UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 6:21−cr−141−RBD−EJK
	)	
EMMET BOWENS,	)	
	)	
Defendant.	)	
	)	

DEFENDANT EMMET BOWENS' UNOPPOSED MOTION TO CONTINUE MOTIONS HEARING SET FOR JULY 26, 2022

The Defendant, Emmet Bowens ("Mr. Bowens"), by and through the undersigned counsel, hereby files this motion to continue the motions hearing currently scheduled in this case for July 26, 2022, at 10:00 a.m. (Doc. 69). 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 January 13, 2022, at the first status conference, the Court granted Mr. Bowens' *ore tenus* motion to continue the trial in this matter, and for an extension of the pretrial motions deadline. Docs. 26, 27, 28. Mr. Bowens also waived his speedy trial rights through April 30, 2022. Doc. 29.

4. On February 22, 2022, the Court granted a motion to withdraw filed by Mr. Bowens' original counsel, and appointed the undersigned counsel to serve as Criminal Justice Act ("CJA") counsel for Mr. Bowens. Docs. 32, 34, 35.

5. On March 10, 2022, at a status conference, the Court granted Mr. Bowens' second *ore tenus* motion to continue trial and for another extension of the pretrial motions deadline. Doc. 37, 38, 39. Mr. Bowens also waived his speedy trial rights through June 30, 2022. Doc. 36.

6. In compliance with the Court's new pretrial motions deadline, Mr. Bowens filed three pretrial motions on May 5, 2022. *See* Docs. 44, 45, 46.

7. On May 6, 2022, Mr. Bowens filed an Unopposed Motion for a Hearing and Out-Patient Examination to Determine Mental Competency ("the competency motion"). Doc. 47.

8. On May 16, 2022, the Court granted the competency motion and appointed Jeffrey A. Danziger, M.D. ("Dr. Danziger") to perform a competency evaluation of Mr. Bowens. Docs. 52, 55, 57.

9. On June 27, 2022, the undersigned timely submitted to the Court, under seal, Dr. Danziger's report concerning the competency evaluation of Mr. Bowens. Docs. 66, 68, 70.

10. On July 1, 2022, the parties filed their respective Notices Regarding Competency of Defendant. Docs. 68, 70.

11. This Court has scheduled a competency hearing for July 13, 2022, at 9:30 a.m. Doc. 71.

12. The Court has also scheduled a hearing on Mr. Bowens' pretrial motions for July 26, 2022, at 10:00 a.m. ("the motions hearing"). Doc. 69.

13. As stated in their respective notices, the parties do not contest Dr. Danziger's findings regarding Mr. Bowens' mental competency. Docs. 68, 70. In light of Dr. Danziger's findings, the parties anticipate that at the upcoming competency hearing, this Court will find 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." *See* Docs. 68, 70; 18 U.S.C. § 4241(d). Further still, it appears that the statutory

language found in § 4241(d) as well as Eleventh Circuit precedent will compel this Court to commit Mr. Bowens to the custody of the Attorney General for restorative competency treatment. *See* 18 U.S.C. § 4241(d); *United States v. Donofrio*, 896 F.2d 1301, 1303 (11th Cir. 1990); *United States v. Cobble*, 724 F. App'x 753, 754 (11th Cir. 2018) (per curiam).

14. Based on the Court's anticipated competency findings with respect to Mr. Bowens, the undersigned requests that the upcoming motions hearing be postponed until Mr. Bowens' competency is restored.

MEMORANDUM OF LAW AND
GROUNDS FOR REQUESTED CONTINUANCE

Pursuant to the Speedy Trial Act, any period of delay resulting from "any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant," is excluded from "the time within which the trial of any such offense must commence." 18 U.S.C. § 3161 (h)(1)(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"). Based on the notices filed by the parties as well as Dr. Danziger's report, the parties agree that Mr. Bowens is

not competent to proceed because "he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." *See* Docs. 68, 70; 18 U.S.C. § 4241(d).

A defendant has a right to be present at any critical stage of the criminal proceeding, "if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987). Further, "[i]t is well settled that the right to the effective assistance of counsel applies to certain steps before trial." *Missouri v. Frye*, 566 U.S. 134, 140 (2012). The "Sixth Amendment guarantees a defendant the right to have counsel present at all 'critical' stages of the criminal proceedings." *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (quoting *United States v. Wade*, 388 U.S. 218, 227-228 (1967)). A "critical stage" is "either a self-contained proceeding or a discrete and separately identifiable portion of a larger proceeding." *United States v. Roy*, 855 F.3d 1133, 1147 (11th Cir. 2017). The right to counsel is the right to effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984).

Although the Supreme Court has stated "the process due at a suppression hearing may be less demanding and elaborate than the protections accorded the defendant at the trial itself," *United States v. Raddatz*, 447 U.S. 667, 679 (1980), the undersigned maintains that due process and Mr. Bowens' right to effective

assistance of counsel require the postponement of the upcoming motions hearing until Mr. Bowens' competency is restored.

The upcoming hearing will address motions to suppress, which, in turn, will require some testimony from government witnesses. Moreover, Mr. Bowens has the option to testify at an evidentiary hearing, or to call witnesses of his own. Because of Mr. Bowens' current competency status, the undersigned is unable to confer with Mr. Bowens about these critically important issues in his case.

At least one court has held that "a suppression hearing is undoubtably a critical part of a criminal prosecution." *See United States v. Lattimore*, 525 F. Supp. 3d 142, 148 (D.D.C. 2021); *see also United States v. Green*, 670 F.2d 1148, 1154, 216 U.S. App. D.C. 329 (D.C. Cir. 1981) (noting that "the suppression hearing is a critical stage of the prosecution which affects substantial rights of an accused person; the outcome of the hearing-the suppression vel non of evidence-may often determine the eventual outcome of conviction or acquittal"). "In many cases, a suppression hearing is the last major pre-trial proceeding, occurring long after indictment and following substantial discovery. The outcome often determines the ultimate result at trial or alternatively dictates whether a defendant accepts a plea deal." *Lattimore*, 525 F. Supp. 3d at 148.

Here, Mr. Bowens' current competency status prevents him consulting with the undersigned "with a reasonable degree of rational understanding." *See Dusky*

supra. Therefore, if the Court were to hold the motions hearing as scheduled on July 26, 2022, it would be as if Mr. Bowens were not present to consult with the undersigned during this critically important hearing in his case. The undersigned believes that this would deprive Mr. Bowens of due process and his right to effective assistance of counsel at critical stages of this prosecution. Lastly, it is likely that this Court will soon commit Mr. Bowens to the custody of the Attorney General, which will make Mr. Bowens physically unavailable for a "reasonable period of time, not to exceed four months." *See* 18 U.S.C. § 4241(d)(1).

Based on the forgoing, the undersigned respectfully requests that this Court cancel the upcoming motions hearing and postpone the rescheduling of said hearing until Mr. Bowens' competency has been restored. As noted above, the entire period of delay related to a determination of Mr. Bowens' competency to proceed in this case is excludable under the Speedy Trial Act. *See* 18 U.S.C. § 3161 (h)(1)(A). Therefore, there are no speedy trial implications in postponing the upcoming motions hearing.

The undersigned has also conferred with Assistant United States Attorney Amanda Daniels who has informed the undersigned that the government does not oppose the relief sought herein.

In the event that the Court disagrees with the undersigned's foregoing request to postpone the motions hearing until Mr. Bowens' competency is

restored, the undersigned respectfully requests, in the alternative, a continuance of the hearing to a date after July 26, 2022. The undersigned will be on a pre-paid family vacation starting on July 15, 2022 and continuing through July 25, 2022. The undersigned is scheduled to arrive back in Orlando, Florida on July 25, 2022 at 11:55 p.m., via a commercial airline flight. As noted above, the motions hearing is currently set for the following morning, on July 26, 2022, at 10:00 a.m. Based on the undersigned's current travel itinerary, the undersigned respectfully requests for the hearing to be continued to a date that will give the undersigned sufficient time to prepare for the hearing, following his return from vacation. The undersigned respectfully proposes the following dates, in the event that the Court is unwilling to postpone the hearing until Mr. Bowens' competency is restored: Thursday, July 28, 2022; Friday, July 29, 2022; Monday, August 1, 2022; Thursday, August 4, 2022; Friday, August 5, 2022; or to a date thereafter that is convenient for the Court's schedule.

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 undersigned counsel for the defendant, Emmet Bowens, respectfully requests that this Court postpone the motions hearing currently scheduled in this case for July 26, 2022, at 10:00 a.m. (Doc. 69) until the defendant's competency to proceed in this case is restored, or, in the alternative, if the Court is unwilling to grant said postponement until the defendant's competency is restored, the undersigned requests that this Court continue the hearing to one of the following proposed dates: Thursday, July 28, 2022; Friday, July 29, 2022; Monday, August 1, 2022; Thursday, August 4, 2022; Friday, August 5, 2022; or to a date thereafter that is convenient for the Court's schedule.

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

s/Andrew C. Searle
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on July 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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