

effects of solitary confinement on prisoners in supermax units: Reviewing what we know and recommending what should change. *Int J Offender Ther Comp Criminol.* 2008 Dec; 52(6):622–40). The empirical evidence regarding these potential harms, however, are limited, and available evidence, mixed (Kapoor R, Trestman R. Mental health effects of restrictive housing. NCJ 250321. In *Restrictive Housing in the U.S.: Issues, Challenges, and Future Directions.* Washington, D.C.: U.S. Department of Justice, National Institute of Justice; 2016. p 199–232). This is both because it is a challenging practice to study, and because when studied, outcomes are not easily generalizable (Appelbaum KL. American psychiatry should join the call to abolish solitary confinement. *J Am Acad Psychiatry Law.* 2015 Dec; 43(4):406–15).

Whether solitary confinement is generally harmful or not, many scholars agree that it “adds no benefit to the treatment of mental illness in prison.” (Kapoor R. Taking the solitary confinement debate out of isolation. *J Am Acad Psychiatry Law.* 2014 Mar; 42(1):2–6). The American Psychiatric Association and the United Nations both have released statements condemning the prolonged segregation of inmates with serious mental illness, and many groups advocate for its elimination. Multiple state governments have sought to decrease its use, especially for individuals with mental illness. Mississippi, for example, narrowed the criteria used to place inmates in solitary confinement, while North Carolina developed therapeutic diversion units which focus on the treatment of mental illness through positive psychology and socialization (Kupers TA, Dronet T, Winter M, *et al.* Beyond supermax administrative segregation: Mississippi’s experience rethinking prison classification and creating alternative mental health programs. *Crim Just & Behav.* 2009 Oct, 36(10):1037–1050; Remch M, Mautz C, Burke EG, *et al.* Impact of a prison therapeutic diversion unit on mental and behavioral health outcomes. *Am J Prev Med.* 2021 Nov; 61(5):619–27). In both cases, they saw not only better mental health outcomes, but also decreased rates of serious misconduct and use of force by corrections officers. More programs exist in the United States but lack published research evaluating their outcomes. Additional empirical evidence would improve our understanding of the impact of solitary confinement and alternative options, and would further advance the field.

Physician Prosecutions under the Controlled Substance Act

Ignacio Cerdena, MD
Fellow in Forensic Psychiatry

Simha Ravven, MD
Assistant Clinical Professor of Psychiatry

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

To Prosecute Physicians under the Controlled Substance Act, the State Must Now Show Intent to Act without a Medical Purpose, as Opposed to Showing Deviation from Standard of Care

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In *Ruan v. United States*, 142 S. Ct. 2370 (2022), the U.S. Supreme Court determined that the 10th and 11th Circuit Courts erred in affirming jury instructions with a negligence standard for the prosecution of two physicians under the Controlled Substances Act (CSA), 21 U.S.C. § 841 (2018). The Court found that the state must prove beyond a reasonable doubt that the physicians knowingly wrote prescriptions without a legitimate medical purpose. The holding establishes a new *mens rea* standard for CSA physician prosecutions.

Facts of the Case

The petitioners in this case are Xiulu Ruan and Sjakeel Kahn, medical doctors with the authority to prescribe controlled substances. Dr. Ruan co-owned and co-operated a pain management clinic and an adjoining pharmacy, which filled the clinic’s prescriptions. He faced criminal charges related to his medical practice, including racketeering, conspiring to violate the CSA by dispensing drugs outside legitimate medical purposes, and conspiracies to commit fraud. Dr. Ruan was alleged to have prescribed inappropriately for personal financial gain, and not monitored appropriately for diversion and misuse of opioid medications (Second Superseding Indictment, *United States v. Couch*, LEXIS 177974 (S.D. Ala. 2016)).

Dr. Kahn practiced as a pain management specialist in Wyoming and Arizona. He was alleged to have

determined prescription quantities based on a patient's ability to pay, where he charged more for prescriptions with more pills; and prescribed fewer pills or even withheld prescriptions if a patient was unable to pay; and to have discussed the "street price" of drugs with patients and closely tracked his own fees to these prices. He allegedly received reimbursement on a "cash-only" basis and accepted personal property, including firearms, as payments. He was accused of requiring patients to sign a "drug addiction statement," which stated that Dr. Kahn was not a "drug dealer" and described a liability of \$100,000 if a patient's statements resulted in any civil or criminal actions against Dr. Kahn. One patient death was alleged to have directly resulted from Dr. Kahn's prescriptions (*United States v. Kahn*, 989 F.3d 806 (10th Cir. 2021)).

At separate trials, the two doctors testified to their clinical practices and that the medications were dispensed according to appropriate prescriptions. Additional details about the doctors' testimony can be found in their Petition for Writ of Certioraris for the 11th Circuit and Supreme Court. Among these, Dr. Ruan testified to his good faith efforts to provide medical care. He reported limiting use of fentanyl to "severe breakthrough pain," and that he terminated relationships if patients had "red flags" for diversion or misuse. He also outlined that most of the cases reviewed by the government represented "legitimate patient" relationships. He offered video evidence of himself declining to prescribe opioid pain medications to undercover DEA agents and suggesting to them that there were better alternatives. Similarly, the additional court documents reveal Dr. Kahn's position that he practiced with an honest intent to provide medical care and had been cleared previously of wrongdoing by the Arizona Medical Board.

Among other crimes, Drs. Ruan and Kahn were both convicted under 21 U.S.C. § 841 (2018) for writing unauthorized prescriptions. Dr. Ruan was given a 21-year sentence and Dr. Kahn a 25-year sentence. Both separately appealed in their respective circuit courts (Tenth and Eleventh) on the grounds that their respective juries were given improper instructions.

In Dr. Ruan's case, the jury was given the instruction to convict if "the doctor's actions were either not for a legitimate medical purpose or were outside the usual course of professional medical practice" (*Ruan*, p 2375). In Dr. Kahn's case, the jury was given the instructions to not find him guilty if the doctor acted in "good faith," defined as "an attempt

to act in accordance with what a reasonable physician should believe to be proper medical practice" (*Ruan*, p 2376). In Dr. Kahn's appeal to the Tenth Circuit, the court said that, to convict under 21 U.S.C 841, the government must prove that a doctor "either: (1) subjectively knew a prescription was issued not for a legitimate medical purpose; or (2) issued a prescription that was objectively not in the usual course of professional practice" (*Khan*, p 825). Drs. Ruan and Kahn's appeals were both denied.

The petitioners appealed to the U.S. Supreme Court. In the writ of *certiorari* to the U.S. Supreme Court, the petitioners described variability across U.S. circuit courts in the prosecution of physicians under the CSA with some requiring a *mens rea* standard and others not. They argued that a Court opinion was needed, among other reasons described below, to provide consistent application of the law. The Court granted *certiorari*.

Ruling and Reasoning

In a unanimous decision, the U.S. Supreme Court remanded the circuit courts' rulings. The Court ruled that a CSA conviction must prove beyond a reasonable doubt that a physician knowingly intended to prescribe outside of the physician's authority, or outside a legitimate medical purpose. It deemed a negligence standard inappropriate on multiple grounds: the severity of the punishment in CSA convictions warrants treatment similar to criminal matters, as opposed to a civil matter; "authorized" prescription language is vague and not easily defined; and precedent consistently applies a culpable mental state standard to any critical component of a case that would distinguish guilt from innocence.

The Court also held that this opinion was consistent with prior rulings. In *Liparota v. United States*, 471 U.S. 419 (1985), the Court found that conviction for the illegal purchase of food stamps required knowledge that one is not authorized to buy food stamps. In *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), the Court found that convictions for child pornography required one to know that minors are present in the videos. Similarly, in *Rehaif v. United States*, 139 S. Ct. 2191 (2019), the Court found that convictions for illegal possession of a gun required knowledge of being a member of a group disallowed from possessing guns.

The Court cited prior cases of criminal acts that required the defendant's intent to be of importance, and not what a "reasonable" hypothetical

person thought. In *Elonis v. United States*, 575 U.S. 723 (2015), the Court ruled that threatening language was not defined by a “reasonable” third party, but instead by the intent of the speaker. Additionally, *Rogers v. United States*, 422 U.S. 35 (1975), reaffirmed that the Court has “long been reluctant to infer that a negligence standard was intended in criminal statutes” (*Rogers*, p 47).

In Justice Alito’s concurrence, which Justice Thomas joined, he said that the majority erred in placing the burden of proof on the government to prove that a prescription was unauthorized in CSA prosecutions. He instead proposed that a physician must provide an affirmative defense to meet the burden of proof that the prescriptions were authorized. He acknowledged that a physician’s prosecution under the CSA may warrant unique treatment when compared with a nonphysician, but he criticized the majority opinion for not specifically saying this.

Discussion

The Court’s decision directly affects practice considerations in multiple areas of medicine, including pain management and primary care. There are also important considerations here for the forensic psychiatrist.

An *amicus* brief supporting the petitioner filed by the National Pain Advocacy Center in *Ruan v. United States* (available at https://www.supremecourt.gov/case_documents.aspx) states that prosecution of physicians for violation of the CSA has recently increased. It argues that this “objective standard” does not exist in chronic pain management given the particular clinical challenges. Under the negligence standard, physicians and other health professionals who prescribe medications may be more reticent to prescribe pain medications (or other medications) for fear of prosecution. This may harm patients if clinical considerations are secondary to medicolegal concerns. A ruling in favor of a *mens rea* standard may provide a reprieve for physicians’ legal concerns and allow physicians to prioritize individualized patient care. Conversely, the brief also recognized that a subjective standard dependent on the intent of the medical professional could undermine efforts to ensure that medical care adhere to a common standard.

The *mens rea* standard established for CSA prosecution may create a new role for the forensic psychiatrist. Forensic psychiatrists could be asked to evaluate the state of mind and intent of medical professionals in the course of practice. There may be a diminished role

for the expert witness to assess adherence to, or deviation from, objective standards of care in these cases.

Competency to Proceed Pro Se and Plead Guilty to a Capital Offense

Ashley Malka, MD
Fellow in Forensic Psychiatry

Madelon Baranoski, PhD
Forensic Psychology Director

Law and Psychiatry Division
Department of Psychiatry
Yale University School of Medicine
New Haven, Connecticut

A Pro Se Guilty Plea in a Death Penalty Case Does Not Warrant Additional Competency Evaluation

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In *Noetzel v. State*, 328 So.3d 933 (Fla. 2021), the Supreme Court of Florida reviewed Barry Noetzel’s *pro se* guilty plea to a capital offense. The court held that the trial court did not err in its decisions not to investigate further Mr. Noetzel’s mental state and not to reassess competency following his disclosures of previous psychiatric diagnoses and treatment. The court also ruled that the trial court had acted within its discretion by not forcing counsel on Mr. Noetzel.

Facts of the Case

On June 26, 2019, while serving life sentences, Barry Noetzel and Jesse Bell, both 46 years old, executed their plan to kill another inmate, Donald Eastwood. Mr. Noetzel stabbed Mr. Eastwood in the eyes; Mr. Bell choked him. The two men then went to the dining hall for the second part of the plan to kill Correction Officer Newman. They severely stabbed Officer Newman before being stopped. The investigation uncovered written detailed plans for the attacks.

On arrest, both men waived their *Miranda* rights (*Miranda v. Ariz.*, 384 U.S. 436 (1966)) and provided detailed confessions. On October 29, 2019,