



2003

# Recent Developments: *Sell v. United States*: Fifth Amendment Due Process Clause Does Not Allow Involuntary Administration of Antipsychotic Drugs to Render a Mentally Ill Defendant Competent to Stand Trial Where It Is Unknown Whether the Side Effects Are Likely to Undermine the Trial's Fairness

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## Recommended Citation

Cutter, Larna M. (2003) "Recent Developments: *Sell v. United States*: Fifth Amendment Due Process Clause Does Not Allow Involuntary Administration of Antipsychotic Drugs to Render a Mentally Ill Defendant Competent to Stand Trial Where It Is Unknown Whether the Side Effects Are Likely to Undermine the Trial's Fairness," *University of Baltimore Law Forum*: Vol. 34 : No. 1 , Article 10.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol34/iss1/10>

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***Sell v. United States:*****Fifth Amendment Due Process Clause Does Not Allow Involuntary Administration of Antipsychotic Drugs to Render a Mentally Ill Defendant Competent to Stand Trial Where it is Unknown Whether the Side Effects are Likely to Undermine the Trial's Fairness**

By: Larna Cutter

The United States Supreme Court held the Fifth Amendment Due Process Clause does not allow involuntary administration of antipsychotic drugs to render a mentally ill defendant competent to stand trial where it is unknown whether the side effects are likely to undermine the trial's fairness. *Sell v. United States*, 123 S.Ct. 2174 (2003). The Court ruled antipsychotic drug treatment can only be administered if it is medically appropriate, substantially unlikely to have side effects that may undermine the defendant's right to a fair trial, and necessary to significantly further important governmental trial-related interests while taking into account less intrusive alternatives. *Id.* at 2184-85.

Charles Sell ("Sell") was a practicing dentist with an extensive history of mental illness. In May 1997, Sell was charged with submitting fictitious insurance claims, mail fraud, Medicaid fraud, and money laundering. A federal magistrate judge ordered Sell to undergo a psychiatric examination and eventually concluded Sell was competent, even if he could experience a future psychotic episode. In April 1998, Sell was charged with

the attempted murder of the FBI agent who had arrested him and a witness who was to testify against him. Sell requested a reconsideration of his competency and the magistrate sent him to the United States Medical Center for Federal Prisoners ("Center"). The Center determined Sell was mentally incompetent to stand trial. He was ordered to remain at the Center for four months. The Center recommended antipsychotic drug treatment, which Sell refused.

Subsequently, the magistrate held a hearing regarding treatment and issued a pretrial order, which stated the only way to keep Sell from being dangerous to himself and others was to involuntarily administer antipsychotic drugs. The magistrate stayed the order, however, so Sell could appeal. The United States District Court for the Eastern District of Missouri affirmed. The government and Sell appealed to the United States Court of Appeals for the Eighth Circuit, which affirmed. The United States Supreme Court granted certiorari to determine whether involuntarily administering antipsychotic drugs to render Sell competent to stand trial unconstitutionally deprived Sell of his liberty to reject such treatment.

The Court first considered whether

the court of appeals had jurisdiction over Sell's appeal. *Id.* at 2181-83. The general rule, pursuant to 28 U.S.C. § 1291, permits federal courts of appeals to review final decisions of district courts. *Id.* at 2181. However, in this case there was no final decision, just the magistrate's order. Thus, the Court reviewed the "collateral order" exception, which allows appellate review when an order (1) conclusively determines the disputed question, (2) resolves an important issue completely separate from the merits of the action, and (3) is effectively unreviewable on appeal from a final judgment. *Id.* at 2182. The Court held the court of appeals did have jurisdiction because the order conclusively determined the disputed question of "whether Sell ha[d] a legal right to avoid forced medication." *Id.* at 2182. The second element was satisfied because "involuntary medical treatment raises questions of clear constitutional importance." *Id.* Finally, since Sell would have undergone forced medication before his trial began, the issue was "effectively unreviewable on appeal from a final judgment." *Id.*

The Court acknowledged the standard for involuntarily administering antipsychotic drugs applied

by *Washington v. Harper*, 494 U.S. 210 (1990) and *Riggins v. Nevada*, 504 U.S. 127 (1992). *Id.* at 2183-85. This standard suggests forced administration of anti-psychotic drugs is appropriate to render a mentally ill defendant competent to stand trial if the treatment is medically appropriate, substantially unlikely to have side effects that may undermine the trial's fairness, and while taking account of less intrusive alternatives, is necessary to significantly further important governmental trial-related interests. *Id.* The Court pointed out this standard may only be applied in rare circumstances because it implies an important governmental interest is being threatened. *Id.* at 2184. The Court noted special circumstances may undermine the governmental interest of timely prosecutions. *Id.* For instance, a defendant who refuses treatment, ultimately securing a more lengthy confinement in an institution, affects a case's efficiency because of faded memories and lost evidence. *Id.* Such circumstances, the Court suggested, may also jeopardize a defendant's right to a fair trial. *Id.* Additionally, the Court recognized this standard is applied only to determine whether forced administration of antipsychotic drugs renders a defendant competent to stand trial, and if a court wants to order such involuntary administration on other grounds, such as the defendant's dangerousness, this standard may become moot. *Id.* at 2185. Before a court uses competency grounds, it should

consider all grounds set forth in *Harper* and *Riggins*. *Id.* The Court rationalized that other grounds, such as dangerousness, are more objective and manageable because experts can determine if drugs are medically appropriate and necessary to control a defendant's dangerousness. *Id.* Moreover, the process of balancing harms and benefits of forced administration is less troublesome when applying other grounds in comparison to trial fairness and competency. *Id.* at 2185.

The Court concluded the court of appeals erred by approving the involuntary administration of anti-psychotic drugs to Sell solely to render him competent to stand trial. *Id.* at 2186. The Court reasoned the magistrate did not find forced medication legally justified on trial competency grounds alone because experts who testified at the initial hearing focused primarily on Sell's dangerousness. *Id.* The failure to focus on trial competence was significant because it was ambiguous whether any side effects were likely to undermine the fairness of Sell's trial, which was not necessarily a relevant question when dangerousness was the primary issue. *Id.* at 2187. Also, the lower courts did not consider whether Sell's long confinement at the Center or his refusal to be medicated would result in further institutionalization. *Id.*

In *Sell v. United States*, the Supreme Court's decision to allow a pretrial order to receive immediate review may open courts to

an expansive range of appellate jurisdiction. Any defendant who appeals on the basis of a trial court order, which will, if implemented, cause an immediate violation of his constitutional rights could seriously impede the efficiency of judicial proceedings. On the other hand, the Court's decision reiterates a growing concern regarding the judicial system's treatment of mentally ill defendants. The Court recognized the difficult task mentally ill defendants face in understanding legal proceedings, let alone comprehending they have rights that cannot be violated without strict review. The standard applied impacts both courts and lawyers by mandating they pinpoint the most appropriate means for a mentally ill defendant to receive a fair trial. This includes forcing courts to consider several subjective factors before ordering antipsychotic drugs to mentally ill defendants who do not desire such treatment. Thus, *Sell v. United States* puts Maryland courts on notice that if they fail to take into account these factors, they are blatantly violating the Constitution.