UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. EMMET BOWENS, Defendant.	)	Case No. 6:21−cr−00141−RBD−EJK

DEFENDANT EMMET BOWENS' UNOPPOSED MOTION FOR A HEARING AND OUT-PATIENT EXAMINATION TO DETERMINE MENTAL COMPETENCY

The Defendant, Emmet Bowens ("Mr. Bowens"), by and through the undersigned counsel, hereby respectfully moves, pursuant to 18 U.S.C. § 4241, for a hearing to determine Mr. Bowen's mental competency, and for an Order appointing a local and duly qualified psychiatrist or psychologist to conduct an outpatient examination of Mr. Bowens to determine whether he 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. In support thereof, Mr. Bowens states as follows:

STATEMENT OF FACTS

Relevant Procedural History

1. On November 10, 2021, a federal grand jury in the Middle District of Florida returned an indictment charging Mr. Bowens with two counts of wire fraud, in violation of 18 U.S.C. § 1343 (Counts One and Two), and four counts of money laundering, in violation of 18 U.S.C. § 1957 (Counts Three through Six). Doc. 1.

2. On December 2, 2021, Mr. Bowens had an initial appearance before a U.S. Magistrate Judge, following his arrest in this case. Doc. 7. At this hearing, the Magistrate Judge set conditions of release for Mr. Bowens. *Id.* at 7.

3. On March 10, 2022, at a status conference, the Court granted an *ore tenus* motion to continue the trial of this matter, and set another status conference for May 12, 2022, at 10:00 a.m., and a jury trial for the term commencing on June 6, 2022. Doc. 37.

4. Since the last status conference, the undersigned has spent considerable time preparing this case for trial, including reviewing the government's voluminous discovery production, and drafting three pretrial motions that were filed timely on May 5, 2022. Docs. 44, 45, 46. However, following a recent communication with Mr. Bowens, the undersigned is now concerned about whether or not Mr. Bowens is competent to stand trial.

Specifically, the undersigned is concerned that Mr. Bowens has a delusional belief system which prevents him from meaningfully consulting with his counsel to a reasonable degree of rational understanding about the material issues in this case. The undersigned is unable to reveal more details concerning his recent communications with Mr. Bowens in this pleading, however, if necessary, the undersigned can provide more specifics to the Court in an *Ex Parte* proceeding.

5. Based on the recent communication with Mr. Bowens, the undersigned has a bona fide belief that the defendant in this matter 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." See 18 U.S.C. § 4241(a). Accordingly, the undersigned is requesting a hearing to determine Mr. Bowen's mental competency. The undersigned is also requesting that prior to the date of the hearing, the Court order an out-patient psychiatric or psychological examination of Mr. Bowens to assist the Court in determining whether Mr. Bowens is indeed competent to proceed in this case.

MEMORANDUM OF LAW

Legal Standards

As the Court is well aware, a defendant is not fit to stand trial if he 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." 18 U.S.C. § 4241(a). "The standard for competency to stand trial is whether **the Defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding**—and whether he has a rational as well as factual understanding of the proceedings against him." *United States v. Hogan*, 986 F. 2d 1364, 1371 (11th Cir. 1993) (emphasis added); *see also Dusky v. United States*, 362 U.S. 402 (1960) (hereinafter "the *Dusky* standard").

When a motion to determine competency is made, "[t]he court shall grant the motion, or shall order such a hearing on its own motion, **if there is reasonable cause to believe that the defendant may**" be incompetent under the standard articulated above. 18 U.S.C. § 4241(a) (emphasis added). Moreover, a court must *sua sponte* conduct a competency hearing if "information known to the trial court at the time of the trial or plea hearing is sufficient to raise a bona fide doubt regarding the defendant's competence." *Tiller v. Esposito*, 911 F. 2d 575, 576 (11th Cir. 1990) (citing *Pate v. Robinson*, 383 U.S. 375, 385 (1966)).

The input of defense counsel regarding the competency of the defendant is a significant part of the information essential in determining whether a legitimate doubt exists as to a defendant's present mental competency. Failing to raise the competency issue before the district court is persuasive evidence that competency

is not in doubt. *United States v. Rodriguez*, 799 F. 2d 649, 655 (11th Cir. 1986). Conversely, when defense counsel timely raises the issue, it must be taken seriously:

> Because legal competency is primarily a function of defendant's role in assisting counsel in conducting the defense, the defendant's attorney is in the best position to determine whether the defendant's competency is suspect. Accordingly, the failure of defense counsel to raise the competency issue at trial, while not dispositive, is evidence that the defendant's competency was not really in doubt and there was no need for a Pate hearing. (For the same reason, a defense counsel's request for a Pate hearing must be taken seriously by the trial judge.).

Watts v. Singletary, 87 F.3d 1282, 1288 (11th Cir. 1996).

In *Torres v. Prunty*, 223 F.3d 1103, 1108 (9th Cir. 2000), the Ninth Circuit held that the trial court erred in failing to inquire as to whether a defendant was competent to stand trial, where, *inter alia*, defense counsel proffered that the defendant would not be able to assist in his defense due to delusional beliefs the defendant was having. Here, based on the undersigned's recent communications with Mr. Bowens, the undersigned has a bona fide belief that Mr. Bowens will not be able to "consult with his lawyer with a reasonable degree of rational understanding." *Dusky*, 362 U.S. at 402. Moreover, the undersigned is presently unable to have a meaningful discussion with Mr. Bowens about the government's evidence and the theory of prosecution in this case.

For the foregoing reasons, this Court is requested to enter an Order under 18 U.S.C. § 4241(b) for a duly qualified psychiatrist or psychologist to conduct an examination to determine the competence of Mr. Bowens and file a report of the examination with the Court. This Court is then requested to conduct a hearing to determine Mr. Bowens' competency.

Mr. Bowens respectfully requests that his competency evaluation be conducted on an outpatient basis by a local psychiatrist or psychologist. As noted above, Mr. Bowens is currently released on conditions set by the Court. Further, Mr. Bowens has had no issues whatsoever complying with the conditions of his release. Courts have articulated that the government must offer evidence establishing "the presence of compelling governmental interests[,]" which would require an examination be conducted pursuant to a custodial commitment, instead of on an outpatient basis. *See e.g. United States v. Neal*, 679 F. 3d 737, 741 (8th Cir. 2012); *United States v. Deters*, 143 F. 3d 577, 582-84 (10th Cir. 1998); *United States v. Song*, 530 Fed. Appx. 255, 259 n. 5 (4th Cir. 2013).

CERTIFICATION OF CONFERRING WITH OPPOSING COUNSEL

Pursuant to the Court's Criminal Scheduling Order (Doc. 16), the undersigned certifies: (1) that the undersigned counsel conferred with opposing counsel; (2) that the motion is unopposed; and (3) that the motion concerns matters not covered by the scheduling order.

CONCLUSION

WHEREFORE, the Defendant, Emmet Bowens, requests that this Court enter an Order: (1) appointing a duly qualified psychiatrist or psychologist to conduct an outpatient examination of the defendant to determine whether the defendant is presently suffering from a mental disease or defect rendering the defendant mentally incompetent to the extent that the defendant is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense; and (2) scheduling a competency hearing in this matter upon the completion of the defendant's competency evaluation.

Respectfully submitted on this 6th day of May, 2022.

s/ Andrew C. Searle
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on May 6, 2022, 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/Andrew C. Searle
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