Who Really Decides? Forcibly Medicating Criminal Defendants: *United States v. Archuleta*

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The Due Process Clause and the Fourteenth Amendment of the Constitution protect people from being deprived by the government of “life, liberty, or property without due process of law.” Along with this protection is the implied notion that a person should be the sole determiner when it comes to decisions affecting that person’s body. This includes the right to accept or reject medical assistance, regardless of the advice of medical professionals. In addition, the Due Process Clause also forbids the conviction of a defendant who is incompetent to stand trial. Despite this, the Supreme Court has held that these liberty interests can be overridden by an important state interest. This interest of bringing to trial an individual accused of a serious crime has come to include the forcible administration of antipsychotic drugs to ensure that defendant’s competency. The Supreme Court attempted to establish a standard for the

1 U.S. CONST. amends. V; XIV, §1.
2 Dina E. Klepner, *Sell v. United States: Is the Supreme Court Giving a Dose of Bad Medicine? The Constitutionality of the Right to Forcibly Medicate Mentally Ill Defendants for Purposes of Trial Competence*, 32 PEPP. L. REV. 727, 730 (2005); See Cruzan v. Mo. Dep’t of Health, 497 U.S. 261 (1990) (ruling that competent people have a right to make decisions regarding their own bodies, including refusal of medical treatment, and those who choose to ignore that right can be held liable).
5 See Wash. v. Glucksburg, 521 U.S. 702 (1997) (holding that state’s ban on physician-assisted suicide was rationally related to a legitimate government interest and did not violate the Due Process Clause of the 14th Amendment).
6 See Wash. v. Harper, 494 U.S. 210, 214 (1990). “Antipsychotic drugs... are medications commonly used in treating mental disorders such as schizophrenia. As found by the trial court,
administration of drugs to restore competency. However, these attempts have resulted in ambiguous language and unaddressed issues leaving vague guidelines for the lower courts to follow, such as in United States v. Archuleta. This has the potential to lead to the over application of Sell, and therefore the deprivation of Due Process rights of mentally ill criminal defendants.

There are approximately 280,000 mentally ill people incarcerated in prisons in the United States today. Since the question of forcibly medicating incompetent criminal defendants was first examined by the Supreme Court, many cases have subsequently addressed the issue. In 1990, the Supreme Court first addressed the issue of forcibly medicating defendants to be held competent for trial in Washington v. Harper. Harper was a mentally ill inmate who challenged a prison policy authorizing the involuntary administration of anti-psychotic drugs without judicial hearing. The Court recognized that a person has a significant constitutionally protected liberty interest in “avoiding the unwarranted administration of antipsychotic drugs.” However, the Court acknowledged the state concern and opined that the government interest in the forcible administration of the drugs to be both legitimate and important. The Court in Harper held that the involuntary medicating of a mentally ill inmate satisfies the Due

the effect of these and similar drugs is to alter the chemical balance in the brain, the desired result being that the medication will assist the patient in organizing his or her thought process and regaining a rational state of mind. See generally Sell v. U.S., 539 U.S. 166 (2003).

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7 Id.
9 Bureau of Justice Statistics, Mental Health and Treatment of Inmates and Probationers (1999), available at http://www.ojp.usdoj.gov/bjs/abstract/mhtip.htm. (last visited July 4, 2007). Additionally, approximately 7% of federal prisoners, 16% of those in jail, and 16% of probationers are also identified as mentally ill. Id.
11 See generally Wash. v. Harper, 494 U.S. 210 (1990). Defendant Harper was charged with assaulting two nurses while serving a civil commitment sentence at a State Hospital in Washington. Id. at 214. The Court considered a challenge to a state policy that permits the forcible administration of antipsychotic medication of mentally ill inmates who pose a danger to themselves or others. Id. at 217-18.
12 Id. at 217.
14 Harper, 494 U.S. at 236.
Process requirements as long as an administrative hearing with sufficient procedural safeguards yields the finding that he poses a serious danger to himself or others and that antipsychotic drugs are substantially likely to reduce that risk.\textsuperscript{15}

The Court once again reiterated the constitutionally protected liberties that one enjoys to avoid involuntary medication in \textit{Riggins v. Nevada}.\textsuperscript{16} Unlike \textit{Harper}, which dealt with a dangerous inmate, Riggins was pre-trial detainee awaiting trial for murder.\textsuperscript{17} The Court held that the Due Process requirements can be satisfied when the state demonstrates that "treatment with antipsychotic medication was medically appropriate and, considering less intrusive alternatives, essential for the sake of Riggins' own safety or the safety of others."\textsuperscript{18} The \textit{Riggins} Court merely refined the standard set forth in \textit{Harper}.\textsuperscript{19}

In 2003, the Supreme Court constructed a test that the government must meet to prove that it had satisfied the Due Process requirements to justify the involuntary administration of antipsychotic drugs to pre-trial criminal defendants.\textsuperscript{20} In \textit{Sell v. United States}, the defendant, who had a long history of mental illness, was charged with multiple counts of fraud and attempted murder of an FBI agent.\textsuperscript{21} Because \textit{Sell} was not considered to be a danger to himself or others, the \textit{Harper} analysis was insufficient.\textsuperscript{22} Rather, the Court introduced a four-part test that the government must demonstrate is

\textsuperscript{15} \textit{Id.} at 227. The \textit{Harper} decision and subsequent applicable test was limited to those incompetent criminal defendants considered to pose a danger to themselves or others. \textit{Id.} Pursuant to the 10th Circuit's holding in \textit{U.S. v. Morrison}, the Court must first determine whether involuntary administration of medication can be justified by the circumstances outlined in \textit{Wash. v. Harper}. \textit{U.S. v. Morrison}, 415 F.3d 1180, 1185 (10th Cir. 2005). The government can justify the administration of drugs involuntarily if it is determined that the criminal inmate presents a danger to himself or others. \textit{Harper}, 494 U.S. at 227. If this test is not satisfied, then the government must proceed to the \textit{Sell} test in order to satisfy the Due Process requirements. \textit{U.S. v. Morrison}, 415 F.3d at 1186; \textit{See also} \textit{U.S. v. Glover}, 153 Fed. Appx. 522 (10th Cir. 2005) (vacating and remanding judgment because lower court failed to consider alternative justification for forcible administration of antipsychotic drugs before turning to \textit{Sell} analysis).


\textsuperscript{17} \textit{Id.} Since Riggins suffered from a mental illness he was prescribed antipsychotic drugs. \textit{Id.} After being found competent to stand trial as a result of the drugs, Riggins motioned to suspend the administration of the medication under after the trial was completed. \textit{Id.}

\textsuperscript{18} \textit{Id.}


\textsuperscript{20} \textit{Sell}, 539 U.S. at 180-81.

\textsuperscript{21} \textit{Id.} at 169.

\textsuperscript{22} \textit{Id.} at 181-82, \textit{See also supra} note 14 and accompanying text.
satisfied in order to show the Due Process rights of the defendant have not been violated.  

First, "a court must find that important government interests are at stake." An important government interest exists when the defendant has been accused of a "serious" crime and special circumstances do not exist that would render that interest less important. Second, "the court must conclude that voluntary medication will significantly further...state interests..." in that the medication will render the defendant competent to stand trial, and be unlikely to produce side effects affecting the defendant's ability to assist counsel." Third, "the court must conclude that involuntary medication is necessary to further those interests...[in that] any alternative, less intrusive treatments are unlikely to achieve substantially the same results." Finally, "the court must conclude that administration of the drugs is medically appropriate, i.e., in the patient's best medical interests in light of his medical condition." The government was unable to meet its burden of proof and could not administer antipsychotic drugs to Sell against his will.

In the present case, the defendant, Benjamin Archuleta, was charged with providing false information (he lied about his prior mental health commitment) in the acquisition of a firearm. The defendant was diagnosed as having "schizophrenia,

23 Id. at 180-81. The Sell Court did not set forth a standard of proof for the Sell factors, nor a standard of appellate review. Id. However, subsequent cases have determined that the government must prove the Sell factors by clear and convincing evidence. U.S. v. Gomes, 387 F.3d 157, 160 (2004); U.S. v. Bradley, 417 F.3d 1107, 1113-14 (10th Cir. 2005). Because of the involuntary administration of antipsychotic drugs involves a substantial infringement on fundamental liberty interests, the Court requires the entity petitioning for forcible medicating to bear the burden of proof. See U.S. v. Evans, 404 F.3d 227, 235 (4th Cir. 2005). See also Riggins v. Nev., 504 U.S. 127, 135 (opining that the state bears the burden of proof that involuntary administration of medication does not violate Due Process requirements).


25 Id.

26 Id. See generally Brenda A. Likavec, Unforeseen Side Effects: The Impact of Forcibly Medicating Criminal Defendants on Sixth Amendment Rights, 41 VAL. U. L. REV. 455 (2006) (discussing the potential side effects from the administration of antipsychotic medications used to restore competency in mentally ill patients).


28 Id.

29 Sell, 539 U.S. at 186. The Court held that the government failed to meet its burden stemming from the standard created in Harper and Riggins. Id. Consequently, the government "could not administer antipsychotic drugs to Sell involuntarily solely to render him competent to stand trial." Id.

paranoid type.” The defendant did not want to be medicated, and believed that he could proceed with the trial without treatment. He appealed on order determining that the involuntary administration of antipsychotic medication was necessary to render him competent to stand trial from the U.S. District Court for the District of Utah. “[T]he District court ordered a specific psychiatric evaluation of whether [defendant] should [have been] involuntarily medicated during the court-ordered competency restoration commitment” and held a hearing on the matter. The 10th Circuit Court of Appeals affirmed the lower court’s decision, holding that the government had met its burden in proving all four prongs of the Sell test.

The 10th Circuit has had the opportunity to address this issue using the Sell...
The Court correctly relied on the four Sell factors in order to determine whether forcible, involuntary medication of the defendant was permitted by law. The Court first looked at the first part of the Sell test, determining if an important governmental interest is at stake. An “important” governmental interest exists when the defendant is accused of a “serious” crime and “special circumstances” do not undermine the government’s interest in trying him for that crime.

The Sell court failed to provide a meaningful description of what constitutes a “serious” crime for purposes of analyzing the first element of the test. There is no shortage of case law attempting to address this void, with no consistent definition identified. In the present case, the government argued that there was a ten year maximum term of imprisonment for the crime with which the defendant is charged. However, the defense countered that the crime with which the defendant was charged did not amount to a “serious” crime, and the Sentencing Guidelines would only have the defendant jailed for a maximum of sixteen months. The defendant was only charged

37 This includes cases on both the District and Appeals levels. See U.S. v. Morrison, 415 F.3d 1180 (10th Cir. 2005) (holding that the government must visit the Harper analysis before proceeding to the Sell factors); U.S. v. Bradley, 417 F.3d 1107 (finding that order to involuntarily medicate defendant significantly furthered governmental interests); U.S. v. Glover, 153 Fed. Appx. 522 (10th Cir. 2005) (remanded to lower court because government did not consider alternatives to Sell before proceeding with analysis).

38 2007 U.S. App. LEXIS 4123 at 11-12. The defense did not dispute that the Court properly analyzed the interrelationship between Wash. v. Harper and Sell v. U.S. Id. All parties agreed that the Harper evaluation required by the Court in U.S. v. Morrison was properly preformed and that none of the factors applied to the defendant. Id. See also supra note 16 and accompanying text.


40 Id. at 12. See Evans, 404 F.3d at 237 (noting that the Sell Court provided no assistance for lower courts to determine if the seriousness factor had been met).

41 Sell, 539 U.S. at 236 (government’s interest in bringing to trial an individual accused of a serious crime is important).

42 See infra notes 42 and 43 and accompanying text.

43 2007 U.S. App. LEXIS 4123, at 13. The government argued that it is appropriate for the Court to focus on the maximum possible sentence as opposed to applicable Sentencing Guideline ranges. See Brief for Appellee at 18-19, U.S. v. Archuleta, 2007 U.S. Dist. 4123. See also Evans, 404 F.3d at 237 (“It is appropriate to focus on the maximum penalty authorized by statute in determining if a crime is ‘serious’ for involuntary medication purposes.”); U.S. v. Gomes, 387 F.3d 157 (2nd Cir. 2004) (possession of a firearm constituted a serious crime); Sell v. U.S., 539 U.S. 166 (attempted murder equaled a serious crime).

44 2007 U.S. App. LEXIS 4123. Court noted that by applying the sentencing range under the United States Sentencing Guidelines, the time served if convicted would probably be “from six to twelve months or, at worst, twelve to sixteen months…” Id. at 13. See U.S. v. Schlooming, 2006 U.S. Dist. LEXIS 28919 (nothing that the utilization of the Sentencing Guidelines most
with attempting to purchase a firearm, not unlawful use of that firearm.\textsuperscript{45} The government likened the charges to defendants in other cases who were facing charges such as murder.\textsuperscript{46}

The Court accepted the argument of the government.\textsuperscript{47} There is no dispute that the government has an interest and responsibility in prosecuting those charged with crimes; however, the government’s interests do not outweigh the constitutionally protected liberty interests of the defendant in avoiding involuntary administration of antipsychotic drugs.

In order to properly analyze the question of whether an important government interest exists, the government must also demonstrate that no special circumstances exist.\textsuperscript{48} The \textit{Sell} court offered two examples of what constitutes “special circumstances,” including the possibility of a civil commitment and length of time already served by the defendant.\textsuperscript{49} It is implied that this list is not exhausted,\textsuperscript{50} and courts “must consider the facts of the individual case in evaluating the Government’s interest in prosecution.”\textsuperscript{51} It was not in dispute that the defendant, absent medication, would not be a candidate for civil commitment.\textsuperscript{52} The defendant did not want to be medicated and believed that he

\begin{itemize}
  \item \textit{Sell v. U.S.}, 539 U.S. at 180. “Special circumstances may lessen the importance of that [government] interest.” \textit{Id.}
  \item \textit{Id.} at 180.
  \item \textit{Id.} at 180. The \textit{Sell} court did not explicitly indicate what constituted a special circumstance, although the court did offer two examples. \textit{Id.} In the first, the absence of court ordered medication might instead require lengthy civil commitment for mental illness “that would diminish the risks that ordinarily attach to freeing without punishment one who has committed a serious crime.” \textit{Id.} The second, the defendant may have already been confined for a significant period of time awaiting competency determination, of which he would receive credit against the ultimate sentence imposed. \textit{Id.} See \textit{U.S. v. Lindauer}, 448 F.Supp. 2d 558, 565 (S.D.N.Y 2006) (noting examples provided in \textit{Sell} do not “define the universe of ‘special circumstances’ that are possible to successfully lessen important interest sought by government).
  \item \textit{U.S. v. Evans}, 404 F.3d 227, 237 (4th Cir. 2005).
  \item Under Utah law, the standard for civil commitment is “a ‘substantial danger to self or others’ and ‘no less restrictive environment.’” Brief of Appellant at 13, \textit{Archuleta}, 2007 U.S. App. LEXIS 4123 at 3.
\end{itemize}
could proceed without medication. Additionally, all parties agreed that medication was unnecessary to allow him to be safe in the correctional institution. In fact, after serving a prior sentence and completing the appropriate probation, the defendant was released back into society without supervision and his case was closed. It can be argued that these circumstances, the heavy burden of proof required by the government, the fact that the defendant is not in danger in a correctional facility, coupled with the fact that he has requested to proceed with trial without medication, sufficiently lessens the government’s interest.

Assuming arguendo, that the argument regarding the misapplication of the standard to determine the seriousness of the crime had been accepted, the amount of time the defendant already has spent incarcerated amounts to an additional “special circumstance” warranting the Court to find in favor of the defendant. At the time of the appeal, the defendant had already been in prison for nearly twelve months. It would most likely take three months for the necessary medication to restore competency to the defendant. Therefore, the total time served by the defendant prior to the actual criminal trial could be greater than or equivalent to the sentence the court could have potentially imposed. This significantly diminishes the important government interest.

The Court next considered whether the involuntarily medicating the defendant would further those state interests. This part of the test focuses heavily on whether

4123 [hereinafter Brief of Appellant]. The independent medication evaluation and all parties to this action agreed that he was not a danger in custody, either to himself or others. Id.
53 Id. at 7.
54 Id.
56 See supra notes 50-57 and accompanying text.
57 See infra notes 59-63 and accompanying text.
58 Brief of the Appellant, supra note 53, at 14.
59 Id.
60 Id. See Sell, 539 U.S. at 180 (defendant confined because of incompetence to stand trial “would receive credit toward any sentence ultimately imposed, see 19 U.S.C. §3585(b”). Id.
61 See U.S. v. Schliming, 2006 U.S. Dist. LEXIS 28919 at 15 (because restoration of competency would most likely take eight months, the result would probably be the incarceration of the defendant beyond which he may be sentenced, thereby lessening the government interest in administering medication against his will); See also U.S. v. Rodman, 446 F.Supp.2d 487, 496 (S.C. Dist. 2006) (holding that government’s interest in forcibly medicating defendant is diminished because the defendant has already served nearly the entire term of his sentence while awaiting decision on involuntary medicating).
62 See Schliming, 2006 U.S. Dist. LEXIS 28919 at 23 (noting that Court is in no position to refute
the medication would actually render the defendant competent to stand trial, and whether there are any side effects associated with the medication that can be expected. The defendant argued that the potential long term side effects, such as heart disease and liver damage, as well as the impact on his pre-existing diabetes, should be given greater deference than the government's interest at stake. Based on testimony of the doctor conducting the evaluation, the court concluded that the medication would leave the defendant both competent to stand trial and free from any side effects. The doctor's evaluation was based on the defendant's past experiences with antipsychotic drugs. Judge Anderson's decision on this element rested heavily on medical evidence, and therefore, is most likely correct.

The court next analyzed the third prong of the Sell test, whether it is necessary to further the government interest and there are no other less intrusive methods to render the defendant competent. The evaluating physician noted that "there are no alternative, less intrusive treatments likely to achieve substantially the same results as antipsychotic medications. . .and there is no less intrusive means for administering drugs

findings of medical professionals and expert testimony when determining competency issues). See also Richard Glasglow, Forced Medication of Criminal Defendants and the Unintended Consequences of Sell v. United States, 21 J. CONTEMP. HEALTH L. & POL'Y 235, 248 (2005) (discussing role of medical professionals in the evaluation of defendants and decisions by courts to forcibly medicate incompetent defendants.)

Sell, 539 U.S. at 166. See Evans, 404 F.3d 227 (70% success rate was sufficient to deem the defendant competent to stand trial); See also U.S. v. Knox, 2006 U.S. Dist. LEXIS 81907 (S.C. Dist. 2006) at 8 (80% chance of antipsychotic drugs rendering defendant competent to stand trial); But see U.S. v. Ghane, 392 F.3d 317 (8th Cir. 2004) (10% not enough to render defendant competent to stand trial).

See Brief of Appellant at 16, U.S. v. Archeleta, 2007 U.S. App. LEXIS 4123 (Defendant "asserts that the has just as much if not more of a right to be free from forced antipsychotic medication as the government has in forcing it"). See also U.S. v. Archeleta, 2007 U.S. App. LEXIS 4123 at 9 (doctor in charge of evaluating defendant conceded that contemplated treatment had the potential for exacerbating his diabetes).


Id.; see also U.S. v. Knox; 2006 U.S. Dist. LEXIS 81907 at 8 (defendant had taken the medication in the past with good response); but see U.S. v. McCray, 2007 U.S. Dist. LEXIS 5424 at 22-23 (government did not meet its burden in establishing that the defendant would not suffer from side effects of the proposed involuntary course of treatment for competency purposes).

See Archeleta, 2007 U.S. App. LEXIS at 2-3; see also supra note 37 and accompanying text. The author will accept the decision reached by the Court regarding the second factor of the Sell test as it is based primarily on medical testimony and evidence. Id. The Court has recognized the limits of the court in this respect and gives a certain amount of deference to medical professional and their findings. Id.

Id. at 14.
given that Archuleta ‘insists he has no mental illness’ and that ‘he will refuse all antipsychotic medications, even in the face of contempt of court.’ Like the second portion of the *Sell* test, this determination was based on the doctor’s independent evaluation. Based on the doctor’s medical opinion, the court correctly ruled on this part of the *Sell* test.

Finally, the court analyzed whether the treatment proposed would be medically appropriate. The relevant case law has not firmly defined what constitutes “medically appropriate” treatment. When considering this final element of the test, *Sell* notes that the court should first ask whether the treatment is needed because defendant’s “refusal to take drugs puts his health gravely at risk,” or if the treatment “medically appropriate and necessary to control a patient’s potentially dangerous behavior.” The medical expert evaluating the defendant did not opine that either of these circumstances applied to the defendant. It is also suggested by *Sell* that the court consider “the defendant’s health, his safety, and whether the Government’s interest in prosecution justifies subjecting the defendant to the effects of medication.” The author does not dispute the findings of the medical expert in the evaluation of the defendant and the potential effects of antipsychotic drugs if involuntarily administered.

Although it seems rather benign on the surface, *United States v. Archuleta* has the potential for wide-reaching consequences due to the lack of relevant case law in the 10th Circuit surrounding the issue of forcible administration of antipsychotic medication on pre-trial detainees. Because *Sell* left a multitude of ambiguities, lower court cases have

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69 *Id.* at 13; see also *supra* note 32 and accompanying text.
70 *See supra* note 64 and accompanying text.
71 *Id.*

73 *See Riggins v. Nev.,* 504 U.S. at 155-56 (course of treatment to forcibly medicate defendant to be rendered competent to stand trial was deemed medically appropriate because defense made no suggestion that outlined treatment was inappropriate); *see also U.S. v. Knox,* 2006 U.S. Dist. LEXIS 81907 at 9 (standard treatment plan and minimal side effects rendered medically appropriate); *but see U.S. v. McCray,* 2007 U.S. Dist. LEXIS 5424 at 27-28 (possibility of serious side effects balanced against question of effectiveness deemed the proposed treatment not medically appropriate). *See generally* Douglas Mossman, M.D., *Is Prosecution ‘Medically Appropriate?’*, 31 *New Eng. J. on Crim. & Civ. Confinement* 15 (2005) (discussing legal interpretations of the phrase “medically appropriate”).
74 *Sell,* 539 U.S. at 182.
76 *See Mossman supra* note 75.
77 *See supra* notes 64-73 and accompanying text.
78 *See supra* note 22 and accompanying text.
and will continue to be forced to interpret and apply their own understandings of the
Sell decision. The intention of the Supreme Court was for Sell to only apply in “rare
circumstances,” leading one to believe that the government must present overwhelming
evidence to meet its heavy burden of proof. Cases like Archuleta open the door for
abuse of the standard and will most certainly lead to the infringement of liberty interests
of those who may be unable to protect themselves.

79 See U.S v. Rivera-Guerrero, 426 F. 3d 1130, 1138 (9th Cir. 2005).