

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted June 25, 2024*

Decided July 2, 2024

BeforeCANDACE JACKSON-AKIWUMI, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*DORIS L. PRYOR, *Circuit Judge*

No. 23-2231

JERRY L. GATES,
*Plaintiff-Appellant,*Appeal from the United States District
Court for the Central District of Illinois.*v.*

No. 20-4044

GREG SCOTT and ERIC KUNKEL,
*Defendants-Appellees.*Jonathan E. Hawley,
*Magistrate Judge.***ORDER**

Jerry Gates, a civil detainee at Rushville Treatment and Detention Facility, appeals from a judgment entered on a jury verdict for the defendants on his claim that they violated his First Amendment rights by denying him access to the internet and computer classes. On appeal Gates takes issue with the district court's decisions allowing him to be referred to as a "sexually violent person" at trial and barring his

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

evidence that state prisoners receive greater access to technology than Rushville detainees. But because the court did not abuse its discretion, we affirm.

Since 2000, Gates has been civilly committed to Rushville under the Illinois Sexually Violent Persons Commitment Act, which allows for detention of a “sexually violent person” until the person is no longer considered sexually violent. 725 ILCS 207/1; 207/40(a). The Act defines “sexually violent person” to include a person who, like Gates, has been convicted of a sexually violent offense and suffers from a mental disorder that makes further acts of sexual violence “substantially probable.” 725 ILCS 207/5(f). In addition to treatment, Rushville offers detainees vocational training, including classes teaching basic computer skills.

The facility also imposes certain restrictions on detainees: Most pertinently, it forbids internet access with very few exceptions and does not allow detainees to have internet-capable personal devices. To communicate with those outside the facility, detainees must use mail, telephone, or receive in-person visits from approved visitors during approved visiting hours. To keep informed, detainees generally may watch television and listen to radio.

In 2020, Gates sued officials at Rushville and the Illinois Department of Human Services, which oversees the facility, alleging that the internet restriction violates his First Amendment rights. He asserted that the policy unduly hinders his ability to communicate with people outside the facility and limits his “educational access to computers, tablets, and other items that may be needed for his treatment and release in the future.” Because Gates was proceeding *in forma pauperis*, the district court screened his complaint, *see* 28 U.S.C. § 1915(e)(2), and dismissed the Department officials but allowed the claims against the Rushville officials to proceed.

During discovery, Gates produced evidence that Illinois prisoners—even those convicted of sexual violence—enjoy greater access to technology than Rushville detainees, enabled by software that allows the Department of Corrections to monitor prisoners’ activity. Gates then moved for summary judgment, arguing that this discrepancy proved that Rushville’s policies were unreasonably restrictive of speech and that he should be entitled to possess an internet-capable tablet. The district court denied the motion, explaining that the defendants had offered evidence that they had “a legitimate security interest in limiting a resident’s ability to access the internet given the nature of each resident’s confinement and the potential for misuse.” *See generally Turner v. Safley*, 482 U.S. 78, 89 (1987); *Brown v. Phillips*, 801 F.3d 849, 853–54 (7th Cir.

2015). Gates, the court added, had not shown that the restrictions were “exaggerated, unreasonable, or unrelated to those ends.”

After denying Gates’s motion, the court set a date for trial, and the parties consented to the jurisdiction of a magistrate judge under 28 U.S.C. § 636(c). The defendants filed motions in limine arguing that the court should exclude evidence of the Department of Corrections’ technology policies. Those policies, the defendants argued, were not relevant to Gates’s claims against the administrators of Rushville—a facility operated by a different agency—and were likely to confuse the jury. The magistrate judge held a final pretrial conference at which he granted the defendants’ motions to exclude the evidence, explaining that the question for the jury was not whether the difference between the prison and Rushville policies was justified, but whether the restrictions at Rushville were constitutional: “And at the end of the day, if you’re in the IDOC and their conditions were way worse than what they are here, that wouldn’t matter. And it doesn’t matter that they’re, you know, way better because ... the comparison is not the question for the jury.”

Because the defendants planned to argue that Rushville’s policies were justified by the reasons for residents’ detention, the magistrate judge informed Gates that the jury would likely learn that he was a “sexually violent person.” The magistrate judge then explained, and the defendants agreed, that the jury would not learn the details of Gates’s offense. Gates indicated that he understood, and he did not object.

At trial, Gates testified that he had a television and radio in his room but noted that the restrictions on communications made it difficult for him to keep in touch with his family. Another detainee testified that residents occasionally lose access to such electronics for disciplinary reasons. The defendants called current and former Rushville administrators, who testified that the restrictions were in place to prevent residents from contacting their victims and victims’ families—something residents had done in the past. The protections also served the general public because they prevented sexually violent persons from finding new victims.

Rushville’s former director added that internet access could impair the facility’s treatment efforts: Because the facility could not feasibly monitor residents’ communications, residents could gain access to sexually explicit materials without the knowledge of staff members.¹ On cross-examination, the magistrate judge permitted

¹ The witness further stated that monitoring the communications of civil detainees is prohibited by law, but nothing in the record provides a source for that

Gates to question whether the former director was aware of “tattletale” software, that is, software used at prisons to monitor inmates’ internet activity and alert officials to prohibited conduct. The director was not aware of such software but, on re-direct, reiterated that Rushville could not monitor “communications.” After deliberating, the jury returned a verdict for the defendants, and the district court entered judgment against Gates.

Gates raises two arguments on appeal. First, he argues that characterizing him at trial as a sexually violent person prejudiced him in the eyes of the jury. But his failure to object before trial, when he received notice that the jury would hear the grounds for his detention, or even at trial, forecloses our review. In civil cases, we generally will not entertain arguments raised for the first time on appeal. *Henry v. Hulett*, 969 F.3d 769, 786 (7th Cir. 2020) (en banc). And Gates does not argue, much less show, that exceptional circumstances warrant disregarding that principle here. *See id.*

Gates’s second argument—that the district court erred in excluding his evidence of technology use within the Department of Corrections—fares no better. We review a decision to exclude evidence for an abuse of discretion. *Chi. Joe’s Tea Room, LLC v. Village of Broadview*, 94 F.4th 588, 596 (7th Cir. 2024). Under Federal Rules of Evidence 401 and 402, evidence is relevant if it tends to make a material fact more or less probable. The lawfulness of a state restriction on a civil detainee’s First Amendment rights is assessed under the factors that the Supreme Court articulated in *Turner*. *See Brown*, 801 F.3d at 853. Therefore, Gates’s evidence is relevant if it bears on those factors. As applied here, the factors include: (1) whether Rushville’s restrictions were rationally related to a legitimate government interest; (2) whether alternative means were available for Gates to exercise his First Amendment rights; (3) how internet access would affect Rushville’s ability to achieve its desired ends; and (4) whether Rushville had “ready alternatives” it could employ to achieve its interests. *See Turner*, 482 U.S. at 89–91. Here, the magistrate judge reasonably concluded that conditions in other types of facilities, run by another state agency, were not relevant to Gates’s claim: Conditions in state prisons did not tend to make it more or less probable that Rushville’s internet restrictions, which were undisputedly imposed for reasons specific to sexually violent offenders, were rationally

purported restriction. And we note that IDHS regulations state that, apart from attorney communications, a resident’s mail, telephone, and in-person communications “*may be* reasonably restricted, censored, screened or *monitored* to protect the resident or others from harm, harassment or intimidation or to ensure implementation of the resident’s [treatment plan].” ILL. ADMIN. CODE 59 § 299.330(e) (emphasis added).

No. 23-2231

Page 5

related to those reasons. And though the evidence might be pertinent to whether there were less restrictive ways to curtail internet misuse at Rushville, no evidence contradicts the director's testimony that residents' internet access would impair Rushville's core mission and that Rushville could not feasibly monitor residents' communication. (We do not rely on the suggestion that it cannot lawfully do so.)

The magistrate judge's alternative rationale was also sound. He concluded that even if the evidence were relevant, the probative value would be outweighed by the potential to confuse the jury. *See* FED. R. EVID. 403. We give "special deference" to a district court's balancing under Rule 403. *Artis v. Santos*, 95 F.4th 518, 528 (7th Cir. 2024). Juror confusion—between prisoners and sexually violent detainees, or between the Department of Human Services and the Department of Corrections and their separate missions, for example—was plainly possible, and crafting an appropriate limiting instruction (which Gates did not suggest) would likely be unworkable. *See Thompson v. City of Chicago*, 472 F.3d 444, 457 (7th Cir. 2006). Moreover, even though the court would not admit the prison policy, Gates was still able to inquire before the jury about the monitoring of internet usage in prisons, so he was not deprived of his point altogether.

AFFIRMED