

suicidal ideation or do not threaten suicide but demonstrate other concerning behavior (through actions, current circumstances, or recent history) indicating that the potential for self-injury should be placed on suicide precautions and observed at staggered intervals not to exceed every 15 minutes [. . .]” (NCCHC Standards, p 109). It is unclear whether the Montmorency jail had its own guidelines, followed those established by NCCHC, or left it up to the nurse to decide on appropriate measures to take when a detainee expressed suicidal thoughts.

Suicide is recognized as a major cause of mortality among jail and prison inmates, but the United States Supreme Court has held that “no decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols. No decision of this Court even discusses suicide screening or prevention protocols” (*Taylor v. Barkes*, 135 S. Ct. 2042, (2015)). This decision seems at odds with the Court’s holding that deliberate indifference to the serious medical needs of incarcerated individuals is a violation of the Eighth Amendment. However, although the Supreme Court has not established a constitutional right to suicide prevention, standard medical and psychiatric practices, in addition to widely accepted correctional care guidelines, establish the necessity of reasonable suicide screening and prevention methods, and access to mental health treatment, in correctional settings. Correctional facilities and health care providers should take notice, as they may not be protected by qualified immunity. Furthermore, cursory efforts by correctional providers to treat serious mental health conditions may be considered deliberate indifference.

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Sexual Abuse Evaluator Testimony on Sexual Assault of a Child in the Absence of Physical Evidence

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The Testimony of an Expert Witness on the Credibility of an Alleged Sexual Assault Victim in the Absence of Physical Evidence Impermissibly Invades the Province of the Jury

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In *Commonwealth v. Maconeghy*, 171 A.3d 707 (Pa. 2017), the appellee had been accused of committing various acts of sexual abuse against his stepdaughter when she was 11 years old. An expert for the prosecution, who had examined the alleged victim, found no physical evidence of abuse, but testified that she had been sexually abused based on her report of the incidents. Kenneth Maconeghy, Jr., was convicted and subsequently appealed on the basis that the trial court had erred in allowing expert testimony that tacitly bolstered the victim’s credibility. The Superior Court of Pennsylvania vacated the judgment and awarded a new trial, which the Commonwealth appealed. The Supreme Court of Pennsylvania affirmed the lower court’s decision. It held that an expert witness is prohibited from offering an opinion on whether a complainant was the victim of sexual assault when that opinion is based solely on witness accounts and not physical evidence of abuse. To do so would intrude upon the function of a jury as the exclusive arbiter of witness credibility.

Facts of the Case

C.S. alleged that her stepfather, Mr. Maconeghy, had repeatedly raped and otherwise sexually abused her for several months when she was 11 years old. Testifying for the prosecution was a pediatrician who had evaluated C.S. to determine whether she had suffered the alleged sexual abuse. As part of his evaluation, the pediatrician observed a forensic interview with C.S., collected and reviewed historical information, and conducted a physical examination. Although the physical examination did not indicate abuse, the pediatrician offered his medical opinion that sexual abuse had indeed occurred based on the history provided to him. The day after the pediatrician testified, the appellee’s attorney attempted to have some of these statements stricken from the record, but his objection was denied by the court. The defendant was subsequently convicted of rape by forcible compulsion, rape of a child, and various other sexual crimes.

Upon appeal, the superior court vacated the judgment of sentence and remanded the case for a new trial. The Commonwealth appealed the superior court's holding and the state supreme court granted appeal on the question of whether the pediatrician's expert opinion on the occurrence of sexual abuse in the absence of physical evidence encroached upon the jury's function as arbiter of witness credibility.

Ruling and Reasoning

The Supreme Court of Pennsylvania affirmed the decision of the superior court. It held that testimony from an expert concerning the occurrence of sexual abuse of a child, on the basis of witness accounts and in the absence of physical evidence of abuse, impermissibly invades the province of the jury to determine witness credibility.

The court cited a body of rulings from other jurisdictions, including Connecticut, Michigan, New Mexico, and South Dakota, as persuasive to its holding. Specifically, in these jurisdictions, experts were restricted from providing testimony on the question of child sexual abuse in the absence of physical evidence. In all such cases, the courts described such testimony as an endorsement of the complainant's credibility, and ruled it an invasion of the province of the jury. Further, these courts found no material difference between direct (i.e., express opinions explicitly describing the witness as credible) and indirect (i.e., concluding that sexual abuse occurred based entirely on complainant and other witness accounts) endorsements.

The Pennsylvania Supreme Court also recognized the risk that expert testimony would influence jurors when providing opinions on the matter of witness credibility. It noted that this risk may be particularly salient in child sexual abuse cases, for which the stakes are high, the consequences are great, and the nature of the offense is especially difficult. The court noted the importance of placing limitations on expert testimony to strike a balance between allowing useful, objective expert opinions and screening potentially biasing sentiments to the jury beyond the scope of the referral question. The state supreme court acknowledged that most states have devised different responses to this question and noted that Pennsylvania had taken a relatively restrictive approach (e.g., Pennsylvania does not allow expert testimony on general characteristics of sexual assault

victims). The court reasoned it would be inconsistent with its previous holdings to allow expert opinions regarding victim credibility, which has great potential to influence jurors.

The state supreme court briefly addressed the Commonwealth's argument that Pennsylvania case law, as well as the Judicial Code, distinguishes between medical professionals and behavioral experts. However, the court rejected this argument, stating, "the credentials of medical professionals do not insulate them from the prohibition against invading the province of jurors" (*Maconeghy*, p 714). In addition, because this case did not involve the presence of physical evidence, the court did not address whether or which restrictions would apply to circumstances in which physical evidence is present.

Dissent 1

Justice Debra Todd said the majority failed to distinguish between expert testimony that addressed the "subject of witness credibility," which the court had found inadmissible, and expert opinions on topics "founded on assessments of witness credibility, which are not ipso facto inadmissible" (*Maconeghy*, p 716). She cited testimony from the pediatrician demonstrating that physical evidence of child sexual abuse is rare, that pediatricians commonly rely on nonphysical evidence, and that he did not identify any specific individual as the perpetrator of the abuse. In addition, she noted that the medical expert's testimony merely credited the veracity of the victim but did not explicitly speak to credibility *per se*. Justice Todd cited previous holdings in which the state supreme court recognized medical expert testimony based upon the veracity of witness statements as a proper methodology so long as it is "generally accepted" and "reasonably relied upon" by other professionals within that field. Finally, Justice Todd expressed concerns that the majority ruling will preclude relevant expert testimony in a variety of subjects, including child abuse cases, which is particularly troubling, given misconceptions on the part of the public.

Dissent 2

Justice Sallie Mundy echoed Justice Todd's statements that the majority's holding would improperly limit expert testimony by preventing experts from articulating the basis for their medical opinions. She also disagreed with the state supreme court's hearing

the case, for procedural reasons unrelated to the matters discussed above.

Discussion

In *Maconeghy*, the relevant legal question concerned the medical determination of child sexual abuse, which was itself informed by the alleged victim's statements and suggested an expert opinion regarding the credibility of the alleged victim. The majority drew a conservative line in the sand not only by precluding testimony that directly speaks to the credibility of a witness, but also by prohibiting statements that indirectly endorse the veracity of a witness. By this reasoning, expert witnesses must be careful not to encroach on the ultimate legal question, or perhaps to even suggest an opinion about the credibility of a witness.

The majority opinion has two important implications for medical expert witnesses. First, it deliberately narrows its holding to expert testimony relying solely on witness and victim accounts in the absence of other corroborating data (e.g., physical examination results). This appears to be an effort by the court to avoid unduly influencing the jury by not permitting expert conclusions that may (even implicitly) communicate an expert opinion regarding the credibility of other witnesses. Although the pediatrician in this case appropriately qualified the limitations of his findings, he may have considered refraining from providing an ultimate opinion on the question of sexual abuse given the absence of corroborating evidence and the heavy emphasis it necessarily placed on the credibility of the witness. The impact of this restriction on mental health testimony, which relies in large part on parties' statements, remains unclear at this time.

Second, the majority opinion emphasized the importance of expert witnesses operating within the scope of their role to the courts. In so doing, it is critical that we remain aware of our function as advisors to the legal process and not substitute arbiters. Although the pediatrician in this case was undeniably qualified to conduct a sexual abuse evaluation, it was arguably beyond his role to testify, "I really believe strongly that was my medical conclusion that this child was victimized" (*Maconeghy*, p 708). Arguably, this opinion may have been more of a personal one than a medical conclusion based upon the objective implications of the available evidence. The circumstances of this case stress the obligation of medical and mental health experts to ensure that our profes-

sional conclusions are justified by the quality of the data upon which we rely.

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Credibility Determinations for Social Security Benefits

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Treating Physician Rule Holds Controlling Weight in Credibility Determinations for Disability Insurance Benefits

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Ricky E. Brown sought appellate review of his denial of disability insurance benefits in *Brown v. Commissioner Social Security Administration*, 873 F.3d 251 (4th Cir. (2017)). Mr. Brown allegedly sustained injuries, including both physical and psychological sequelae, after a workplace accident on July 19, 2006. Mr. Brown did not return to work thereafter. His claim was denied by the Commissioner on two occasions (January and October 2009) and, upon Mr. Brown's request for review, was denied by the Administrative Law Judge (ALJ). Mr. Brown brought the case forward for review in the district court of South Carolina, where the case was reversed and remanded. Nevertheless, during the second hearing, the ALJ again denied Mr. Brown's claim, and his request for appeal via the Social Security Administration's Appeals Council was also denied. Mr. Brown brought the case forward as a civil matter to the district court of South Carolina, and the ALJ's second ruling was affirmed. The Fourth Circuit Court of Appeals granted review and reversed and remanded the case.

Facts of the Case

On July 19, 2006, Mr. Brown is alleged to have sustained numerous physical injuries while using a hammer drill at work that resulted in chronic pain and associated problems with his mental health and