

A competency examination was thereafter performed at the Federal Medical Center in Butner, North Carolina. Following a report from the appropriate officials at FMC Butner, a competency hearing was held on March 24, 2003, and Judge Sargent determined that Evans was not competent to stand trial. Pursuant to 18 U.S.C.A. § 4241(d)(1) (West 2000), Evans was recommitted to determine whether there was a substantial probability that he would regain competency.

Evans was returned to FMC Butner. On June 24, 2003, the warden at Butner requested the court for permission to involuntarily medicate Evans in an effort to restore his competency.¹ Judge Sargent held an evidentiary hearing on this request on October 31, 2003, at which time she received lay and expert testimony concerning Evans' mental condition. Thereafter, in a written opinion, Judge Sargent found that pursuant to the standards established by the Supreme Court in *Sell v. United States*, 539 U.S. 166 (2003), involuntary medication of Evans was not appropriate. See *United States v. Evans*, 293 F. Supp. 2d 668, 674-75 (W.D. Va. 2003).

Judge Sargent scheduled another hearing for January 23, 2004, to determine if Evans should be committed pursuant to 18 U.S.C.A. § 4246 (West 2000) on the

¹ The government has not specified the nature of "voluntary" as opposed to "involuntary" medication. However, it appears that antipsychotic medication taken voluntarily is typically administered orally. In contrast, such medication given involuntarily is typically administered in an injectable form. See *United States v. Gomes*, No. 3:98 CR 195(CF), 2004 WL 345301, at *8 (D. Conn. Feb. 17, 2004).

ground that his release would create a substantial risk of bodily injury to another or of serious damage to the property of another. Immediately prior to the hearing, Evans was charged in Case No. 1:04M00014 with threatening to murder Judge Sargent. *See* 18 U.S.C.A. § 115(a)(1)(B) (West 2000). Judge Sargent accordingly recused herself and I assumed both cases. On March 5, 2004, I conducted an evidentiary hearing on the government's request that the issue of involuntary medication be reconsidered in light of the new criminal charge and the defendant's request that he be released on bond.

I have carefully considered the evidence, both as introduced before me and as submitted at the prior hearings before Judge Sargent, and the following constitute my findings of fact and conclusions of law.

Defendant Evans is clearly incompetent to stand trial on any criminal charge. The medical evidence is substantial in that regard. He suffers from schizophrenia, paranoid type and his present incompetency results from his strong delusional beliefs of persecution arising from that illness.² While Dr. Margaret S. Robbins, a psychiatrist who testified for Evans, was of the opinion that medication would be

² Evans believes himself to be persecuted by "right wingers" and the government. (Forensic Evaluation, July 31, 2003, at 10.) Ironically, of course, his lengthy incarceration without trial because of the competency issues and the government's request to involuntarily medicate him doubtless support, in his mind, the fact of government persecution.

unlikely to change Evans' delusional beliefs (Tr. Oct. 31, 2003, at 61-62, 65, 66-67), the medical staff at Butner opines that it is "substantially likely" that Evans can be restored to competency with antipsychotic medication (Forensic Evaluation July 31, 2003, at 18).

Dr. Robbins also expressed concern about the side effects of antipsychotic medicine, particularly because Evans is seventy-five years old (Tr. Oct. 31, 2003, at 68-72), but the Butner staff is of the opinion that such medicine can be safely administered without side effects that will interfere significantly with Evans' ability to assist in his defense (Forensic Evaluation, July 31, 2003, at 18).

The staff at Butner reports (*id.* at 9) that Evans will not voluntarily take antipsychotic medicine. Dr. Robbins suggested a "non-confrontational" approach to restoring Evans' competency, although she was generally pessimistic that Evans would ever be competent. (Tr. Oct. 31, 2003, at 82-83.)

While I respect Dr. Robbins' views, I find the opinions of the staff at Butner more credible. The Butner staff has had a much longer opportunity to observe and evaluate Evans, and their conclusions better correspond with Evans' medical and social history.

In her earlier opinion, Judge Sargent found that there was not an important governmental interest within the meaning of *Sell* in bringing Evans to trial because

he had already been confined longer than any possible imprisonment for the misdemeanor with which he was then charged. *See United States v. Evans*, 293 F. Supp. 2d at 674. Now, however, he is charged with a felony for which the maximum term of imprisonment is ten years. *See* 18 U.S.C.A. § 115(b)(4) (West 2000 & Supp. 2003). I find that under these changed circumstances, the government does have an important interest in bringing Evans to trial.³ Moreover, I find that other standards approved in *Sell*, which Judge Sargent did not reach because of her initial determination, also support an order of involuntary medication.

In *Sell*, the Supreme Court held that

the Constitution permits the Government involuntarily to administer antipsychotic drugs to a mentally ill defendant facing serious criminal charges in order to render that defendant competent to stand trial, but only if the treatment is medically appropriate, is substantially unlikely to have side effects that may undermine the fairness of the trial, and, taking account of less intrusive alternatives, is necessary significantly to further important governmental trial-related interests.

123 S. Ct. at 2184. The Court further held that this standard requires the following findings by any reviewing court: (1) that important governmental interests are at

³ While I make no determination at this time, there is an open question as to whether Evans is sufficiently dangerous to permit his long-term civil commitment. Thus, the government's interest in seeking to punish Evans for his alleged criminal conduct is not lessened by that possibility. *See Sell*, 123 S. Ct. at 2184. In addition, the government intends to rely largely upon informants' testimony in connection with the latest charge against Evans, and therefore the government has an additional interest in a prompt prosecution, before memories fade. *See id.*

stake; (2) that involuntary medication will significantly further those interests, by likely rendering the defendant competent, without side effects that will significantly interfere with her ability to assist in her defense; (3) that any alternative, less intrusive treatments are unlikely to achieve substantially the same results; and (4) that the administration of the drugs is medically appropriate with regard to the patient's best interests. *Id.* at 2184-85.

I find that the government has shown sufficient proof to allow the court to make all of the above findings. In summary, I find as follows: (1) that defendant Evans is presently suffering from a mental disease that renders him incompetent to the extent that he is unable to assist properly in the defense of the pending serious criminal charges; (2) that there is a substantial probability that the administration of antipsychotic medicine will restore Evans to competency within a reasonable time; (3) that Evans will not voluntarily take such medicine; (4) that there are not less intrusive forms of therapy likely to restore Evans to competency; (5) that the administration of such medicine is not substantially likely to cause any serious side effects that would interfere significantly with Evans' ability to assist in his defense; (6) that such medicine is medically appropriate; and (7) that the government has important interests at stake in the restoration of Evans' competency.

The defendant has moved that he be admitted to bond. However, for the reasons stated, I find that it is appropriate that his commitment be extended in order to determine whether he can be restored to competency. Release on bond at this time is thus not appropriate.⁴

For the reasons stated, it is **ORDERED** that the defendant Herbert G. Evans, Jr. is committed to the custody of the Attorney General pursuant to 18 U.S.C.A. § 4241(d)(2) (West 2000) for a reasonable period of time until his mental condition is so improved that trial may proceed or until the pending charges against him are disposed of according to law, whichever is earlier. The defendant must be promptly returned by the United States Marshals Service to the appropriate medical facility of the Bureau of Prisons. Once there, if the defendant refuses to voluntarily take antipsychotic medicine prescribed for the purpose of restoring his competency, the court authorizes the involuntary administration of such medicine for such purpose. It is further **ORDERED** that the defendant's request for release on bond is denied at this time.

⁴ The question of possible commitment of the defendant because of dangerousness pursuant to 18 U.S.C.A. § 4246 is also premature.

The clerk will send copies of this order and opinion to counsel for the parties; to the United States Marshals Service; to the Warden of FMC Butner; and to the United States Probation Office.

ENTER: March 18, 2004

/s/ JAMES P. JONES
United States District Judge