

the standard of deliberate indifference. As such, this failure to provide care did not constitute a violation of the patient's due process rights. The state employees in *Pena v. Givens* did not clearly violate the patient's constitutional rights, and qualified immunity was applicable to the technicians, the nurse, the doctor, and their supervisors. The implication of this case involves a level of protection from tort claims involving involuntarily held, but not committed patients, especially those who may be uncooperative with treatment and assessment.

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## Sell Requirements in Georgia

**Samuel J. House, MD**

*Forensic Psychiatry Fellow*

**Robert P. Forrest, MD**

*Assistant Clinical Professor of Psychiatry*

**Raymond K. Molden, MD**

*Assistant Clinical Professor of Psychiatry*

**Department of Psychiatry**

**University of Arkansas for Medical Sciences**

**Little Rock, AR**

### Necessity of Specific Treatment Plans to Establish Elements of the Sell Test

In *Warren v. State*, 778 S.E.2d 749 (Ga. 2015), Mr. Warren challenged the lower court's decision that he be forcibly medicated for the purpose of restoration of competency to stand trial on four counts of murder as well as other charges related to a mass shooting. The state filed a motion requesting forced administration of medications to restore fitness to proceed. The trial court granted the motion. On appeal, the Supreme Court of Georgia vacated that order and remanded the case for further proceedings.

#### Facts of the Case

On January 12, 2010, Jesse James Warren allegedly shot multiple persons at a business in Cobb County, Georgia, killing four individuals and paralyzing a fifth victim. In early 2013, Mr. Warren filed a special motion of mental incompetence to stand trial, after which the trial court ordered a psychiatric evaluation to be performed at the Georgia Department of Behavioral Health and Developmental Disabilities (GDBH). Two expert evaluators, Drs. Brian Schief and Don Hughey, submitted reports to the

court indicating that Mr. Warren lacked fitness to proceed, but he may be restored to fitness with treatment. The trial court then ordered Mr. Warren's commitment to GDBH for observation, evaluation, and treatment. On November 18, 2013, the state filed a motion to force medications for the purpose of rendering Mr. Warren competent to stand trial.

On June 25, 2014, the trial court held an evidentiary hearing, during which the state presented testimony from the two expert witnesses. Dr. Schief, a psychiatrist, testified that Mr. Warren held the delusion that he was an "emperor," rendering him unable to assist his attorney effectively and unfit to proceed. Dr. Schief stated that Mr. Warren had not been offered antipsychotic medications in "quite some time," and had refused medications when they were last offered. Dr. Schief further stated that there was a substantial probability of improvement if Mr. Warren took medications, that other forms of treatment would not likely improve his fitness, and that taking medications would not interfere with his ability to assist in court. Finally, Dr. Schief testified that while he did not recommend any specific medication, administration in the hospital setting could maximize Mr. Warren's safety during treatment because of the amount of monitoring that occurs during inpatient treatment. Dr. Hughey concurred with Dr. Schief's testimony, adding that Mr. Warren had received legal education, individual therapy, and group therapy but remained as delusional as on admission.

Mr. Warren presented three expert witnesses: Dr. Francis Kane, Jr., Dr. Norris Currence, and Dr. Alexander Morton. Dr. Kane, Mr. Warren's treating physician, testified that Mr. Warren had a delusional disorder, which is often difficult to treat. Dr. Kane further testified regarding the possible side effects of antipsychotic medications and that Mr. Warren had experienced various side effects while on ziprasidone and haloperidol. Dr. Kane testified that the reasons he stopped Mr. Warren's antipsychotic medications were his significant comorbid medical illnesses that may be exacerbated by antipsychotic medications, his preference not to be on medications, and Mr. Warren's lack of disruptive or injurious behaviors. Dr. Currence, Mr. Warren's treating psychologist, agreed with Dr. Kane's testimony, adding that he had seen psychotherapy help change the behavior of some delusional persons. Dr. Morton, a consulting pharmacologist, concurred with Dr. Kane's assess-

ment of the risk of antipsychotic treatment to Mr. Warren's health. Dr. Morton also described treatment plans, adding that Mr. Warren had no written treatment plan. Finally, Dr. Morton opined that because Mr. Warren had not been dangerous, the only benefit for taking medications would be the possibility of improving his ability to work with counsel.

On July 9, 2014, the trial court filed an order granting the state's motion for forced medication. Mr. Warren subsequently filed a notice of appeal to the Supreme Court of Georgia, who heard the case. The state argued that the criteria for forced administration of antipsychotic medications delineated in *Sell v. United States*, 539 U.S. 166 (2003), referred to as the *Sell* test, applied and were satisfied in Mr. Warren's case. The criteria of the *Sell* test include the following:

The state has important governmental interests in prosecuting the criminal defendant.

Involuntary medication will significantly further governmental interests in bringing the defendant to trial.

Involuntary medication is necessary to further the governmental interests in proceeding with the defendant's prosecution.

Administration of the drugs is medically appropriate (i.e., in the patient's best medical interest in light of his medical condition).

#### *Ruling and Reasoning*

The Supreme Court of Georgia vacated the lower court's decision and remanded with direction.

In the application of the *Sell* test, the court held that the state failed to show that Mr. Warren's case met the criteria. The court found that the state had important governmental interest in bringing Mr. Warren to trial because his alleged crimes were "of the most serious magnitude" (*Warren*, p 761), and Mr. Warren did not present any special circumstances identified in *Sell* that would undermine governmental interests. In application of the furtherance of governmental interest, the court held that there was no consensus on the efficacy of antipsychotic administration to improve Mr. Warren's fitness, there was agreement that Mr. Warren, an older person with multiple medical complications, faced the possibility of numerous dangerous side effects from administration of antipsychotic medications. Citing

*United States v. Chavez*, 734 F.3d 1247 (10th Cir. 2013), *United States v. Watson*, 793 F.3d 416 (4th Cir. 2015), and *United States v. Evans*, 404 F.3d 227 (4th Cir. 2005), the court held that *Sell* "should be applied in the context of a specific proposed treatment plan for a specific defendant" (*Warren*, p 764). The state did not meet the second criteria of the *Sell* test, because it failed to identify a treatment plan to be used in the restoration of Mr. Warren's fitness, which at a minimum includes the proposed medications, a maximum allowed dosage, and duration of administration before reporting back to the court. The court also held that, in the absence of this plan, the state failed to show the necessity of medication for furthering governmental interests. Regarding medical appropriateness, the court held that the trial court erred in its order because the evidence offered was "imprecise in linking specific predictions of success and specific possible side effects to specific medications" (*Warren*, p 768). Based on these facts, the court vacated the trial court's decision and remanded the case with direction that the trial court should "allow the parties to present additional evidence to ensure that the court's findings are based on current circumstances" (*Warren*, p 769).

#### *Discussion*

The *Sell* test allows for the forced administration of psychiatric medications for the purpose of restoration of fitness to stand trial if certain criteria are met. Numerous case law decisions have upheld defendants' rights to refuse psychiatric treatment based on the *Sell* test, including *Chavez*, *Watson*, and *Evans*. The court in *Warren v. State* rejected the notion that the state can forcibly administer psychiatric medications for restoration of fitness without a treatment plan identifying a particular medication or medications, ranges of doses that will be used during the restoration process, and duration of administration before reporting back to the court, thus creating court oversight of the forced treatment process. The implications for psychiatrists working to restore a defendant's fitness to proceed are clear: failure to provide a written, specific treatment plan that identifies a specific medication or medications with dose ranges and duration of administration impairs the fact finder's ability to appropriately apply the *Sell* test.

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