

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

**TIME SENSITIVE MOTION TO COMPEL MEDICAL RECORDS OR,
ALTERNATIVELY, FOR AN ORDER AUTHORIZING ISSUANCE OF RULE
17(c) SUBPOENA**

The United States of America by Roger B. Handberg, United States Attorney for the Middle District of Florida, by the undersigned AUSA, hereby requests that this Court (1) compel the production of the medical records in the defendant's possession from Advent Health New Smyrna Beach Hospital dated July 8, 2022, through August 25, 2022; (2) order the production of the Advent Health New Smyrna Beach records directly from the hospital; or (3) alternatively, enter an order authorizing the issuance of a subpoena under Federal Rule of Criminal Procedure 17(c) for the medical records from Advent Health New Smyrna Beach Hospital dated July 8, 2022, through August 25, 2022.

This Court previously ordered the disclosure of the defendant's medical records to be produced to the parties based upon the parties' joint request. Doc. 45. The Court's order specifically identified the medical records from the Orlando Regional Medical Center from December 14, 2022 forward, but did not specifically address the Advent Health Records New Smyrna Beach Hospital dated July 8, 2022,

through August 25, 2022. Nevertheless, the defendant signed a specific release of medical records for the Advent Health Records when he was in BOP custody at FMC Devens, and based upon information and belief, also provided a release for the same information to be provided to defense counsel. On October 15, 2024, the government contacted counsel and requested the Advent Health Records New Smyrna Beach Hospital dated July 8, 2022, through August 25, 2022. *See* Exhibit A. Although counsel did not object to their production, he also did not acknowledge having the documents, or agree to produce them stating “That’s quite odd. As I recall, your office provided them to me or I to your office some time ago.” *See* Exhibit B.

I. Background

On December 7, 2022, a federal grand jury returned an indictment against the defendant, Evan Edwards, charging him with Conspiracy to Commit Bank Fraud in violation of 18 U.S.C. § 1349, Bank Fraud in violation of 18 U.S.C. §§ 1344 and 2, False Statement to Lending Institution in violation of 18 U.S.C. §§ 1014 and 2, and Visa Fraud in violation of 18 U.S.C. § 1546(a). The sophisticated scheme involved multiple frauds to procure more than \$8 million in funds from the Federal Government.¹

¹ As an initial matter, the government notes that all of the competency reports and medical reports were provided to all parties by agreement with the defense. The documents have been reviewed by the Court and arguably part of the record of a judicial proceeding, and are “judicial documents,” to which common-law presumption of public access attaches. *See United States v. Sattar*, 471 F. Supp. 2d 380, 385 (S.D.N.Y. 2006), *see also Nixon v. Warner Commc’ns*,

On or about May 15, 2023, the defendant signed a release authorizing the Department of Justice and the Bureau of Prisons to obtain these specific medical records from Advent Health dated July 8, 2022, through August 25, 2022. *See* Exhibit A, redacted. Based upon conversations with the record custodians and the legal department of Advent Health, they do not have a record of receiving the release, nor of sending the records to the BOP.² Based upon conversations with the record custodians and the legal department of Advent Health, the defendant also authorized the release of the medical records from Advent Health dated July 8, 2022, through August 25, 2022 to defense counsel and those records were sent to defense counsel.

On or after September 23, 2024, the Court and the parties received the 18 U.S.C. § 4241(d) Competency Restoration Report by Dr. Chad Brinkley. On October 8, 2024, the Court held a status conference in which the government made a request for the appointment of Dr. Ryan Darby, a neurologist, to review the medical and mental health records of the defendant and to render an opinion as to his competency and/or restoration. ECF No. 226. The Court agreed and appointed Dr.

Inc., 435 U.S. 589, 597 (1978), *Callahan v. United Network for Organ Sharing*, 17 F. 4th 1356 (11th Cir. 2021), *United States v. Rogers*, No. 6:23-cr-7-RBD-RMN, 2023 U.S. Dist. LEXIS 178692, 2023 WL 6464110 (M.D. FL, Oct. 4, 2023), *United States v. Kaczynski*, 154 F.3d 930, 931 (9th Cir. 1998).

² Given the extreme time exigency of the Court's October 8, 2024 order, the government is simultaneously sending, or resending, the defendant's release to Advent Health to obtain the records from July 8, 2022, through August 25, 2022.

Darby to review the available medical records, but established a strict deadline of October 29, 2024.

Based upon information provided to mental health evaluators, the defendant had no significant medical or cognitive problems prior to July 8, 2022. On that day, according to records not in the possession of the government, the defendant was brought by family members to the Emergency Department at Advent Health New Smyrna Beach Hospital. His family reported that he had not eaten or drank for two days, mumbled incoherently, and had become progressively weak. According to the reports from his family members, they had been spending every day at the beach under direct sun. His daughter had reportedly been feeding Mr. Edwards salt and lemons, with the intention of increasing his fluid intake and enhance alertness.

It is this report of “salt and lemon” poisoning that forms the basis of the defendant’s claimed cognitive deficiencies which render him incompetent, and possibly unrestoreably incompetent. That report by family members is sandwiched by other bizarre and dubious conduct by the defendant’s family, and the defendant himself. The defendant self-published a self-help book in 2011 in which he bragged about being “[a]rrested and harassed by the Turkish police and military over 50 times.” *See* Exhibit C. On or about September 18, 2020, the defendant was arrested on a federal complaint for allegations of visa fraud. *See United States v. Evan Edwards*, Case 6:20-mj-01673-LRH (M.D. FL, Sept. 18, 2020), ECF No. 1. The complaint was dismissed on the same date. *Id.*, ECF No. 7. The defendant was under investigation for an \$8 million Covid Fraud scheme. On December 14, 2020, the

United States filed a complaint seizing over \$8 million in cash under the defendant's control. *See United States of America v. Approximately \$5,698,846.38*, 6:20cv2269 (M.D. FL, Dec. 14, 2020), ECF No. 1. The defendant's fraudulent scheme was laid out in that public filing identifying the defendant and his family member's involvement in the fraud. *Id.* The defendant was properly served notice of the forfeiture complaint. *Id.*, at ECF No. 19. On December 14, 2022, the defendant was arrested for his involvement in the Covid Fraud scheme outlined in the civil forfeiture proceeding. *See United States v. Evan Edwards*, Case 6:22cr201 (M.D. FL, Dec. 14, 2022), ECF No. 9.

It is between this gap, the initial visa fraud arrest and the forfeiture proceedings outlining the defendant's fraud and the arrest for the Covid Fraud, that the defendant presented himself to Advent Health on or about July 8, 2022 with the complaint of "salt and lemon" poisoning. During his restoration proceedings at FMC Devens, the defendant was also observed engaging in malingering behavior. In administrative notes taken at Devens, the staff noted that the defendant:

is under telemetry monitoring due to suspected selective mutism for secondary gain versus dementia versus catatonia. Suspected malingering versus dementia and inability to recognize thirst or hunger or participate in conversation or self-care. With certain times with some staff members, he is speaking and answering questions and at other times he is non-verbal.

18 U.S.C. § 4241(d) Competency Report, pg. 11. The defendant was also observed taking and ingesting hand sanitizer, potentially to make himself appear sick.

II. The Court has the Authority to Order the Production of Records

The Court has the authority to order the production of the defendant's medical records under the circumstances of this case. *See United States v. Akula*, No. 3:19-cr-30039-MGM, 2020 U.S. Dist. LEXIS 63903, 2020 WL 1853134 (D. Mass., Apr. 13, 2020) (ordering production of defendant's hospital records to help establish kidnapping charge). The defendant has placed his mental state and mental health in issue by raising the issue of competency. The Court also obviously has the authority to order the production of the medical records from the defendant himself.

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") governs the procedures for the release by health care providers (hereinafter "providers") of patient health information. Generally, providers may disclose protected health information only with the written authorization of the patient, or where there is an opportunity for the patient to agree or object to the disclosure. 45 C.F.R. §§ 164.508, 164.510.

There are certain circumstances, however, where patient authorization is not required for disclosure, nor is any opportunity required for a patient to object to the disclosure of her medical records. 45 C.F.R. § 164.512. One such circumstance includes when there is a court order. 45 C.F.R. § 164.512(e)(1)(i). Another is where the government serves a subpoena on the provider and the government provides satisfactory assurance to the provider that it has made reasonable efforts to: (1) provide notice of the request to the patient; or (2) secure a qualified protective order. 45 C.F.R. § 164.512(e)(1)(ii). A "qualified protective order" is a court order or a

stipulation between the parties that prohibits the parties from disclosing the produced patient's health information for purposes other than the litigation and requires the return to the provider or destruction of the produced patient health information at the end of the litigation. 45 C.F.R. § 164.512(e)(1)(v); *see also Degnan v. United States*, No. CV 06-40099-TSH, 2007 WL 9805541, at *2 (D. Mass. Aug. 31, 2007).

The government may also obtain a patient's medical records without the patient's authorization for law enforcement purposes permitted by a court order, warrant, subpoena or summons issued by a judicial officer. 45 C.F.R. § 164.512(f).

III. Rule 17(c) Subpoena Duces Tecum

While the use of a Rule 17(c) subpoena is not a substitute for regular discovery practice under Rule 16, a party “may still be able to obtain materials not discoverable under Rule 16 by using Rule 17(c), ‘so long as they are evidentiary.’” *United States v. Hardy*, 224 F.3d 752, 755 (8th Cir. 2000) (*quoting Bowman Dairy Co. v. United States*, 341 U.S. 214, 219 (1951)). Rule 17(c) “was not intended to provide an additional means of discovery,” and such evidentiary materials may be subpoenaed only if there is “a good-faith effort[] made to obtain evidence.” *Bowman Dairy Co.* 341 U.S. at 219–20. Moreover, in order to gain access to said materials, the moving party must show that the subpoenaed document: (1) is relevant; (2) admissible; and (3) has been requested with adequate specificity. *United States v. Hardy*, 224 F.3d at 755. The parties can also make the request *ex parte*. *United States v. Hang*, 75 F.3d 1275, 1281–82 (8th Cir. 1996).

The District Court for the Middle District of Florida, Magistrate Judge Mizel presiding, recently considered the propriety of issuing a Federal Rule of Criminal Procedure 17(c) subpoena for the pretrial production of records from the defendant in *United States v. Gyetvay*, No. 2:21-cr-83-TPB-NPM, 2022 U.S. Dist. LEXIS 161540, 2022 WL 4095070 (M.D. FL, Sept. 7, 2022). The Court held that to require production by subpoena, the movant must show:

- (1) that the documents are evidentiary and relevant;
- (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence;
- (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and
- (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'

Gyetvay, No. 2:21-cr-83-TPB-NPM, 2022 U.S. Dist. LEXIS 161540 * 5, *citing United States v. Nixon*, 418 U.S. 683, 699-700 (1974). The Court summarized by saying that "Generally, the government "must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity." *Id.*

Here, the Advent Health New Smyrna Beach Hospital records dated July 8, 2022, through August 25, 2022 clear all three hurdles. The documents are clearly relevant, forming the basis for the defendant's claim of salt and lemon poisoning causing cognitive decline that renders the defendant incompetent to stand trial, and perhaps unrestoreably incompetent. Further, all mental health evaluations reference the Advent Health New Smyrna Beach Hospital records as the "source" documents

establishing the mechanism of the defendant's cognitive deficiency. As such, the documents are clearly admissibly in any competency hearing. Finally, the request is extraordinarily specific, referencing only those documents relied upon by other evaluators.

IV. The Defendant's Waiver and the Court's Prior Orders

As previously stated, the defendant previously authorized the release of the Advent Health New Smyrna Beach Hospital records dated July 8, 2022, through August 25, 2022 and that release forms an independent basis for the production of the records, which the government is separately pursuing. Further, the government suggests, the Advent Health New Smyrna Beach Hospital records dated July 8, 2022, through August 25, 2022 are within the ambit of those records previously ordered to be produced by the Court, although perhaps not specifically described, and the Court's prior Order provides an additional basis for disclosure.

WHEREFORE, the government requests that this Court order the production of the Advent Health New Smyrna Beach Hospital records dated July 8, 2022, through August 25, 2022 to the government and defense so that the records may be provided to Dr. Darby.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of October 2024, a true and correct copy of the foregoing document was filed with the Court using the Court's CM/ECF systems and was served upon each attorney of record via ECF notification:

Brian Philips, Esq.

/s/ James D. Peterson
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Trial Attorney