

two appeals and involuntary medication stays, which did not “fatally undermine the district court’s finding that an additional period of commitment [was] reasonable” (*Tucker*, p 889). The court provided notice to the government, however, that it cannot “keep trying and failing and trying and failing, hoping to get it right. . . we trust no further extensions will be sought once the current appeal is finally resolved” (*Tucker*, p 890).

Discussion

The decision in *Tucker* offers some perspective in how this court applied *Sell* criteria to weigh involuntary hospitalization and treatment against Fifth Amendment rights for liberty and due process where legitimate legal delays resulted in repeated extensions for treatment and detention. In the U.S. Supreme Court case *Sell*, a four-factor test is described to permit the use of involuntary medications in those defendants who were not thought to be dangerous to themselves or others. Given the nature of Mr. Tucker’s appeal, the Fourth Circuit provided extensive commentary on the first *Sell* criteria involving “important governmental interests.” The Fourth Circuit turned to the *Sell* recommendation that “courts . . . must consider the fact of the individual case in evaluating the government’s interest in prosecution” because “special circumstances may lessen the importance of that interest” (*Sell*, p 180).

In the *Sell* decision, these special circumstances included a defendant’s medication noncompliance resulting in prolonged commitment, “which would diminish the risks of freeing without punishment one who has committed a serious crime” (*Sell*, 180). The Fourth Circuit argued that the government had legitimate interests in prosecuting Mr. Tucker given the specific behavior he is alleged to have engaged in and because the maximum penalty for his charges was 30 years in prison. Mr. Tucker appealed for his immediate release as he had been held in pretrial custody for an amount of time equal to what he likely would have served had he taken an initial plea bargain offered to him. Despite the lack of legal precedent to consider this information, the Fourth Circuit specifically acknowledged that these data were not irrelevant. They also incorporated information regarding the low likelihood of Mr. Tucker’s meeting civil commitment criteria in their opinion. After weighing these factors, however, they did not find error with the district court’s procedure and order.

This reasoning appears consistent with the discussion in *Sell*, where it is clarified that civil commitment

was not “a substitute for a criminal trial,” but the “potential for future confinement” and extended pre-adjudicative custody affected, “but [did] not totally undermine, the need for prosecution” (*Sell*, p 180). The Fourth Circuit also commented on the second *Sell* criteria, “that administration of the drugs is substantially likely to render the defendant competent to stand trial” and “substantially unlikely to have side effects that will interfere significantly with the defendant’s ability to assist counsel” (*Sell*, p 181). The court placed emphasis on treatment that not only “works on a defendant’s type of mental disease in general, but that it is likely to work on this defendant in particular” (*United States v. Bush*, 585 F.3d 806 (4th Cir. 2009), p 816). Despite Mr. Tucker’s argument that taking the same medications sought in the involuntary medication order earlier in his commitment did not restore him to competency, the Fourth Circuit deferred the evaluation of his current prognosis with treatment to the district court, which they believed had more expertise in interpreting the testimony of experts advocating for medications.

The decision in *Tucker* adds to the growing body of cases that are the progeny of *Sell*. It considers both potential penalties and the nature of the alleged crimes in addressing the first criteria of *Sell*. More importantly, it provides some reasoning and boundaries pertaining to governmental requests to extend involuntary medications and detention in those defendants who do not meet the dangerousness justification and can only be restored through the *Sell* pathway.

Balancing the Rights of Defendants with the Rights of Victims of Sexual Assault in Obtaining Victim’s Mental Health Records

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Sexual Assault Defendants Are Not Entitled to Victims' Preincident Mental Health Records

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In *State v. Chambers*, 288 A.3d 12 (N.J. 2023), Terrell Chambers, charged with second-degree sexual assault, filed a motion to compel the state to produce the alleged victim's preincident mental health records. The Superior Court, Appellate Division, granted the motion, and the state appealed. The New Jersey Supreme Court created a pathway for ordering the records, which required a preponderance of the evidence to support that there was a substantial, particularized need for the records, that the mental illness impacted the victim's ability to remember the alleged assault, and that the information could not be obtained through less intrusive means.

Facts of the Case

During the afternoon of Saturday, October 13, 2018, multiple people were gathered at the home of Terrell Chambers' sister. Mr. Chambers and the victim (Mr. Chambers' cousin) fell asleep in the living room after drinking alcohol. The victim claimed that she woke up to Mr. Chambers performing oral sex on her. She reported that she unsuccessfully attempted to push him away on three occasions throughout the evening. A few days later, the victim contacted her best friend, who encouraged her to tell law enforcement about the alleged incident. The victim subsequently provided a statement to the Prosecutor's Office.

The police took statements from Mr. Chambers, Mr. Chambers' sister, and the sister's boyfriend. Mr. Chambers implied that the victim may have suffered from an illness that impaired her ability to remember the incident. He also suggested that she may have imagined or fabricated the offense. Mr. Chambers' sister told detectives that the victim wanted to be a law enforcement officer but did not pass the background check because of a history of suicidality. The sister's boyfriend reported that the victim had been suicidal for some time and speculated about her intentions in reporting the alleged crime.

A grand jury charged Mr. Chambers with second-degree sexual assault after a saliva sample collected from the victim's underwear matched his DNA. The

defense filed a motion to produce the victim's mental health records, which the state opposed. The trial judge granted the motion and ordered the state to obtain and produce the victim's mental health records from six months prior to six months following the alleged offense. The judge agreed that if the victim had a mental illness and was taking medications, a combination of the medications and alcohol could have impaired the victim's perception of the incident. Defense counsel also argued that mental illness "could have motivated" the victim to contaminate her underwear with Mr. Chambers' DNA intentionally.

The state appealed the judge's orders, and the Appellate Division denied the state's request. The New Jersey Supreme Court granted leave to appeal. The state conceded that mental health records should be discoverable under certain circumstances, with a heightened discovery standard. The state proposed that the defendant should have the burden to show "that there is a particularized need for such discovery and that the mental health information sought cannot be obtained by less intrusive means" (*Chambers*, p 23). The state also suggested that a judge should consider the privacy of the victim, and whether the records revealed material exculpatory evidence.

The defense acknowledged that the victim had a right to notice but rejected the application for a heightened standard for disclosure. The defense argued that there must be a reasonable suspicion of a mental illness, and that it should directly relate only to the ability to recount what allegedly occurred.

Ruling and Reasoning

The New Jersey Supreme Court begins its analysis by reviewing the rights of criminal defendants in obtaining proper discovery, followed by discussion of the rights of victims of sexual assaults.

Criminal defendants have the right to seek "discovery that is relevant and material to a victim's ability to perceive, recall, or recount an alleged sexual assault, or a proclivity to imagine or fabricate it" (*Chambers*, p 25). The state is obligated to produce reports of "mental examinations . . . which are within the possession, custody or control of the prosecutor" (N.J. Stat. Ann. § 3:13-3(b)(1)(C) (2022)). But, a situation in which mental health records of a sexual assault victim that are in possession of a private third party and are not within the possession, custody, or control of the prosecutor, imposes no obligation on the prosecutor to obtain and produce those records.

In contrast to the defendant’s right for discovery to support a fair defense, the court acknowledged, quoting a variety of sources, that sexual assault victims have the rights to be treated with compassion, to be free from harassment, to be minimally inconvenienced, to receive information about the case, and to participate in proceedings. The New Jersey Supreme Court noted that in managing a request for additional discovery, the rights of defendants and victims should be balanced.

The New Jersey Supreme Court used these principles to establish the framework for maintaining the rights of the defendants and the victims. Under the framework, there were two options for obtaining records: a formal motion and an informal path. Under the formal pathway, the victim would have to be notified, and the motion would satisfy a two-part standard. The first stage would require the defendant to show “(1) that there is a substantial, particularized need for such access; (2) that the information sought is relevant and material; and (3) that the information is not available through less intrusive means” (*Chambers*, p 29). If the three prongs are met by a preponderance of the evidence, the defendant is entitled to have a judge conduct an *in camera* inspection. The defense counsel should not be present, and the judge must determine whether to “pierce” mental health privilege, redact the preincident records, and make them available.

Alternatively, a defendant can informally seek access to the records. Through this path, the victim would still be notified. Defense counsel would send a letter to an assistant prosecutor, stating what kinds of records were sought, the substantial need, and that the victim had the right to not participate in the investigation. The letter must inform the victim that disclosure is voluntary.

Regarding the request made in this case, the New Jersey Supreme Court vacated the trial court’s orders and remanded for further proceedings to be guided by the framework established in this opinion. The New Jersey Supreme Court stated that as the record stood, there was not enough to support the substantial need for the mental health documentation. On remand, defense counsel was permitted to supplement the record to demonstrate the substantial need. The New Jersey Supreme Court could not determine if there were a less intrusive means to access the information, and recommended that the defense speak with additional family members and friends, or investigate the victim’s social media, for more information regarding the victim’s alleged mental illness.

Discussion

The framework established in *State v. Chambers* highlights the importance of balancing the rights of the victim with the rights of the defendant in allegations of sexual assault. The court in *State v. Chambers* creates a procedural and analytical framework that supports a “heightened discovery standard” in order for medical and psychiatric records to be obtained by the defense. Medical records, and especially mental health records, have long been considered private information. This notion was codified with the Health Insurance Portability and Accountability Act of 1996. In the interest of pursuing justice, however, in certain circumstances, it is reasonable and acceptable to “pierce” mental health patient-provider confidentiality to assure a fair and meaningful defense.

Disability Determinations and Chronic Mental Illness

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Subjective Statements of Symptoms and Treating Psychiatrists’ Opinions Are Important in Disability Determinations in Chronic Mental Illness

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In *Shelley C. v. Comm’r Soc. Sec. Admin.*, 61 F.4th 341 (4th Cir. 2023), Shelley Cannon appealed the order of the U.S. District Court for the District of South Carolina affirming the Social Security Administration’s denial of her Social Security Disability Insurance (SSDI) following a formal hearing by an Administrative Law