

gued that even if the two tests were indistinguishable, the fundamental requirement underlying any notion of competency must still be one of rationality.

Justice Rucker's position is understandable to forensic psychiatrists. The capacity to make a rational choice free from the intrusion of delusional beliefs is substantively different from understanding proceedings and consulting with an attorney when delusions are present. The *Rees* standard offers a broader model than does the *Dusky* for examining an inmate's mental capacity, because it addresses rational decision making.

All three mental health professionals in the current case based their conclusions on whether Mr. Corcoran's mental illness affected his ability to make a rational choice, even though his capacity to understand and to consult was intact. An irrational analysis or purpose within a rational plan is one of the complex characteristics of a paranoid disorder. It is often that characteristic that challenges explanation in state-of-mind defenses when, for a delusional reason, the defendant has carried out a well-orchestrated plan. As evident in this case, that same paranoid characteristic complicates the assessment of competency. Of course, the ultimate complication is that Mr. Corcoran's was a capital case, in which the finality of the decisions and the action is absolute.

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Involuntary Medication Administration Standards for Restoring Competency to Stand Trial

Appellate Court Refines the Sell Criteria for Involuntary Medication of Defendants

The Constitution's Fifth and Fourteenth Amendments liberty interest affords defendants the right to refuse psychotropic medications. For the liberty interest to be overcome, thus allowing such medications to be given involuntarily, four specific criteria laid out in *Sell v. U.S.*, 539 U.S. 166 (2003) must be met; these criteria constitute the so-called *Sell* test.

In *U.S. v. Evans*, 404 F.3d 227 (4th Cir. 2005), the U.S. Court of Appeals for the Fourth Circuit was asked to determine if the "*Sell* test" had been met by the government, thereby allowing the defendant to be medicated against his will for the purpose of rendering him competent to stand trial.

The defendant appealed the trial court's finding that prosecuting him represented an important government interest (*Sell* criteria one), that involuntary medication would significantly further this interest (*Sell* criteria two), and that the administration of the medication was medically appropriate (*Sell* criteria four). The defendant did not challenge the trial court's finding on *Sell* criteria three, the state's need to show that involuntary medication is "necessary" to further the government's interest.

Facts of the Case

Herbert Evans, 74, went to the Rural Development Agency (RDA) office in Wytheville, Virginia, in November 2002, to complain about a housing loan. He became "extremely angry and loud" according to the agent with whom he spoke and allegedly made threats involving terrorist acts with chemical and biological weapons. He was later arrested and charged with a misdemeanor charge of "assaulting, resisting or impeding" a federal employee under 18 U.S.C.A. § 111(a)(1) with a maximum penalty of one year's imprisonment. At his detention hearing, the government's motion for a psychiatric examination was granted, and Mr. Evans was transferred to the Federal Correctional Institution in Butner, North Carolina (Butner). Mr. Evans was evaluated and determined to be incompetent to stand trial, but he refused medications to restore his competency. During the time of his pretrial confinement, the U.S. Supreme Court decided *Sell v. U.S.*, and, under the strictures of this ruling, the government moved to have Mr. Evans medicated against his will for the sole purpose of rendering him competent to stand trial on the misdemeanor charge.

An evidentiary hearing in October 2003 reviewed the reports of the Butner medical staff concerning Mr. Evans' competence to stand trial, an evaluation concerning his need for involuntary medication (IM report), and the report and testimony of Dr. Margaret Robbins, a forensic psychiatrist who testified for the defendant. At that hearing, the government's motion to medicate Mr. Evans involuntarily was denied. The court held that the importance of bringing him to trial was not enough to outweigh his liberty

interest in refusing medication. The trial court noted that the motion for involuntary medication was based on the government's prosecutorial interest in bringing Mr. Evans to trial, not on a claim that Mr. Evans was dangerous. Another hearing was set for January 2004 to determine whether Mr. Evans was dangerous and might therefore continue to be involuntarily confined. Noteworthy at the initial hearing of October 2003 was the observation by the Butner staff that Mr. Evans did not appear to be dangerous.

On the very day of this scheduled hearing, the government filed a new felony criminal complaint against Mr. Evans charging him with violating 18 U.S.C.A. § 115(a)(1) for allegedly "threatening to murder a United States judge, with intent to retaliate against such judge, on account of the performance of official duties." The complaint was supported by an affidavit that alleged that Mr. Evans had told fellow inmates that the magistrate judge was responsible for his continuing to be incarcerated and that he knew where she lived and once released would "get rid of her and her family." The magistrate judge then recused herself from the case and it was reassigned.

The government renewed its motion to have Mr. Evans involuntarily medicated in a March 2004 district court hearing. The district court noted that the facts of the case had changed, with the new charge against Mr. Evans being a felony carrying a maximum penalty of 10 years' imprisonment, thereby enhancing the government's interest in prosecuting Mr. Evans, and so authorized the government to medicate Mr. Evans against his will. Mr. Evans appealed the order to medicate him involuntary to the Fourth Circuit Court of Appeals.

Ruling and Reasoning

During the pendency of the Evans proceedings, the United States Supreme Court decided *Sell v. U.S.*, 539 U.S. 166 (2003). In that decision, the Court laid out the criteria for determining whether there is a sufficiently compelling reason to allow the involuntary medication of a defendant solely for the purpose of rendering him competent to stand trial. *Sell* also sets forth four requirements that the government must meet to medicate: (1) that "important governmental interests are at stake" in trying the defendant, (2) that involuntary medication will "significantly further" this interest, (3) that involuntary medication is "necessary" to further the government's interests, and (4) that the administration of the medication is "medically appropriate," or that it

is in the defendant's "best interest in light of his medical problems." On appeal, Mr. Evans argued that the first, second, and fourth criteria of the *Sell* test had not been satisfied by the government in the district court hearing. Because Mr. Evans did not challenge the third *Sell* criteria on appeal, it was resolved in the government's favor.

The court of appeals affirmed the trial court's finding that the government had an important interest in trying Mr. Evans, as the crime he was accused of, threatening to murder a federal judge, carried a maximum penalty of 10 years' imprisonment. The maximum penalty authorized for a crime is considered relevant to the level of seriousness of the crime under precedent set by *Duncan v. Louisiana*, 391 U.S. 145 (1968). The appellate court held that a penalty of 10 years' imprisonment "is 'serious' under any reasonable standard."

The court of appeals disagreed with the district court's finding that the government had satisfied the second and fourth *Sell* criteria. Fault was found with the IM report, which spoke broadly of the class of "atypical antipsychotics" but did not note the specific medication that was to be given to Mr. Evans. *Sell* requires that the government propose a course of treatment that specifies the drug to be administered, to allow for an evaluation of possible side effects. The appellate court reasoned that since different antipsychotic medications have different side-effect profiles, speaking only of a class of medications is insufficient to meet the requirements of *Sell*.

The court of appeals further noted that while the IM report stated that involuntary medications would significantly further the government's interest by being "substantially likely" to restore Mr. Evans to competency, its omission of the specific medications to be administered amounted to a failure to demonstrate this point. Furthermore, the appellate court noted that the IM report did not address concerns regarding the delusions Mr. Evans was experiencing or whether side effects of the medications might impair Mr. Evans' ability to assist counsel in his defense.

The appeals court further noted that the IM report did not discuss the impact that the medication (or medications) would have on Mr. Evans, given his unique medical history. Since no specific medication was discussed, the appeals court found that there was no way to determine the likely side effects from the medication and how they might affect Mr. Evans' health. Thus, it would be impossible to demonstrate that the proposed treatment is "medically appropri-

ate” with respect to Mr. Evans as an individual. The appellate court therefore found that the government had not satisfied the demands of the fourth criterion of *Sell*. The court of appeals, noting the deficiency of the government’s proofs, vacated the trial court’s findings on criteria two and four of *Sell* and remanded the case to the district court for reconsideration of the motion to medicate.

Discussion

The liberty interest of all persons, including defendants, is closely guarded in the United States. By refusing medications, a defendant is invoking his or her liberty interest. *Sell* set forth specific guidelines under which this liberty interest would be weighed against the opposing government’s prosecutorial interests. This case expands and clarifies the specificity necessary for an involuntary medication treatment plan to meet the criteria set forth in *Sell*.

It is important to point out that under *Sell*, the first criterion (“important interest”) is a legal argument. The remaining three criteria of *Sell* are matters that fall under the purview of medicine, specifically psychiatry. The second criteria of *Sell* specifies that in determining if involuntary medication will “significantly further” the government’s interest in trying a defendant, the court must be able to determine if the proposed medication is “substantially likely” to restore the competency of the defendant and “substantially unlikely” to cause side effects that will interfere with the defendant’s ability to assist counsel. In this case, the court of appeals made clear that *Sell* requires an involuntary medication treatment plan that includes the specific medications to be given, a dosage range, and the likely side effects. The *Sell* criteria also require a showing that involuntary medication would “significantly further” the government interest and that the treatment is “medically appropriate.” The treatment plan must demonstrate consideration for the particular mental and physical condition of the individual who is to be treated.

The appellate court noted that *Sell* allows for more than one treatment plan to be proposed in a motion for involuntary medication. If the initial treatment plan is ineffective for any reason, the government may file a second motion for involuntary medication and propose an alternate treatment plan. The court of appeals also explicitly stated that the government may set forth alternate treatment plans under the initial motion for involuntary medication. The order in which the treatment plans will be applied to the

defendant must be specified, and information regarding how each alternate treatment plan will be applied to the particular defendant must be provided. Given the specificity of treatment planning that *Sell* requires, it can be anticipated that in some cases, as in the instant case, there will be “battles of the experts” concerning the proposed use of competency-restoring medications. The grist of these battles will no doubt involve current questions surrounding the efficacy and safety of psychotropic medications.

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Federal Sentencing Guidelines

Guidelines Are Effectively Advisory, Not Mandatory; Appeals Should Follow the Standard of Unreasonableness

The U. S. Supreme Court concurrently heard two cases—*United States v. Booker*; *United States v. Fanfan*, 543 U.S. 220 (2005)—that asked the Court to “determine whether our *Apprendi* line of cases (*Apprendi v. New Jersey*, 530 U.S. 466 (2000)) applies to the [Federal] Sentencing Guidelines, and if so, what portions of the Guidelines remain in effect.” In *Apprendi* the Court held that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”

Facts of the Case

Freddie J. Booker was charged with possession with intent to distribute 50 g or more of crack cocaine. A jury found Mr. Booker guilty beyond a reasonable doubt after hearing testimony that he had 92.5 g of cocaine in his possession. During the post-trial sentencing hearing, the judge found additional facts by a preponderance of the evidence. These included that Mr. Booker possessed an additional 566 g of crack cocaine and was also guilty of obstruc-