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

**Case No.: 6:21-cr-141-RBD-NWH**

**UNITED STATES OF AMERICA,**

Plaintiff,

v.

**EMMET BOWENS,**

Defendant.
_____/

Orlando, Florida
May 16, 2022
10:01 a.m. - 10:22 a.m.

**TRANSCRIPT OF MOTION HEARING (Docs. 40, 47)**
**BEFORE THE HONORABLE EMBRY J. KIDD**
**UNITED STATES MAGISTRATE JUDGE**

**APPEARANCES:**

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**P R O C E E D I N G S**

(Court called to order.)

**THE COURTROOM DEPUTY:** Case No. 6:21-cr-141, United States of America v. Emmet Bowens.

Counsel, please state your appearance for the record.

**MS. DANIELS:** Good morning, Your Honor.

Amanda Daniels on behalf of the United States.

**THE COURT:** Good morning.

**MR. SEARLE:** Good morning, Your Honor.

Andrew Searle on behalf of Emmet Bowens, who's present in the courtroom and seated to my right.

**THE COURT:** Good morning.

We're here today for two pending motions. One is to -- a renewed motion to modify the conditions of Mr. Bowens' release. And then the second is a motion for a hearing and outpatient examination to determine Mr. Bowens' competency.

Why don't we start with the second, Mr. Searle, and I'll hear from you on that.

**MR. SEARLE:** The motion for competency, Your Honor?

**THE COURT:** That's correct.

**MR. SEARLE:** Yes, Your Honor.

I believe I've laid out the basis for my request in my written motion, which was filed with the Court. To the extent that the Court wishes for me to provide specific details, I would actually ask that that be done in an ex parte

proceeding, as some of the information I'd prefer for the Government not to hear at this juncture.

**THE COURT:** Sure.

Ms. Daniels, do you mind -- I'm sorry. You were about to say something?

**MR. SEARLE:** The only other thing I'd add, Your Honor, is that the Government does not oppose the motion. I believe they -- they understand that in situations like this the defense counsel's interactions and beliefs concerning whether or not the client needs to be evaluated for competency carries some weight, because I'm in the best position right now to know whether or not there's a concern when evaluating the situation through the *Dusky* standards.

**THE COURT:** All right. And have the parties agreed on a psychologist or psychiatrist?

**MR. SEARLE:** We have not, Your Honor.

I prefer Dr. Danziger. From my conversations with Ms. Daniels, my understanding is that the Government is now not inclined to agree to Dr. Danziger. But based on the specific issues that I'm seeing here, I think Dr. Danziger is the most qualified court-appointed expert to do this evaluation.

**THE COURT:** Okay. Ms. Daniels, do you have an alternative proposal? Or what's your objection to Dr. Danziger?

**MS. DANIELS:** Your Honor, the United States has been

in contact with Dr. Otto. I have worked with Dr. Otto on previous cases. I know that he -- you know, I -- I know his work. I'm familiar with him. He's very easy to work with. And I've confirmed that he's available before June -- any time before June 24th is my memory of it.

**THE COURT:** Okay. What's your objection to Dr. Danziger?

**MS. DANIELS:** No specific objection, Your Honor. I don't know Dr. Danziger. I've never worked with him. But I do know Dr. Otto.

I worked very closely with him on another case that I went to trial on. He did work evaluating the work of two additional experts on that trial. And on one of those experts he actually found out that the expert had -- not that I would -- I believe that Dr. Danziger would do this, but Dr. Otto figured out that the defense expert that had been hired, unknown to the defense, had committed some sort of fraud, so -- in their evaluation.

So I have a lot of trust with Dr. Otto. I've worked with him extensively, and I think he does an excellent job. And I think he would be perfectly capable of doing this evaluation.

**THE COURT:** All right. Then I suppose my question is to Mr. Searle, what's -- do you have an objection to Dr. Otto?

**MR. SEARLE:** Yes, Your Honor. I don't think that the

basis the Government has provided is a reason to go with their expert as opposed to the one I'm requesting.

I'm sure the Court is well aware that Dr. Danziger has a longstanding reputation in this district as a well-regarded expert in this field. He's a medical doctor and a psychiatrist. So I believe he brings a different background to these evaluations. He's not just a psychologist. And so I think, based on his experience, he's able to, I guess, do a more comprehensive evaluation and really kind of drill down as to what's going on with an individual.

And I don't believe he's, by any means, a defense-slanted expert. He frequently finds people competent to proceed and makes determinations that people are malingering and things of that nature.

He's been practicing in this district for at least two decades, as far as I understand. So I think he'd be an appropriate person.

I'm not familiar with Dr. Otto's work. He may have been an expert in another case that I've had. But off the top of my head, I'm just not aware of his work. And I do know Dr. Danziger's work and his reputation. And so based on my past experience with him, I'd like for him to be appointed.

**THE COURT:** All right. Well, I've had experience with both. Both are fine with me.

Since this is the defense's motion, I will grant

their request to appoint Dr. Danziger. And I'll issue an order on that.

Of course, if the United States disagrees with Dr. Danziger, the United States can obtain its own expert to rebut that report.

All right. So I will -- based on the representations from Mr. Searle, both in his motion and on the record today, I do find that there is reasonable cause to believe that Mr. Bowens may be 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. So I will order that he undergo an outpatient evaluation with Dr. Danziger. And I will issue an order setting forth more specific deadlines on that.

As to the other motion, which was to modify the conditions of release, I'll hear from you on that, Mr. Searle.

**MR. SEARLE:** Yes, Your Honor.

Again, I've laid out my basis for the motion in the written filing.

I'm not asking for the Court to do away with all of the conditions of release.

I'm simply asking for the ankle monitor to be removed.

I noted from the initial pretrial services report

that pretrial was not actually even asking for electronic monitoring when Mr. Bowens had his initial appearance in the Northern District of Georgia.

I don't believe he's a flight risk based on his background. He has longstanding ties to this district.

He has a family who he lives with. His wife is present in the courtroom in the audience. He has a daughter who lives in the home. They own their home in Apopka.

He does not have any significant criminal history.

There was one international trip that he took, that he returned from when he was arrested at the Atlanta International Airport. I would note, for the record, that Mr. Bowens was aware of the Government's investigation, I believe, well in advance of his arrest. He had been contacted by the FBI. He was in the process of attempting to try to secure counsel. I don't believe that ever actually came to fruition. But, certainly, he knew that he was under investigation.

And had he been a true flight risk, he could have decided not to return to the United States. He obviously did that because this is his home. This is where he -- where he lives. This is where his family is. So this isn't a situation where he was doing international travel trying to avoid apprehension in this case or anything of that nature.

So I believe the Court has the ability to modify the

conditions at any time the Court deems appropriate.

I can -- I can understand why the judge at the initial appearance in the Northern District of Georgia decided to have the electronic monitoring device put on Mr. Bowens to ensure that he made it to the district where he was charged and showed up for his initial appearance, but he did that. I think he's demonstrated to the Court these past several months, while he's been under supervision, that he's fully able to comply with all conditions of release. My understanding is that he's had no issues whatsoever with his pretrial services officer.

So I think it would be appropriate to remove the electronic monitoring device. It provides Mr. Bowens with a great deal of discomfort on his ankle. And I just don't think it's necessary in this -- in this white-collar case that does not involve any violence whatsoever or any obstructive conduct, really.

I mean, this is a pretty simple and straightforward case, Your Honor, of a discrete act of PPP loan alleged fraud. So this isn't a Ponzi scheme where we're dealing with assets in foreign accounts or money that the Government has not been able to recover. They've seized all the money that -- from the accounts that was not, I guess, spent before the Government decided to execute the seizure warrant. So there's not assets in foreign countries, there's not ties to foreign countries, Your Honor.

The Government handed me a case that I don't know if they're going to rely on or not. I will address that if the Government does rely on it. But it's -- it's completely distinguishable from -- from this situation before the Court in terms of the ties to a foreign country and the flight risk presented by Mr. Bowens as compared to the individual in the case the Government handed me before the hearing.

So I think based on the pretrial services report, based on Mr. Bowens' track record these past several months while he's been on pretrial services, I think the Court can fashion conditions of release that don't require electronic monitoring that would assure his appearance at future court proceedings and would protect the public in this case.

**THE COURT:** All right.

Ms. Daniels.

**MS. DANIELS:** Your Honor, the United States has filed a response, as I'm sure this Court is aware. So I will rely primarily on that response.

However, a few things that I'd like to note for the Court.

So Mr. Bowens was contacted by the FBI -- as is stated in the motion and as defense counsel has stated -- around October 2020. My understanding from the case agent is that there were multiple calls placed to Mr. Bowens, that a call was placed from an attorney to the case agent in response

to the calls that the case agent placed to Mr. Bowens, that the case agent gave a brief description of what the investigation involved, then called the attorney back about, I think, a week later, she said. And the attorney said that Mr. Bowens had cut off communication with that attorney. And then, when the case agent went to call Mr. Bowens back, his phone had been disconnected.

So Mr. Bowens, also, when he came back from Rwanda, where he had traveled to, he wasn't coming back to the Middle District of Florida according to his own statements. He was coming back to Mississippi. And there is some evidence in the case that he was, in fact, living in Mississippi. So the concern by the Government is not necessarily that he's going to travel internationally -- although that is a concern, because he clearly has ties outside of this country -- it is that he is going to travel outside of this district and be very difficult to locate thereafter, which is why the Government requested a GPS monitor and travel restrictions for Mr. Bowens.

Mr. Bowens has family -- as is evident in the pretrial services report -- outside of this district. He has family in Mississippi. And I believe he has family elsewhere outside of the district, although I don't want to try to guess where because I don't remember at this time.

Additionally, his wife -- there is evidence that his wife was present with him while he was using proceeds from his

fraud. There is a clear-as-day surveillance image capture where Mr. Bowens is, I believe in Louisiana, pulling out, I believe, approximately $40,000 in cash. And who is standing next to him but Ms. (Unintelligible) Bowens, who is present in this --

**MR. SEARLE:** Your Honor, I'm going to object. This isn't a trial. I don't see how that's a basis for --

(Multiple simultaneous, overlapping speakers.)

**THE COURT:** -- raise the fact that his wife was present and was able to somehow contribute to his not leaving the district.

So, go ahead, Ms. Daniels.

**MS. DANIELS:** Yes, Your Honor.

And so the United States has asked for conditions that are specifically tied to Mr. Bowens' conduct during this investigation. It was not tailored to be overly burdensome on Mr. Bowens. Mr. Bowens can work. Mr. Bowens can go to, you know, whatever religious services he might want to go to. He can do -- essentially, he can go anywhere he wants to within the district with the monitor on.

Additionally, the United States believes that this inquiry should be, at least in part, guided by the 3142(f), which states that a hearing should be opened where there is new information that has a material bearing on the issue of whether the defendant is a flight risk or a danger to the community.

The United States would submit, as is stated in our motion, that (audio interference) new information here, Your Honor. You know, it is known or knowable that, you know, a monitor attached to an ankle might be uncomfortable while it is attached. That is knowable at the time that the condition is fashioned.

Additionally, the fact that Mr. Bowens has complied with the Court's conditions is not new information. To the extent that it is new information would suggest that Mr. Bowens was not planning on following the Court's conditions, which weighs against releasing him from these conditions. However, it is evidence that the conditions are properly tailored to meet their end, which is making sure Mr. Bowens shows up to his court appearances, as he continues to do.

And the fact that Mr. Bowens had a mistaken belief that this condition would be altered, I can't really speak to that. I don't know why that is. But that's not new information; that's a mistaken belief.

And so for these reasons, Your Honor, the United States would just request that the conditions remain in place.

The United States brought case law just in case the Court had a question about the relationship between the new and material information, so subsection (f), and -- I think it is (c)(3). That case really just has a -- it's a slip copy. It

just talks about the relationship between those and how subsection (f) might provide context for the Court in considering whether or not it's going to amend its prior order. So I just wanted to bring that as authority for Your Honor.

But the facts are different. I mean, they do talk about -- sorry. And this is *United States v. Fard*. It's a slip copy. It is 2017 Westlaw 11610729.

The facts are different. That person had extensive travel. That person had previously been an alien in the United States who had naturalized, had further extensive travel than Mr. Bowens did. Although, I will note that Mr. Bowens does have international travel on his record. In that case, the Court determined that his conditions -- his GPS that he was seeking to have removed should not be removed.

Mr. Bowens is facing a substantial amount of time with the statutory maximums if he were to be convicted of all of these offenses, just as the defendant in *Fard* was, which the Court also considered in its analysis of denying the motion to modify conditions.

But, for those reasons, Your Honor, the United States, respectfully, opposes the motion.

Additionally, this motion should be deemed as a motion to reconsider. This was brought at the defendant's initial appearance. And motions to reconsider have a different standard. There's no manifest errors of law or fact that

Mr. Bowens has brought up. And there are none that happened in the Court's prior ruling.

So for those reasons, Your Honor, the United States opposes the motion.

**THE COURT:** All right.

**MR. SEARLE:** Your Honor --

**THE COURT:** (Overlapping speech) -- respond?

**MR. SEARLE:** Yes, Your Honor.

First of all, it's not a motion to reconsider. The Bail Reform Act vests this Court with authority to amend the initially set conditions of release and impose different or additional conditions of release at any time.

So the Court has the authority to do that without reconsidering any prior ruling. And that's the basis that we've moved under or the ground that we've moved under.

Mr. Bowens does not have ties to a foreign country. He traveled to a foreign country a single time. I don't believe that, in and of itself, makes someone have ties to a foreign country. If I visited Italy one time, that does not mean I have ties to the country of Italy.

This case that was cited before Your Honor, it has no bearing on the situation we're dealing with here. In that case, the defendant was actually seeking to eliminate the conditions of his release. I'm not asking to eliminate conditions of release. I'm simply asking for one aspect of the

conditions to be modified.

In terms of the travel outside of the district, my client has a travel restriction. His passport has been seized. All of that can address the concerns the Government has without the need to have an electronic device on my client's ankle 24/7.

This is a white-collar case. It's not an extensive fraud. It's a very discrete circumstance here. So I don't think that an ankle monitor is appropriate here.

This isn't a drug case.

As I said, there's not money in foreign accounts. There's not property in foreign accounts. My client doesn't have any family overseas like the defendant in *Fard* did.

So I do think this is a different situation, Your Honor, and I do think you can impose conditions of release that don't have to have the electronic monitoring device on my client's ankle 24/7.

**THE COURT:** All right. Thank you, Mr. Searle.

I know that this has been an issue for Mr. Bowens since the outset.

I do recall his initial appearance in this district where he himself raised this issue and -- through his attorney. I recognize Mr. Searle wasn't his attorney at that time. And, as I recall, this was in the order that was set forth by the magistrate judge in -- I believe it was Atlanta. And I was not

presented with any information to -- I know that Mr. Bowens was under the impression -- at least as he stated in court or his attorney stated in court -- that the purpose of the ankle monitor, the GPS unit, was simply to assure his appearance in this district. However, that's not reflected in the order.

I have not been presented with, for instance, a transcript of the hearing to indicate that that's what the judge indicated. So the information before me is that the judge in Atlanta decided, after hearing from both parties, that it was appropriate to set as a condition of Mr. Bowens' release that he have a GPS unit for location monitoring.

So that was raised at the prior hearing. And, as the parties know, under 3142(f), that can really only be revisited if information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that would reasonably assure the appearance of such person, as required, and the safety of any other person from the community.

We're not dealing with danger to the community. It's really risk of flight. And I've not been presented with new information.

I can't -- I appreciate that Mr. Bowens has been compliant while on pretrial release. But compliance, in my view, does not equate to new information. Otherwise, these decisions will be revisited all the time. Most of our

pretrial -- most of the defendants who are released on pretrial conditions are, indeed, compliant. So that, in itself, does not serve as a basis for revisiting the conditions.

In terms of burden on Mr. Bowens, I understand that it might be uncomfortable, but I'm not hearing anything that leads me to believe it's impeding his ability to do important things in his life such as attend medical appointments or things of that nature.

So I'm not really inclined to revisit the issue of the ankle monitor, those raised previously. It's been raised again. I've not received new information.

Unless I receive new information regarding the ankle monitor along the lines of, "The judge in Atlanta said that this was only supposed to be in place until he arrived in Orlando," I'm not inclined to revisit this issue again.

So the ankle monitor will remain in place.

Is there anything else from the United States?

**MS. DANIELS:** No, Your Honor. Thank you.

**THE COURT:** All right. Anything else from the defense?

**MR. SEARLE:** No, Your Honor. Thank you.

**THE COURT:** All right. Thank you.

As I said, I will issue an order on the competency issue, and we'll forward from there.

This hearing is adjourned.

(Proceedings adjourned at 10:22 a.m.)

**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.

February 25, 2026

s\ Nikki L. Peters

Nikki L. Peters, RMR, CRR, CRC
Federal Official Court Reporter
United States District Court
Middle District of Florida