

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

VS.

CASE NO: 6:22-cr-201-WWB-LHP

EVAN EDWARDS

REPORT AND RECOMMENDATION¹

TO THE UNITED STATES DISTRICT COURT:

This case comes before the Court following extensive competency proceedings under 18 U.S.C. §§ 4241 and 4247. As discussed in more detail below, the parties agree that Defendant Evan Edwards is not presently competent to stand trial under the standards set forth in 18 U.S.C. § 4241(d) and *Dusky v. United States*, 362 U.S. 402 (1960). However, the parties contest whether the Court must now commit Evan Edwards to the custody of the Attorney General for restoration treatment and evaluation, as required by 18 U.S.C. § 4241(d)(1), or whether the Court can skip this step and instead proceed to evaluation under either 18 U.S.C. §§ 4246 or 4248. See Doc. Nos. 108, 116.

¹ Although the undersigned has the authority to enter an order when the parties do not contest the issue of competency, because the parties do contest the course of further proceedings in this case, the undersigned has addressed this issue via the present report and recommendation. See *In re: Authority of United States Magistrate Judges in the Middle District of Florida*, No. 8:20-mc-100-T-23, Doc. No. 3 § (d)(27) (M.D. Fla. Oct. 29, 2020).

For the reasons set forth in this report, I find the procedures of 18 U.S.C. § 4241(d)(1) to be mandatory, and will therefore respectfully recommend that the Court commit Evan Edwards to the custody of the Attorney General, who shall hospitalize Evan Edwards for treatment in a suitable facility for a reasonable time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward.

I. RELEVANT PROCEDURAL HISTORY

On December 7, 2022, a grand jury returned an indictment charging Evan Edwards with one count of conspiracy to commit bank fraud, one count of bank fraud, and two counts of visa fraud, in violation of 18 U.S.C. § 1349, 18 U.S.C. § 1344, and 18 U.S.C. § 1546(a), respectively. Doc. No. 1. Evan Edwards was arrested on December 14, 2022, and an initial appearance proceeding pursuant to Fed. R. Crim. P. 5 was conducted before United States Magistrate Judge David A. Baker that same day. Doc. Nos. 9, 10.

During the course of the Rule 5 proceedings, Magistrate Judge Baker determined that there was a question as to Evan Edward's mental competency to proceed. Doc. Nos. 9, 14. Accordingly, Magistrate Judge Baker continued the Rule 5 proceedings, provisionally appointed counsel pursuant to the Criminal Justice Act, and ordered Evan Edwards temporarily detained and committed to the

custody of the United States Marshal for provision of medical care. Doc. Nos. 9, 17, 21, 25-26.²

Magistrate Judge Baker held a status conference with counsel on December 21, 2022, and on December 27, 2022 Magistrate Judge Embry J. Kidd held a continuation of the Rule 5 hearing via the online Zoom platform, and attempted to conduct an arraignment. Doc. Nos. 27, 33. Magistrate Judge Kidd was able to complete a portion of the Rule 5 proceedings – he advised Evan Edwards of his rights, and summarized the charges and the potential penalties – but was unable to go forward with any further proceedings or the arraignment. Doc. No. 33. Magistrate Judge Kidd thereafter held status hearings with counsel on December 28, 2022, and January 4, 2023, and on January 6, 2023, appointed Dr. Ryan C. W. Hall, M.D., DFAPA, to examine Evan Edwards pursuant to 18 U.S.C. §§ 4241 and 4247(b). Doc. Nos. 42, 45, 48, 50.

On January 16, 2023, Dr. Hall submitted his expert report, in which he opined that Evan Edwards was currently incompetent to proceed, but that the question of whether Evan Edwards' competency could be restored was unclear. Doc. No. 58 (filed under seal). Counsel for Evan Edwards objected to Dr. Hall's findings, and

² Magistrate Judge Baker initially provisionally appointed the Federal Public Defender to represent Evan Edwards, but based on a conflict of interest, authorized the Federal Public Defender's withdrawal, and provisionally appointed Attorney A. Brian Phillips under the Criminal Justice Act on December 20, 2022. Doc. Nos. 17, 24-26. Attorney Phillips continues to represent Evan Edwards to date.

filed a motion for detention hearing. Doc. No. 56. The United States noted its agreement with Dr. Hall's findings, and requested that a hearing be set to address competency, with a commitment order under 18 U.S.C. § 4241(d) to follow. Doc. No. 57.

By this point, the case had been reassigned to the undersigned. On February 24, 2023, following several status conferences with counsel and briefing from both sides (Doc. Nos. 65, 78-79; Doc. No. 66 under seal), I denied without prejudice Evan Edwards' motion for a detention hearing, and motion to prohibit his transfer by the United States Marshals Service. Doc. No. 85; *see also* Doc. Nos. 56, 77.³

By that same Order, I also found that there was reasonable cause to believe that Evan Edwards was presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he was unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense. Doc. No. 85, at 5-6; *see also* 18 U.S.C. § 4241(a). Accordingly, I committed Evan Edwards to the custody of the Attorney General for placement at

³ Up until this point in the case, Evan Edwards had remained in the custody of the United States Marshals Service and was receiving around-the-clock medical care at Orlando Regional Medical Center ("ORMC"). The United States Marshals Service ultimately designated Evan Edwards to the Columbia Regional Care Center (the "Care Center") in Columbia, South Carolina, which provides a program for inmates and detainees with complex medical issues. Evan Edwards, through counsel, filed a motion to prohibit this transfer to the Care Center, which motion the undersigned denied. Doc. No. 85.

the Federal Medical Center in Butner, North Carolina (“FMC Butner”) for a term not to exceed 30 days to conduct a psychiatric or psychological examination, and to prepare and submit to the Court and all parties a psychiatric or psychological report assessing “whether [Evan Edwards] is 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.” Doc. No. 85, at 5-6 (quoting 18 U.S.C. §§ 4247(b), (c)). *See also* 18 U.S.C. § 4241(b).⁴

On July 7, 2023, Dr. Miriam Kissin, Psy. D., a forensic psychologist employed by the Bureau of Prisons, submitted a forensic report regarding Evan Edwards’ present competency to stand trial. Doc. No. 98 (under seal).⁵ Dr. Kissin opined, following completion of the 30-day evaluation period set forth in 18 U.S.C. § 4247(b), that Evan Edwards’ “present competency-related skills are significantly compromised by symptoms of a serious mental illness or defect, namely Major Neurocognitive Disorder (Dementia) without behavioral disturbance, severe, such that he is unable to understand the nature and consequences of the proceedings

⁴ The Bureau of Prisons changed Evan Edwards’ designation to FMC Devens in Ayer, Massachusetts, as that facility operated a unit specifically for individuals with dementia-related illnesses and could provide the medical care he required.

⁵ Although Dr. Kissin’s report remains under seal, it is necessary to discuss some of her conclusions in this report and recommendation, although the undersigned has endeavored to keep such discussion to the minimum necessary to render this report.

against him or to assist properly in his defense.” *Id.*, at 8. Under a section entitled “Prognosis and Recommendations,” Dr. Kissin further opined that:

Mr. Edwards’s Major Neurocognitive Disorder (Dementia) has a significant negative impact on his ability to function or make rational decisions or to effectively aid his defense counsel. As evidenced by his presentation over the last several months, Mr. Edwards has demonstrated no ability to engage meaningfully with others. Typically, there is a one-year window for rehabilitation to ensure some functional gains post brain injury. As this time frame has already passed, limited if any, improvement in Mr. Edwards’s cognitive functioning would be expected. Furthermore, his attending medical provider has opined that Mr. Edwards has suffered irreversible neurological damage. As such, a period of restoration to competency pursuant to Title 18, United States Code, Section 4241(d) is not indicated for Mr. Edwards as he is not expected to benefit from educational interventions in light of his neurological disorder. He would be best served within a structured setting where he has access to regular support to meet his basic needs.

Id.

Upon review of Dr. Kissin’s report, Evan Edwards, through counsel, filed a renewed motion for a detention hearing. Doc. No. 99. The parties subsequently filed a joint notice (Doc. No. 101; *see also* Doc. No. 100), stating that neither side currently contests the finding of incompetence made within Dr. Kissin’s report. Doc. No. 101, at 1. However, the parties further represented that the question of what further proceedings were necessary and appropriate remained in dispute. *Id.*, at 1-2. The United States also filed a separate response, in which it agreed that conditions of pretrial release could now be set. Doc. No. 102.

On August 3, 2023, the undersigned conducted a status conference with

counsel, at the conclusion of which the undersigned scheduled a detention hearing for August 31, 2023, and established a briefing schedule for the parties to argue their positions as to whether the restoration procedures of 18 U.S.C. § 4241(d) apply, and, if not, what further proceedings should occur in this case. Doc. Nos. 104-06. The detention hearing was rescheduled for September 12, 2023, and Magistrate Judge Kidd conducted the hearing due to the undersigned's unforeseen absence. Doc. Nos. 107, 112. At the conclusion of the hearing, Magistrate Judge Kidd released Evan Edwards on various pretrial conditions, including that he be placed in the custody of his wife, Mary Jane Edwards, who agreed to act as third-party custodian. Doc. No. 114. Evan Edwards remains out on these conditions of release as of the date of this report.

In the meantime, the parties have now submitted their briefing on the question of further proceedings, and Evan Edwards has submitted, under seal, copies of some of his medical records, which the undersigned has reviewed. Doc. Nos. 108, 116; *see also* Doc. No. 111, under seal. The issue is therefore ripe for consideration and this report and recommendation follows.

II. ANALYSIS

18 U.S.C. § 4241(d) provides as follows:

(d) Determination and disposition.--If, after the 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, the court *shall commit* the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility –

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward; and

(2) for an additional reasonable period of time until –

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the proceedings to go forward; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the proceedings to go forward, the defendant is subject to the provisions of sections 4246 and 4248.

18 U.S.C. § 4241(d) (emphasis supplied).

The Eleventh Circuit Court of Appeals has made clear that once a defendant is found incompetent to stand trial, the language of § 4241(d) mandates that the defendant be hospitalized under the custody of the Attorney General for a careful determination of the likelihood of regaining mental capacity to stand trial. *United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990). The Eleventh Circuit further held that this hospitalization did not violate due process because the period of

commitment is limited by § 4241(d) itself to a “reasonable period,” not to exceed four (4) months, and the period may only be extended by a separate finding that the defendant would attain competency within the additional time. *Id.* The Court of Appeals further held that the provisions of § 4241(d) are mandatory even if it appears that a defendant’s mental condition/competency status is permanent; as “[t]he permanency of the condition would then be determined for later consideration by the court” following the hospitalization period set forth in § 4241(d). *Id.*

Donofrio remains the binding precedent for this Circuit, and every other Circuit to address this issue has reached the same conclusion. *See, e.g., United States v. Shawar*, 865 F.2d 856, 860 (7th Cir. 1989) (“The statute plainly states that ‘the court shall commit the defendant to the custody of the Attorney General [who] shall hospitalize the defendant for treatment’ The plain meaning of this phrase is, and we hold it to be, that once a defendant is found incompetent to stand trial, a district judge has no discretion in whether or not to commit him.” (quoting 18 U.S.C. § 4241(d)) (emphasis in original)); *United States v. Filippi*, 211 F.3d 649, 651 (1st Cir. 2000) (noting that § 4241(d) “certainly establishes a general rule of some breadth and does not appear to call for any case-by-case choice by the district court as to whether to incarcerate once the incompetency finding has been made.”); *United States v. Ferro*, 321 F.3d 756, 761 (8th Cir. 2003) (noting that although “[i]t is clear

that the statutory scheme detailed by Congress in § 4241(d) provides the district court with the discretion to initially determine whether the defendant is competent to stand trial [A]fter determining that a defendant is incompetent . . . a district court is required to commit the defendant to the custody of the Attorney General for a reasonable period of time to evaluate whether treatment would allow the trial to proceed.”); *United States v. Magassouba*, 544 F.3d 387, 404 (2d Cir. 2008) (“[I]n contrast to the discretion afforded district courts in deciding whether to commit a defendant for a preliminary competency examination, once a defendant is found incompetent, commitment pursuant to 4241(d) is mandatory.” (citations omitted)); *United States v. McKown*, 930 F.3d 721, 727 (5th Cir. 2019) (“[U]nlike the court’s discretion to confine a defendant before an initial competency hearing, commitment is mandatory upon a finding of incapacity. That is so irrespective of the defendant’s initial prognosis.” (footnotes omitted) (citing 18 U.S.C. § 4241(d)); *United States v. Donnelly*, 41 F.4th 1102, 1105 (9th Cir. 2022) (“The [Insanity Defense Reform Act] thus imposes two mandatory duties following an incompetency finding. First, the district court ‘shall commit the defendant to the custody of the Attorney General.’ Second, ‘[t]he Attorney General shall hospitalize the defendant for treatment in a suitable facility . . . for such a reasonable period of time, not to exceed four months.’” (quoting 18 U.S.C. § 4241(d)(1)). See also *United States v. Lee*, No. 1:21-CR-20034, 2022 WL 18275882, at *3 (S.D. Fla. Dec. 27, 2022), report and

recommendation adopted, 2023 WL 168755 (S.D. Fla. Jan. 12, 2023) (“Upon a finding of incompetence to continue in proceedings against a criminal defendant, a court must commit the defendant to the custody of the Attorney General for a period not to exceed four months to evaluate whether the defendant may be restored to competency. Such commitment is mandatory.” (citing 18 U.S.C. § 4241(d)(1); *Donofrio*, 896 F.2d at 1303); *United States v. Calhoun*, No. 2:22-CR-167-ECM, 2023 WL 2316186, at *1 (M.D. Ala. Mar. 1, 2023), *appeal dismissed*, No. 23-10773, 2023 WL 3863505 (11th Cir. June 7, 2023) (“Upon the finding of incompetency, commitment to the custody of the Attorney General for a period of restoration is mandatory.” (citing 18 U.S.C. § 4241(d)(1); *Donofrio*, 896 F.2d at 1303).

In his briefing on the issue, Evan Edwards recognizes this body of authority, and does not cite to any decisions suggesting § 4241(d) is not mandatory. Rather, Evan Edwards argues that the caselaw is factually distinguishable because here, the question of Evan Edwards’ restoration to mental competency is a foregone conclusion, and therefore any further treatment would only serve to punish him and violate his due process rights. Doc. No. 108. Evan Edwards focuses on his extensive medical history, which demonstrates several life-threatening medical issues since July 2022, and suggests that Evan Edwards has suffered irreversible brain damage and is unable to independently perform basic activities of daily living. *Id.*, at 5-7; *see also* Doc. No. 111, under seal. Evan Edwards particularly

focuses on the statements by Dr. Kissin in her BOP report that “limited if any, improvement in Mr. Edwards’s cognitive functioning would be expected,” that Evan Edwards “has suffered irreversible neurological damage,” and therefore hospitalization for restoration proceedings under § 4241(d) “is not indicated.” Doc. No. 98, at 8. In short, Evan Edwards contends that “the BOP has already resolved this issue” of restoration, therefore any further restoration is “[a] factually unnecessary endeavor,” and would render “meaningless the clear and unambiguous findings of the government’s report.” Doc. No. 108, at 9.

While there can be no dispute that Evan Edwards suffers from a myriad of serious physical and mental ailments, the undersigned disagrees that complying with the clear mandates of § 4241(d) would be a “factually unnecessary endeavor.” While Dr. Kissin’s opinions do suggest that restoration will ultimately be unsuccessful, she rendered that opinion after only conducting the preliminary 30-day evaluation contemplated by 18 U.S.C. § 4241(b), and § 4247(b), and she prepared her report in accordance with 18 U.S.C. § 4247(c), which does not request a finding as to probability of restoration. *See* Doc. No. 98, at 1, under seal. In other words, Dr. Kissin’s evaluation was focused primarily on whether Evan Edwards is *currently* competent to proceed. *See United States v. Brennan*, 928 F.3d 210, 217 n.2 (2d Cir. 2019) (noting that the initial psychiatric evaluation is limited by § 4241(b) and § 4247(b) to a period not to exceed 30 days, thus “constraining a medical

professional's ability to evaluate and treat a mentally incompetent defendant.").

In contrast, the period of commitment to assess restoration necessarily involves a much more detailed evaluation and assessment, focusing on the future. It "requires a more 'careful and accurate diagnosis' than the 'brief interviews' and 'review of medical records' that tend to characterize the initial competency proceeding." *United States v. Strong*, 489 F.3d 1055, 1062 (9th Cir. 2007) (citing *Ferro*, 321 F.3d at 762; *Filippi*, 211 F.3d at 651). *See also McKown*, 930 F.3d at 728 ("On account of 'the limitations on the federal courts in the field of mental health,' the statute reasonably permits a more thorough evaluation before the district court must decide 'whether to defer trial indefinitely and (quite often) to release the defendant back into society.'" (first quoting *Shawar*, 865 F.2d at 860-61, then quoting *Filippi*, 211 F.3d at 651). Thus, with all due respect to Dr. Kissin's opinions, whether or not Evan Edwards is capable of restoration to competency is not a foregone conclusion.

In addition, decisional authority from within this Circuit and others shows that even where the likelihood of restoration is bleak, § 4241(d) is mandatory and cannot be ignored. *See Donofrio*, 896 F.2d at 1302-03 (finding that following the mandates of § 4241(d) did not violate due process even though evidence was presented at the initial § 4241(a) proceedings that defendant would never attain the capacity to permit a trial to proceed); *United States v. Millard-Grasshorn*, 603 F.3d 492,

494 (8th Cir. 2010) (“When a finding of mental incompetence is made after the competency hearing mandated by § 4241(a), the defendant *must* be committed under § 4241(d) for a restoration-of-competency evaluation, even if there is evidence that his condition can never improve.” (emphasis in original)); *McKown*, 930 F.3d at 728 (finding order committing defendant for four month restoration evaluation accords with due process because “even where the medical evidence indicates that the defendant’s condition is permanent, temporary hospitalization bears some reasonable relation to the purpose for that confinement.”); *Brennan*, 928 F.3d at 215-16 (because the district court found the defendant presently incompetent, commitment under § 4241(d) was mandatory and constitutional, even though expert who conducted initial competency evaluation opined that defendant’s mental capacity was highly unlikely to improve); *Shawar*, 865 F.2d at 861 (“Our reading of 18 U.S.C. § 4241(d) is not only that commitment is mandatory, but also that likelihood of recovery is not something to be considered by the district court in deciding whether to commit the defendant for the evaluation period”; thus, even though experts had already opined that defendant’s mental defect would not change, commitment for restoration assessment was still required). *See also United States v. Cottingham*, Case No. 5:19-cr-00010-LCB-JHE-1, Doc. No. 35 (N.D. Ala. Nov. 5, 2019) (even though Bureau of Prisons’ expert opined in forensic report that “considering the typical nature of neurocognitive disorders, it is questionable as to

whether the defendant would experience any significant improvement in his mental state,” district court committed defendant to custody of Attorney General for restoration hospitalization under mandatory provisions of § 4241(d); noting that “the process of determining whether a defendant is competent or not is markedly different from determining whether an incompetent defendant may be restored to competency.”); *United States v. Hooks*, No. CR 21-054, 2022 WL 1207824, at *5 (E.D. La. Mar. 31, 2022), *report and recommendation adopted*, No. CV 21-MJ-54, 2022 WL 1202895 (E.D. La. Apr. 22, 2022) (while recognizing a state court finding that the defendant was “irrestorably incompetent,” district court had no discretion and must commit defendant to the custody of the Attorney General for further evaluation under § 4241(d)). Evan Edwards points to no legal authority suggesting a contrary conclusion.

In sum, the binding and persuasive precedent on this issue has uniformly held that § 4241(d) is mandatory. Once a district court finds a defendant be presently incompetent, the court has no discretion – the defendant must be committed to the custody of the Attorney General for a reasonable period not to exceed four months in order to assess whether mental competency can be restored. Whether or not the evidence in this case (including Dr. Kissin’s statements during the initial evaluation process) suggests that the answer to this question for Evan Edwards will ultimately be no, does not change this result.

III. RECOMMENDATION

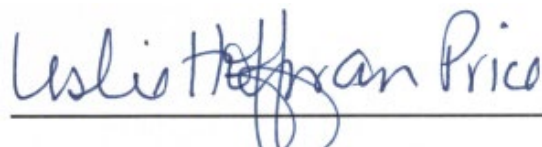
Because the parties do not dispute that Evan Edwards is currently incompetent to proceed, and for the reasons set forth in this report, I **RESPECTFULLY RECOMMEND** that the Court find that Defendant Evan Edwards is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in this defense. *See* 18 U.S.C. § 4241(d). I **FURTHER RECOMMEND** that the Court commit Evan Edwards to the custody of the Attorney General for hospitalization and treatment in a suitable facility for such a reasonable period of time, not to exceed four (4) months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the proceedings to go forward. I **FURTHER RECOMMEND** that the Court permit Evan Edwards to self-surrender to the facility so designated by the Attorney General for such hospitalization and treatment.

NOTICE TO PARTIES

A party has fourteen days from the date the Report and Recommendation is served to serve and file written objections to the Report and Recommendation's factual findings and legal conclusions. Failure to serve written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal

conclusion the district judge adopts from the Report and Recommendation. 11th
Cir. R. 3-1.

Recommended in Orlando, Florida on October 3, 2023.

A handwritten signature in blue ink that reads "Leslie Hoffman Price". The signature is written in a cursive style and is positioned above a horizontal line.

LESLIE HOFFMAN PRICE
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record