

classified a sexually dangerous person. In their ruling, the court made it clear that they are not restricted to consider only diagnoses listed within the DSM, opening the door for discussion of non-DSM disorders, such as complex post-traumatic stress disorder (PTSD) or hypersexuality (sexual addiction) that might be relevant in cases such as this.

In their ruling, the Fourth Circuit acknowledged the immense weight of judgment asked of both experts and the courts in civil commitment release hearings. It recognized that balancing an individual's liberty interests with the duty of protecting the public from potential future dangerous behavior is indeed a daunting task.

Requirements for Involuntary Medication Recommendations under *Sell*

Anna Volkovinskaia, MD
Fellow in Forensic Psychiatry

Ahmad Adi, MD, MPH
Assistant Professor, Department of Psychiatry
Associate Program Director, Forensic Psychiatry
Fellowship

University of Colorado Anschutz Medical Campus
Aurora, Colorado

Richard Martinez, MD, MH
Robert D. Miller Professor of Forensic Psychiatry
Director, Forensic Psychiatry Services and Training

Department of Psychiatry
Forensic Psychiatry Services and Training Program
University of Colorado Anschutz Medical Campus
Aurora, Colorado

Using *Sell* Factors for Competency Restoration Treatment with Involuntary Medications Requires Analysis of the Meaning of "Important Governmental Interests"

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Key words: involuntary medication; *Sell*; competency restoration

In *United States v. Fieste*, 84 F.4th 713 (7th Cir. 2023), the Seventh Circuit Court of Appeals reviewed an appeal from federal district court involving involuntary medication of a defendant under *Sell* criteria. In this case on appeal, the court focused its analysis

on the first *Sell* factor requiring important governmental interests and the second factor involving the question of whether the recommended treatment would significantly further those interests. The court concluded that these two elements of the *Sell* criteria were met appropriately; however, the court concluded that more specificity of the medication recommendations was required and returned the case to the lower court to refine the order.

Facts of the Case

Darlene Fieste was charged with threatening to assault and murder two federal judges, the current president, and three former United States presidents. She exhibited delusional beliefs of having been sexually assaulted by several high-ranking federal officials. Ms. Fieste was found incompetent to proceed because her delusions interfered with a rational understanding of her charges and her ability to work with her attorney to assist in her defense.

After she was committed to the custody of the Attorney General for the purpose of determining whether there was a substantial probability that she could be restored to competency within the foreseeable future, her competency was again evaluated by Dr. Matthew Opresso, a Bureau of Prisons psychologist. Dr. Opresso diagnosed her with "bipolar disorder, current episode manic, with mood congruent psychotic features" (*Fieste*, p 717). He also determined that "her delusions heavily impaired her abilities to participate in her defense and communicate with her attorneys" (*Fieste*, p 717) and therefore opined she was incompetent to proceed. He added that, during the evaluation period, Ms. Fieste demonstrated improvement in her symptoms while taking fluphenazine. He concluded that medication compliance "would give her a substantial probability of attaining competency" (*Fieste*, p 718).

Soon after the submission of Dr. Opresso's report, Ms. Fieste began refusing medication. The government then moved for the court to authorize involuntary medication to restore her to competency under *Sell v. U.S.*, 539 U.S. 166 (2003). On March 20, 2023, a *Sell* hearing was held, during which three expert witnesses testified. These experts were Dr. Opressa, Dr. Ramya Seenii, Ms. Fieste's psychiatrist within the Bureau of Prisons, and Dr. Michael Byrne, a psychiatrist retained by the defense. The experts disagreed on the diagnosis, with Dr. Seenii agreeing with Dr. Opresso's diagnosis of bipolar I

disorder, current episode manic, with mood-congruent psychotic features, whereas Dr. Byrne provided a diagnosis of schizoaffective disorder, bipolar type, instead. Nevertheless, all three experts “concluded that a long-term injectable antipsychotic medication would be most effective in restoring Fieste to competency” (*Fieste*, p 718).

On April 13, 2023, the district court issued a *Sell* order for the involuntary medication of Ms. Fieste, “in accordance with Dr. Seeni’s treatment plan and recommendation for long-acting injectable antipsychotic medication, along with other medications, as outlined in her testimony and as it comports with her best medical judgment” (*Fieste*, p 719). Ms. Fieste filed an interlocutory appeal and requested a stay for the order until resolution of the appeal, which the court granted.

Ruling and Reasoning

The Seventh Circuit reviewed Supreme Court precedent. The Supreme Court’s decision in *Sell* identified four factors that must be proven by the government by clear and convincing evidence to justify involuntarily medicating a defendant: “(1) important governmental interests are at stake; (2) involuntary medication will significantly further those interests; (3) involuntary medication is necessary to further those interests; and (4) administration of the drugs is medically appropriate” (*Sell*, p 180–2). Ms. Fieste argued that the first and second *Sell* criteria were not met. She also argued that the *Sell* order did not place necessary constraints on medications and their dosages.

To assess *Sell* factor one (i.e., that important governmental interests are at stake), the Seventh Circuit referenced the maximum statutory penalty of Ms. Fieste’s offenses to determine their seriousness, in addition to considering any special circumstances that could lessen the importance of the government’s interests. Her offenses were determined to be serious as they carried maximum penalties of either five years for threatening to kill presidents or ten years for threatening to kill federal judges. Ms. Fieste argued that two special circumstances applied to her: “(1) her high likelihood of civil commitment if she [was] not prosecuted and convicted; and (2) the significant amount of time she [would] ultimately spend in pretrial detention relative to her likely sentence if convicted” (*Fieste*, p 721).

With regards to civil commitment, it was noted that, during the *Sell* proceedings, civil commitment was discussed only briefly and in terms of next

procedural steps in the case if *Sell* criteria were not met. This was deemed “insufficient to flag the issue as a mitigating circumstance” (*Fieste*, p 722). Furthermore, “not one of the experts opined on Fieste’s dangerousness under the civil commitment standard,” (*Fieste*, p 722) as that would have required a different type of assessment. The court concluded that there was insufficient information in the original hearing about civil commitment and dangerousness to mitigate the governmental interests criteria.

In measuring the significance of pretrial confinement under *Sell* factor one, some courts use the statutory maximum, whereas others use the sentencing guidelines range in the defendant’s circumstances. The Seventh Circuit pointed out that “the district court did not plainly err when it relied on Fieste’s anticipated guidelines range to evaluate the significance of her pretrial detention” (*Fieste*, p 724). Furthermore, the government demonstrated that “it [had] particularly strong prosecutorial interests at stake,” (*Fieste*, p 725) because of the nature and extent of Ms. Fieste’s crimes. Not only did Ms. Fieste send messages with threats to shoot public officials, but she also developed a plan to obtain a firearm illegally. It was determined that prosecuting her would seek “to protect the very integrity of our system of government” (*Fieste*, p 726). Overall, the Seventh Circuit court found that the district court was correct in concluding that Ms. Fieste’s pretrial detention was “insufficient to overcome the government’s interest in prosecution” (*Fieste*, p 727) and concluded that the government met its burden of proof with regards to *Sell* factor one.

The following criteria would need to be proven by clear and convincing evidence to satisfy *Sell* factor two that the treatment will significantly further the governmental interests: “(1) the proposed treatment plan is substantially likely to render the defendant competent, and (2) that the side effects are substantially unlikely to significantly interfere with the defendant’s ability to participate in the proceedings” (*Sell*, p 181). Although the experts who testified in the *Sell* hearing did not agree on an estimate of the likelihood of restoring Ms. Fieste to competency, based on Dr. Opresso’s testimony, the district court “found that Fieste faced ‘at worst’ a 73 percent chance of restoration” (*Fieste*, p 727). Furthermore, Dr. Opresso also commented on the positive effects fluphenazine had on Ms. Fieste’s symptoms previously. The court concluded that Ms. Fieste was substantially likely to be restored to competency through treatment with antipsychotic medication.

Finally, the Seventh Circuit deemed the *Sell* order incomplete because a dosage range of medication was not mentioned. Relying on *U.S. v. Breedlove*, 756 F.3d 1036 (7th Cir. 2014), the “district court must indicate the medication or range of medications to be administered, the dose range and the length of treatment” (*Fieste*, p 729). In *Breedlove*, this was deemed necessary to “ensure that the prison medical staff does not have unfettered authority to experiment with. . . different medications” (*Fieste*, p 729, citing *Beedlove*, p 1044). Therefore, the court remanded on this concern.

Discussion

In *United States v. Fieste*, the Seventh Circuit sought to determine whether the first two *Sell* criteria were satisfactorily met, ultimately weighing the importance of restoring Ms. Fieste to competency by involuntarily medicating her against her individual right for autonomy. It was found that Ms. Fieste’s case met these *Sell* criteria, as the government had an important interest in prosecuting her and there was substantial probability that her competency would be restored with involuntary medication. This case highlights the nuanced analysis necessary to address the important governmental interest’s factor.

In addition, the case considers the balance necessary in the court’s responsibility to place reasonable boundaries around treatment recommendations while recognizing the need for some flexibility in medication choices by the treating psychiatrist. The Seventh Circuit requested that dose ranges of medication(s) be provided, as this would prevent treatment providers from potentially experimenting with different medications at various doses. This would minimize the risk of bothersome or serious side effects from antipsychotic medications, thereby protecting the defendant from unnecessary harm. These findings have a direct impact on psychiatrists who practice in forensic settings if they need to pursue involuntary medications through *Sell*.

Qualifying as a “Psychiatrist” in Commitment Proceedings

Andrea Johnson, MD
Fellow in Forensic Psychiatry

Ahmad Adi, MD, MPH
Assistant Professor, Department of Psychiatry
Associate Program Director, Forensic Psychiatry Fellowship

University of Colorado Anschutz Medical Campus
Aurora, Colorado

Richard Martinez, MD, MH
Robert D. Miller Professor of Forensic Psychiatry
Director Department of Psychiatry, Forensic
Psychiatry Services and Training Program

University of Colorado Anschutz Medical Campus
Aurora, Colorado

Psychiatry Residents Qualify as Psychiatrists under Statutory Requirement of Medical Examination in Texas for Civil Commitment Proceedings

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In *In re A.R.C.*, 685 S.W.3d 80 (Tex. 2024), the Supreme Court of Texas considered a case involving a psychiatry resident who was practicing under a physician-in-training permit and filed an application for temporary court-ordered mental health treatment for a patient, Mr. A.R.C. The county attorney filed a motion for an order of protective custody based on the psychiatry resident’s documentation. Mr. A.R.C. filed a motion to dismiss, stating that a psychiatry resident does not qualify as a “psychiatrist” under the relevant statute. The Supreme Court of Texas ruled that psychiatrist residents are qualified as psychiatrists under the statutory requirement.

Facts of the Case

The respondent, Mr. A.R.C., was a 34-year-old man who presented to the emergency room on July 24, 2022 with psychosis and delusions. His presentation led the attending physician, Dr. Morales, to file an application for emergency detention, which was authorized. This authorization required Mr. A.R.C. to be kept in a medical facility for up to 48 hours to undergo further evaluation. On July 25, 2022, Dr. Paez, who was a second-year psychiatry resident at the Texas Tech University Health Sciences Center El Paso Paul L. Foster School of Medicine, evaluated Mr. A.R.C. Dr. Paez was practicing under a “physician-in-training” permit at the time. Based on Mr. A.R.C.’s presentation, Dr. Paez wrote a certificate of medical examination and filed an application for temporary court-ordered mental health treatment on July 26, 2022. Dr. Paez wrote that Mr. A.R.C. “presented a