

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff,
v.
ERIC SHIBLEY,
Defendant.

NO. CR20-174JCC

**GOVERNMENT'S RESPONSE TO COURT
ORDER RE: DEFENDANT'S HEALTH
(Dkt. #49)**

The government files this response to the Court's order to brief what measures, if any, should be taken to address Defendant Eric Shibley's health. Dkt. # 49. The government does not oppose Defendant's apparent request for a hearing and psychiatric evaluation to determine his mental competency.

I. BACKGROUND

On October 15, 2020, the grand jury returned a 15-count indictment charging Defendant with wire fraud, bank fraud, and money laundering related to a scheme to submit false and fraudulent applications for Paycheck Protection Program (PPP) loans. Dkt. #31.

Defendant is currently detained pending trial at FDC-Seatac after Judge Peterson revoked Defendant's appearance bond on September 28, 2020. Dkt. #29. On November

20, 2020, Judge Peterson denied Defendant's motion to reopen detention (Dkt. # 46) after a hearing.

Trial was initially scheduled for December 14, 2020. Dkt. #37. On Monday, November 16, the Court held a status conference with the parties and discussed the upcoming trial date. At this status hearing, counsel for Defendant raised concerns about his ability to be ready for the upcoming December trial date. Defendant's counsel also raised concerns related to Defendant's current mental health, including that Defendant was confused, panicked, and hearing voices.

On November 18, 2020, in response to the Court's order, counsel for Defendant filed a sealed response detailing more concerns about Defendant's mental health, as well as details about his physical health. Dkt. # 52.

II. DISCUSSION

A. Legal standard for ordering a competency evaluation

18 U.S.C. § 4241(a) states:

At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, . . . the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

18 U.S.C. § 4241(b) directs that after the request for a hearing on the mental competency is granted, "the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c)."

B. The government does not oppose a hearing and psychiatric evaluation to determine the mental competency of Defendant

Defendant's sealed filing regarding his medical status appears to be a request for a hearing and psychiatric evaluation to determine the mental competency of the defendant

pursuant to 18 U.S.C. § 4241. The government does not oppose such a request, in light of the statements made by Defendant's counsel at the November 16, 2020 status conference and the statements about Defendant's mental health put forward in Defendant's filing. These statements, taken together, suggest that "there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense" under 18 U.S.C. § 4241.

Should the Court agree with Defendant's request for a hearing and psychiatric evaluation, the government has provided a proposed order for a hearing and a psychiatric evaluation of Defendant to determine Defendant's mental competency and excluding the time required to determine Defendant's competency under the Speedy Trial Act. *See* Attachment 1. The time should be excluded as "delay resulting from any proceeding, including examinations, to determine the mental competency ... of the defendant" within the meaning of 18 U.S.C. § 3161(h)(1).

C. Defendant's request for an independent medical/psychiatric evaluation

In his response, Defendant requests that any medical or psychiatric "evaluation be done by professionals not employed or habitually contracted by FDC Seatac," but does not identify such a professional. Dkt. # 52 at 3-4. 18 U.S.C. § 4247(b) governs psychiatric examinations ordered pursuant to 18 U.S.C. § 4241 and states:

A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section 4245, 4246, or 4248, upon the request of the defendant an additional examiner may be selected by the defendant. . . .

Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court.

A "suitable facility" is one "that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant." 18 U.S.C. § 4247(a)(2).

Defendant is not entitled under 18 U.S.C. §§ 4241 or 4247 to select the examiner; the Court is empowered to appoint the examiner. “[A]n accused, ordered to have an examination by a court appointed expert, is not entitled to have present his own expert or his own counsel.” *United States v. Mattson*, 469 F.2d 1234, 1236 (9th Cir. 1972). And district courts who have ordered psychiatric evaluations have noted that the Bureau of Prisons is well equipped to evaluate competency. *See, e.g., United States v. Sampson*, 12 F. Supp. 3d 214, 217 (D. Mass. 2014) (“The BOP has experience and expertise in the evaluation of competency, and it performs such evaluations on a regular basis. . . . The court expects that the BOP’s Examiner will remain, as required, neutral and detached.”) (*quotations and citations omitted*); *see also United States v. Loughner*, 770 F. Supp. 2d 1026, 1027 (D. Ariz. 2011). Especially in light of the fact that Defendant has not identified an expert to conduct the examination, the government submits that the mental health professionals at FDC-Seatac, who are well-equipped to handle issues such as the ones presented here, should perform the evaluation requested in this case.

As to his request for an evaluation of his physical health, Defendant has provided nothing in his response suggesting medical professionals at FDC-Seatac have even conducted a medical evaluation related to his general physical condition, and Defendant has proffered no evidence to suggest that they would not be impartial and professional in their evaluation. Furthermore, Defendant has not identified any medical professional who could perform this evaluation. The government opposes any request by Defendant to receive an outside medical evaluation until Defendant provides an explanation of why it is necessary.

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III. CONCLUSION

The government does not oppose Defendant's request for a hearing and psychiatric evaluation to determine his mental competency. Should the Court order that Defendant be evaluated for competency, the government submits a proposed draft order and asks that the Court exclude the time under the Speedy Trial Act.

DATED this 20th day of November, 2020.

Respectfully submitted,

BRIAN T. MORAN
United States Attorney

DANIEL S. KAHN
Acting Chief, Fraud Section,
Criminal Division
U.S. Department of Justice

s/ Brian Werner
BRIAN WERNER
Assistant United States Attorney

s/ Laura Connelly
LAURA CONNELLY
Trial Attorney