SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK
EX REL. LISA FREEMAN, ESQ.
on behalf of

ALL YOUTH IN JUVENILE DETENTION,

Petitioners,

-against-

DAVID HANSELL, Commissioner,
New York City Administration for
Children's Services,

Respondent.

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DECISION/ORDER
Index No. 451130/2020

MICHAEL L. KATZ, J.:

Petitioners are youth between the ages of 13 and 17 who are being detained in secure and non-secure detention centers operated directly by or on behalf of the New York City Administration for Children's Services ("ACS") during the pendency of their juvenile delinquency cases.

The Petition for Writ of Habeus Corpus, brought against respondent David A. Hansell, in his official capacity as Commissioner of ACS, seeks the immediate release of petitioners pursuant to CPLR § 7002, which provides, in relevant part, that "[a] person illegally imprisoned or otherwise restrained in his liberty within the state, or one acting on his behalf, ... may

petition without notice for a writ of habeus corpus to inquire into the cause of such detention and for deliverance."

This Court held a hearing (via Skype) on April 6 and 7, 2020.[1] Written closing statements were submitted by both sides on April 15, 2020.

Although the Petition alleges that 22 youth were, upon the filing of the proceeding, in juvenile detention, petitioners' counsel indicated at the commencement of the hearing that it represented only five individuals ("John Does 1 through 5").

John Doe 1 was released on consent, with the approval of the Family Court, on the first day of the hearing.

This Court heard: (i) testimony relating to John Doe 2, who was being detained at the Sharp House, a non-secure detention residence located in Bronx County, which is operated by Good Shepherd Services pursuant to a contract with ACS; (ii) oral argument with respect to respondent's contention that this Court lacks jurisdiction to adjudicate petitioners' claims with respect

[1] Petitioners' counsel, The Legal Aid Society, waived the presence of her clients.

to John Does 3 and 4, since none of the charges for those individuals are pending in New York County[2] (*see,* CPLR 7002[5]; *Matter of Welch v Farkas,* 2013 WL 363076 [4th Dep't], *app. dism'd,* 21 NY3d 940 [2013]); and (iii) testimony relating to John Doe 5, a 13 year old boy who has been charged with Murder in the 2nd Degree under Penal Law § 125.25(3) and is currently detained in Hall "C" at Crossroads Juvenile Center ("Crossroads"), a secure detention facility located in Kings County.[3]

Pursuant to Stipulation dated April 15, 2020, petitioners withdrew the Petition with respect to John Does 1, 2, 3 and 4. This decision thus relates solely to John Doe 5, who has been in secure remand since December 13, 2019.

Background

The Hon. Carol Goldstein of the Family Court, New York County, issued an order entered on or about January 2, 2020, directing that John Doe 5 be held in secure remand. On or about January 29,

[2] The charges are pending in Kings and Queens Counties, respectively.

[3] Since the filing of the Petition, approximately 17 adolescents have been (or are in the process of being) transferred from Horizon Juvenile Center ("Horizon"), a secure detention facility in the Bronx, to Crossroads. However, Hall "C", a 15-bed unit, currently houses only 8 youth, including John Doe 5, and thus remains at just over 50% capacity.

2020, John Doe 5 sought a stay of, and leave to appeal, that order, but the relief sought was denied by the Appellate Division, First Department.

By Order Directing Detention dated March 11, 2020, Judge Goldstein determined that John Doe 5's continued remand was necessary, pursuant to Family Court Act § 320.5, finding that available alternatives, including conditional release, would not be appropriate and that there was a serious risk that John Doe 5 would, before the return date, commit an act which if committed by an adult, would constitute a crime. Judge Goldstein further found that a return of John Doe 5 to his home would be contrary to his best interests.[4]

By Order dated April 1, 2020, Judge Goldstein continued John Doe 5's remand pending the commencement of his fact-finding hearing which is scheduled to commence on June 25, 2020.

Petitioners contend that John Doe 5's detention is illegal on the ground that it violates his due process rights under the due process clauses of the New York State and United States

[4] Petitioners presented no evidence to contradict Judge Goldstein's findings.

Constitutions because John Doe 5 is exposed at Crossroads to the deadly threat caused by the COVID-19 pandemic.[5]

They argue, *inter alia,* that ACS has failed to: (i) ensure that all staff and youth at Crossroads, including John Doe 5, have access to adequate cleaning and sanitation supplies; (ii) instruct youth on appropriate hygiene matters such as proper hand washing; and (iii) mandate appropriate social distancing practices.[6]

Respondent contends that: (i) John Doe 5's detention is lawful and does not violate his constitutional rights. *See, Schall v Martin,* 467 US 253 (1984), in which the United States Supreme Court held that the section of New York Family Court Act authorizing pretrial detention of an accused juvenile delinquent based on the finding that there was "serious risk" that the juvenile "may before the return date commit an act which if committed by an adult would constitute a crime" did not violate the due process clause; and (ii) ACS has implemented appropriate risk mitigation measures, including enhanced comprehensive cleaning and sanitizing

[5] John Doe 5 has a private bedroom, but must share common areas, including the cafeteria, living areas, bathrooms and recreational areas, with other juveniles.

[6] There is no allegation in the Petition, nor was any proof presented, that John Doe 5 suffers from any underlying medical condition which places him at greater risk than similarly situated youth.

procedures, to ensure the health and safety of the youth in ACS's custody, including John Doe 5, to the greatest extent possible.

Petitioner called the following witnesses to address the conditions at Crossroads: (i) Derek Robinson, a Vice President of the Social Services Employees Union Local 371 for Grievances and Legal Services; (ii) Lisa Sydorowitz, who is employed as a Tour Commander at Crossroads; and (iii) Tyrone Washington, who is employed as a Tour Commander with ACS's Division of Youth & Family Justice ("DYFJ").

Respondent called Charles Parkins, ACS's Deputy Associate Commissioner for Detention Services.

Derek Robinson

Mr. Robinson testified that the union "filed complaints years ago" regarding the air quality at both Crossroads and Horizon. Petitioners, however, did not offer any corroborating evidence showing that the air quality violates any applicable laws or standards.[7]

[7] Moreover, the union's prior complaints apparently concerned what Mr. Robinson described to be the "warm and muggy" conditions at Crossroads. However, Mr. Robinson acknowledged on cross-examination that the air conditioning units at Crossroads were replaced six months ago.

Mr. Robinson raised concerns that members of his union who work at Crossroads have not, to his knowledge, been instructed by ACS to take the temperature of the staff or youth.

However, Mr. Robinson acknowledged that he had received a copy of a document issued by ACS on or about March 25, 2020 setting forth pandemic related protocols for detention facilities, which mandate, among other things, that medical staff immediately assess the youth for signs and symptoms of COVID-19 upon entering the facility. He claimed, however, that, to his knowledge, the document has not been widely distributed to the staff.[8]

Mr. Robinson testified during his direct examination that no instructions have been given to the staff to report that they are symptomatic if they themselves should display COVID-19 related symptoms, but acknowledged during cross-examination that the staff have been told to stay home if they feel ill or exhibit any symptoms.[9]

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[8] Neither party offered a copy of this document into evidence.

[9] Approximately forty staff members at Crossroads have either tested positive for the virus or stayed home because they displayed symptoms or were exposed to someone that tested positive or displayed symptoms. Sadly, one staff member, a case manager assigned to Hall "C", recently passed away after

Mr. Robinson testified that ACS, to his knowledge, has failed to issue any instructions about handwashing for either the youth or staff at Crossroads, but later acknowledged during cross-examination that the staff at Crossroads were given instructions at roll call meetings held during the prior week regarding sanitation protocols and social distancing requirements.[10]

Mr. Robinson testified that it was his understanding that institutional aides are being deployed to clean the facility, but expressed his concern that "it's not enough institutional aides to realistically clean the entire building ... I observed three ... institutional aides for the weekend, which will make it impossible for them to clean the entire area."

He further testified that "[t]he institutional aides also were not given the proper equipment to clean Crossroads," although he indicated that the union distributed surgical masks to the staff on or about Thursday, April 2, 2020.

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reportedly contracting COVID-19. Fortunately, no youth being detained at Crossroads has, to date, reportedly fallen ill from the Coronavirus.

[10] He did not recall whether or not the workers received instructions at the roll call meeting he attended regarding appropriate hygiene.

According to Mr. Robinson, ACS has failed to provide the institutional aides with "overalls, which are required to clean the infectious disease areas, such as a hall for a kid who possibly had symptoms or possibly was tested positive. They didn't have the proper equipment for that. Also for that particular cleaning there is suppose[d] to be a training, and they are institutional aides, and they are not trained as well to do that type of infectious disease cleanup." He also testified that ACS has failed to provide disinfecting liquids and gloves to the staff at Crossroads.

However, Mr. Robinson admitted on cross-examination that he has not been to Hall "C", where John Doe #5 is being detained, in seven years and thus has no firsthand knowledge regarding the current conditions in that section of the facility. He further conceded that he had not been inside any portion of Crossroads in the last week to observe whether or not disinfecting liquids have now been made available.

Mr. Robinson testified as to his concern that there are "no particular protocols" in place for cleaning the vans used by Court Services to transport youth to and from the Criminal Courthouse at

100 Centre Street.[11] According to Mr. Robinson, "they don't have a designated staff to clean the vehicles." However, Mr. Robinson (who this Court found to be less than a forthcoming witness) acknowledged on cross-examination that the Court Services staff have been given instructions to clean equipment and vehicles.

Lisa Sydorowitz

Ms. Sydorowitz, a Tour Commander at Crossroads, testified that she worked a double shift on Friday, April 3, 2020. She was thus in a better position than Mr. Robinson to testify as to the current conditions and protocols in place at the facility, and generally presented as a straightforward and honest witness.

She testified that the staff at Crossroads has been provided with "hand sanitizer and wipes, some cleaning ... solutions that we use to clean the bathrooms, but that's about it." She further testified that ACS has "given us gloves. They said that we were getting some masks at some point. As of the last time I was in the building on Friday, they had masks and they provide us with hand sanitizer and again like I said the Lysol wipes."

[11] During his direct examination, Mr. Robinson misleadingly implied that the vehicles operated by Court Services were also used to transport youth from non-secure facilities to obtain medical care at Crossroads. On cross-examination, however, Mr. Robinson admitted that separate vans are used for that purpose.

According to Ms. Sydorowitz, "[t]he wipes are to use to wipe down the radios, the TVS, the door handles. I mean whatever they needed, they felt they needed to wipe down the phones, what have you, that's what they were given the wipes for."[12] She testified that the staff was told to clean "as often as you felt need be," but were not given detailed instructions or, to her knowledge, any written protocols.

She testified that "not all" staff members have masks, although she understood that masks had recently been delivered to the facility. She further testified that some staff members (but not youth) have started wearing masks at Crossroads.

Ms. Sydorowitz testified that when the residents "came to recreation they could no longer play basketball. They could work out, but they were to stay in the gym. They were not allowed to congregate together. That was the last thing I was told with the social distancing and the residents."

[12] She later clarified that housecleaning personnel also come in to clean the bathrooms when the residents are off the hall.

However, according to Ms. Sydorowitz, social distancing is "not really" being enforced in the housing areas. She testified that she has noticed residents "playing cards together, watching movies together, doing homework together. So I didn't really see that enforcement there." Ms. Sydorowitz acknowledged on cross-examination that one of *her* responsibilities is to instruct staff members to enforce the social distancing rules.

Ms. Sydorowitz also acknowledged that signs have been posted in bathrooms at the facility offering guidance regarding proper handwashing protocol and that signs have been posted throughout the facility detailing the symptoms of COVID-19. She further testified that she is aware that a protocol is in place wherein any youth that displays symptoms is to be immediately directed to the medical office.

In person visitation of residents by family members has understandably been suspended, but Ms. Sydorowitz testified that the minimum amount of time each youth can use the phone to call family members has consequently been increased, and each resident can earn additional time through good behavior.[13]

[13] Family members are also free to initiate additional phone visitation by reaching out to a resident's case manager. This

Tyrone Washington

Mr. Washington, a tour commander in the Court Services transportation unit, testified that he is aware that the interior transport van currently being used to transport youth to 100 Centre Street was sanitized last week with Lysol and Clorox wipes, at the direction of Susan Campos, the Assistant Commissioner of the unit. He also reported that staff members were instructed to thoroughly clean the Court Services office the prior week.[14]

Mr. Washington also testified that ACS has provided guidance to him and the staff that he supervises to ask particular questions of the youth brought by the New York Police Department to the Family Court detention room to determine if they are symptomatic.

He further testified that "[o]ur commissioner is very thorough. So he sends ... e-mails out from the office. But because our department staffing does not sit assigned to a desk with a computer, ... we often ... at roll call ... print the literature out. And as more information was being provided, we just give it

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appears to this Court to be, under the circumstances, a reasonable accommodation.

[14] Mr. Washington, who is recovering from COVID-19, has not been at the facility since March 20, 2020.

out to the staffing." Specifically, the staff was provided "with the basic information of wash your hands. Don't touch your face," and to use an alcohol-based sanitizer, soap and water.

According to Mr. Washington, information was also provided through the central office that staff should stay home and contact the agency if they feel sick.

Charles Parkins

Deputy Associate Commissioner Charles Parkins, who has worked in juvenile detention facilities in six different states since 1996 and currently oversees both Crossroads and Horizon, credibly testified as to his efforts to ensure the safety of the residents and staff at Crossroads.

He indicated that he has been in "regular communication" with Assistant Commissioner Campos and other members of the facility leadership, including Darlyce Smith, Jamel Nedderman, the Executive Director for Operations at Crossroads, and Marabel Thevenin, the Acting Executive Director for Administration at Crossroads, regarding the cleanliness of the facility and vehicles, "on a fairly daily basis now for ... probably four weeks."

He testified that they "have instructed the facilities supervisory staff to the management to relay information to staff about being diligent around personal hygiene, around making sure kids remaining distant from each other, make sure the staff are remaining socially distant from each other as well as ensuring that, you know, there is constant cleaning going on."

He further testified that they "have also discussed the requirement to sanitize TVs, radios, television remotes. We have discussed basketballs. In fact, we have had to pull basketballs back from the kids, because there was some issue with kids passing basketballs back and forth. So it is a constant, it's kind of like Whac-A-Mole in terms of determining who and what issues need to be addressed as we kind of think about things we weren't thinking about four weeks ago."

Mr. Parkins represented that "[s]taff have been instructed to oversee cleaning as it occurs on the living unit. When they are not on the living units with the youth, institutional aides are instructed to go on to living units to provide a more thorough sanitizing cleaning that would occur with solutions that ... we wouldn't use with the kids on the unit."

In addition, "the institutional aides have been instructed to clean the restrooms along with the regular living units. The youths pick up after themselves as we referred to as tiding up. So the youths have been instructed to tidy up after themselves, but the staff and cleaning staff actually do the cleaning."

Mr. Parkins testified that he has issued instructions (which are to be disseminated through Mr. Nedderman at the daily roll call meetings) for the housing areas (including the bathrooms, the living area and the common area) to be cleaned twice per tour during the day and one per tour at night, for the cafeteria area to be cleaned after each group of youth goes down to have their meals, and for the recreation areas to be cleaned after each use.

Mr. Parkins testified that he has also "given instructions to Susan Campos to instruct her staff to clean the van. That includes sanitizing and wiping the areas down" after each use. Mr. Parkins did, however, acknowledge during cross-examination that he did not provide any specific instruction about how that cleaning should take place or by whom.

Mr. Parkins represented that he has also been in direct communication with the housekeeping supervisor, Pablo Rodriguez,

who directly oversees the institutional aides, "specifically to reiterate issues around cleaning protocols at Crossroads."

He further testified that he has relayed instructions that staff and youth stay 6 feet apart "at all times."[15]

Mr. Parkins testified that he is part of a group that is procuring personal protective equipment ("PPE"), including 500 cloth masks "to be delivered to the facility this week," and N95 masks. It is Mr. Parkins' understanding that masks are currently available to staff who want to use them at the facility.[16] He testified that he has given specific guidance to Jamel Nedderman to make sure that the staff understands that they are allowed (although not required) "to wear those masks, [and that] if they want to wear their own masks or face coverings they are allowed to do so."[17]

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[15] John Doe 5 receives administrative one-on-one supervision for the child's protection. Mr. Parkins clarified that the staff member specifically assigned to exclusively supervise John Doe 5 must follow the same six foot rule.

[16] Mr. Parkins acknowledged that the union has also distributed masks to the staff, as testified to by Mr. Robinson.

[17] Mr. Parkins testified that "[i]t is up to [the staff members'] discretion, unless they're interacting with someone who is symptomatic, then they are required to wear full PPE, which includes gloves, gowns and an N95 mask."

Finally, Mr. Parkins testified that he has "given guidance to [his] direct reports that anybody who is displaying any symptoms whatsoever should stay home," and that anyone who shows up to work who is displaying symptoms be sent home.

Mr. Parkins testified that he follows up with Mr. Nedderman to ensure that his instructions are being implemented at the facility level. He indicated that "there is constant follow up that happens so we can understand how the staff is receiving the information." He acknowledged, however, that he had not been physically present at Crossroads in over two weeks, and has only limited first-hand knowledge (through cameras which can be viewed through his desktop computer) regarding whether his instructions, including social distancing guidelines, are being consistently followed.

Discussion

In order to state a cognizable claim for a violation of John Doe 5's rights under the due process clauses of the Fourteenth Amendment and the State Constitution based on a risk of serious medical harm, petitioners "must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs." *Estelle v Gamble,* 429 US 97, 106 (1976). *See also, Darnell v Pineiro,* 849 F3d 17, 29 (2017); *People ex rel.*

Hall v LeFevre, 60 NY2d 579, 580 (1983); *People v Muro*, 208 AD2d 654 (2nd Dep't 1994); *People ex rel. Kalikow v Scully*, 198 AD2d 250 (2nd Dept 1993).

The New York Court of Appeals has held that

> [t]his "deliberate indifference" standard is comprised of an objective component and a subjective component (citation omitted). The objective component of the test examines whether the deprivation of medical care was "sufficiently serious" (*Farmer [v Brennan]*, 511 US [825] [1970] at 832; additional citation omitted). This objective component in turn requires the examination of two factors: First, "whether the prisoner was actually deprived of adequate medical care" (citation omitted), and second, "whether the inadequacy in medical care is sufficiently serious" (citation omitted). Thus, the objective component of the standard is essentially a reasonableness inquiry. In other words, the question is whether the response of prison officials to the inmate's medical needs was objectively reasonable under the circumstances (citation omitted).
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> The subjective component of the deliberate indifference standard inquires whether "the charged official ... act[ed] with a sufficiently culpable state of mind" (citation omitted). The Second Circuit has explained this subjective requirement as follows:
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> > "In medical-treatment cases not arising from emergency situations, the official's state of mind need not reach the level of knowing and purposeful infliction of harm; it suffices if the plaintiff proves that the official acted with deliberate indifference to inmate health. Deliberate indifference is a mental state equivalent to subjective recklessness, as the term is used in criminal law. This mental state requires that the charged official act or fail to act while actually aware of a substantial risk that serious inmate harm will result" (citations omitted).

Matter of Wooley v New York State Department of Correctional Services, 15 NY3d 275, 282 (2010).

Mere negligence is not sufficient to state a cognizable claim of deprivation of constitutional rights. *See, Estelle v Gamble*, 429 US 97, 106 (1976); *Page v Sharpe*, 487 F2d 567, 569 (C.A.1 1973); *Wilbron v Hutto, 509 F2d 621, 622* (C.A.8 1975).

The instant case does not involve any allegation that John Doe 5 has been deprived of adequate medical care. Nonetheless, the case law set forth in *Matter of Wooley v New York State Department of Correctional Services, supra*, is instructive, as petitioners have demonstrated that John Doe 5 remains at serious risk of medical harm resulting from his continued exposure to the Coronavirus.

Although ACS has taken many sensible actions in response to the unprecedented pandemic, this Court finds that increased vigilance by ACS's leadership is warranted to further mitigate the risk to John Doe 5.

Additional steps which should be immediately implemented include the following: (i) ACS should ensure that necessary personal protective equipment, including masks, are distributed to

and worn by all staff members (even if asymptomatic) to minimize the risk of exposure and transmission of the virus to the youth at the facility, including John Doe 5; (ii) ACS should increase its oversight to ensure that instructions regarding social distancing are consistently and uniformly followed in all areas of the facility, including but not limited to the common and recreational areas; and (iii) ACS should ensure that clearer guidelines, subject to rigorous oversight, are issued for the cleaning of the facility and transport vans.

In particular, it appears that: (a) ACS must ensure that detailed instructions and information regarding relevant protocols are consistently disseminated to all institutional aides (who do not attend the general roll call meetings), including temporary housekeeping individuals who work over the weekend; and (b) ACS must clearly designate those individuals who are responsible for cleaning the Court Services' vehicles.

However, there is no evidence that respondent has acted recklessly or with deliberate indifference. To the contrary, this Court credits Mr. Parkins' testimony that "it's been really chaotic; new information is ... coming out every day, we're combating disinformation or misinformation on a daily basis and trying to clarify what's accurate, what's not accurate. Our ...

intention is to keep staff as healthy as possible, keep kids as healthy as possible. Our guidance is only around those two factors."

Thus, despite this Court's finding that there are areas of deficiency which requires respondent's immediate attention and remedial action, this Court finds that petitioners have been unable to meet their high burden of showing that respondent has been "deliberately indifferent" to John Doe 5's medical needs.

Accordingly, it is

ORDERED and ADJUDGED that the Petition for a Writ of Habeus Corpus is denied.

This constitutes the decision and order of this Court.

Dated: April 17, 2020

Michael L. Katz
J.S.C.

HON. MICHAEL L. KATZ
J.S.C.