for suicide, or for conducting experiments, or for teaching purposes.

The federal magistrate, after a hearing, found Ghane incompetent to stand trial. A few weeks later, a forced-medication hearing was held, with psychiatric testimony that Ghane's Delusional Disorder (persecutory type) had a 10 percent chance of responding. The magistrate found that this satisfied the *Sell* requirement that medication be "substantially likely" to restore competence and issued an order for involuntary medication. Ghane appealed.

Ruling and Reasoning

Under *Sell*, four factors must be established before an order for involuntary medication to restore competence may be issued:

> First, a court must find that. . .[t]he Government's interest in bringing to trial an individual accused of a serious crime is important. . . . Second, the court. . .must find that administration of the drugs is substantially likely to render the defendant competent to stand trial [and] that. . .the drugs [are] substantially unlikely to have side effects that will interfere significantly with the defendant's ability to assist counsel in conducting a trial defense. . . . Third, the court must conclude that involuntary medication is *necessary* to further those interests. . . . Fourth, . . .the court must conclude that administration of the drugs is *medically appropriate*. . . [539 U.S. at 180–2; emphasis in original].

In *Ghane*, the Eighth Circuit stated that "[t]he second and fourth *Sell* factors are at issue here": whether the medication is "substantially likely" to succeed and whether it is "medically appropriate" (392 F.3d at 319). Curiously, the court never mentioned the fourth factor again.

As to the second factor, "substantially likely," the court first noted that the Supreme Court in *Sell* had neglected to address the standard of proof. That omission notwithstanding, a 10 percent chance of success is not "substantially likely" under any standard, the court declared, reversing the order for involuntary antipsychotic medication:

> We cannot accept that a "glimmer of hope" for. . .restored competence rises to the level of "substantial likelihood," as mandated by the Supreme Court's holding in *Sell*. A five to ten percent chance of restored competence cannot be considered substantially likely under any circumstances [392 F.3d at 320].

Discussion

The court cited *United States v. Gomes*, 387 F.3d 157 (2d Cir. 2004), to illustrate the meaning of "substantially likely" to restore competence: 70 percent in *Gomes* is "substantially likely," whereas 10 percent in this case is not. Unfortunately, the court failed to notice, or perhaps simply elected not to acknowledge, that both cases involved exactly the same illness, Delusional Disorder (persecutory type). Unless antipsychotic medications are more efficacious in New England than in Missouri, this surely does not bespeak a coherent deployment of psychiatric expertise in the courtroom.

More troubling is *Sell*'s declaration that forced medication of seriously psychotic criminal detainees should be "rare" (539 U.S. at 180). The Supreme Court noted soothingly that lengthy incarceration or civil commitment can be counted on to keep the citizenry safe, even without (1) a trial to address the psychotic person's legal rights or (2) manifestly appropriate and needed psychiatric care for his or her disease.

Putting aside the problem of applying loose statistics, whether 10 percent or 70 percent, to individual cases, Delusional Disorder is notoriously treatment resistant. It is also, like so many psychiatric disorders, insight resistant, making coerced treatment often the only treatment.

Having forgotten the fourth *Sell* factor, "medically appropriate," the court sees only a "glimmer of hope" for the suicidal Mr. Ghane and, for that reason, blocks treatment. Ironically, the defendant in *Sell* itself, Charles Sell, also suffering from Delusional Disorder (persecutory type), has remained in custody since 1997, incompetent to stand trial and, under the *Sell* criteria, still unmedicated (MacCourt D, Stone AA: Caught in limbo between law and psychiatry. Psychiatr Times 22(7);1, 2005).

Can this make sense in a society that strives to be compassionate, just, and at least logical?

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A Defendant's History of Violence and Psychiatric Pathology Do Not Per Se *Necessitate a Competence Evaluation*

In *People v. Ramos*, 101 P.3d 478 (Cal. 2004), the California Supreme Court considered an appeal contending that the trial court in a capital case had erred

in not ordering a competence hearing at three junctures: (1) before accepting a guilty plea, (2) before the penalty trial, and (3) before sentencing. Ramos claimed that his history of bizarre and violent behavior, hoarding of medications for a putative suicide attempt, instructions to his attorney that he wished to plead guilty and seek the death penalty, as well as a history of psychiatric treatment, required the trial court to stop the proceedings and order an evaluation of competence. The California Supreme Court disagreed, unanimously upholding the conviction and death sentence.

Facts of the Case

William James Ramos had a long history of violent behavior. In October 1976, he damaged property at the home of his former girlfriend, Patricia Mowery, shortly after she had ended their relationship. Arrested for destruction of property and released the same day, he approached Mowery at work and shot her in the chest. She survived. While awaiting trial on the attempted murder charge, Ramos asked his brother to kill her. He also threw urine at a deputy sheriff, was seen pounding his head against the wall of his cell, and reportedly threatened to kill a corrections officer. Following his conviction, Ramos repeatedly threatened and assaulted prison staff during his incarceration.

The present case concerned three murders committed in March 1991. Witnesses reported hearing shouting and gunfire coming from the home of Tonya Karr, the daughter of Ramos' ex-wife. He was seen leaving the scene shortly afterward. When police arrived, they found Karr dead with two bullet wounds in her head. About an hour later, the sister of Ramos' ex-wife was found shot to death. The victim's daughter located the body after hearing an answering machine message in which Ramos stated where the body could be found. The following day, police found the body of Ramos' girlfriend, Janice Butler, in the back of his truck. A search of his home revealed evidence that she had been murdered there two days earlier.

While awaiting trial for these crimes, Ramos assaulted Sheriff's Deputy Sean Dexter as he escorted a jail nurse. He later threatened to kill the deputy. It was also reported that Ramos had hoarded medications in his cell, possibly contemplating a suicide attempt.

Prior to trial, Ramos informed his attorney that he intended to enter a guilty plea and request the death penalty and that he would request new counsel if his attorney did not comply. Defense counsel so informed the court and requested a competence hearing based on Ramos' "prior criminal activity," his assaultive behavior while incarcerated on the pending charges, and his hoarding of medications. The court denied the request and allowed Ramos to plead guilty, observing: "I have had a chance to consider . . .the demeanor of the defendant. . .I have no reason whatsoever to question his competency to enter [a guilty plea]" (101 P.3d at 489).

On appeal, Ramos contended that the trial court had failed to fully consider his "death wish" in denying his attorney's request for a competence hearing. Ramos argued that "a capital defendant whose stated goal is lethal injection will never be in a position to assist his trial counsel in presenting a defense" (101 P.3d at 490). He further contended that the trial judge erred in relying on his "demeanor" in court and instead should have ordered a psychiatric evaluation. Ramos also argued that it was an error not to halt the penalty trial for a competence hearing and not to hold such a hearing prior to pronouncing sentence. In support, he pointed to lay testimony at the penalty trial to the effect that as a child he had been abused by his mother and to defense psychiatric testimony as to a diagnosis of Paranoid Personality Disorder. Ramos contended that his paranoid personality disorder precluded him from admitting that his actions in killing three people were in any way wrong, a premise, as a practical matter, for any mental state defense or mitigation argument. This, then, should have "alerted" the trial court that Ramos could not work effectively with his attorney.

Ruling and Reasoning

The California Supreme Court rejected all of Ramos' incompetence arguments. As to his expressed preference for the death penalty, the court had previously held in *People v. Guzman*, 775 P.2d 917 (Cal. 1988), that a desire to die does not, in itself, constitute substantial evidence of incompetence nor obligate the trial court to order an independent psychiatric evaluation.

The court also felt that Ramos' propensity for violence, history of psychiatric treatment, and "hoarding of medication for an alleged suicide attempt" did not address, let alone raise doubt about, his capacity to assist in his own defense. The court noted that presentation of "merely a litany of facts, none of

which [is] actually related to. . .competence at the time of [the] proceeding. . .” does not suffice to trigger a competence hearing (101 P.3d at 489, interior quotation marks omitted).

The court gave short shrift to Ramos’ objection to the trial court’s mention of his demeanor in denying a competence hearing. When “substantial evidence” arises suggesting incompetence, a psychiatric evaluation and a hearing are mandatory. However, when, as in this case, there is no such substantial evidence, a competence hearing is discretionary and considering a defendant’s in-court demeanor is not an abuse of that discretion.

Finally, the court dismissed the argument that testimony as to Ramos’ paranoid personality disorder met California’s case law standard of a “changed circumstance” or “new evidence casting a serious doubt” on Ramos’ competence. After all, the same psychiatrist explicitly conceded that Ramos’ personality disorder “did not render him mentally incompetent to understand the proceedings or assist the defense in any way” (101 P.3d at 491).

Other arguments raised by Ramos regarding alleged errors in the admission of evidence, jury selection, alleged juror misconduct, and, rather wishfully, the illegality of the death penalty under “international law” were brushed aside.

Discussion

In *Dusky v. United States*, 362 U.S. 402 (1960), the United States Supreme Court defined competence to stand trial: a defendant must have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding. . .and. . .a rational as well as factual understanding of the proceedings against him.” The Court later ruled in *Godinez v. Moran*, 509 U.S. 389 (1993), that *Dusky* applies also to a defendant’s competence to plead guilty. While the burden of proving incompetence generally rests on the defense, the case of *Cooper v. Oklahoma*, 517 U.S. 348 (1996), bars any such burden higher than preponderance of the evidence. California has by case law adopted the *Dusky* test, *People v. Welch*, 976 P.2d 754 (Cal. 1999), and has statutorily enacted the *Cooper* standard (Cal. Pen. Code section 1369(f)).

Neither Ramos’ record of violence nor his putative suicidality implicated the *Dusky* standard. The defense never introduced evidence to suggest psychosis or impaired cognitive abilities. Ramos was within his rights to plead guilty, even if actuated by a desire to be executed. Still, given that California has sentenced more than 750 individuals to death since 1977 but has executed only 12 (see www.deathpenaltyinfo.org and www.corr.ca.gov), it is far from certain that Ramos’ expressed desire will be fulfilled.

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Competence to Stand Trial Does Not Conclusively Equate to Competence to Waive Trial Counsel

In *Brooks v. McCaughtry*, 380 F.3d 1009 (7th Cir. 2004), the Seventh Circuit Court of Appeals addressed the claim that a state court’s finding of competence to stand trial compels acquiescence in the defendant’s motion to proceed to trial without an attorney. Deftly navigating through inconvenient *dicta* in *Godinez v. Moran*, 509 U.S. 389 (1993), the court rejected such automatic linkage.

Facts of the Case

Eddie Brooks received a sentence of life plus 109 years for the murder of a police officer. After exhausting his state court remedies, Brooks argued on federal *habeas* that a trial attorney had been forced on him in violation of his right to waive counsel under *Faretta v. California*, 422 U.S. 806 (1975).

The trial judge had found Brooks competent to stand trial. Brooks argued that the same test governs competence to waive counsel, as *Godinez* seems to say (“. . .we reject the notion that competence to. . .waive the right to counsel must be measured by a standard. . .different from. . .the *Dusky* standard”; 509 U.S. at 399), and therefore that the trial judge had erred in denying Brooks’ motion to represent himself before the jury. The U.S. district court rejected this argument, denying Brooks’ writ.

Ruling and Reasoning

Judge Posner, in a characteristically elegant opinion for the Seventh Circuit Court of Appeals, affirmed, holding that a defendant’s competence to stand trial does not vitiate the court’s duty to evaluate whether the waiver of particular constitutional