

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
CASE NUMBER 6:22-cr-201-WWB-LHP

.
UNITED STATES OF AMERICA, :
:
Plaintiff, :
:
v. : Orlando, Florida
:
:
EVAN EDWARDS, :
also known as Ian Heringa, :
:
Defendant. :
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.
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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE EMBRY J. KIDD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

Counsel for Government: Kara M. Wick

Counsel for Defendant: A. Brian Phillips

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P R O C E E D I N G S

THE DEPUTY CLERK: Case Number 6:22-cr-201,
United States of America versus Evan Edwards.

Counsel, please state your appearances for the
record.

MS. WICK: Good afternoon, Your Honor. Kara Wick
on behalf of the United States. With me is Roger Fuentes
from the United States Secret Service.

MR. PHILLIPS: Good afternoon, Your Honor. Brian
Phillips on behalf of Evan Edwards who's present and in the
hospital bed to my immediate left.

THE COURT: All right. We're here today on a
status conference to follow up on our last hearing.
Following that hearing, I did issue an order to the
hospital directing them to disclose Mr. Edwards' medical
records and for the parties to file a joint notice by
yesterday to update the Court on Mr. Edwards' status.

I did receive and review the status report, and it
does appear that the hospital complied. But from what I
gather, the attorneys, not being medical professionals, are
not really able to ascertain exactly still what's going on
with Mr. Edwards medically or mentally.

Does that -- is that a fair assessment, Ms. Wick?

MS. WICK: Yes, Your Honor.

1 THE COURT: And from your perspective,
2 Mr. Phillips?

3 MR. PHILLIPS: It is, Your Honor.

4 As we put in our portion of the status report,
5 there has been a psychiatric eval, but that eval was not
6 focused on the issue that we're dealing with. And so even
7 the conclusions from that, which are not conclusions much
8 at all -- it's maybes and coulds and possibility-type
9 language -- doesn't answer the ultimate question.

10 So I think the best word that, I think, Ms. Wick
11 selected, I think -- and it's correct -- is it's ambiguous
12 what the situation is. And I think, my humble opinion, we
13 need better medical information to decide where to go next.

14 THE COURT: Can I assume --

15 MR. PHILLIPS: The Government sees it differently.

16 THE COURT: -- that you've not been able to speak
17 with Mr. Edwards' doctors?

18 MR. PHILLIPS: I have not, Your Honor, other -- I
19 did speak to one of his attending nurses.

20 His left hand has been bandaged, as the Court may
21 or may not -- I think can see from here.

22 THE COURT: I can.

23 MR. PHILLIPS: He is not eating, and so they've
24 inserted a nasal tube through which he's being fed. He was
25 using his left hand to pull it out, so his left hand has

1 now been bandaged such that his fingers don't work.

2 I would also note, Your Honor, I'm in the presence
3 of his -- what's the phrase I'm looking for? The process
4 by which urine is drained from the body without the person
5 having to be volitional about it.

6 THE COURT: Catheter.

7 MR. PHILLIPS: Catheter. Thank you. I couldn't
8 think of the word for a second.

9 THE COURT: All right. Well, is he still -- I
10 think there was a breathing tube the last time. It doesn't
11 look like he has that anymore?

12 MR. PHILLIPS: I'm sorry, Your Honor. I didn't
13 hear you for a second. The air conditioning is running in
14 here in the room.

15 THE COURT: Was there a breathing tube at our last
16 conference?

17 MR. PHILLIPS: Yes, Your Honor. He had a nasal
18 cannula of some sort installed at the time. I think that
19 was removed to facilitate the feeding tube that's now been
20 inserted.

21 THE COURT: Okay.

22 All right. Well, you know, I was prepared to have
23 the parties meet and confer and select an expert to conduct
24 a competency evaluation because I think that making a
25 determination as to whether or not Mr. Edwards' inability

1 to communicate is due to a medical condition or a mental
2 health condition could be subsumed under the umbrella of a
3 competency evaluation. An expert could determine that no,
4 this is not an issue that requires mental health treatment.
5 It is an issue that requires a medical procedure or
6 something of the sort. But given the new revelations,
7 well, it's clear that there's some combination.

8 So I might still order a psychiatric evaluation
9 because I do agree with the United States that -- I believe
10 there is reasonable cause to believe that the defendant may
11 presently be suffering from a mental disease or defect.
12 But the defendant is mentally incompetent to the extent
13 that he's unable to at least assist properly in his
14 defense. And that's not to say that there are not also
15 other medical issues going on. But I do think that we need
16 somebody to come in and separate the two and tell us what's
17 going on.

18 So I am going to ask the parties to meet and
19 confer and to select an expert. I know that there are some
20 that appear frequently in federal court. I don't know
21 their availability. But perhaps the parties can reach out
22 to their preferred experts and either jointly or separately
23 submit one or more names for me to consider. If you can
24 agree on someone, that's great. I'll just go ahead and
25 appoint that person. If you can't agree on someone, then

1 perhaps submit, like I said, one or more names for me to
2 consider and I will select one.

3 MS. WICK: Your Honor, may I be heard briefly?
4 Oh, sorry.

5 THE COURT: Go ahead, Ms. Wick.

6 MS. WICK: Your Honor may have already decided
7 against this, but it would be the United States' request
8 that the defendant be sent to the Bureau of Prisons for the
9 competency evaluation given the unique circumstance --

10 THE COURT: How do you propose -- I thought about
11 that, but how do you propose to do that if he hasn't been
12 discharged from the hospital?

13 MS. WICK: So I actually spoke with Penelope Knox
14 from the Marshals Service yesterday. And I passed this
15 information along to Mr. Phillips.

16 According to the Marshals Service, he -- Mr. Evans
17 -- excuse me, Mr. Edwards is -- would be released if there
18 were somewhere to send him apparently. Apparently the
19 hospital has been communicating with Orange County Jail.
20 Orange County Jail will not take him. And that is the
21 reason that the marshals are hearing that he has not been
22 released.

23 Obviously, I haven't heard that directly from the
24 hospital. I communicated briefly with Mr. Phillips this
25 morning about that. I don't believe, unless things have

1 changed, that Mr. Phillips has heard that directly from the
2 hospital. But that's what I'm hearing, you know, third
3 hand being passed from the hospital to the jail to the
4 marshals and then to me.

5 So if there's a way for Mr. Phillips to confirm
6 that, that he would be in a position to be released if he
7 could, in fact, go to a BOP medical facility, that could
8 address both his medical concerns and his potential
9 competency concerns. Then I think that's the route to go
10 given how complex the situation is, given that the
11 defendant is not communicating at this time.

12 I don't believe this is a situation where someone
13 could come in, have some sort of brief evaluation for a
14 few hours or for a day and be able to observe him and
15 interact with him enough to really understand what's going
16 on here.

17 I will also pass along to the Court that my office
18 did speak directly to BOP and got confirmation that there
19 is no backlog for any -- for short studies and that JPATS
20 is running efficiently. And there are zero Orlando
21 Division pending JPATS to be transported so that there
22 should not be any delay in that process if that's what the
23 court orders.

24 THE COURT: Mr. Phillips?

25 MR. PHILLIPS: Your Honor, if Ms. Wick is hearing

1 it third hand, I'm getting it fourth hand because I'm
2 getting what information I have from Ms. Wick. The
3 Marshals Service nor ORHS has supplied me information on
4 his release or not release status.

5 I would note, Your Honor, he is currently
6 handcuffed to the bed, wrist and ankle. So I don't think
7 there's much of a risk of him going anywhere from here.

8 To my mind, until we have the initial eval and
9 competency, there's no reason to send him to Butner or
10 Springfield, Missouri, or whatever federal psych hospital
11 they prefer. To my mind, he needs to be evaluated while
12 here, that is to say in Central Florida, and have someone
13 who is an M.D.

14 And I think the Court said psychiatric evaluation.
15 I think that's absolutely correct. Someone who's an M.D.
16 tell us whether or not there is a significant issue with
17 his mental health. There may be.

18 And as I put in the defense portion of the status
19 report yesterday, it may be communication. It may be a
20 volitional choice. But until somebody with M.D. at the end
21 of their name tells us that, I don't think the Court has
22 the basis on which to send him off to our friends at Butner
23 for a residential eval, if you will.

24 THE COURT: I agree with Mr. Phillips that while I
25 do conclude that there's a reasonable cause to believe that

1 he may be presently suffering from a mental disease or
2 defect, before we send him off to Butner or another
3 facility, I do want some more assurance on that point.

4 Of course if he is discharged in the meantime,
5 that will present a different issue. And I also recognize
6 that this is undoubtedly putting a strain on the Marshal's
7 resources to have someone stationed at the hospital 24/7.

8 So I think right now I want to ascertain which of
9 the experts the parties might agree upon or can find
10 independently who would be able to see Mr. Edwards in very
11 short order, such as next week, and provide a report to me
12 within the next couple of weeks.

13 If there's no one available, then, you know,
14 perhaps the next step is simply to make sure that there's a
15 BOP facility that can properly treat whatever medical
16 issues there might be. Because, again, I'm not inclined to
17 order his release from the hospital simply to go to the
18 Orange County Jail where they can't properly treat him.

19 So if there's a plan in place to quickly get him
20 or directly get him to a BOP facility that's able to treat
21 whatever his medical condition might be, I think that to
22 the extent that it can be hammered down should be presented
23 as an option as well. So the question is timing.

24 I am -- why don't we do this. By Friday, the
25 parties meet and confer about potential experts, and

1 hopefully you can agree on one. If one is available, they
2 can see Mr. Edwards next week. If not, then state that in
3 your notice. And then we'll set another hearing and decide
4 what to do at that point.

5 Although, like I said, at the hearing I would want
6 some more details about where Mr. Edwards would go and how
7 he would be transported there. Again, I don't think that
8 having an interim step of going to the local jail is going
9 to be acceptable given what I am observing plainly from the
10 video conference. So to the extent that having a local
11 evaluation quickly is not going to be an option, I would
12 want some more details about those next steps with BOP. So
13 do that by Friday. And then if we need to have another
14 hearing, we'll do that.

15 There will be another hearing at some point
16 regarding competency. It's a matter of whether it's going
17 to be before me or another judge, but we will notice that
18 after the parties have filed their notice on Friday.

19 Is Friday enough time for you guys to meet and
20 confer about that?

21 MR. PHILLIPS: Absolutely.

22 MS. WICK: Yes, Your Honor.

23 THE COURT: All right. Well, then, let's do that.
24 And like I said, once I receive the notice and review it,
25 then we will -- I'll either order that the evaluation occur

1 or we'll have another hearing and determine whether he
2 should be sent to the BOP.

3 MS. WICK: Thank you, Your Honor.

4 THE COURT: Is there anything else from the
5 United States?

6 MS. WICK: No. Thank you, Your Honor.

7 THE COURT: From the defense?

8 MR. PHILLIPS: No, Your Honor.

9 THE COURT: All right. Thank you.

10 This hearing is adjourned.

11 MR. PHILLIPS: Thank you, Your Honor.

12 (Proceedings adjourned at 1:45 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

January 10, 2023

s\ Amie R. First
Amie R. First, RDR, CRR, CRC, CPE
Federal Official Court Reporter
United States District Court
Middle District of Florida