

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:22-cr-00201-WWB-LHP
	)	
EVAN EDWARDS,	)	
	)	
Defendant.	)	
_____	)	

**DEFENDANT EVAN EDWARDS' RESPONSE AND OPPOSITION TO
TIME-SENSITIVE MOTION TO COMPEL MEDICAL RECORDS, ETC.¹**

COMES NOW, the Defendant, Evan Edwards, by and through the undersigned counsel, hereby responds to and opposes the United States' Time-Sensitive Motion to Compel Medical Records, or alternatively, for an Order Authorizing Issuance of Rule 17(c) Subpoena. Dkt. 229. In support thereof, Defendant states as follows:

1. 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.

¹It is of material note that, in its Notice at Dkt. 231 that the United States submits that the instant motion is moot.

§§ 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).

2. Mr. Edwards was arrested on December 14, 2022. Dkt. 9.

3. Since his arrest nearly two (2) years ago, and despite not yet having been arraigned, the Defendant has been held either in custody or on bond since his arrest.

4. During this time, he has been held while bound by shackle at wrist and ankle to his hospital bed at ORMC, transported to Columbia Regional Care Center in Columbia, South Carolina, for warehousing, sent to FMC Devens for a competency determination² (as well as a restorability determination), had his bond revoked, been determined by the United States Bureau of Prisons to be un-restorable to competency, and remains in custody at FMC Devens.

5. On September 23, 2024, a report was prepared by the United States Bureau of Prisons as to the Defendant's restorability, in which report the attending doctors in the employ of the United States Department of Justice opined that the Defendant is unlikely to benefit from further competency restoration efforts and is likely to be unrestorable in the foreseeable future.

² It is of note that during his initial evaluation, the United States Bureau of Prisons treating personnel, Miriam Kissin, Psy.D., opined that restoration efforts were likely unavailing. Differing personnel at the United States Bureau of Prisons have now confirmed this in their most recent report.

6. Despite this clear, unambiguous, and well-reasoned finding, the Office of the United States Attorney has objected to the report and indicated that it will have a fourth “evaluation” of Mr. Edwards, this time solely via a review of Mr. Edwards’ medical records.

7. Basing the request on the thinnest wisp of a claim of malingering (which claim was addressed and totally debunked in the most recent report of the United States Bureau of Prisons), the United States seeks to have a new doctor, solely via the review of medical records, determine if the in-patient, 24 hour-a-day assessment of the United States Bureau of Prisons is erroneous.

8. However, despite seeking this extraordinary and punitive (or, at best, dilatory) relief, the United States failed to marshal, contemporaneously with the request, the precise records on which it seeks to have its doctor opine

9. Upon the tardy discovery of this shortcoming, the Office of the United States Attorney sought to secure the records it claims that its doctor needs to render an opinion, when this failed, the instant Motion ensued.

10. The United States claims to be trying to locate a series of medical records from July 8, 2022, through August 25, 2022, when the Defendant was hospitalized at Advent Health New Smyrna Beach Hospital.

11. The Defendant’s custodian provided certain of these records to the undersigned in about December 2022, and the undersigned transmitted the same,

unredacted and bates-stamped to the Office of the United States Attorney shortly thereafter, using the United States' USAfx document delivery system. This production included approximately 710 pages.

12. It now appears that counsel for the United States has "misplaced" these records and cannot discern where or how they were then transmitted to each of the United States' *three* prior experts, who have each utilized them in preparing the relevant reports. For example, the United States Bureau of Prisons acknowledges that it has reviewed and utilized these records in delivering their report dated September 23, 2024.³ BOP Report dated September 23, 2024, p. 1.

13. Now, in a frantic, last-ditch effort to undo what the United States Bureau of Prisons has done, the United States seeks the same records once again, via a Motion to Compel, which motion omits the key touchstone for the requested relief: a duty on the part of someone to provide the records.

14 Neither the Grand Jury process nor reciprocal discovery affords the United States the required relief. Of the three types of relief sought, only Rule 17 may afford the United States some succor; yet this too, fails the United States on further review. In the instant Motion, the United States omits any basis for the requested relief.

³ The reports delivered by Dr. Hall on January 16, 2023, and Dr. Kissin on July 7, 2023, also included references to their own personal review of the records in question.

15. On October 18, 2024, the undersigned received an email – from what the undersigned presumes is the Defendant’s custodian – (on which counsel for the United States was copied) which contained information previously provided as well as voluminous additional materials that appear to be within the scope of the government’s motion practice. The undersigned has attempted to discern the source of these materials but has not yet been able to discern their precise source. However, the materials provided constitute 2666 pages of material, 256 pages of which were previously produced in the batch supplied by the defense to the United States.

16. On October 22, 2024, the United States indicated in a Notice [Dkt. 231] that the Advent Health records received from what can be presumed as the Defendant’s custodian has made the relief sought in the instant motion moot. As a result, the Court should deny the United States’ Motion to Compel accordingly.

MEMORANDUM OF LAW

Having chosen to indict the Defendant, the United States has lost the use of the Grand Jury subpoena process, as a “grand jury cannot be used “solely or even primarily” to gather evidence against an indicted defendant.” *United States v. US Infrastructure, Inc.*, 576 F.3d 1195, 1214 (11th Cir. 2009) (internal citations omitted). Further, *Fed.R.Crim.P.* 16(b)(1)(B), ordinarily requires a defendant to permit the government upon request, to inspect the result or reports of any physical or mental examination that is within the defendant’s possession, custody, or control. However,

in this case, Defendant has duly complied with this requirement as Defendant has already produced the July 8, 2022, and August 25, 2022, medical records to which the BOP and *three* other experts in this case have reviewed and relied on the same. *See* September 23, BOP Report, and Reports by Dr. Hall and Dr. Kissin. The Government's seeming misplacement of those documents should not impose on the defense a burden to produce, a second time in this pre-trial proceeding, these same records.

In the alternative, the Government seeks issuance of a Subpoena Duces Tecum under Federal Rule of Criminal Procedure 17(c). In order to require production by subpoena the Government 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.'

United States v. Nixon, 418 U.S. 683, 699-700 (1974)(emphasis added); *see also United States v. Silverman*, 745 F.2d 1386, 1397 (11th Cir. 1984) (stating that the rule only reaches “specifically identified documents that will be admissible as evidence *at trial*, provided that the application for the subpoena is made in good faith).

While Defendant's medical records may have been relevant in this case, it now appears that the United States seeks simply to re-litigate an issue that did not go as it wished and burden the defense or some third party as a result of the United States having simply lost the relevant records. So too, the Government cannot sincerely argue that Defendant's medical records at issue were not procurable by exercise of reasonable diligence, as Defendant has previously provided the Government with those records as evidenced by the three prior expert opinions relying on the same. The good faith foundation of the United States' motion practice is built on the intellectual sand that there was some whiff of malingering. This issue was addressed and resolved by the United States Bureau of Prisons. The instant motion practice smacks of a "punishment first, trial later" approach that has seemed to color the United States' conduct of the matter to date.

WHEREFORE, the Defendant, by and through the undersigned counsel, respectfully requests this Court deny the requested relief and require the United States to decide if dangerousness proceedings are necessary for a defendant who lacks the ability to provide for any of his activities of daily living.

Respectfully submitted this 22nd day of October, 2024.

s/A. Brian Phillips

A. BRIAN PHILLIPS, ESQ.

Fla. Bar No. 0067113

A. BRIAN PHILLIPS, P.A.

912 Highland Avenue

Orlando, Florida 32803

Telephone: (407) 872-0777

Telecopier: (407) 872-0704

Email: Brian.Phillips@Phillips-Law-Firm.com

Counsel for Defendant Evan Edwards

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of October, 2024, I filed a copy of the foregoing with the Clerk of the Court via the CM/ECF system. I further certify that all parties to this case are equipped to receive service of documents via that system.

s/A. Brian Phillips

A. BRIAN PHILLIPS, ESQ.

Fla. Bar No. 0067113

A. BRIAN PHILLIPS, P.A.

912 Highland Avenue

Orlando, Florida 32803

Telephone: (407) 872-0777

Telecopier: (407) 872-0704

Email: Brian.Phillips@Phillips-Law-Firm.com

Counsel for Defendant, Evan Edwards

