

The majority argued that the cost of imposing this duty is limited, because tort law already requires physicians to warn a patient of side effects, and the public benefits of doing so are great.

This case forces us to rethink our traditional notions of confidentiality and the physician-patient relationship. Of interest, the majority suggests that if the public supports more traditional notions, then it is up to the legislature to pass laws upholding them.

## Involuntary Medication to Restore Competence to Stand Trial: *Sell* Revisited

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### The Fifth Circuit Court of Appeals Interprets and Applies Three of the Four *Sell* Criteria in Assessing the Involuntary Medication of a Defendant for Competency Restoration

#### Facts of the Case

Wayne Lee Palmer entered a Clerk of Court's office in Louisiana in October 2003 demanding to know why the *pro se* lawsuit he had filed was dismissed. He became irate and threatened to kill a court security officer who attempted to retrieve his visitor's badge. Authorities found a semi-automatic handgun in Mr. Palmer's back pocket when he was arrested.

Mr. Palmer was indicted on one count of threatening to murder a federal officer. He was found incompetent to stand trial, and he was committed to Butner Federal Medical Center for a psychiatric evaluation. He was found to have a delusional disorder and was referred for a civil commitment evaluation. Clinicians opined that Mr. Palmer's release would not endanger others. The indictment against him was dismissed in November 2004. One month later, he purchased a gun. On the purchase application, he falsely answered "no" to the question of whether he had ever been adjudicated mentally incompetent or committed to a mental institution.

On May 12, 2005, U.S. marshals found Mr. Palmer sitting in the driver's seat of a vehicle at Louisiana State University Law School. The marshals observed a gun in the front passenger seat and ordered him out of his car. He drove away but was later apprehended. Marshals also found a box of pistol ammunition.

Mr. Palmer was indicted on possession of a firearm by a person adjudicated mentally ill and possession of a firearm and ammunition by a person adjudicated mentally ill and committed to a mental institution. The court-appointed examiner opined that he was incompetent to stand trial because he did not have complete awareness of the charges against him and did not appreciate the seriousness of the charges. His diagnosis was schizophrenia, and it was opined that he presented a danger to the public. The report recommended that he be returned to Butner with an order for forced medication.

He was returned to Butner, where his evaluators recommended involuntary medication to render him competent to stand trial. A federal magistrate found him incompetent to stand trial and authorized involuntary medication to restore his competency. The United States District Court adopted the magistrate's findings.

Mr. Palmer appealed, claiming that in his case the U.S. District Court failed to assess properly the three factors described in *Sell v. United States*, 539 U.S. 166 (2003): that important governmental interests are at stake; that involuntary medication will further the government's interests; and that forced medication is necessary to further the government's interests. (Mr. Palmer did not dispute the fourth *Sell* criteria—that medication was medically appropriate.)

#### Ruling and Reasoning

The appellate court affirmed the district court's ruling. The court reasoned that important governmental interests were at stake because Mr. Palmer's crime was serious. Even though he may have received probation if convicted, he was eligible for a maximum sentence of 10 years in prison. Courts have held that crimes punishable by more than a 6-month sentence are serious. The court concluded that it was appropriate to consider the maximum penalty to determine if a crime is serious. Because Mr. Palmer threatened the life of a marshal and caused a disruption on the LSU campus, the court could decide on an upward departure from the sentencing guidelines.

Therefore, an important government interest was at stake in bringing Mr. Palmer to trial.

The district court did not err in finding that involuntarily medicating Mr. Palmer would further the government's interest. It reasoned that administration of the medication must be substantially likely to render him competent to stand trial and substantially unlikely to cause side effects interfering with his ability to assist his counsel. Mr. Palmer argued that he would suffer side effects of antipsychotic medication, but the doctors who testified agreed that, no matter which drug was used, the side effects could be treated or minimized. Furthermore, Mr. Palmer failed to show that his ability to assist in his defense would be substantially undermined by the medication.

The appellate court found that forced medication was necessary to further the government's interest in bringing Mr. Palmer to trial. The Supreme Court had ruled that a defendant could be involuntarily medicated only if "alternative, less intrusive treatments are unlikely to achieve substantially the same result" (*Sell*, p 181). There was no dispute that treatment options such as psychotherapy and education would be ineffective in restoring Mr. Palmer to competency. Although Mr. Palmer may serve little or no time in prison, the government interest was in bringing him to trial, regardless of whether he was convicted or acquitted.

#### Discussion

The Supreme Court, in *Washington v. Harper*, 494 U.S. 210 (1990), stated that inmates have a liberty interest protected by the Due Process Clause that permitted them to refuse antipsychotic drugs unless certain preconditions are met. The Court also found in *Washington v. Harper* that involuntary medication does not violate the Due Process Clause if the inmate is a danger to himself or others, and treatment is in his/her best interest. In *Sell v. U.S.*, involuntary medication for a defendant found incompetent to stand trial for a serious but nonviolent crime is permissible under rare circumstances. The Court declared that lower courts when making this determination must consider the following four criteria:

Important governmental interests must be at stake.

Involuntary medication must significantly further those interests.

Involuntary medication must be necessary to further those interests.

The administration of drugs must be medically appropriate.

These criteria are known as the *Sell* criteria. The majority in *U.S. v. Palmer* interpreted and applied the first three of the *Sell* criteria as described previously. The ruling and reasoning in this case are similar to those in *U.S. v. Evans*, 404 F.3d 227 (4th Cir. 2005). At issue in both was what constitutes a serious offense. The Court concluded that the seriousness of an offense is governed by the maximum term of imprisonment if found guilty, not what the actual sentence might be. The judge should have information about the proposed medication, the dosage range, and the side effects associated with the medications. Furthermore, the judge should have information about specific side effects and how those side effects would interact with the particular physical condition of the defendant.

Interestingly, Mr. Palmer argued that an important government interest was not at stake because he could have served little or no time in prison. Another argument used by the defense was that an important government interest may not be at stake if a defendant is likely to be found insane. For example, in *U.S. v. Sherman*, CR 04-1179-TUC-CKJ (D. Ariz. April 27, 2006), a 2006 case from the District Court of Arizona, there was evidence from a forensic evaluation that Mr. Sherman would be adjudicated insane. The court determined that because of this, there was no important government interest at stake.

In conclusion, a nondangerous pretrial detainee who is incompetent to stand trial but competently refuses treatment should be assessed according to the *Sell* criteria to determine whether involuntarily medicating the defendant to restore him or her to competency is warranted. The government's interest is to bring the defendant to trial, regardless of the likely outcome. The importance of the state's interest in bringing the defendant to trial is governed by the maximum potential sentence the defendant could receive if convicted and the dangerousness of the offense. For illnesses such as schizophrenia, there may be no less restrictive alternative for rendering a defendant competent than by administering antipsychotic medication. If defendants argue that the side effects of medication will impair their ability to assist in their defense, there must be an assessment as to

whether the side effects are sufficiently severe as to impair their ability to assist in their defense and whether the side effects can be ameliorated.

## Federal Sentencing Guidelines

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### **District Court Failed to Address the Defendant's Schizoaffective Disorder as it Related to Sentencing Guidelines and it Remains Mandatory to Do So, Despite the Advisory Nature of Sentencing Guidelines Post Booker**

In *U.S. v. Miranda*, 505 F.3d 785 (7th Cir. 2007), the Seventh Circuit reviewed the sentencing of Luis Miranda by the district court for the Northern District of Illinois, Eastern District, in a conviction for bank robbery. The appeals court sought to determine if the trial court had committed reversible error by failing during sentencing to address the evidence of Mr. Miranda's schizoaffective disorder. The Seventh Circuit addressed statutes mandating consideration of "nonfrivolous" arguments regarding mental health status at sentencing, despite the advisory nature of federal sentencing guidelines in the post-*Booker* era.

#### *Facts of the Case*

On September 12, 2005, Mr. Miranda entered a bank and presented a teller with a note demanding money and indicating that he was armed with both a firearm and a bomb. After taking approximately four thousand dollars, he left the bank but was turned in to police the next day by his wife Melissa, who recognized him in a newspaper photograph.

For years before the robbery, Mr. Miranda had told his wife of auditory hallucinations of a command nature, of paranoid delusions, of visual hallucinations, and of symptoms consistent with thought broadcasting. He had attempted suicide at least twice. Once, he had attempted to set himself on fire after dousing himself with gasoline. In the second

episode involving a firearm, Mrs. Miranda called police who took Mr. Miranda to a hospital for psychiatric treatment. Police found that Mr. Miranda's firearm owner's identification card had expired and, upon his discharge from the hospital, returned to arrest him for unlawful possession of a firearm. At the time of arrest, he was further discovered to possess a crack pipe and a small amount of cocaine and was charged with possession of a controlled substance. He subsequently pleaded guilty to both charges. This comprised the total of his criminal history before the bank robbery.

After pleading guilty to bank robbery, Mr. Miranda was examined at counsel's request by a court-appointed psychiatrist, Dr. Daniel Yohanna. Dr. Yohanna noted that Mr. Miranda had been hospitalized for depression, suicidality, substance abuse, and psychosis six times throughout his life and that he was in outpatient treatment for the three years leading up to his arrest. At the time of Dr. Yohanna's interview, Mr. Miranda was taking six medications related to his mental health and medical conditions, and no illegal drugs had been detected in Mr. Miranda's system for more than a year. Dr. Yohanna's diagnosis for Mr. Miranda was schizoaffective disorder, cocaine dependence in remission, and opiate dependence in remission, based on his interview and review of collateral sources. Dr. Yohanna's testimony indicated that at the time of the robbery, Mr. Miranda was experiencing auditory command hallucinations telling him that he should rob a bank. He further testified, "I thought that what was driving him was the schizophrenia more than the drug use, so that's what I thought was the predominant disease driving him." Mr. Miranda also testified about his mental health history, including the attempt to kill himself by dousing himself with gasoline and trying to set himself on fire.

During the sentencing phase, Mr. Miranda's counsel argued for a below-guidelines sentence because of his severe mental illness and because his mental illness was a significant factor in the commission of the crime. The government argued that he was "in fact under the influence of drugs at the time of the offense" and that, because of his mental illness, he should be incarcerated for his own protection. The court concluded that he "understood the nature of his crime and was aware that he was committing the crime and therefore he should be held accountable for his conduct" (*Miranda*, p 790). Citing retri-