

route mental health calls away from law enforcement and into mental health care (Westervelt, 2020). The gap in training and expertise in working with persons with serious mental illness may contribute to insufficient tactics in de-escalation and inappropriate application of force.

In *Palma's* dissenting opinion, it was suggested that individuals with mental illness may pose a “heightened risk,” and that their behavior and actions lead to law enforcement requiring the use of more force. Studies, however, estimate that the general violence toward others attributed solely to people with mental illness makes up only three to five percent of the violence in the United States (Pinals *et al.* Resource document on access to firearms by people with mental disorders. *Behav Sci & L.* 2015; 33: 186–94). With limited mental health training, as mentioned in the dissenting opinion, it calls for resources to divert persons with mental illness away from the legal system and toward the mental health system or to have mental health providers embedded into law enforcement for support.

Adequacy of Mental Health Services and Unaccompanied Alien Children in Juvenile Detention Centers

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Deliberate Indifference Was Incorrectly Applied in Assessing the Adequacy of Mental Health Care Provided to Unaccompanied Alien Children

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Key words: professional judgment; juvenile detention; deliberate indifference; mental health treatment; unaccompanied alien children

In *Doe v. Shenandoah Valley Juvenile Center (SVJC Commission)*, 985 F.3d 327 (4th Cir. 2021), the plaintiffs, a class of Unaccompanied Alien Children (UAC), appealed a Western District of Virginia decision to grant summary judgment after the deliberate indifference standard was applied to claims that SVJC failed to provide a constitutionally adequate level of mental health care. The Fourth Circuit Court of Appeals ruled that the district court erred in both granting summary judgment and applying the deliberate indifference standard, holding that the *Youngberg* standard of professional judgment should be applied in assessing the claim.

Facts of the Case

John Doe 4, an UAC, experienced significant trauma, both in his home country of Honduras and as he fled through Mexico to the United States. After being detained by U.S. Customs and Border Protection, he was placed into custody of the Department of Health and Human Services Office of Refugee Resettlement (ORR). Because of behavioral problems, he was transferred to SVJC, a juvenile detention facility. While detained, he received an initial psychological evaluation, follow up with a psychiatrist, and weekly therapy sessions. His treatment included medications for attention deficit hyperactivity disorder, depression, and insomnia. Over the course of his detention, Mr. Doe was physically restrained, placed in solitary confinement, and had physical altercations with staff. Because of Mr. Doe’s ongoing psychiatric and behavioral concerns, his psychiatrist recommended residential treatment, but placement could not be secured for him given his violence history. Mr. Doe continued to be detained and psychiatrically treated at SVJC. Over the course of seven months, it was documented that Mr. Doe spent 176 hours confined alone in his room and over 800 hours alone or restricted from others.

In October 2017, representatives for UAC, including Mr. Doe, filed a class action complaint against SVJC in the District Court for the Western District of Virginia and sought declaratory and injunctive relief under 42 U.S.C. § 1983 (1996), alleging that SVJC had engaged in unlawful patterns of conduct through excessive use of force, physical restraints, and solitary confinement; had failed to provide a constitutionally adequate level of care; and had discriminated based on race and national origin. Following discovery, which included testimony given by experts regarding the mental health care provided by SVJC, defendants filed

motions for summary judgment and motions *in limine* to exclude the expert testimony.

Among several decisions, the court granted summary judgment with respect to the plaintiffs' claim that SVJC provided inadequate mental health care. The district court applied a standard of deliberate indifference in determining the adequacy of the care provided at SVJC. Because SVJC had provided Mr. Doe with a psychological evaluation, psychiatric consultation, medication, and individual therapy, the district court determined that SVJC had provided adequate mental health care. The district court also granted in part and denied in part the defendant's motions *in limine* to exclude expert testimony regarding the mental health care provided by SVJC, stating the testimony was irrelevant because adequate care had been rendered. In addition, the court noted that the expert's opinion on SVJC's failure to apply trauma-informed care (TIC) was inadmissible because it was not the minimum constitutional standard of care. After the court issued summary judgment, the plaintiffs appealed the district court's granting of summary judgment with respect to their claim of inadequate mental health care.

Ruling and Reasoning

The U.S. Court of Appeals for the Fourth Circuit reviewed the granting of summary judgment *de novo*. After ruling that the plaintiffs had standing to file a complaint against SVJC, the court was faced with determining the appropriate standard for assessing the care provided, whether providing TIC was part of a relevant standard of care, and whether granting summary judgment was appropriate.

Concerning the appropriate standard for assessing the care delivered at SVJC, the Fourth Circuit agreed that there is a right to adequate care and specified that the *Youngberg* standard of professional judgment, which states that "liability may be imposed only when the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment," should be used in determining the adequacy of mental health care afforded to detained UAC (*Youngberg v. Romeo*, 457 U.S. 307 (1982), p 323). The court reviewed *Patten v. Nichols*, 274 F.3d 829 (4th Cir. 2001), which applied the *Youngberg* standard to an involuntarily committed patient claiming inadequate psychiatric care. The court distinguished between pretrial detainees, who are in detention

centers or jails after being charged with a crime, and involuntarily committed patients, who are in hospitals to receive treatment, and said that the detained UAC were more akin to psychiatric patients involuntarily committed. The court rejected the defendant's argument that UAC were primarily held for security reasons, and, therefore, the deliberate indifference standard as outlined in *Farmer v. Brennan*, 511 U.S. 825 (1994), should be applied in determining the adequacy of care. The court ruled that *Youngberg* was the appropriate standard given UAC's vulnerability and the state's duty to care for them.

Regarding the appropriateness of granting summary judgment, the Fourth Circuit ruled that, in light of the *Youngberg* standard, the trial court must consider all evidence, including testimony regarding TIC, relevant to the professional standards of care necessary to treat the plaintiffs' mental health needs. Although it noted TIC to be the standard of care in several other contexts, the court left the decision of determining the relevance of TIC to the professional judgment standard to the trial court. The Fourth Circuit reiterated that the district court incorrectly applied the standard of deliberate indifference when it should have determined whether the defendant departed from accepted standards of professional judgment. The case was reversed and remanded to the district court so it could apply the appropriate standard in determining whether the defendants provided adequate mental health care to UAC detained at SVJC.

Discussion

In evaluating the facts related to the district court's granting of summary judgment, the Fourth Circuit addressed application of the appropriate standard when determining whether adequate mental health care was rendered to UAC housed at SVJC. The court noted that prior cases involving immigrant detainees in which the deliberate indifference standard was applied involved adults detained in immigration removal proceedings. In differentiating UAC from adults detained in immigration removal proceedings, the court discussed that the U.S. Supreme Court had long acknowledged that children are developmentally and psychologically different from adults and had recognized childhood as a time of increased susceptibility to outside influences. The court noted that many UAC held in juvenile detention centers have experienced extensive trauma and are vulnerable to mental health conditions, problematic behaviors, and abuse. The

court found that it is in the best interests of the UAC, the community, and the state that UAC are protected from further abuse and given the opportunity for independent growth.

The court's decision also identified treatment as the purpose of placement of UAC in juvenile detention centers, which then drove the standard used to assess the adequacy of mental health care. The Fourth Circuit emphasized that the detention of UAC is more analogous to involuntary civil commitment rather than pretrial detention, noting both safety and appropriate treatment as goals of the detention and highlighting that the ORR's regulations cited both objectives. The parallels made between the detention of UAC and involuntarily civil commitment were used to justify the position that the standard of professional judgment prevailed over the standard of deliberate indifference commonly used in claims made against correctional facilities. The application of the standard of professional judgment by the court of appeals effectively lowered the burden required in court for UAC to make claims of inadequate health care in juvenile detention facilities.

By opining that the *Youngberg* standard was appropriate, the court deferred to the subjective facets of medical decision-making and presumed them to be valid. Although there was no question that SVJC provided some treatment, including therapy and medication, the application of the *Youngberg* standard makes expert testimony regarding treatment of trauma-related disorders and use of TIC relevant. Similar expert testimony could be required in future claims made by UAC related to the treatment of other psychiatric conditions in juvenile detention facilities where they are held. The Fourth Circuit's ruling that the trial court erred in applying the deliberate indifference standard to inadequate care claims, paired with the complex psychological needs of UAC and ever-evolving treatments for psychiatric conditions, may lead to similar class action lawsuits related to the psychiatric treatment of UAC in other facilities or contexts.

Admissibility and Voluntariness of Psychiatric Evaluation

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Fifth Amendment Rights Not Violated When Defendant Initiated Psychiatric Evaluation after Previously Invoking *Miranda* and *Edwards* Rights

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In *People v. Johnson*, 501 P.3d 651 (Cal. 2022), the California Supreme Court considered whether the superior court erred in admitting statements made to a prosecution-retained psychiatrist who interviewed the defendant the night he shot and killed an officer. The court ruled that there was no Fifth Amendment error from admitting the defendant's statements to the psychiatrist.

Facts of the Case

In July 1996, Michael Johnson went to his wife's workplace with two pistols. She noticed that Mr. Johnson was acting "strangely, 'crazy,' and speaking rapidly and loudly" (*Johnson*, p 666). After he returned home, a family member called the police. Once officers arrived, Mr. Johnson's wife exited the front door as an officer entered. The officer was shot and killed by Mr. Johnson. He then ran out of the building and shot at another officer, who returned fire, hitting Mr. Johnson in the chest. Mr. Johnson was then taken into custody and transported to a hospital.

Over three hours at the hospital, Mr. Johnson was contacted on four separate occasions by law enforcement personnel seeking a statement. On each occasion, Mr. Johnson invoked his *Miranda* rights (referring to *Miranda v. Arizona*, 384 U.S. 436 (1996)). During one contact, Mr. Johnson said he may "want to speak later," and during another, he invoked his *Edwards* right to counsel (referring to *Edwards v. Arizona*, 451 U.S. 477 (1981)). During one contact, a detective asked if Mr. Johnson would speak with a psychiatrist, and he was amenable. Mr. Johnson was then transferred to another hospital for ongoing treatment.