

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

DOI:10.29158/JAAPL.220086-22

Key words: Fifth Amendment; *Miranda*; *Edwards*; interrogation; dual-role

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.

Psychiatrist Donald Patterson was retained by the district attorney's office that evening. He was given a tape recorder, *Miranda* advisement card, and instructed to "do your usual thing, advise him of his rights, tell him who you are, who you work for, and see if he wants to talk" (*Johnson*, p 675). Dr. Patterson explained that his "purpose was to determine [the] defendant's mental status close in time to the earlier events that day but that 'eliciting incriminating information' . . . 'was not the purpose of my interview'" (*Johnson*, p 675).

After approximately an hour of observation, Dr. Patterson introduced himself, saying, "The DA's office asked me to come and talk with ya" (*Johnson*, p 676). After Dr. Patterson partially readvised Mr. Johnson of his *Miranda* rights, Mr. Johnson declined, saying he would rather speak with a lawyer first. Dr. Patterson responded that he would "stay around" and reminded Mr. Johnson that he was previously willing to meet with a psychiatrist, but he could still refuse. Dr. Patterson stepped out of the room and spoke with the deputy district attorney, who advised Dr. Patterson to follow and observe the defendant. The deputy district attorney testified that Dr. Patterson did not inform him that Mr. Johnson invoked counsel.

Twenty minutes later, Mr. Johnson said, "Still here, huh?" and commented that Dr. Patterson had "a kind face." Mr. Johnson then spoke about previous psychiatrists and efforts to seek mental health evaluation and treatment. Mr. Johnson asked Dr. Patterson, "You wanna talk about it?" (*Johnson*, p 677). He then spoke about his mental health and eventually gave self-incriminating accounts of recent events that amounted to a confession. At one point, Mr. Johnson stated, "I think I'd be better off talking to you about emotional states than about actual specific facts . . . I'm sure my lawyer wouldn't appreciate it, you know?" (*Johnson*, p 677). In discussing his reasons for speaking with Dr. Patterson, he said, "I started out by just not wanting to tell you exactly what happened, but it ended up that way . . . at this point I don't have anything to lose by being honest and saying what happened . . . and I understand my lawyer's really going to be pissed and so forth" (*Johnson*, p 678).

The defense moved to suppress statements made to Dr. Patterson, arguing that Mr. Johnson invoked his rights to silence and counsel, did not explicitly waive said rights, and did not initiate further interrogation. The trial court acknowledged that there were prior *Miranda* and *Edwards* violations, but

denied the motion to suppress because Mr. Johnson knowingly and voluntarily initiated further communication. The trial court reasoned that the audio recording demonstrated Mr. Johnson's awareness that his lawyer would be upset, and that Mr. Johnson "controlled the conversation and directed the topics for discussion" (*Johnson*, p 679). Mr. Johnson appealed.

Ruling and Reasoning

The California Supreme Court upheld the trial court's ruling. The court addressed whether law enforcement's earlier contact with Mr. Johnson violated his *Miranda* and *Edwards* rights, whether Mr. Johnson initiated the conversation, and whether he did so with a knowing and voluntary waiver of his previously invoked rights.

The court concluded that Mr. Johnson's *Miranda* rights were violated at points throughout the evening. The court noted that *Edwards* explicitly states that once a defendant invokes the right to counsel, law enforcement personnel must cease interrogation until counsel is provided or the defendant reinitiates contact. Citing several cases, most recently *People v. San Nicholas*, 101 P.3d 509 (4th Cir. 2004), the court commented that under settled law, a psychiatric interview is an interrogation if the interview contains material later used by the prosecution.

The court reasoned that *Edwards* exceptions require that the suspect initiate further exchanges. They reviewed case law regarding statements like Mr. Johnson's initiating question, "Still here, huh?" and concluded it "squarely falls within the kind of statements that have constitute[d] an initiation of further communication by the accused" (*Johnson*, p 684).

Considering the totality of the circumstances of Mr. Johnson's contact with Dr. Patterson, and whether the evaluation was "the tainted product of" *Miranda* violations, the court noted, "We have never found that an initial failure to honor a defendant's invocation—whether of the [right] to remain silent or the right to have counsel present—poses a categorical bar to the admission of any subsequent statement" (*Johnson*, p 684). The court reasoned that the record did not reveal berating or coercion evident in other cases. The recorded interview demonstrated that Mr. Johnson was not questioned until after he initiated further engagement with Dr. Patterson, and he was aware that information provided might be used against him.

The majority opinion acknowledged that aspects of the interaction between Dr. Patterson and Mr. Johnson made “this question close.” They explained that “every *Miranda* inquiry is highly fact specific” (*Johnson*, p 693), and their ruling was only “for this unique record.” The court ruled that there was no Fifth Amendment violation in admitting the evidence.

Dissent

The dissent stated the trial court erred in admitting Mr. Johnson’s statements to Dr. Patterson, and further, that the error was prejudicial to Mr. Johnson’s conviction of first-degree murder. Citing *Leyra v. Denno*, 347 U.S. 556 (1954), the dissent noted that sending in a medical professional is a tactic used by law enforcement. The dissent also pointed out that the practice of evaluating suspects prior to consultation with their legal counsel “has been condemned as unethical by professional psychiatric organizations (Janofksy, *Lies and Coercion: Why Psychiatrists Should Not Participate in Police and Intelligence Interrogations* (2006) 34 J. Am. Acad. Psychiatry & L. 472, 475–476” (*Johnson*, p 640). The dissent further pointed out the multiple *Miranda* and *Edwards* violations and Dr. Patterson’s “lingering presence” under the guise of a “mutual, rather than adversarial” relationship.

The dissent recognized an insufficient break in the stream of events to insulate Mr. Johnson’s statement from the effects of prior violations. Citing *Smith v. Illinois*, 469 U.S. 91 (1984), the dissent asserted that *Edwards*’ “bright-line rule” that all questioning must cease after an accused requests counsel could not be squared with the majority opinion.

The dissenting opinion considered ramifications of the majority ruling, stating that “today’s decision tells law enforcement officials that there is ‘nothing to lose, and a useable confession to gain, if they simply disregard the suspect’s requests for counsel’ and continue to interrogate the suspect with shifting and ever subtler tactics” (*Johnson*, p 729).

Discussion

This case addressed whether the trial court erred when it denied the motion to suppress testimony from a prosecution-retained psychiatrist who evaluated Mr. Johnson after he had previously invoked his *Miranda* and *Edwards* rights.

The majority and dissenting opinions differed in their appraisal of the context surrounding the psychiatric evaluation. The majority opinion’s review of relevant case law found that the exchange between Mr. Johnson and Dr. Patterson was analogous to *Edwards* exceptions and concluded that the testimony was admissible.

The dissenting opinion viewed the psychiatric evaluation as a “ploy” in which the psychiatrist acted as the “good cop” to elicit self-incriminating testimony after detectives failed. This case examines the problems that may occur when, despite being warned about the role of the evaluator, defendants may still respond as if a treatment relationship exists. The dissent noted that both the American Psychiatric Association and the American Academy of Psychiatry and the Law have adopted ethics principles related to this concern.

Duty to Warn and Actual Communication

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A Duty to Warn Arises When a Threat is Actually Communicated to the Psychiatrist

DOI:10.29158/JAAPL.220087-22

Key words: duty to warn; ; duty to protect; ; Tarasoff; ; duty to third-party

In *Rodriguez v. Lasting Hope Recovery Center*, 955 N. W.2d 707 (Neb. 2021), the Supreme Court of Nebraska ruled that summary judgment was properly granted to defendants in a wrongful death action brought against them for failure to warn and protect a woman from her ex-boyfriend, who allegedly killed her