LEGAL DIGEST

Competency to Stand Trial following a Suicide Attempt

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Substantive Evidence Required to Necessitate Constitutional Competency Hearing

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In *State v. Flow*, 886 S.E.2d 71 (N.C. 2023), the North Carolina Supreme Court affirmed the decision of the lower courts, holding that the trial court did not erroneously decline to make further inquiry into the defendant's capacity to proceed with his trial and therefore did not violate the United States Constitution or the North Carolina General Statutes by declining to conduct a formal competency hearing following the defendant's apparent suicide attempt.

Facts of the Case

Scott Flow was charged with rape, burglary, kidnapping, sexual offense, possession of a firearm by a felon, and violation of a protection order for events that took place in Dallas, North Carolina between May 26 and May 27, 2018. Trial proceedings began on December 9, 2019. Two colloquies were conducted by the trial judge with the defendant on December 13 and December 16, 2019 to determine whether the defendant was freely and intelligently making the decision to not testify or present other evidence in his defense. After the second colloquy, the jury heard closing arguments from both sides. The trial proceedings were then concluded for the day.

On the morning of December 17, 2019, Mr. Flow jumped from a mezzanine level within the jail. He sustained injuries to his leg and ribs. Subsequently, the defense challenged the defendant's competency to proceed with trial under N.C. Gen. Stat. § 15A-1002 (2009). Following a recess from the trial proceedings, both the prosecution and defense were given an opportunity to present their findings regarding the events that transpired on December 17, 2019. The prosecution argued for Mr. Flow's absence to be considered voluntary. The state further contended that Mr. Flow's actions may not have been suicidal in nature. In contrast, defense counsel expressed the opinion that proceeding without Mr. Flow in attendance would infringe on his due process rights as well as his right to jury trial. The trial court's analysis focused on whether Mr. Flow's actions were voluntary, rather than the question of whether his actions amounted to a suicidal gesture. The trial court concluded that Mr. Flow had voluntarily absented himself from the trial. Consequently, the trial proceedings were allowed to move forward, leading to his conviction.

Mr. Flow appealed his conviction to the court of appeals, arguing that the trial court had erred in denying defense counsel's motion to conduct an inquiry into his capacity to proceed with trial. Mr. Flow based his arguments on N.C. Gen. Stat. § 15A-1001 (2015) N.C. Gen. Stat. § 15A-1002 (2009), and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. The court of appeals found there had been no error by the trial court. Mr. Flow then appealed to the Supreme Court of North Carolina.

Ruling and Reasoning

In a two to one decision, the Supreme Court of North Carolina held that the trial court did not erroneously decline to make a further inquiry into Mr. Flow's capacity to proceed with trial following the events of December 17, 2019. The court found that the initial motion by defense counsel was satisfactory in initiating the hearing procedures defined by N.C. Gen. Stat. § 15A-1002 (2009). But, the majority said that this statute offers only "sparse guidance regarding the procedural and substantive requirements of the competency hearing" (*Flow*, p 85). The majority noted that, in this instance, the trial court conducted a hearing in which the court received testimony regarding the events of December 17, 2019 and heard arguments from both the prosecution and the defense. The majority said that this examination was "statutorily sufficient because defendant was provided an opportunity to present any and all evidence relating to his competency that he was prepared to present" (*Flow*, p 86). Specifically, the trial court

permitted defense counsel to visit Mr. Flow in the hospital and collect evidence relevant to his nonattendance in court, which the defense deemed appropriate for presentation.

The court further explained that, upon reconvening, the trial court had sought evidence concerning Mr. Flow's mental health history, any observations of prior instances of his experiencing mental or emotional disturbance, and details about Mr. Flow's behavior preceding and during his apparent suicide attempt. After reviewing all the available evidence, the trial court determined that, at the time of the alleged suicide attempt, Mr. Flow had the capacity to proceed with trial. In addition, the trial court concluded that, in regard to the events of December 17, 2019, Mr. Flow had acted in a voluntary manner and had thereby waived his right to be present at all stages of his trial. The majority acknowledged that the trial court did not consider whether Mr. Flow had attempted suicide by his jump. But, the court found that this did not indicate a disregard for the defendant's capacity to proceed at trial. The court said, "suicidality does not automatically render one incompetent; conversely, a defendant may be found incompetent by way of mental illness without being determined to be suicidal" (*Flow*, p 86). Hence, the court found that the trial court was not obligated to make a distinct decision as to whether Mr. Flow's actions constituted a suicidal gesture.

With regard to the Due Process Clause argument presented by Mr. Flow, the court noted that the requirements for a constitutional competency hearing are more extensive. But, these requirements are activated only when the trial court is confronted with substantive evidence indicating the defendant's incompetence. The defense highlighted three points which it argued demonstrated Mr. Flow's incompetence: his prearrest actions which included erratic behavior (e.g., rants about being the target of gunshots, smashing of his own wristwatch without any apparent cause), the atypical use of a racial slur, and the nature of his crimes; his suicide attempt; and testimony which showed Mr. Flow was heavily medicated and experienced difficulty communicating in the hospital following his suicide attempt.

The court dismissed the third category as it concerned post-attempt events. In addition, the court emphasized that the second category on its own did not establish Mr. Flow's incompetence. Finally, the court concluded the evidence under the first category was insufficient to demonstrate substantial evidence of Mr. Flow's incompetence. Furthermore, the trial court had the opportunity to personally observe and engage with Mr. Flow throughout the trial. The court considered the evidence presented by the defense during the hearing and concluded that none of this evidence suggested either a history of mental illness or an inability to engage with or comprehend legal proceedings before the suicide attempt. Consequently, there was no substantial evidence warranting further investigation by the trial court.

Discussion

Flow underscores the importance of forensic psychiatrists' understanding the criteria utilized by courts in their respective jurisdictions to determine whether an inquiry into a defendant's competence to stand trial is warranted. It emphasizes the distinction between the standards for competence to stand trial and the threshold that must be met before a court must order such an evaluation. The court in this instance held that a standard requiring the presence of substantial evidence of lack of capacity to proceed with trial is appropriate before requiring the trial court to order a formal evaluation of competence to stand trial. In *Flow*, the court concluded that insufficient evidence of lack of capacity to proceed with trial was present to require a formal inquiry into Mr. Flow's competence to stand trial.

Forensic psychiatrists must be well-versed in the standards that trigger an inquiry into incompetence to stand trial in their jurisdiction. For example, in *Flow*, the Supreme Court of North Carolina noted the presence of a mental illness alone does not automatically signify that a defendant is incompetent to stand trial. While the existence of a mental illness may affect an individual's cognitive and emotional functioning, it does not necessarily render the individual incapable of meeting the legal standard of competency to stand trial.

This case further highlights that a defendant's suicide attempt, though indicative of a significant level of distress, should not be automatically equated with incompetence to stand trial. Similarly, a defendant's commission of a heinous and irrational crime does not justify a presumption that the defendant lacks the competence to stand trial. The present case serves as a reminder that forensic psychiatrists must avoid equating the presence of maladaptive behaviors (e.g., a suicide attempt), the mere presence of a mental

disorder, or the nature of the alleged crime with a defendant's lacking the competence to stand trial. Instead, forensic psychiatrists must always carefully evaluate how the symptoms of a mental illness affect the specific elements outlined in legal standards defining competence to stand trial. This approach ensures a fair and accurate assessment of a defendant's competence to stand trial within the legal framework.

Failure to Protect Requires Subjective Knowledge of Risk

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Qualified Immunity Applies to Officials Who Do Not Have Subjective Knowledge of Inmate's Suicide Risk

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In *Edmiston v. Borrego*, 75 F.4th 551 (5th Cir. 2023), a plaintiff alleged that jail officials violated a pretrial detainee's right to protection, under the Eighth and Fourteenth Amendments, from suicide. The defendant officials moved to dismiss the case on the basis of qualified immunity. The U.S. Court of Appeals for the Fifth Circuit held that although the detainee was not screened for suicide risk at the time of intake, the plaintiffs did not demonstrate that the officials had the requisite subjective knowledge of the detainee's risk of suicide, and this subjective knowledge is necessary to demonstrate a failure to protect.

Facts of the Case

In Culberson County, Texas, on the night of July 6, 2019, decedent John Schubert called a jail official (Oscar Borrego) and said someone was trying to kill him (Schubert). That night, Mr. Schubert made similar statements to an off-duty trooper and to someone inside a hotel. The trooper and an individual at the hotel notified Mr. Borrego. Mr. Borrego instructed Sheriff's Deputy Melendez to respond. Per the Deputy's statement, when apprehended, Mr. Schubert "appeared nervous and said that people were trying to kill [him]" (*Edmiston*, p 555). Mr. Schubert did not provide his correct birth year. To identify him, Deputy Melendez brought Mr. Schubert to a Border Patrol Station. There the Deputy determined Mr. Schubert had a warrant for parole violation. Deputy Melendez arrested Mr. Schubert and brought him to the jail at 12:14 am on July 7. Mr. Schubert told Mr. Borrego and another official, Sheriff Carrillo, that he had left El Paso, had a history of drug abuse, and had left a halfway house in Horizon after "they were mean to him at the facility, and . . . he had had enough" (*Edmiston*, p 556).

The jail officials did not complete an intake mental health screening as specified by the Texas Commission on Jail Standards (TCJS). Mr. Schubert was not wearing a shirt and said this was because his shirt was wet. He was given correctional attire and placed in a cell at 1:42 am. He again told Deputy Melendez that "someone was trying to kill him" (*Edmiston*, p 556). Mr. Borrego gave Mr. Schubert a mattress. Suicide precautions were not initiated. At 1:48 am, Mr. Borrego asked another jail staff member (Ms. Zambra) to check Mr. Schubert's driver's license and criminal history. She did so. She also requested a report of his medical history, which returned as "no match." At 2:42 am, she checked on the jail's detainees. At Mr. Schubert's cell, she observed him half-kneeling with a sheet around his neck. The other end of the sheet was tied to a shelf. He was nonresponsive. After being notified, Sheriff Carrillo arrived within minutes, began providing CPR, and instructed Ms. Zambra to call emergency services. Emergency personnel arrived at 2:59 am. Mr. Schubert was pulseless, not breathing, and was pronounced dead. His manner of death was listed as suicide caused by asphyxia from hanging.

The plaintiffs, administrator of Mr. Schubert's estate and heirs, claimed Mr. Borrego, Sheriff Carillo, and Deputy Melendez violated Mr. Schubert's Eighth and Fourteenth Amendment rights by failing to protect him from suicide. The defendants filed motions to dismiss based on qualified immunity. The district court denied the motions in 2022 and ruled that based on Mr. Schubert's "fragile psychological state; his statements regarding an unidentified assailant; and [officials'] knowledge about the risk of jail suicides,"

the defendants had the necessary subjective knowledge of an "obvious" risk of suicide or serious harm (*Edmiston*, p 557). The court stated that if an official has subjective knowledge of suicide risk and gives a detainee a ligature such as loose bedding, this act constitutes deliberate indifference and nullifies the official's qualified immunity. The defendants appealed.

Ruling and Reasoning

Citing prior case law, the Fifth Circuit Court of Appeals stated that "pretrial detainees have a Fourteenth Amendment right to protection from a known risk of suicide" (*Converse v. City of Kemah,* 961 F.3d 771 (5th Cir. 2020), p 775). If an official is aware of facts (including circumstantial evidence) from which they infer substantial risk of a detainee's suicide exists and fail to take actions to mitigate the risk, that would constitute deliberate indifference. But, the official is not liable if they "merely 'should have known' of a risk" (*Converse,* p 775). The court stated that officials are entitled to qualified immunity unless their conduct violates a "clearly established [statutory or] constitutional right" (*Converse*, p 774, and *Mace v. City of Palestine*, 333 F.3d 621 (5th Cir. 2003), p 623). To overcome qualified immunity, a plaintiff must demonstrate that "every reasonable official would have understood that what he is doing violates that right" (*Est. of Bonilla v. Orange Cnty.*, 982 F.3d 298 (5th Cir. 2020, p 306, quoting *Ashcroft v. Al-Kidd*, 563 U.S. 731 (2011), p 741).

In *Edmiston*, the Fifth Circuit noted the plaintiffs' allegations that the jail officials did not provide Mr. Schubert with a mental disabilities and suicide screening on admission as required by the Texas Commission on Jail Standards (TCJS) (37 Tex. Admin Code § 273.5 (2013)), and that there had been a prior suicide at the same jail. In response, the court stated, "there is no independent constitutional right to suicide screening" (*Edmiston*, p 560), citing the Supreme Court's precedent that "no decision of this Court establishes a right to the proper implementation of adequate suicide prevention protocols" or "even discusses suicide screening or prevention protocols" (*Taylor v. Barkes*, 575 U.S. 822 (2015), p 826). According to the Fifth Circuit, even if the plaintiffs could assert a right to screening, deliberate indifference on the part of the officials would still require that they have subjective knowledge of Mr. Schubert's suicide risk.

The court analyzed each defendant's right to qualified immunity based on whether they had the requisite subjective knowledge. The court cited precedents explaining the standard for subjective knowledge based on evidence such as a witnessed suicide attempt (*Cope v. Cogdill,* 3 F.4th 198 (5th Cir. 2021)), hearing an individual make suicidal statements (*Converse,* p 776), or knowing that an individual had depression and that collateral information indicated the individual was suicidal (*Hyatt v. Thomas*, 843 F.3d 172 (5th Cir. 2016)). The court found that while Mr. Borrego, Sheriff Carrillo, and Deputy Melendez all knew Mr. Schubert had repeatedly expressed that someone was trying to kill him, there was no evidence he had behaved or spoken in a way indicating he was suicidal or at risk of self-harm. The court also concluded that knowing Mr. Schubert had a history of drug use and being in a halfway house would not have clearly led officials to infer that Mr. Schubert was at risk of suicide.

The court ruled the plaintiffs did not demonstrate the defendant officials had subjective knowledge that Mr. Schubert posed a substantial risk of suicide. The court held that the three officials were entitled to qualified immunity. Whether they responded with deliberate indifference was therefore not a concern. The lower court's ruling was vacated, and the defendants' motion to dismiss the failure-to-protect claims was granted.

Discussion

This decision is a reminder for forensic psychiatrists to understand the applicable standards in a specific jurisdiction (from both statute and case law) when asked to assess deliberate indifference by custody officials. Carceral facilities have a responsibility to ensure that detainees' basic human needs are met. This includes making sure that detainees have access to adequate medical and mental health care. Unless appropriately assessed, detainees with mental disorders are at risk of these problems' (including self-harm ideation) going undetected. The ruling in *Edmiston* utilized a "reasonable official" standard for determining whether a detainee's suicide risk is elevated and requires a custody official to take mitigating action. The court reiterated that for claims of deliberate indifference in jail suicide prevention, the "reasonable official" standard is a subjective one.

The Fifth Circuit acknowledged that the TCJS specifies that inmates must have mental health and

suicide prevention screening on admission. The court also noted that the TCJS had cited the jail (both before and after Mr. Schubert's death) for violating requirements for intake screening and suicide prevention training. But, while the Fifth Circuit stated that the defense of qualified immunity is overcome if an inmate's constitutional or statutory rights are violated, the court held there is not a constitutional right to suicide screening. Therefore, the court has distinguished between suicide prevention and other services that are constitutionally required in a carceral setting. Specifically, the Fifth Circuit appears to have determined that jail officials are not necessarily required to assess at intake whether or not an inmate has suicidal thoughts, plans, or intent.

This ruling could have substantial impacts on suicide screening as well as suicide prevention efforts in carceral settings. By emphasizing a subjective standard for deliberate indifference and discounting the guidelines set forth by the TCJS, the ruling creates a tension between efforts to improve suicide prevention strategies and officials' interest in preserving the defense of qualified immunity. For instance, the Texas Administrative Code requires jails to provide training to staff regarding mental health and suicide prevention. Such training would position staff to better recognize inmates at risk of suicide and to intervene to reduce such risk. But, an official who participates in such training and does not follow the guidance could be at greater risk for claims of deliberate indifference. Moreover, one might argue that the knowledge gained from such training could limit one's ability to employ a qualified immunity defense against such claims. Resolution of this tension to improve care in carceral settings will require collaboration between courts, clinicians, and regulatory bodies.