Criminal Procedure

Competency to Stand Trial – Involuntary Medication to Render Defendant Competent – *Sell* Factors

***State v. J.D.B.*, 2026 WI 5 (filed Feb. 25, 2026)**

HOLDING: The circuit court properly issued an order for involuntary medication to restore the defendant's competency to stand trial.

SUMMARY: The defendant was charged with battery to a law enforcement officer. He was diagnosed with schizophrenia and found incompetent to stand trial. While committed to a mental health institution, he refused to take his prescribed antipsychotic drugs, and the circuit court subsequently issued an involuntary medication order. The Wisconsin Court of Appeals reversed this decision. In a majority opinion authored by Justice Hagedorn, the Wisconsin Supreme Court reversed the court of appeals.

The U.S. Supreme Court has held that a defendant charged with a serious crime may be involuntarily medicated to render the defendant competent for trial. *See Sell v. United States,* 539 U.S. 166 (2003).

But given the liberty interest implicated, *Sell* held that a court must make the following four findings before issuing an involuntary medication order. First, the government must have an important interest. Second, involuntary medication must be substantially likely to restore the defendant to competency for trial and substantially unlikely to cause side effects that might hinder the defendant's ability to assist in the defense. Third, in light of any available alternatives, involuntary medication must be necessary to bring the accused to trial. And fourth, involuntary medication must be in the best medical interest of the defendant (*see* ¶ 46). In *J.D.B.*, the court dealt with the appellate standard of review for each of the four *Sell* factors and then analyzed the evidence related to each factor, applying the appropriate standard.

Under the first *Sell* factor, the court must determine whether important governmental interests are at stake. This is a legal question that the appellate court reviews de novo (*see* ¶ 21). In *J.D.B.*, the court concluded that battering a law enforcement officer is a serious offense and that a serious crime is ordinarily enough to find the presence of an important governmental interest (*see* ¶¶ 12-14). Various special circumstances articulated by the defendant did not undermine that interest (*see* ¶¶ 24-28).

The remaining three *Sell* factors are entrusted to the factfinder, and an appellate

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In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize all decisions of the Wisconsin Supreme Court (except those involving lawyer or judicial discipline).

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court will disturb those findings only if they are clearly erroneous. The supreme court concluded that the circuit court's findings with respect to each of these factors were not clearly erroneous based on the record in this case (*see* ¶ 48).

Regarding the second *Sell* factor, the evidence supported the circuit court's findings that the course of treatment was substantially likely to render the defendant competent to stand trial and substantially unlikely to have side effects that undermine the fairness of the trial (*see* ¶ 38).

As for the third *Sell* factor, the record supported the circuit court's finding that involuntary medication was necessary based on the doctor's testimony that no less intrusive alternative would help return the defendant to trial competency (*see* ¶ 41). Regarding the fourth *Sell* factor, the record supported the circuit court's finding that involuntary administration of medications or treatment was medically appropriate (*see* ¶¶ 44-45).

Finally, having concluded its analysis of the *Sell* factors as applicable in this case, the court considered whether the state proved the statutorily required incompetency findings. Under Wis. Stat. section 971.14(3)(dm), before a court can order involuntary medication, the state must make two showings. First, it must prove that the advantages and disadvantages of the medication were explained to the defendant. Then, it must demonstrate that the defendant lacks ability either to apply or to express understanding of the advantages and disadvantages of the medication (*see* ¶ 51). Once again, the supreme court concluded that there was sufficient evidence supporting the circuit court's conclusion that these statutory elements were satisfied.

Justice Crawford filed a dissenting opinion.

Search and Seizure – Search by Private Actor

***State v. Rauch Sharak*, 2026 WI 4 (filed Feb. 24, 2026)**

HOLDING: The defendant's Fourth Amendment rights were not violated when Google identified child sexual abuse material on his computer and referred the matter to law enforcement.

SUMMARY: Google is an electronic service provider (ESP). The company scans its users' content, searching for files that match a list of known child sexual abuse material (CSAM) and flagging such files for review. In August 2021, Google flagged four files as potential CSAM and submitted a tip to the CyberTipline of the National Center for Missing & Exploited Children (NCMEC). The tip contained the four files, and Google noted that an employee had viewed each of them. The tip identified the suspect as "Andreas Rauch" and provided his location and IP address data. The NCMEC forwarded the tip to the Wisconsin Department of Justice (DOJ).

After subpoenaing the associated telecommunication company, the DOJ linked the IP address to a dwelling in Jefferson County and forwarded the tip to the Jefferson County Sheriff's Office. A detective in that office viewed the files from the tip without a warrant. He then obtained a search warrant to search Rauch Sharak's home and devices. Upon executing the warrant, law enforcement found CSAM on Rauch Sharak's phone. The circuit court denied the defendant's motion to suppress the CSAM found on his phone, and he was convicted of multiple counts of possessing CSAM.

On certification from the court of appeals, a unanimous supreme court affirmed the denial of the defendant's motion to suppress in an opinion authored by Justice Protasiewicz. Said the court: "We hold that Google acted as a private actor – not as an instrument or agent of the government – when it scanned Rauch Sharak's files and an employee opened and viewed files flagged as CSAM" (¶ 10). "When considering whether a search is a government or private search, we consider the totality of the circumstances.... The ultimate inquiry is whether the private actor acted as an instrument or agent of the government.... We clarify that the considerations listed in [*State v. Payano-Roman*, 2006 WI 47, 290 Wis. 2d 380, 714 N.W.2d 548] are not requirements. Although a court may analyze those considerations – whether the police initiate, encourage, or participate in the search; the private actor's purpose; and whether the search was a joint endeavor – no one consideration is dispositive" (¶ 19) (citations omitted).

The defendant failed to meet his burden to show that Google acted as a governmental agent or instrument (*see* ¶ 20). Among the pertinent factors, Google had a valid business reason "to complete this search" (¶ 23). In addition to case law, the court looked at federal regulations governing CSAM. It found itself in "good company" in holding that "ESPs like Google are private actors when searching for CSAM on their platforms" (¶ 31). The court also clarified "that law enforcement did not need a warrant before opening and viewing the files in the CyberTip because law enforcement's search falls under the private search doctrine. Under that doctrine, the government does not conduct a 'search' under the Fourth Amendment when it repeats a search by a private actor and stays within the scope of the private search" (¶ 34). **WL**