that should she be found not guilty by reason of insanity, she would be evaluated at his home institution during a 30-day commitment, at which point she would likely be released, given his testimony that she was malingering. The court considered Dr. Vitacco’s testimony and determined that it was potentially misleading. The court determined that Dr. Vitacco’s statements “could have reinforced, rather than corrected, any misconceptions jurors may have had that only a guilty verdict would prevent Middlebrooks’s nearly immediate release” (Middlebrooks, p 329).

To determine whether this improper, nonconstitutional, evidentiary ruling warranted a new trial, the court applied a “harmless-error test” as was done in Jones v. State, 880 S.E.2d 509 (Ga. 2022). The court sought to determine whether there was more than a theoretical possibility Dr. Vitacco’s testimony contributed to the verdicts. The court concluded that compared with the “substantial evidence that Middlebrooks had the mental capacity to distinguish right from wrong” (Middlebrooks, p 330), it was highly unlikely that Dr. Vitacco’s testimony was an important factor for the jury in reaching their guilty verdicts and ruled there was no justification for a new trial.

Discussion

The court’s first two rulings highlight a federal regulation that is pertinent to forensic psychiatric practice. 38 C.F.R. § 14.808(a) states that “VA personnel shall not provide, with or without compensation, opinion or expert testimony in any legal proceedings concerning official VA information, subjects, or activities, except on behalf of the United States or a party represented by the United States Department of Justice,” barring authorization from a “responsible VA official.” This case serves as an important reminder for individuals working for the Department of Veterans Affairs to consult with the appropriate VA officials prior to speaking with legal counsel regarding VA-related information. This case also emphasizes the importance of reviewing VA medical records, when available, as the forensic expert’s report and testimony may be the most effective way to introduce relevant information related to an individual’s psychiatric history within the VA system.

This case also serves as a cautionary tale for forensic psychiatrists to stay within their scope of expertise when providing testimony. While this case makes clear that the legal error in allowing the state expert’s testimony lies with the state and not the expert witness, it does raise consideration of what topics an expert witness should speak to on the witness stand. The prosecution’s line of questioning related to the consequences of a not guilty by reason of insanity verdict, while not completely unrelated to forensic mental health practice, began to stray from the witness’ scope of expertise, as it encroached upon the court’s instructions to the jury regarding potential verdicts. Expert witnesses may be well-intentioned in answering such questions based on their undoubted familiarity with relevant statutory law. Nonetheless, they run the risk of presenting a biased understanding of how that law is applied. Forensic psychiatrists are not experts in the application of the law and thus should exercise caution when asked to provide such testimony.

Involuntary Medication and Detention in Federal Court via Sell Criteria

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Extending Involuntary Medications and Detention Using the Sell Criteria Allowed for Competency Restoration Treatment

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In United States v. Tucker, 60 F.4th 879 (4th Cir. 2023), the Fourth Circuit Court of Appeals considered whether a criminal defendant who had been found incompetent to stand trial and was held in pretrial custody for more than five years, could be ordered for continued commitment and involuntary medications. The court ruled that, although not without limits, further extension of his commitment was reasonable.
Facts of the Case

Christopher Tucker was arrested in April 2017. His charges included two counts of attempting to persuade minors to engage in sexually explicit conduct for the purpose of producing a visual depiction, one count of transporting child pornography, one count of receiving child pornography, and one count of possessing a firearm while addicted to a controlled substance. For the first two counts, Mr. Tucker faced a maximum penalty of “not less than 15 years nor more than 30 years” (Tucker, p 884).

In September 2017 the district court found Mr. Tucker incompetent to proceed and committed him to the custody of the attorney general. He then spent the next several months being evaluated at correctional institutions. In May 2018, he was adjudicated incompetent to proceed, and in June 2018, Mr. Tucker was hospitalized at the Federal Medical Center in Butner, North Carolina for competency restoration treatment. In early 2019, his commitment and restoration treatment were extended. In May 2019, the forensic psychologist assigned to evaluate Mr. Tucker documented that he was only intermittently compliant with his medications and opined that he was “right at the threshold of competency, and likely would have been restored had he [fully] complied with medication treatment” (Tucker, p 885). The evaluator recommended continued involuntarily medications given Mr. Tucker’s poor treatment compliance. The government moved for an involuntary medication order, but this was delayed as Mr. Tucker’s mother hired a new attorney to represent him. The government then requested additional time for treatment and retracted its involuntary medication order request.

On August 12, 2019, Mr. Tucker filed an objection stating, “absent a request for involuntary medication, there was no basis for his continued detention” (Tucker, p 885). The government again petitioned for an involuntary medication order, as Mr. Tucker had “firmly and unequivocally told [his treatment team] . . . he was stopping all of his psychiatric medications going forward” (Tucker, p 885). On October 22, 2019, the district court found that the government had met its burden under Sell v. United States, 539 U.S. 166 (2003) and ordered continued hospitalization and treatment.

Mr. Tucker appealed this decision and requested a stay for the order until the appeal was resolved. The district court granted the request. The court of appeals remanded the case back to the district court for further consideration on October 18, 2021. Mr. Tucker then moved to dismiss the motion and argued for immediate release. On remand, the district court ordered involuntary medications again and four months of continued commitment. Mr. Tucker appealed again, challenging both his continued detention and involuntary medication treatment.

Ruling and Reasoning

On appellate review, the Fourth Circuit affirmed the district court’s decision. The court said that the first Sell factor, whether “important governmental interests are at stake” (Sell, p 180), had been met when considering the “maximum penalty authorized by statute” as quoted in United States v. Chatmon, 718 F.3d 369 (4th Cir. 2013), p 374. The court reasoned that Mr. Tucker’s charges carried penalties of up to 30 years of imprisonment. Mr. Tucker argued that the government had earlier offered a plea bargain where he could have pled guilty to one count of transporting child pornography. This would have resulted in an incarceration of five to 20 years. Mr. Tucker emphasized that “he would likely have had an advisory guidelines range at or near the minimum sentence of 60 months” (Tucker, p 887).

The Fourth Circuit acknowledged that although Mr. Tucker had not cited prior court decisions that considered potential plea agreements, they would treat this evidence as relevant, but in the final analysis, the court opined that the government did retain a substantial interest in prosecuting Mr. Tucker. The court described that although his offenses could be shorthanded as “child pornography,” he was accused of attempting to persuade “a person whom [he] believed to be a minor to engage in . . . sexually explicit conduct for the purpose of producing [a] visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported” (Tucker, p 887).

The court also considered the nature of Mr. Tucker’s psychiatric condition. The court reviewed that ongoing medication noncompliance would not result in a prolonged hospitalization as he would likely not meet criteria for civil commitment given that the “government cannot show his release would create a substantial danger to others” (Tucker, p 888). Because of this, the court of appeals opined that there existed a risk of freeing Mr. Tucker without punishment and an inability to monitor him appropriately in supervised release. Finally, the Fourth Circuit noted that part of the delays in Mr. Tucker’s legal case were caused by his
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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