

terminated more by adaptive functioning, because that is what determines the level of support needed by the individual.

The Oregon Supreme Court decision, influenced by the ruling in *Hall*, awards more mentally disabled individuals protection against the death penalty. Determination of intellectual disability will continue to rely on evaluation and testimony from forensic evaluators. The shift in emphasis to adaptive functioning presents new challenges on how best to evaluate for intellectual disability. Although there are some objective measures, the evaluation of adaptive functioning is mainly subjective. An evaluator should interview many informants; however, even their accounts can be biased. In addition, when determining the level of function before 18 years of age, informants may have a difficult time retroactively commenting on specific details. There is also difficulty when evaluating an individual's level of adaptive functioning when living in settings where he is not primarily responsible for meeting his needs (for example, in jail).

This decision, and other recent Supreme Court decisions that extend protections to vulnerable psychiatric populations, such as juveniles and those with mental disability, underscore the positive impact that advances in psychiatry and psychology can have on the judicial system. As would be expected, laws pertaining to these populations often do not take into account state-of-the-art scientific knowledge, and forensic experts play a central role in educating courts about current thinking in the field of mental health.

The decision in *Agee* provides additional opportunities for legal challenge for intellectually disabled individuals facing the death penalty in Oregon. *Agee* expands those who qualify for an intellectual disability diagnosis. By minimizing IQ scores and emphasizing adaptive functioning when determining intellectual disability, low-functioning defendants who originally did not qualify via DSM-IV TR criteria, may now meet criteria through DSM-5 and potentially be spared the death penalty. This shift in emphasis toward adaptive functioning may also mean that individuals with an IQ score below 70, who might have been spared the death penalty previously, may now be considered eligible.

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Forced Medications in the Restoration of Competency

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The Government Failed to Meet Its Burden of Proof That Forced Medication Was Substantially Likely to Restore Defendant's Competency

In *United States v. Watson*, 793 F.3d 416 (4th Cir. 2015), the Fourth Circuit Court of Appeals reversed the United States District Court for the Eastern District of Virginia's decision to grant the government's request that John Watson, Jr., be medicated by force, stating that the government had not met its burden of proving that the proposed treatment was substantially likely to restore his competency as required by *Sell v. United States*, 539 U.S. 166 (2003). Furthermore, the district court failed to give enough consideration to a defense expert's opinion that Mr. Watson, who had a diagnosis of delusional disorder, persecutory type, would be unlikely to respond to such treatment.

Facts of the Case

On September 28, 2012, John Watson, Jr. was observed shooting a handgun at a Coast Guard helicopter. The helicopter was not damaged and none of the Coast Guard employees on board was injured. Mr. Watson was indicted for attempted destruction of an aircraft (18 U.S.C. § 32(a)(1) (2009)); possession of a firearm by a felon (18 U.S.C. § 922(g)(1) (2009)); and use of a firearm during a crime of violence (18 U.S.C. § 924(c)(1)(A) (2009)). Following his arrest, Mr. Watson underwent a competency evaluation, during which he expressed the belief that he had been a covert operative for the British special forces, thereby entitling him to diplomatic immunity; that the Coast Guard and Secret Service were working to help protect him; and that his phones and computer were being tapped. Mr. Watson was deemed incompetent to stand trial and was transferred to the Federal Medical Center in Butner (FMC Butner), North Carolina, for mental health evaluation and treatment.

On April 4, 2013, the government submitted a report to the court written by an FMC Butner psychiatrist indicating that Mr. Watson had a diagnosis of delusional disorder, persecutory type, and recommending that he be forcibly medicated to restore his competency to stand trial. The government's psychiatrist made this recommendation based on his own experiences treating patients with delusional disorder and also based on "extensive support in the psychiatric literature that individuals with the diagnosis of a psychotic illness obtain substantial reduction in their psychotic symptoms when treated with antipsychotic medication" (*Watson*, p 421). This assertion was challenged by Mr. Watson's defense expert, who stated that there was little evidence regarding "efficacy of pharmacological treatment of persons suffering from Delusional Disorders" (*Watson*, p 422).

On March 7, 2014, the district court granted the government's request that Mr. Watson be forcibly medicated to restore his competency, finding that the proposed treatment was substantially likely to restore his competency as required by *Sell v. United States*. Under *Sell*, the Supreme Court ruled that involuntary administration of drugs solely for restoration of trial competence would be permitted if four prongs were met:

First, a court must find that important governmental interests are at stake (*Sell*, p 180).

Second, the court must conclude that involuntary medication will significantly further those concomitant state interests. It must find that administration of the drugs is substantially likely to render the defendant competent to stand trial.

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 (*Sell*, p 181).

The magistrate judge found that, with respect to the first *Sell* factor, "an important government interest is at stake in the prosecution of the defendant" and rejected Mr. Watson's argument that the government's interest was mitigated by "the possibility of an affirmative defense of not guilty by reason of insanity" (*Watson*, p 422). With respect to the second *Sell* factor, the magistrate judge found that the proposed treatment plan was substantially likely to restore Mr. Watson's competency. Mr. Watson appealed the decision, challenging the district court's findings with respect to the first and second prongs of *Sell*.

Ruling and Reasoning

The Fourth Circuit Court of Appeals (in a split decision) reversed the district court's decision to grant the government's request that Mr. Watson be medicated by force, stating that the district court clearly erred in finding that the government had met its burden under the second prong of *Sell*. In particular, the court of appeals concluded that the government had not met its burden of proof, by clear and convincing evidence, that forcible medication was substantially likely to restore Mr. Watson to competence.

The court of appeals held that the district court erred in that it did not assess the efficacy of antipsychotics as applied "with specificity to Watson's circumstances," which is a requirement under *Sell*. Merely showing a proposed treatment to be "generally effective," as the government's expert testified, was inadequate to meet the burden of proof. Rather, the legal standard would require the government to undertake "searching and individualized assessment of Mr. Watson's likely susceptibility to forcible medication" (*Watson*, p 428).

The court of appeals examined studies that had been cited by the government's expert and found that the available evidence for the efficacy of treatment of the persecutory type of delusional disorder with antipsychotic medication was equivocal. Although the studies could be used as evidence, the government had not applied them to Mr. Watson's specific circumstances, and thus did not provide the requisite level of clear and convincing proof that forcible injection of antipsychotic would be substantially likely to treat Mr. Watson's specific persecutory delusions. As such, the court of appeals found that the lower court had reached a conclusion against the clear weight of the record.

The appeals court held that the district court erred by relying solely on the opinion of the government's psychiatric expert, while apparently failing to consider the opinion of Mr. Watson's expert. There was no reasoning offered by the lower court for why the contrary argument was not considered. In fact, the court of appeals opined that Mr. Watson's expert had actually provided an opinion that related to Mr. Watson's situation in a more specific way than the government's expert.

The appeals court did not decide whether a possible insanity defense is a special circumstance that

could mitigate the government's interest in prosecution under the first prong of *Sell*.

Dissent

In the dissenting opinion, Chief Judge Traxler wrote that the majority had not addressed the question actually raised by Mr. Watson in his appeal: that the district court erred by not requiring supportive therapy in addition to medication, which would have increased the likelihood that he would be restored to competency. Judge Traxler further believed the case should have been vacated and remanded for additional findings rather than simply reversing the district court's decision.

Discussion

In this case, the majority of the court of appeals ruled that, given the important liberty interests at stake, the government must be held to a high standard of proof before being granted the right to administer forced medication. In addition, the court of appeals concluded that the lower courts must conduct a searching inquiry to ensure that the government has met its burden by clear and convincing evidence. Under the second prong of *Sell*, simply showing that a treatment is "generally effective" is insufficient to meet this requirement.

Therefore, the government must prove that the proposed treatment will be an effective therapy for the defendant's specific disorder. To do so, the analysis of the proposed treatment requires consideration of factors, such as the defendant's age and medical condition, as well as the nature of the defendant's delusions. Such a standard is in place to prevent the government from using the same generalized evidence to prevail in all cases involving the same condition or course of treatment. Thus, forensic psychiatrists must prepare individualized treatment plans when recommending forced medications for defendants.

This case is also important, as it pertains to a condition, delusional disorder, that is difficult to treat and may have limited response to antipsychotic medications. For such disorders, psychiatric experts must be aware of the evidence for treatments of the disorder. Psychiatrists must also provide a treatment plan that is tailored to the specific situation of the defendant being evaluated. They must then be prepared to defend the proposed treatment course with available evidence and present this evidence as it pertains specifically to the individual. Furthermore, the case

highlights the importance of obtaining past records, which can strengthen the argument for use of psychotropic medications if the individual has had prior response to treatment.

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Involuntary Detainment for Mental Health Evaluations

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Detainment for Mental Health Evaluation for Violent Ideation Not Viewed as Violation of Fourth or First Amendment

In *Raub v. Campbell*, 785 F.3d 876 (4th Cir. 2015), the Fourth Circuit Court of Appeals affirmed the United States District Court for the Eastern District of Virginia's decision to grant Michael Campbell qualified immunity after involuntarily detaining Brandon Raub for a mental health evaluation, stating that Mr. Campbell did not violate Mr. Raub's Fourth Amendment rights and Mr. Raub did not provide evidence for a First Amendment violation. Furthermore, the appellate court stated that injunctive relief was not appropriate in this case.

Facts of the Case

In the summer of 2012, Brandon Raub made a series of Facebook posts that drew the attention of two Marine veterans who had served with Mr. Raub during his deployment to Iraq. The veterans were sufficiently concerned by the violent and threatening nature of the posts that one contacted the FBI and provided samples of the posts, stating that Mr. Raub "genuinely believes in this and is not simply looking for attention" (*Raub*, p 879). The FBI sent a special agent accompanied by a local police officer to interview Mr. Raub and they found that he displayed a volatile demeanor, alternating between calm and emotional and intense. He was also paranoid and