

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:22-cr-00201-WWB-LHP

EVAN EDWARDS

**GOVERNMENT’S MEMORANDUM REGARDING DETENTION AND
COMPETENCY ISSUES AND REQUEST FOR SPEEDY TRIAL FINDING**

The United States of America, by Roger B. Handberg, United States Attorney for the Middle District of Florida, in accordance with this Court’s Order (Doc. 60) (the “Order”) hereby files its Memorandum Regarding Detention and Competency Issues related to defendant, Evan Edwards (the “Defendant”), and states as follows:

Introduction

The Court has asked the parties to address the issue of whether a detention hearing can be properly held prior to a final competency determination (the “Issue”). While there does not appear to be binding precedent directly on point, the relevant authorities, along with the practical considerations of this particular case, support the conclusion that the Court should proceed with a final competency determination prior to holding a detention hearing.

The Court also asked the United States to address any speedy trials concerns. Because competency has been at issue since the date of the Defendant’s arrest in this case, speedy trial should be tolled. In an abundance of caution, the United States herein requests that the Court make a finding that speedy trial has been tolled from the

date of arrest, continuing through the date on which a final competency determination is made.

Relevant Background

1. On December 7, 2022, the defendant was charged with violation of conspiracy to commit bank fraud, bank fraud, and visa fraud, in violation of 18 U.S.C. §§ 1344, 1349, and 1546, respectively. Doc. 1.

2. On December 14, 2022, the defendant was arrested, transported to the federal courthouse, and scheduled for his initial appearance before United States Magistrate Judge David A. Baker. However, the defendant was unable to participate in an initial appearance due to reported medical issues.¹ The United States Marshals Service ultimately transported the defendant to the Medical Provider, where he has since remained. *See* Doc. 21 (ordering the defendant into the custody of USMS for medical evaluation).

3. On December 27, 2022, and continuing through December 28, 2022, the defendant's initial appearance was held before United States Magistrate Judge Embry J. Kidd.²

¹ The defendant's initial counsel raised potential competency concerns at the time of the first attempted initial appearance.

² The defendant and his counsel appeared via teleconference from the defendant's hospital room. Due to the defendant's physical and/or mental limitations and non-verbal responses, the Court was unable to move forward with the defendant's arraignment and unable to complete the initial appearance, which was continued to December 28, 2022.

4. On January 6, 2023, after continued competency concerns were raised, the Court entered an order requiring Dr. Ryan C.W. Hall, M.D., P.A. to evaluate the Defendant's competency to proceed and to submit a written report of his findings. Doc. 50. On January 16, 2023, Dr. Hall submitted his Competency Evaluation Report (the "Competency Report") for defendant, Evan Edwards. On January 17, 2023, the Competency Report was submitted to the Court. A copy of the Competency Report has been filed under seal.

5. On January 26, 2023, at a status hearing following submission of the Competency Report and by way of written motion (Doc. 56), Defendant's counsel indicated that he contests the findings of Dr. Hall and requested a detention hearing. At that time, the Court raised the Issue and ordered the instant briefing.

6. In consideration of the below authorities and practical considerations relevant to this case, the United States requests that the Court make a final competency determination prior to addressing release or detention. Ultimately, the United States submits that, as a result of a competency hearing, the Court should enter an Order under 18 U.S.C. § 4241(d), finding the defendant mentally incompetent and committing the defendant to the custody of the Attorney General for treatment.

MEMORANDUM OF LAW

A. The Competency Standard, Generally

A defendant remains competent to stand trial if he: (1) "has a rational as well as factual understanding of the proceedings against him"; and (2) "has

sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.” *Indiana v. Edwards*, 554 U.S. 164, 170 (2008) (internal quotation marks and emphasis omitted).

Consequently, 18 U.S.C. § 4241(a) requires a district court to conduct a competency evaluation 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.” *See James v. Singletary*, 957 F.2d 1562, 1572 (11th Cir. 1992) (defendant is entitled to a competency evaluation if “clear and convincing evidence” creates a “real, substantial, and legitimate doubt” about his ability to understand those things) (internal quotation marks omitted).

Further, under 18 U.S.C. § 4241(d), the Court shall commit the defendant to the custody of the Attorney General if, after a hearing, the court finds by a preponderance of the evidence that the defendant is presently 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.”³ *See Jackson v. Indiana*, 406 U.S. 715, 738, 92 S.Ct. 1845, 32

³ The express provisions of Section 4241 suggest that a defendant should be competent before addressing release or detention under the Bail Reform Act. Specifically, § 4241(e), explains that after a defendant is deemed to be restored to competency, then a defendant is subject to the normal release and detention provisions of 18 U.S.C. § § 3141 et seq.:

L.Ed.2d 435 (1972). (“[A] person charged ... who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future.”)

In this case, as explained below, it has not been shown that the defendant is competent to proceed. Instead, the record evidence supporting incompetence is strong. The Court has not, however, made a finding of incompetence to trigger § 4241(d) commitment to the custody of the Attorney General. Thus, if a detention hearing were held, it would be governed by the provisions of the Bail Reform Act.

B. The Defendant is Not Currently Competent

The record evidence does not support the Defendant’s competence. Not only has defense counsel expressed ongoing concern regarding the Defendant’s competence, but Dr. Hall’s Competency Evaluation Report finds that § 4241(d) commitment to the custody of the Attorney General is the prudent path to allow the Defendant to undergo the appropriate treatment. Moreover, the Defendant’s videoconference appearances in these proceedings have shown the Defendant’s mental

If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial or other proceedings. *Upon discharge, the defendant is subject to the provisions of chapters 207 and 227.*

18 U.S.C.A. § 4241(e) (emphasis added).

and physical limitations, including a limited ability to communicate either verbally or non-verbally. Based on this evidence, it is difficult to fathom how the Defendant could understand the proceedings against him, let alone have sufficient present ability to consult with his lawyer with any degree of rational understanding.

C. Here, a Competency Determination Should be Made Prior to a Hearing on Release or Detention

Courts have deferred detention hearings because of a pending competency determination. For example, in *United States v. McCrary*, the District Judge denied defendant's motion for release pending trial, stating that he had terminated the pretrial hearing because he was “ordering that a competency determination with respect to Mr. McCrary occur before further proceedings.” The court, sua sponte, characterized the delay as “raising the question of defendant's competency to participate in the hearing and, a fortiori, to stand trial.” Trial was postponed and the hearing was adjourned until such time as defendant could be examined and his competency determined. *United States v. McCrary*, 569 F.2d 429, 429 (6th Cir. 1978).

The *McCrary* case highlights a threshold matter: that a defendant must be competent at all critical stages of the proceedings. *See United States v. Meyer*, No. 2:11-CR-43-FTM-29SPC, 2011 WL 1519724, at *1 (M.D. Fla. Apr. 20, 2011) (“In order for a criminal case to proceed, a defendant must be competent at all critical stages of the proceedings.”).⁴ A detention hearing is a critical stage of the criminal

⁴ In *Meyer*, the court addressed detention at the same time as addressing competency, moving forward with a detention hearing but ultimately relying on the competency concerns to commit the defendant to the custody of the Attorney General for competency evaluation,

proceedings. *Id.*; see *United States v. Flores*, 856 F. Supp. 1400, 1406 (E.D. Cal. 1994) (explaining that detention hearings are an important part of criminal proceedings, and motions by the government to detain a person should be viewed as a serious matter). It follows the Defendant should be competent at any detention hearing, which the record evidence currently shows he is not. Thus, proceeding with a detention hearing at this point is premature.

Additionally, and especially instructive here, are the practical concerns associated with attempting to move forward with a release or detention determination when the Defendant has severe mental limitations. For example, in *United States v. Peppi*, the court considered the ongoing detention of a defendant who had been found incompetent under § 4241 and had not been restored to competency. While the *Peppi* court's analysis arises in a different context, the practical concerns it raises regarding the imposition of release conditions are informative:

The Court fails to see how bail, as a practical matter, could be imposed on Mr. Peppi. His mental state clearly precludes any reasonable finding that Mr. Peppi, no matter the conditions, could form the requisite linear thought progression to appreciate and accept his bail conditions, adhere to them, then appear at the scheduled date and time at the scheduled location. Of course, the Government may seek to impose all of Mr. Peppi's bail conditions on his family, but such a request would not succeed for two reasons. First, fairness and liberty interests dictate that any bail conditions must, at least in part, apply directly to the defendant. Because of his incompetence, Mr. Peppi cannot reasonably be expected

citing to defendant's inability to engage in any meaningful conversation regarding the nature and seriousness of the charges nor any meaningful defense, among other things.

to comply with any mandates from any court. Were these requirements to rest directly and fully on the shoulders of those with the obligation and compassion to care for him, their weight would fall, too, on the conscience of this Court. Second, by imposing Mr. Peppi's bail conditions on his family, the Court would essentially create a new and arbitrary paradigm where one defendant with a family will be treated differently from an identical defendant without such support.

United States v. Peppi, No. CRIM. 06-157(AET), 2007 WL 674746, at *5 (D.N.J. Feb. 28, 2007).

The same practical concerns arise in this case. Even without a final determination of incompetence in this case, it is clear that the Defendant does not have the mental ability to “form the requisite linear thought progression to appreciate and accept his bail conditions, adhere to them, then appear at the scheduled date and time at the scheduled location.” Moreover, the Defendant cannot reasonably be expected, at least at this time, to comply with any mandates from the Court. Further, putting the responsibility on the Defendant's family members is improper, especially in this case where there are concerns regarding the family members' care for the Defendant and their prior involvement in attempted flight from criminal charges.⁵

There are non-binding cases, however, suggesting that a court may proceed with detention despite pending competency issues. In *United States v. Magassouba*, 544 F.3d

⁵ Also from a practical perspective, it seems the more prudent path forward would be to move expeditiously forward with a final competency determination, after which the Defendant would either be moved directly to a BOP medical facility for treatment (following a finding of incompetence), or a detention hearing would be held (following a finding of competence). This would likely eliminate, or at least minimize, multiple movements of a medically compromised Defendant.

387, 412–14 (2d Cir. 2008), the defendant contended on appeal that § 3142 could not authorize his detention after the date the district court found him incompetent pursuant to § 4241(d), because § 3142 applies only to cases “pending trial,” and due process prohibits the trial of an incompetent defendant. The Second Circuit rejected the defendant’s argument that he was no longer “pending trial” after the date of finding of incompetency, and, therefore, no longer detainable under § 3142. *See also United States v. Brennan*, 354 F. Supp. 3d 250, 267 (W.D.N.Y.), *aff’d*, 928 F.3d 210 (2d Cir. 2019) (noting that the detention hearing had been held in abeyance due to competency proceedings, but that defendant was free to request such a hearing) (citing *United States v. Smith*, 764 F.Supp.2d 541, 545 (finding “no reason why a detention hearing cannot be held” while competency issues are being addressed)).

In light of the above, and without binding authority requiring the Court to hold a detention hearing prior to a final competency determination, the United States submits that a final competency determination should be made prior to detention proceedings under § 3142.

D. The Pending Competency Issue Tolls Speedy Trial

The competency of the Defendant has been at issue since the date of the Defendant’s arrest on December 14, 2022. The competency concerns continued and the Court entered an Order requiring the Defendant’s competency evaluation. The Defendant was found to be incompetent by the local evaluator, Dr. Hall, but that finding is contested by defense counsel. Thus, to date, competency remains at issue because the Court has not made a final determination.

Concerns regarding the Defendant's physical capacity have, likewise, been at issue since his arrest. In fact, the Defendant was admitted to the hospital on the day of his arrest and has undergone medical treatment and/or evaluation since that time. Moreover, based on the medical records, a summary of which have been filed under seal with the Court, it is likely that the Defendant has either been mentally incompetent and/or physically unable to stand trial since his arrest.

Thus, pursuant to the provisions of 18 U.S.C. § 3161(h)(1)(A) ("delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant"); (h)(1)(D) ("delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion"); and (h)(4) ("Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial"), the United States submits that the entire period of time since Defendant's arrest on December 14, 2022 is excludable time for speedy trial purposes.

In an abundance of caution, the United States respectfully requests that this Court make a finding that speedy trial has been tolled for the duration of this case. *See, e.g., United States v. Brennan*, 354 F. Supp. 3d 250, 256 (W.D.N.Y.) (excluding time under the Speedy Trial Act for delay resulting from proceedings to determine the mental competency of the defendant), *aff'd*, 928 F.3d 210 (2d Cir. 2019); *see also United States v. De Matteis*, No. 5:19-CR-75-AKK-GMB, 2020 WL 4210501, at *3 (N.D. Ala.

Mar. 2, 2020), *report and recommendation adopted*, No. 5:19-CR-75-AKK-GMB, 2020 WL 4201857 (N.D. Ala. July 22, 2020).

WHEREFORE, the United States complies with this Court's order and submits its memorandum concerning competency and detention issues and requests the Court make a finding that speedy trial has been tolled from the date of the Defendant's arrest and will be tolled through the date of a final competency determination.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that undersigned counsel electronically filed the foregoing Notice with the Clerk of Court on February 17, 2023, by using the CM/ECF system, which will send a notice of electronic filing to counsel of record:

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