

chiatrists should offer law enforcement officers only minimum necessary information, the case underscores the importance of communication in providing police officers who conduct mental health seizures relevant information about an individual's dangerousness. In addition, forensic psychiatrists may be asked to opine on whether an individual's behaviors met the threshold of probable cause for dangerousness in an emergency mental health seizure or, contrarily, whether detainment was arguably necessary but was not executed by law enforcement. This case highlights the evolving legal landscape regarding standards for mental health seizures by law enforcement and the importance that psychiatrists be aware of relevant legal standards in their jurisdictions.

## Law Enforcement's Application of Excessive Force with Persons with Mental Illness

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### Fourth Amendment Protects Citizens from Excessive Use of Force and Law Enforcement Should Consider Mental Illness When Determining Applications of Force

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**Key words:** excessive force; law enforcement; mental illness; qualified immunity

In *Palma v. Johns*, 27 F.4th 419 (6th Cir. 2022), the U.S. Court of Appeals for the Sixth Circuit ruled that the district court erred in granting summary judgment on qualified immunity grounds to a police deputy where there were sufficient questions of fact as to the deputy's use of lethal force despite knowing

Vincent Palma had mental illness, no crime was committed, and the interaction was nonviolent.

#### Facts of the Case

On February 8, 2017, Vincent Palma's stepmother called 911 and requested that Mr. Palma be removed from the home after he reportedly engaged in a domestic dispute regarding a television show. Dispatch informed the responding Ashtabula County (Ohio) officer, Deputy Matthew Johns, that Mr. Palma had mental illness, which elicited Deputy Johns' reaction to have his firearm readily accessible prior to arrival. At the house, Deputy Johns saw Mr. Palma standing alone on his family's porch with his hood up and his hands in his pockets. Deputy Johns greeted Mr. Palma multiple times, but Mr. Palma did not respond and instead started approaching the officer. Although some of the facts are disputed, Deputy Johns called for backup and displayed his taser after Mr. Palma did not respond and continued walking toward him with his hands in his pockets. After warnings, Deputy Johns tased Mr. Palma a total of three times: the first tase had little impact as Mr. Palma kept walking; the second caused him to fall to the ground for a few minutes; the third was reportedly given after Mr. Palma got up and continued to approach Deputy Johns. Deputy Johns pulled out his baton but exchanged the baton for his firearm as the distance grew closer. After warning shots, he discharged a total of twelve shots, with nine hitting Mr. Palma; data on autopsy indicated some of the shots dispensed at Mr. Palma occurred as he lay possibly in a fetal position. Throughout the encounter, Mr. Palma was silent and did not make threatening gestures toward Deputy Johns. Once backup arrived and Mr. Palma was searched, it was discovered that he was unarmed.

Mr. Palma's family members sued Deputy Johns for damages under 42 U.S.C. § 1983 (1996), alleging that the deputy had violated Mr. Palma's constitutional rights by using excessive force. They also sued the county under Ohio tort laws. The district court granted summary judgment on all claims on qualified immunity grounds as they found Deputy Johns' actions were reasonable, there was insufficient data to suggest excessive force, and he did not violate Mr. Palma's rights under the Fourth Amendment. Mr. Palma's family appealed the decision to the Sixth Circuit Court of Appeals.

#### Ruling and Reasoning

The U.S. Court of Appeals for the Sixth Circuit reversed and remanded the district court's decision

to grant summary judgment on qualified immunity grounds. The court noted that qualified immunity on an excessive-force claim protects government officials from civil damages only if clearly established statutory or constitutional rights are not violated. The court considered two main questions: whether Deputy Johns violated Mr. Palma's constitutional rights under the Fourth Amendment; and whether that constitutional right was clearly established at the time of the incident.

The court found that Mr. Palma's constitutional rights under the Fourth Amendment were violated due to the use of excessive force during the tasing and shooting, accepting the facts of the case most favorable to the plaintiffs. Although the court agreed that taser use is justified if a person is "particularly violent or physically resistant, so as to endanger responders" (*Palma*, p 430, citing *Kent* 810 F.3d 384 (6th Cir. 2016), p 391), the court noted that Mr. Palma was not violent and never physically resisted; his defiance in ignoring Deputy Johns' orders, especially in the context of his mental illness, did not justify the use of the taser.

Regarding the shooting, the court considered several components of the situation, including the reason for police response; the presence of a weapon; disobedience and threatening behavior; distance between the officer and the person; duration of the encounter; mental health conditions; and readily available alternatives. In balancing all these factors, the court noted that when viewing the facts of the case in the light most favorable to the plaintiffs, it would "raise a triable issue as to the reasonableness of [Deputy] Johns' decision to use lethal force" (*Palma*, p 440).

The court noted that Deputy Johns was aware of Mr. Palma's mental illness prior to his arrival and contended that this factor should have been considered in the context of the scenario with de-escalation techniques utilized. Finally, the court said that even if the tasing and initial shooting had been reasonable, the subsequent shooting after Mr. Palma fell to the ground and was no longer dangerous was excessive.

In answering the second question, the court found that Mr. Palma's constitutional right was clearly established; he had a right to be free from excessive force and experienced unlawful conduct during the encounter. Accordingly, the court ruled that the plaintiffs sufficiently raised genuine disputes of material fact as to whether the deputy violated Mr. Palma's constitutional rights and therefore reversed the decision of the lower court and remanded for additional proceedings.

#### Dissent

The dissent said that Deputy Johns' uses of force were reasonable and therefore constitutional under the Fourth Amendment. The dissent discussed the innate challenges law enforcement personnel have in rapidly balancing Fourth Amendment rights against protecting themselves during threatening encounters. The dissent further said that the Constitution contains "no categorical rule requiring an officer to deescalate a situation merely because he knows the person has an unspecified mental health issue" (*Palma*, p 451). The dissent noted that mental health is not an area of expertise of law enforcement and that an officer may believe a person with mental illness to actually "pose a heightened risk" (*Palma*, p 452).

#### Discussion

*Palma v. Johns* addresses several topics of relevance to forensic psychiatry and mental health professionals. This case highlights citizens' Fourth Amendment rights to protection from unreasonable searches and seizures, including the right to be protected from excessive force. The Supreme Court has weighed in on excessive force cases and states that in the assessment of a law enforcement officer's actions, the following must be considered: the severity of the crime; whether the suspect poses immediate threat to others; and whether the suspect is resisting arrest. Additionally, the court said that a suspect's mental health should be considered by law enforcement in determining the application of force and that mental illness should be considered a mitigating factor in the officer's risk assessment.

In an analysis of police violence by National Public Radio, Westervelt stated that between 2015 and September 2020 nearly twenty-five percent of individuals killed by law enforcement in America had a known mental illness (Westervelt E. *Mental health and police violence: How crisis intervention teams are failing*. National Public Radio, 2020). With nationwide protests asking for policy change regarding police brutality, some police forces have implemented crisis intervention teams (CITs) to address the interface of law enforcement with persons with mental illness, although data are mixed about their effectiveness (Westervelt, 2020). Ideally, CITs fulfill a mission of recognizing and de-escalating confrontations with individuals who have mental illness. But, studies have suggested that most CITs consist of insufficiently trained law enforcement officers, and that there is a systemic failure to re-

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 (4<sup>th</sup> 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