UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 20-3237-BECERRA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID TYLER HINES,

Defendant.

_________________________________/

REPLY TO GOVERNMENT'S RESPONSE TO MOTION TO VACATE COMPETENCY EVALUATION ORDER

David Hines, through undersigned counsel, files this Response to the Government's reply to Mr. Hines' Motion requesting that the Court vacate its Order that Mr. Hines submit to a competency evaluation and states:

The government's reply does not address the central point that the defense asserted in its motion: there is no reasonable cause to believe that Mr. Hines does not possess the "capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense...." *Drope v. Missouri*, 420 U.S. 162, 171, 95 S.Ct. 896, 903, 43 L.Ed.2d 103 (1975). "To comply with a defendant's procedural right, once the court learns of information that raises a "bona fide doubt regarding the defendant's competence", the court must apply adequate procedures to ascertain whether the defendant is competent to proceed to trial... . *United States v. Wingo*, 789 F.3d 1226, 1235 (11th Cir. 2015)

The government has raised three general issues, although it has not articulated how those issues raise a "bona fide doubt" concerning Mr. Hines competence. Rather, the government appears intent on casting Mr. Hines in an unfavorable light. Firstly, the government describes the alleged facts of this case. Rather than supporting the government's position, this point undercuts it. The government has examined Mr. Hines' business bank records and determined that there were average monthly inflows and outflows of approximately $200,000. This seems to suggest that Mr. Hines was competent to operate a business with substantial cash flow.

Secondly, the government recounts Mr. Hines' "personal history" including his prior arrest record and history of substance abuse issues. The government appears to substantially overstate the number of Mr. Hines' arrests. Three of the arrests listed in the pretrial services report appear to have resulted in six separate cases. For instance, Mr. Hines was arrested on 10/6/2009 on a misdemeanor leaving the scene of an accident charge (case 7589FSB) and was separately cited for "no drivers license" (case 7590FSB) both of which, like nearly all of the cases listed in the PSR, were subsequently dismissed. The government's faulty information supports the conclusion that it is, at the very least, premature to order a competency evaluation before the parties have an opportunity for further investigation. The additional information provided in this section relates to Mr. Hines' substance abuse issues. While Mr. Hines may very well have substance abuse issues, the government has failed to explain how this relates to his competence. A significant number of individuals in the criminal justice system have substance abuse issues and merely having substance abuse issues certainly does not mean that these individuals are not competent.

The government also provides a record of heated emails between Mr. Hines and the Bank of America and an email the prosecutor believes was sent to him by Mr. Hines. While the language employed in the email allegedly between Mr. Hines and the Bank of America is intemperate, it is not irrational and certainly provides no support for the conclusion that Mr. Hines is not competent. Without conceding that the email to the prosecutor came from Mr. Hines, it is yet another fact that actually undercuts the government's position. The email includes the statement "I know it's your job to prosecute me." One of the issues examined in a competency hearing is whether the defendant knows the roles of the individuals involved in his case.

Finally, the government refers to a statement that Mr. Hines allegedly made to the agents that his emergency contact was "god." As already noted by the defense, it is not clear whether this statement was made in jest or sarcastically. What we do know, however, is that when Pretrial Services interviewed him, Mr. Hines was able to provide them with his personal information, including the name and contact information for his wife.

Requiring a defendant to submit to a psychological evaluation is a significant intrusion on his privacy rights and potentially on his right not to incriminate himself, as any evaluation ordered by the Court is not privileged. While it was certainly understandable that the Court would enter the order initially, based on the joint motion and representations of the government and Mr. Hines' temporary counsel, at this point, there is insufficient evidence of a "bona fide doubt" concerning Mr. Hines' competence to compel him to give up his rights and submit to an evaluation.

For the above reasons, Mr. Hines respectfully requests that the Court vacate its Order for a competency evaluation.

Respectfully Submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY certify that on **October 6, 2020**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/R. D'Arsey Houlihan
R. D'Arsey Houlihan