In addition, lack of immunity for contracted medical and mental health personnel is particularly relevant, as the use of privately contracted personnel providing care and services to detainees and prisoners is steadily increasing. It is important for administrators and practitioners to consider the limits of legal protections available to privately contracted staff, which further underscores the importance of appropriate training, clearly defined protocols, and adherence to standards of care.

Disclosures of financial or other potential conflicts of interest: None.

Qualified Immunity for Jail Health Care Staff: When Are Providers off the Hook for Claims of Deliberate Indifference?

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Facts Pertaining to a Jail Nurse's Provision of Mental Health Services to a Pretrial Detainee Preclude Summary Judgment for Qualified Immunity and Open the Door for a Claim of Deliberate Indifference

DOI:10.29158/JAAPL.3773L2-18

In *Bays v. Montmorency County*, 874 F.3d 264 (6th Cir. 2017), the Sixth Circuit Court of Appeals considered the limits of qualified immunity for a jail nurse who evaluated the mental health needs of a pretrial detainee who later committed suicide at the jail. The parents of the detainee filed suit, pursuant to 42 U.S.C. § 1983 (1996), against the jail nurse, alleging that she violated their son's Fourteenth Amendment right to sufficient treatment for a serious medical condition, his mental illness. Their suit was also against Montmorency County, which was responsible for running the jail. The district court granted qualified immunity to the county jail but denied it to the nurse. The nurse appealed to the Sixth Circuit and the decedent's family filed a cross-appeal. The court affirmed the verdict of the lower court denying qualified immunity to the nurse but dismissed the Bays' appeal for lack of jurisdiction.

Facts of the Case

On March 28, 2013, 28-year-old Shane Bays was arrested for driving with a suspended license and was detained at the Montmorency County Jail. During the health screening, on April 9, he told jail nurse Donna Sigler that he was "bipolar," "paranoid," and "angry." He also said he had "panic attack[s]," a history of substance use, difficulty sleeping, and "severe rage." Ms. Sigler documented that Mr. Bays would require mental health treatment "[upon] discharge." She consulted with Amy Pilarski, a registered nurse specializing in mental health, telling her that Mr. Bays had "some issues with anxiety." At Ms. Pilarski's recommendations, Ms. Sigler ordered medication (Benadryl) for Mr. Bays, and on April 11, she scheduled an appointment for him on May 2. Although she could have scheduled an earlier appointment for him, as offered by the jail mental health center, Ms. Sigler did not do so, because she anticipated transportation difficulties related to a deputy being on vacation. She documented that day that Mr. Bays "denies suicide at this time" (*Bays*, p 267).

While Mr. Bays remained in the general population area, he requested to meet with Ms. Sigler on April 17, and she noted that he was "more relaxed and less anxious" than the previous week (*Bays*, p 267). By April 19, Mr. Bays' symptoms recurred: he reported "anxiety, agitation, paranoia, and troubling thoughts," including that he feared "he would hurt others," and that he had scraped his hands punching a wall (*Bays*, p 267). Although Ms. Sigler noted "Shane denied being suicidal," she attempted to call Ms. Pilarski twice and left a message asking her for an earlier appointment for Mr. Bays. Sometime between April 22 at 11:00 p.m. and April 23 at 1:30 a.m., Mr. Bays hanged himself in the jail showers.

Mr. Bays' parents filed a § 1983 civil rights action, claiming Ms. Sigler violated their son's "right to receive care for a serious medical need and that the County failed to train its personnel to provide proper health care to its inmates" (*Bays*, p 267–8) The United States District Court for the Eastern District of Michigan denied the nurse's motion for summary judgment, so she filed an interlocutory appeal challenging the denial of qualified immunity. The court granted the

county's motion for summary judgment and denied the Bays' motion for reconsideration. The Bays cross-appealed to the Sixth Circuit Court of Appeals.

Ruling and Reasoning

The Sixth Circuit held that Ms. Sigler was not entitled to qualified immunity in the care she provided to Mr. Bay. The appeals court indicated that, in qualified-immunity cases, it is essential to establish whether the officer, assuming as true the allegations of the nonmoving party, violated the constitutional rights of the injured party and whether those rights were clearly established at the time (*Pearson v. Callahan*, 555 U.S. 223 (2009)).

The court cited the Supreme Court decision in *Estelle v. Gamble*, 429 U.S. 97 (1976), which established that prison officials who act with "deliberate indifference" to the "serious medical needs" (*Estelle*, p 105) of inmates in their charge violate those inmates' Eight Amendment rights. Several circuits, including the Sixth, had held that those rights include psychological treatment for serious mental illness (*Clark-Murphy v. Foreback*, 439 F.3d 280 (6th Cir. 2006)). Because Mr. Bays was a pretrial detainee, the Due Process clause of the Fourteenth Amendment extended those rights to him (*City of Revere v. Mass. Gen. Hosp*. 463 U.S. 239 (1983)). The Sixth Circuit held that in cases where prison staff provided treatment, constitutional liability attaches only if the treatment is "so cursory" as to amount to a conscious disregard for the needs of the inmate (*Rouster v. City of Saginaw*, 749 F.3d 437 (6th Cir. 2014)).

In assessing "deliberate indifference," the appeals court sought to determine whether, in the case of a serious ailment, the official was "subjective[ly] reckless[. . .]" in providing care (*Farmer v. Brennan*, 511 U.S. 825 (1994)). Given the proffered facts, "Shane's mental illness was objectively serious" and "a reasonable nurse would recognize that Shane needed prompt medical help" (*Bays*, p 268). In addition, Ms. Sigler "subjectively thought there was a 'risk of serious harm'" and "disregarded that risk in a way that goes beyond negligence" (*Bays*, p 268).

The Sixth Circuit ruled that the defendants must accept the proffered facts indicating that Mr. Bays must have suffered severe psychological pain before his completing suicide and was entitled to treatment that Ms. Sigler failed to provide for his serious medical condition. The court compared the facts to those in a prior case in which an inmate failed to receive adequate and timely treatment for a burst appendix and suffered severe pain as a result (*Blackmore v. Kalamazoo County*, 390 F.3d 890 (6th Cir. 2004)). The facts in evidence would permit a jury to conclude liability. Therefore, the court ruled that Mr. Bays' parents deserved the chance to prosecute the case as a § 1983 before a jury.

Furthermore, the court held that it did not have pendent appellate jurisdiction to decide on the Bay's cross-appeal in connection with Ms. Sigler's appeal. The court explained that a claim is "inextricably intertwined" with another if it is "coterminous with, or subsumed in" the claim on collateral appeal, such that "appellate resolution of the collateral appeal necessarily resolves the pendent claim as well" (*Mattox v. City of Forest Park*, 183 F.3d 515,524 (6th Cir. 1999)). The court rejected the nurse's appeal, and the Bay's failure-to-train claim therefore did not meet the test.

Discussion

In *Bays*, the Sixth Circuit further clarifies the Eighth Amendment rights of prisoners, and by extension, the Fourteenth Amendment rights of pretrial detainees, to medical care for psychiatric disorders. In denying qualified immunity to the nurse, Ms. Sigler, the court made a strong statement that inadequate care, though not, strictly speaking, "indifferent," may be the equivalent of deliberate indifference if a serious condition is not managed with prompt, appropriate measures. When Mr. Bays requested to speak with Ms. Sigler on April 19, although he denied suicidal thoughts, he had "scraped his hands punching the wall" and reported the recurrence of several distressing symptoms, including thoughts of harming others (*Bays*, p 267). However, instead of increasing observation frequency for Mr. Bays, Ms. Sigler attempted only to request an earlier mental health appointment for him. Mr. Bays hanged himself that day between 11:00 p.m. and 1:30 a.m.

Although some jails and prisons follow their own protocols in implementing medical care to their detainees, other correctional facilities follow guidelines established by the National Commission on Correctional Health Care (NCCHC). In their updated guidelines of 2015, NCCHC outlined a suicide prevention program (The Standards for Mental Health Services in Correctional Facilities MH-G-04, (2015)). In this section, NCCHC defines "non-acutely suicidal patients" as those "[. . .] who deny

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.

Disclosures of financial or other potential conflicts of interest: None.

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

DOI:10.29158/JAAPL.3773L3-18

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.