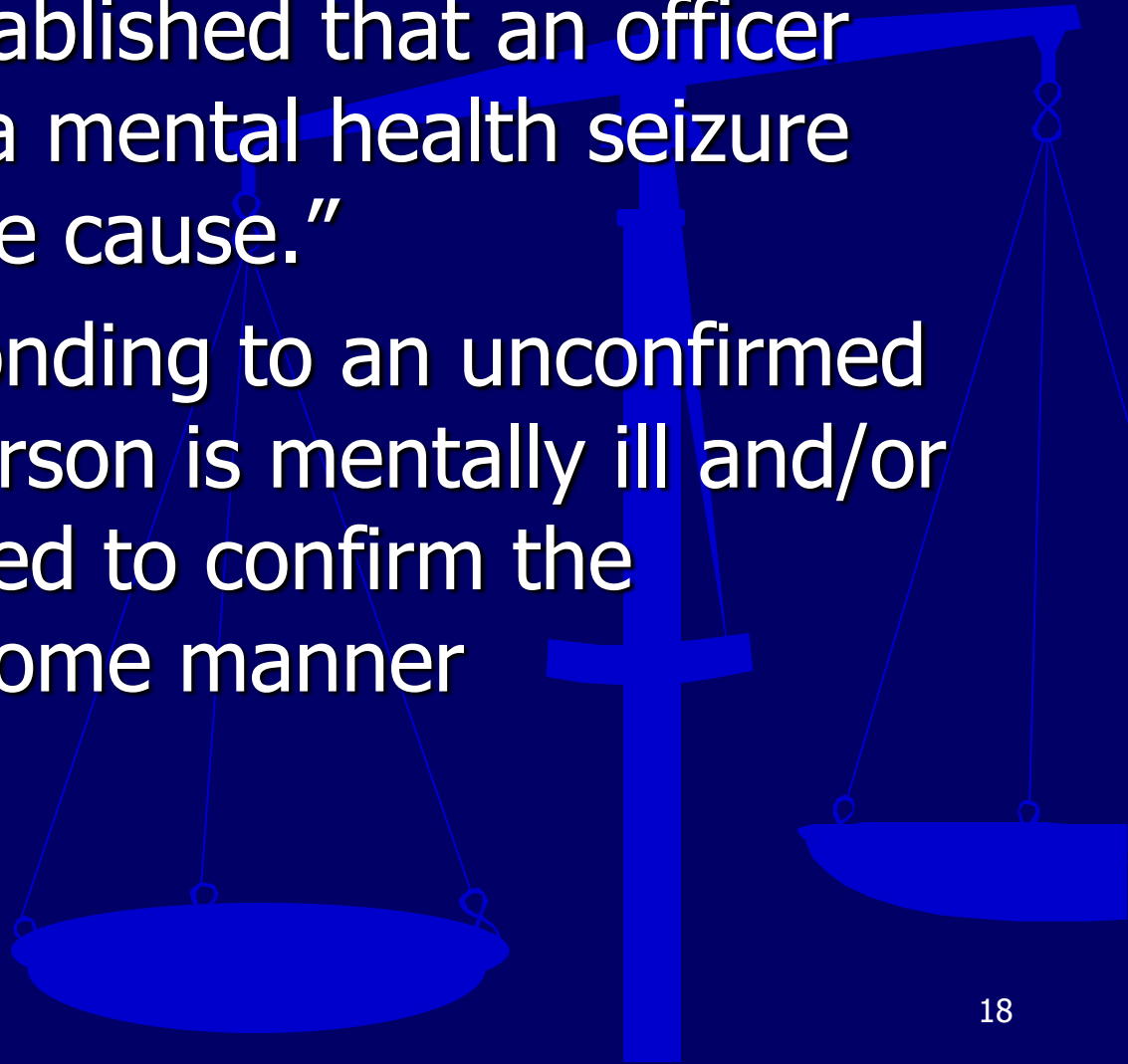
- Decline to adopt a rule that would apply *Terry v. Ohio* to mental health seizures
- Defendants were unable to demonstrate they had probable cause to believe that man was a danger to himself or others
- “Deputies forced the man to the ground and handcuffed him without any suspicion of criminal activity, without frisking him for additional weapons, and without asking any questions”

## *Fisher v. Harden*—Court Says...

- “In the present case, the information presented to the officers was much more vague. The [deputies] were investigating an unconfirmed report that an individual was suicidal. Fisher was not in the company of an obviously distressed companion. And, the deputies failed to question him. Rather, they drew their guns, ordered Fisher to the ground, and handcuffed him.”

# *Fisher v. Harden*—Take Away

- “It is clearly established that an officer may not effect a mental health seizure without probable cause.”
- If you are responding to an unconfirmed report that a person is mentally ill and/or suicidal, you need to confirm the information in some manner

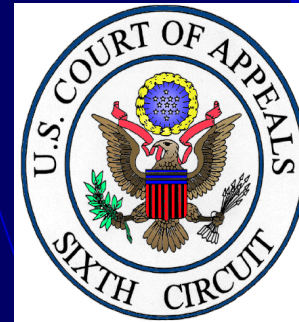


## *Fisher v. Harden*—Take Away

- Gather additional facts from family, friends, other witnesses and any past run data
- Interact with the person who is suspected of having a mental illness and gather information from your own senses as to whether a crisis is taking place and whether that crisis meets the established criteria for custody under ORC §5122.10

# U.S. Sixth Circuit Court of Appeals Decision

- ***Griffith v. Coburn***, 473 F.3d 650.  
(Sixth Circuit 2007)



# *Griffith v. Coburn*—Facts

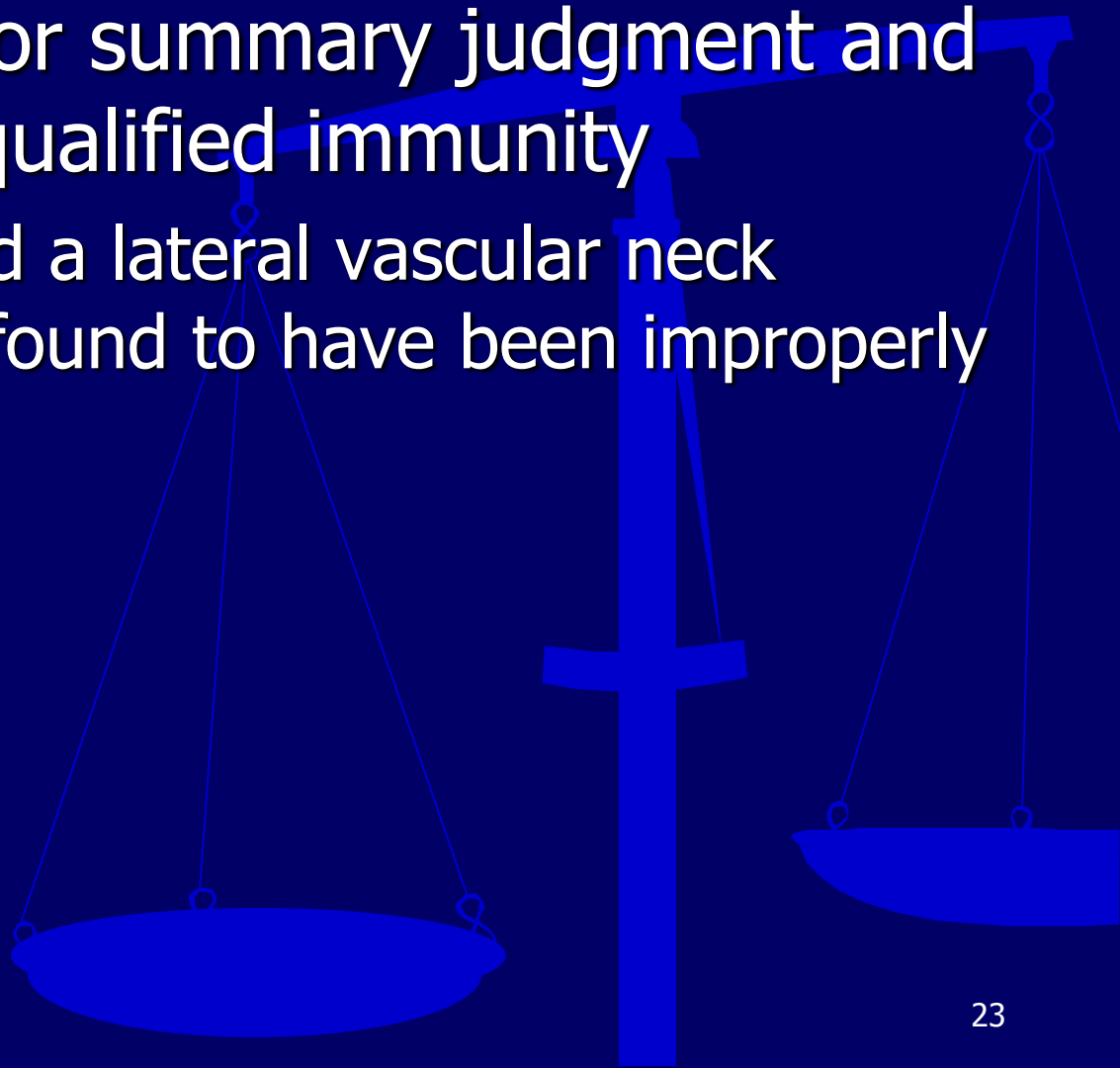
- Mother approached township police department in Michigan
- Wanted son hospitalized because he was “acting strangely”
- Police said son was not danger to self or others based on mother’s explanation
- Son had outstanding traffic warrant
- Officers offered to arrest son to get help

# *Griffith v. Coburn*—Facts

- Officers entered to find son passive
- Told him they had a warrant, he denied it and turned back to the TV
  - Officers moved the table in front of the son after believing that he was knowingly ignoring them, precipitating a struggle
- Once subdued, son went into respiratory distress and died
- Mother brought 42 USC §1983 lawsuit against the police department

# *Griffith v. Coburn*—Facts

- Officers asked for summary judgment and to be afforded qualified immunity
  - One officer used a lateral vascular neck restraint (later found to have been improperly applied)



# *Griffith v. Coburn*— Court Says...

- Based on evidence and testimony, officer's actions were unreasonable based on "totality of the circumstances"
- Court looked at the agency's own force continuum
- Court added one other relevant factor—Officers knew subject "...was experiencing some sort of mental or emotional difficulty sufficient to cause his mother to seek help from the police department."

## *Griffith v. Coburn*—Court Says...

- Referenced another 6<sup>th</sup> Circuit case—*Champion v. Outlook Nashville, Inc.*, 380 F. 3d 893, 904 (6th Cir. 2004) and further applied it to mentally ill individuals
- That case involved police interaction with a developmentally disabled individual who died after being maced and restrained by Metro Nashville police officers

## *Griffith v. Coburn*—Court Says...

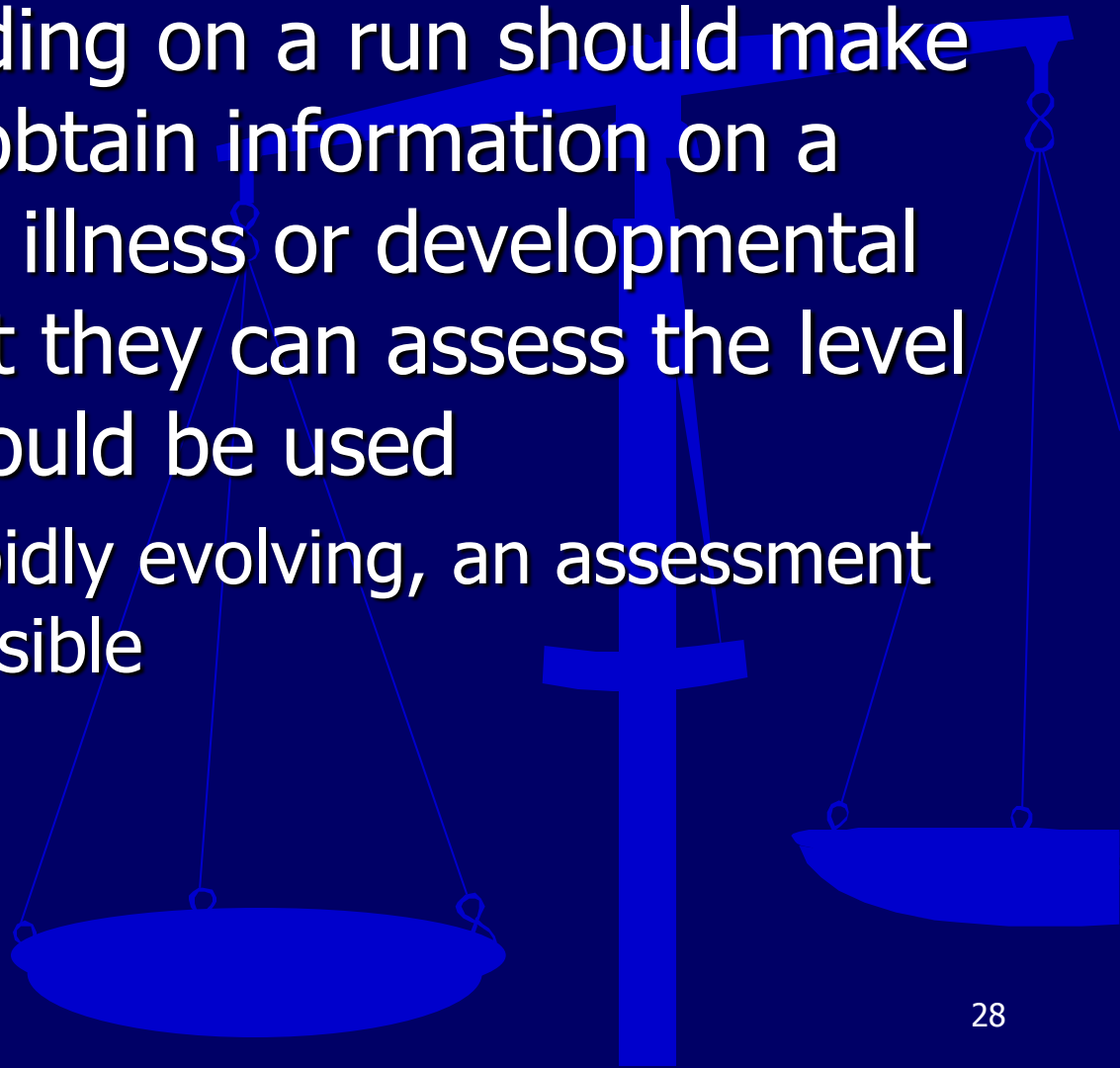
- “It cannot be forgotten that the police were confronting an individual whom they knew to be mentally ill or retarded, even though the Officers may not have known the full extent of [his] autism and his unresponsiveness. The diminished capacity of an unarmed detainee must be taken into account when assessing the amount of force exerted.”

# *Griffith v. Coburn*—Take Away

- Judges are not saying that you have to take unreasonable risks with a person who has a mental illness
- Judges do say that if you go into a situation with an unarmed arrestee who is mentally ill or has a diminished capacity and you know you may have to use force, you have to consider the person's mental illness or developmental disability when assessing the type and amount of force to be used

# *Griffith v. Coburn*—Take Away

- Officers responding on a run should make every effort to obtain information on a person's mental illness or developmental disability so that they can assess the level of force that should be used
  - If the run is rapidly evolving, an assessment may not be possible

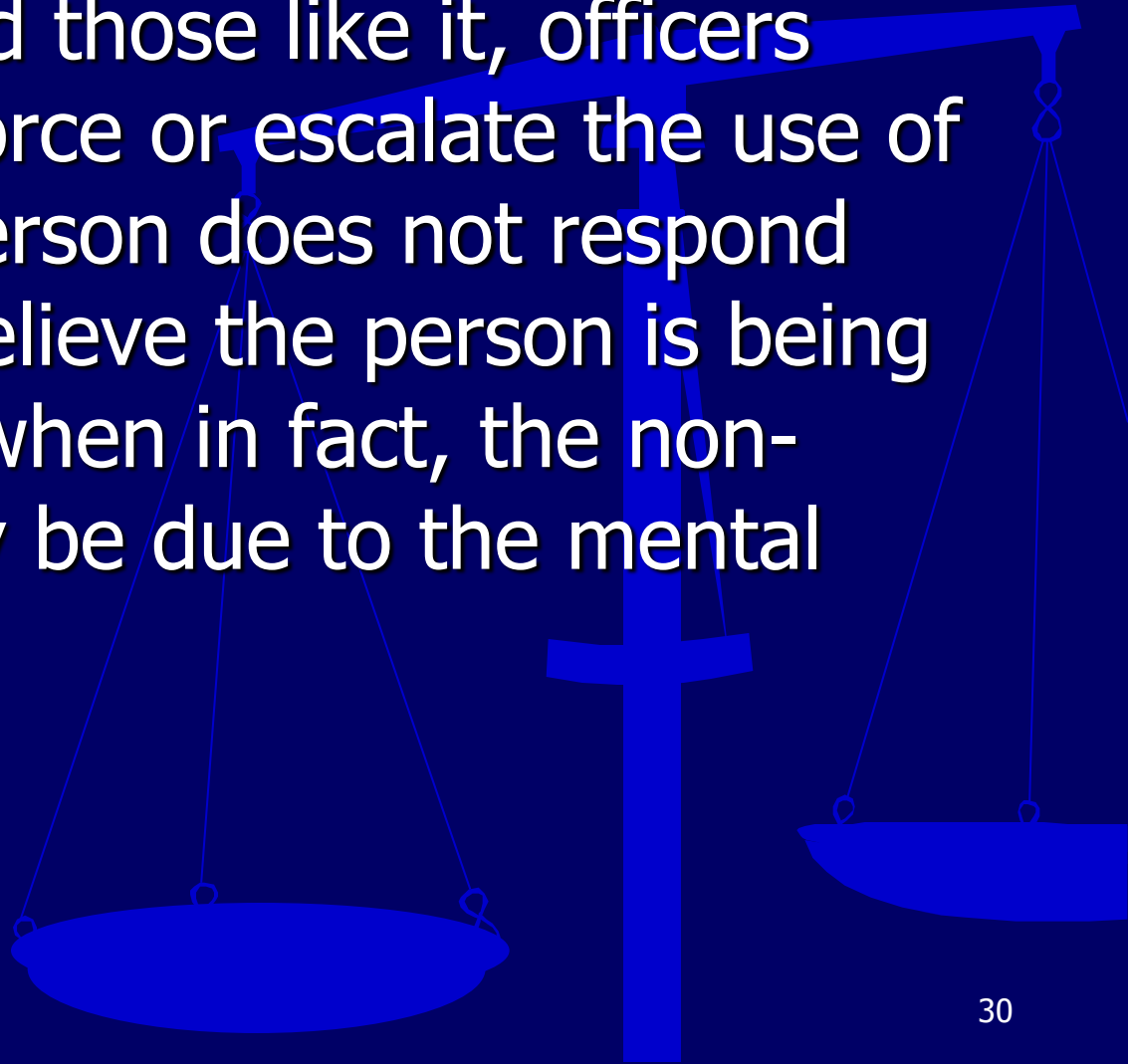


## *Griffith v. Coburn*—Take Away

- Officers responding to a run at Netcare, other mental health facilities, group homes, or other like locations should presume that the subject of the run has a mental illness or developmental disability and should gather information from present staff members about the mental illness, any tactics that have been unsuccessful before, and any medical concerns if an exigency does not exist

## *Griffith v. Coburn*—Take Away

- In this case, and those like it, officers continue with force or escalate the use of force when a person does not respond because they believe the person is being non-compliant when in fact, the non-compliance may be due to the mental illness

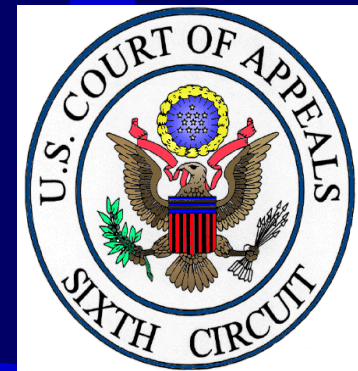


## *Griffith v. Coburn*—Take Away

- Officers should be constantly assessing whether a lack of response is intentional or due to a prevailing mental illness
- Officers should also be cautious of using restraint techniques that may affect the person adversely due to medical conditions that officers are made aware of
  - Use other techniques or devices if possible and have EMS respond to the scene right away

# U.S. Sixth Circuit Court of Appeals Decision

- ***Ziegler v. Aukerman et al***, 06-2618. (Sixth Circuit 2008)



# *Ziegler v. Aukerman et al*—Facts

- Plaintiff went to hospital for an outpatient referral at 8 PM
  - Brought by husband because she was “depressed and suicidal”
- Plaintiff in first half hour was alleged to have reported that she was suicidal and planned to drive her car into a tree
- At 9:40 PM, plaintiff left and staff notified police

# *Ziegler v. Aukerman et al*—Facts

- Plaintiff reappeared at 11:00 PM and police were then told not to go to her home
- Plaintiff was then evaluated by a nurse and determined to have a mental illness that “caused her to pose a risk of serious physical injury to herself or to others within the near future”

# *Ziegler v. Aukerman et al*—Facts

- The nurse completed her statement and gave it to a doctor
- Doctor met with plaintiff and determined that she needed to be hospitalized and completed a “clinical certificate”
- Plaintiff decided “..that the law did not allow the hospital to hold her and she announced her intention to leave”

# *Ziegler v. Aukerman et al*—Facts

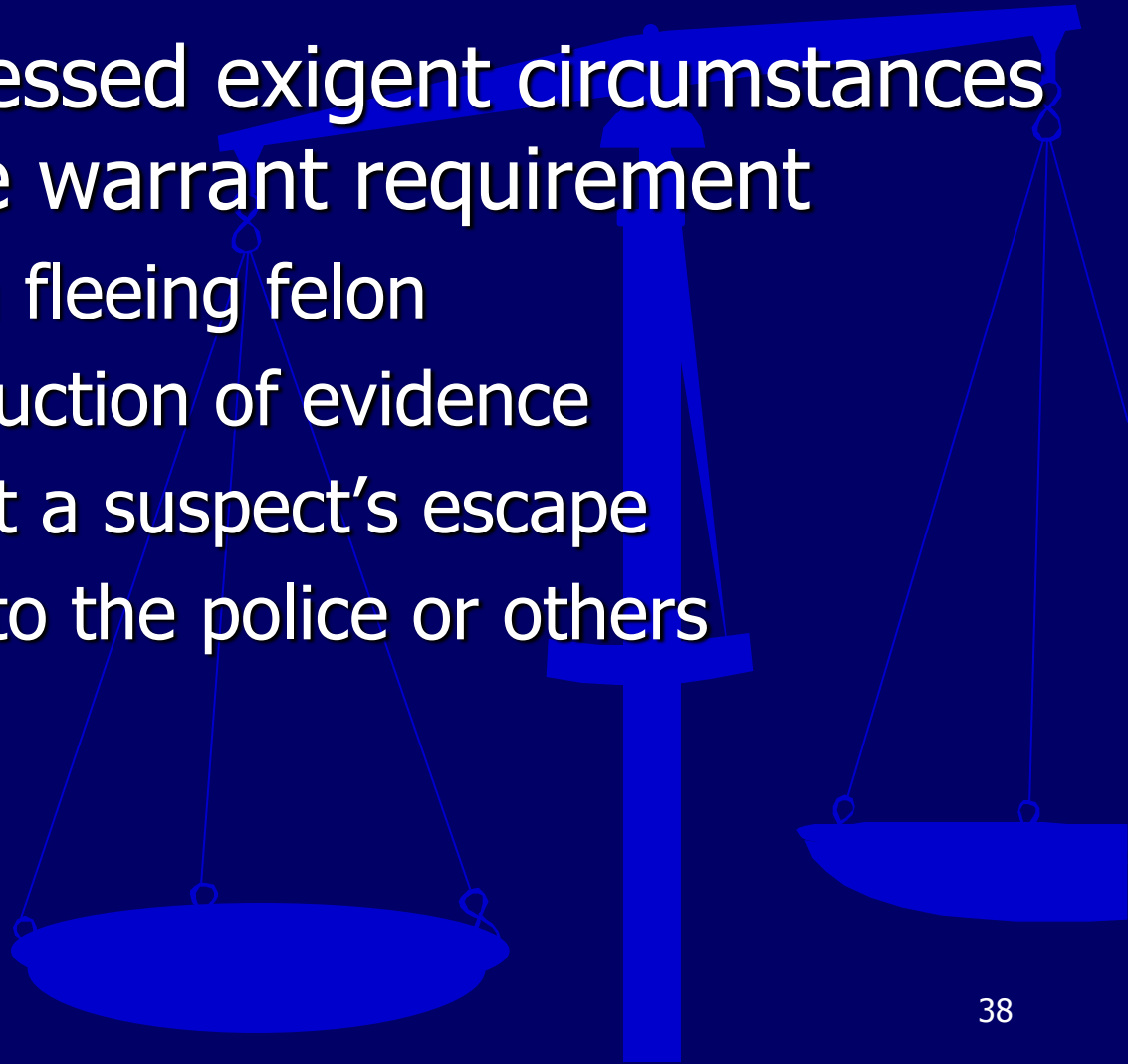
- Plaintiff did leave and the police were called to locate her and bring her back because she was suicidal
  - Dispatcher was told that a “certificate” had been completed
- Officer arrived and took plaintiff into custody “outside her house...on the walkway or driveway connected to the house” based on the information provided

# *Ziegler v. Aukerman et al—* Court Says...

- “A showing of probable cause in the mental health seizure context requires only a ‘probability or substantial chance’ of dangerous behavior, not an actual showing of such behavior”
- “Courts evaluate the existence of probable cause from the perspective of a reasonable and objective person in the position of the seizing official”

# *Ziegler v. Aukerman et al*— Court Says...

- Court also addressed exigent circumstances exception to the warrant requirement
  - Hot pursuit of a fleeing felon
  - Imminent destruction of evidence
  - Need to prevent a suspect's escape
  - Risk of danger to the police or others



# *Ziegler v. Aukerman et al*— Court Says...

- Court noted that the exigency at issue is most frequently applied “...where the government actors were performing ‘community caretaker’ functions rather than traditional law-enforcement functions”
- Officer has to show that there was a “...risk of serious injury posed to himself or his fellow officers or others that required swift action”

# *Ziegler v. Aukerman et al*— Court Says...

- Court also addressed exigent circumstances exception to the warrant requirement
  - Hot pursuit of a fleeing felon
  - Imminent destruction of evidence
  - Need to prevent a suspect's escape
  - Risk of danger to the police or others
- Court noted that the exigency at issue is most frequently applied when government actors were performing "community caretaker

# *Ziegler v. Aukerman et al—* Take Away...

- If a person “elopes” on a pink slip, you can use that document as probable cause to bring him/her back
  - Still subject to time frames and changes in fact patterns
- Make be able to use exigent circumstances exception to force entry when criteria #1 or criteria #2 is checked

# Questions?



TO: The Chief Clinical Officer of \_\_\_\_\_  
(Behavioral Healthcare Organization - BHO/Facility Name) (Date)

The undersigned has reason to believe that:

\_\_\_\_\_  
(Name of Person to be Admitted)

1. Is a mentally ill person subject to hospitalization by court order under division B of Section 5122.01 of the Revised Code, i.e., this person
- (1) Represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm;
  - (2) Represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness;
  - (3) Represents a substantial and immediate risk of serious physical impairment or injury to self as manifested by evidence that the person is unable to provide for and is not providing for the person's basic physical needs because of the person's mental illness and that appropriate provision for those needs cannot be made immediately available in the community; or
  - (4) Would benefit from treatment in a hospital for his mental illness and is in need of such treatment as manifested by evidence of behavior that creates a grave and imminent risk to substantial rights of others or himself.
2. Represents a substantial risk of physical harm to self or others if allowed to remain at liberty pending examination.

Therefore, it is requested that said person be admitted to the above named facility.

**STATEMENT OF BELIEF**

Must be filled out by one of the following: a psychiatrist, licensed clinical psychologist, licensed physician, health or police officer, sheriff or deputy sheriff.

(Statement shall include the circumstances under which the individual was taken into custody and the reason for the person's belief that hospitalization is necessary. The statement shall also include a reference to efforts made to secure the individual's property at his residence if he was taken into custody there. Every reasonable and appropriate effort should be made to take this person into custody in the least conspicuous manner possible.)

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Pink  
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