

lationship is established, there is a duty regardless of control. The dissent in *Volk* pointed out the contradiction in precedent (*Volk*, p 275).

With continuing legal ambiguity regarding the scope of mental health professionals' duty to prevent harm to others, mental health providers working in correctional settings should be aware of the implications of both *Binschus* and *Volk*. It is prudent for clinicians to perform routine and adequate assessments of inmates for thoughts of harming themselves or others, including during intake and before release. Reasonable measures can then be taken to minimize or target the inmate's future risk for violence while in physical custody, including offering psychiatric and psychological treatment when appropriate. The inmate's participation in care, or lack thereof, should be documented in an effort to preserve an account of the attempts to mitigate the inmate's risk for violence.

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Constitutionally Inadequate Treatment for Psychiatric Inmates

Thomas Rodriguez, MD
Fellow in Forensic Psychiatry

Joseph Simpson, MD, PhD
Clinical Associate Professor

Institute of Psychiatry, Law, and Behavioral Science
University of Southern California
Los Angeles, CA

Court Allows a Case to Proceed Against Jail Medical Personnel for Claim of Eighth Amendment Violation for Failure to Restart Psychiatric Medications

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In *Richmond v. Huq*, 872 F.3d 355 (6th Cir. 2017), the United States Court of Appeals for the Sixth Circuit considered whether summary judgment for the defendants was appropriate in a case alleging that the psychiatric care provided to the plaintiff in jail amounted to cruel and unusual punishment. The district court had granted summary judgment in favor of the defendants on the grounds that the plaintiff failed to show a violation of the

constitution. On appeal, the Sixth Circuit Court of Appeals affirmed in part and reversed in part.

Facts of the Case

Plaintiff Melissa Richmond was arrested on December 25, 2012, in relation to an altercation at a family gathering in Wyandotte, Michigan. While in the police cruiser, she set her seatbelt on fire in an attempt to free herself, resulting in burn wounds. She was transported to a hospital and treated for first- and second-degree burns. After being discharged the next day, she was arraigned and placed in the custody of the jail.

On December 26, 2012, after her arraignment, Ms. Richmond was screened for medical and mental health histories by a member of the jail medical staff, who determined that follow-up medical and mental health evaluations would be necessary. Nurse Shevon Fowler examined Ms. Richmond, changed her wound dressing, referred her to a psychiatric social worker (PSW), and paged the on-call doctor, who ordered once-daily dressing changes and prescribed Lortab (an opioid) for pain. On December 28, Ms. Richmond was seen by Dr. Rubab Huq, who prescribed Motrin (for pain and inflammation) and antibiotics to prevent infection and scheduled a follow-up medical visit for January 10, 2013. On December 28, Ms. Richmond received mental health screening by Agron Myftari, PSW, who discussed Ms. Richmond's history of bipolar disorder and her then-current medications, which included Prozac and Xanax. After his screening, Mr. Myftari scheduled Ms. Richmond for a January 11, 2013, appointment with a psychiatrist. On January 7, Ms. Richmond saw Patricia Rucker, PSW, regarding the jail's failure to provide her psychiatric medication. Because Ms. Richmond stated that she had not yet been evaluated, Ms. Rucker sent her to the mental health unit for another screening. During this second mental health screening, a third PSW, Jim Gilfix, determined that Ms. Richmond was stable and could await her previously scheduled appointment without any psychiatric medication, even though he was aware that Ms. Richmond had been taking Prozac and Xanax before she was taken into custody.

On January 11, Dr. Lisa Hinchman, a psychiatrist, evaluated Ms. Richmond and diagnosed bipolar disorder, depression, and posttraumatic stress disorder and prescribed psychiatric medication.

After her release on February 13, 2013, Ms. Richmond saw a doctor who informed her that she needed a skin graft because a portion of the burn was not healing by itself. She had the procedure on February 22, 2013.

Ms. Richmond filed an underlying suit on December 24, 2014, alleging violations of her Eighth Amendment right to be free from cruel and unusual punishment. She alleged that the jail's medical staff did not provide the prescribed number of dressing changes and doses of medication. She also alleged that her Eighth Amendment right was violated by the delay in her access to psychiatric medication. The district court granted summary judgment to the defendants.

The plaintiff then appealed the case to the Sixth Circuit Court of Appeals. The Sixth Circuit reviewed the district court's granting of summary judgment *de novo*, to determine whether there were questions of material fact and whether the lower court was correct in its application of the relevant substantive law.

Ruling and Reasoning

The Sixth Circuit reversed the district court's grants of summary judgment to defendants Agron Myftari (PSW), Maxine Hawk (nurse), Patricia Rucker (PSW), Jacqueline Lonberger (nurse), Danielle Allen (medical assistant), and Wayne County. The court reversed in part and affirmed in part the grants of summary judgment to defendants Dr. Rubab Huq (treating physician), Dr. Thomas Clifton (medical director of the Wayne County Jail), Shevon Fowler (nurse), and Marie Shoulders (nurse).

The Eighth Amendment provides an inmate the right to be free from cruel and unusual punishment and a "prisoner's Eighth Amendment right is violated when prison doctors or officials are deliberately indifferent to the prisoner's serious medical needs" (*Comstock v. McCrary*, 273 F.3d 693, 207 (6th Cir. 2001), citing *Estelle v. Gamble*, 429 U.S. 97, 103(1976)). The clearly established right to be free from deliberate indifference to medical needs extends to an inmate's psychiatric needs (*Waldrop v. Evans*, 871 F.2d 1030 (11th Cir. 1989)).

An Eighth Amendment claim on these grounds has an objective and subjective component. The objective component requires the plaintiff to show that the medical need in question is sufficiently serious (*Farmer v. Brennan*, 511 U.S. 825 (1994)). A prison official's act or omission must result in the denial of

the minimal civilized measure of life's necessities and "a medical need is objectively serious if it is 'one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity of a doctor's attention'" (*Blakmore v. Kalamazoo Cty.*, 390 F.3d 890, 897 (6th Cir. 2004), quoting *Gaudreault v. Municipality of Salem*, 923 F.2d 203, 208 (1st Cir. 1990)).

Ms. Richmond's nonhealing wound was serious enough to require a skin graft after her release. Her mental health needs appeared serious, as her burn was from self-harm when she set her seatbelt afire. The defendants did not challenge Ms. Richmond's contention that her medical needs were sufficiently serious to satisfy the objective component.

The subjective component of an Eighth Amendment claim requires a showing that the "official kn[ew] of and disregard[ed] an excessive risk to inmate health or safety" (*Farmer*, p 837). The official should be aware of the facts from which the inference could be drawn that there is a substantial risk of serious harm, and he must also draw the inference. Intent to inflict unnecessary pain is not required, rather "obduracy and wantonness" are required, to make a showing of deliberate indifference (*Boretti v. Wiscomb*, 930 F.2d 1150, 1153 (6th Cir. 1991)).

The defendants challenged Ms. Richmond's contention that their actions satisfied the subjective component. The main psychiatric legal questions in this case regard the allegations against Mr. Myftari, Dr. Huq, and Ms. Rucker.

Mr. Myftari, PSW, evaluated Ms. Richmond and diagnosed bipolar disorder, depression, anxiety, and auditory hallucinations. Despite stating in testimony that if medications such as Ms. Richmond's were stopped, an inmate may begin experiencing serious psychiatric symptoms within 10 days to two weeks, he scheduled Ms. Richmond's appointment with the psychiatrist Dr. Lisa Hinchman for 17 days after her arrest, understanding that Ms. Richmond would not be given psychiatric medications until that evaluation. According to the court, this understanding of the risk of lack of medication as well as Mr. Myftari's disregard for this risk creates a genuine question of fact as to Ms. Richmond's claim that he exhibited deliberate indifference, making summary judgment inappropriate.

Dr. Huq, who evaluated Ms. Richmond for her medical problems, may have been aware that Ms.

Richmond was receiving psychiatric medications before her incarceration, according to entries in nursing notes. The court ruled that the possibility that Dr. Huq could have or should have been aware of Ms. Richmond's serious need for psychiatric medication raises a genuine question of fact making summary judgment inappropriate.

Ms. Rucker, PSW, saw Ms. Richmond on January 7, 2013, in response to Ms. Richmond's complaints that she had not yet received her psychiatric medications. A reasonable jury could find that Ms. Rucker knew that Ms. Richmond faced a substantial risk of psychological distress, and that Ms. Rucker disregarded these risks by failing to review her chart or verify her existing outside prescriptions. The court therefore ruled that summary dismissal on Ms. Richmond's claims against Rucker was inappropriate.

Discussion

The court looked at the possibility of violations of the Eighth Amendment in regard to delaying the

initiation of an inmate's then-current psychiatric medications after incarceration. When looking at this aspect of the case, it is important to recognize what the risks are when psychiatric medications are not continued. Failing to continue medications such as benzodiazepines carries a high risk of poor outcomes such as seizures and death, and health professionals must exercise caution when evaluating patients who state they take these types of medications. More generally, missed doses of any psychiatric medication carries the risk of recurrence of psychiatric symptoms, which can cause significant emotional turmoil.

Prisoners have protections against cruel and unusual punishment, and failing to continue prescribed psychiatric medications needlessly exposes them to risk of recurrence of psychiatric symptoms that could be interpreted as amounting to cruel and unusual punishment.

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