UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	**Case No.: 1:20CR00020**
	)	
JAMES LOUIS JORDAN	)	

MOTION FOR CUSTODIAL SANITY EVALUATION
AND RESPONSE TO DEFENDANT'S MOTION FOR LOCAL SANITY EVALUATION

The United States respectfully moves this Court, pursuant to 18 U.S.C. §§ 4242(a) and 4247(b), for a custodial psychiatric or psychological examination of the defendant, James Louis Jordan ("Jordan"), to determine whether Jordan was insane at the time of the charged offenses. The United States opposes Jordan's request that the sanity evaluation be done locally (ECF No. 85), and respectfully requests that the Court commit Jordan to the custody of the Attorney General for placement in a suitable facility for evaluation.

BACKGROUND

Jordan is charged with murder, attempted murder, assault with intent to commit murder, and two counts of assault with a dangerous weapon with intent to do bodily harm. ECF No. 67. He has been detained pending trial, which is set to begin on January 25, 2021. ECF Nos. 5 & 77.

In July 2019, following a court-ordered competency evaluation paid for by the Federal Public Defenders' Office, forensic psychologists at the Institute of Law, Psychiatry, and Public Policy at the University of Virginia ("UVA") found Jordan incompetent to understand the nature and consequences of the court proceedings and to assist properly in his defense. ECF Nos. 32 & 44. The Court subsequently committed Jordan to the custody of the Attorney General to undergo competency restoration and evaluation. ECF No. 47. After seven months of treatment and observation by staff at the Federal Medical Center ("FMC") in Butner, North Carolina, Jordan was

restored to competency. ECF Nos. 61 and 66. The Court found Jordan competent to proceed on June 11, 2020. ECF No. 66.

Over three months later, on September 21, 2020, Jordan gave notice of his intention to rely on the insanity defense. ECF No. 81. The same day, he filed a motion requesting that any sanity evaluation sought by the government be conducted locally by the UVA forensic psychologists, without transfer into the custody of the Attorney General. ECF No. 82. For the reasons below, the government seeks a custodial sanity evaluation at a suitable BOP facility—preferably the FMC at Butner.

LEGAL ANALYSIS

Upon the filing of a notice "that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, *shall* order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c)." 18 U.S.C. § 4242(a) (emphasis added). Section 4247(b) further provides that, for the purposes of a sanity evaluation under § 4242(a), "the court *may* commit the person to be examined for a reasonable period, but not to exceed . . . forty-five days, to the custody of the Attorney General for placement in a suitable facility.[1] Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court." 18 U.S.C. § 4247(b) (emphasis added).

Read in context, the statutory language commands the district court to order an examination but permits it either to commit the defendant to the custody of the Attorney General for that purpose or to order that the examination be made in some other manner. Federal Rule of Criminal Procedure 12.2 further contemplates that the Court possesses supervisory authority to manage how

[1] This time period may be extended by up to 30 days for a sanity examination, according to the statute. 18 U.S.C. § 4247(b).

mental examinations are conducted. Rule 12.2's procedures "were put in place to impose the necessary safeguards to preserve [the defendant]'s constitutional rights while at the same time afford the government a meaningful right of rebuttal on mental health issues." *United States v. Taylor*, 320 F. Supp. 2d 790, 791 (N.D. Ind. 2004).

Here, a custodial examination at a BOP facility is necessary to protect the government's interest in a full and thorough examination, particularly considering the seriousness of Jordan's murder charges. The government has a "compelling interest in ensuring that [the defendant's] psychiatric evaluation is thorough and complete." *United States v. McDonald*, Case No. 2:09CR656, 2012 WL 4659242, at *3 (D.N.J. Oct. 1, 2012). The staff at BOP facilities regularly perform sanity examinations under federal standards, and their impartiality and qualifications are thus less likely to be questioned by either side, eliminating the need for additional evaluations. *See United States v. Hartz*, 852 F. Supp. 511, 514 (S.D.W.V. 1994) ("[T]he Court must give weight to the Government's strong interest in avoiding duplicative and unnecessary examinations."). Further, "common sense dictates that [Jordan's] examination would require more than a few hours" and BOP—unlike the proposed local evaluators—would have unencumbered access to Jordan and could "observe [Jordan] around-the-clock rather than for a few hours during discrete, separate medical visits." *McDonald*, 2012 WL 4659242, at *3. Additionally, Jordan concedes that because he is already in pretrial custody, deprivation of liberty concerns for a custodial examination are significantly decreased. ECF No. 82 at 4.

Jordan argues that because the proposed local evaluators completed Jordan's competency evaluation, they are more familiar with Jordan's charges and mental state at the time of the crimes, which will facilitate a more comprehensive sanity evaluation. ECF No. 85 at 5. However, district courts routinely designate different mental health professionals to complete competency and sanity

evaluations. *See United States v. Wilkinson*, Case No. 07-12061-MLW, 2008 WL 427295 (D. Mass. Feb. 14, 2008) (noting that § 4247(b) is not intended "to create a battle of experts selected by each party, or to allow the defendant to select the sole expert"). And regardless, as Jordan admits, the staff at FMC Butner are equally—if not more—familiar with Jordan's mental state and charges, as they observed and evaluated him pre-competency and over the course of the seven-month restoration period. ECF No. 85 at 6,

Jordan's speedy trial concerns also do not warrant local evaluation. First, section 4247(b) sufficiently limits the length of custodial evaluations. *See* 18 U.S.C. § 4247(b) (limiting commitment to 45 days plus a 30-day extension upon a showing of good cause). Further, if Jordan is evaluated locally, the government likely will be forced to request an additional, duplicative examination by an evaluator of its choice. Custodial evaluation at a neutral BOP facility eliminates this unnecessarily time-consuming step. *See Hartz*, 852 F. Supp. at 514. Additionally, Jordan's own delay in noticing his insanity defense undercuts his speedy trial concerns. Jordan waited until September 21, 2020 to formally notice his insanity defense and trigger the government's request for a sanity evaluation, despite communicating with FMC Butner regarding the wait time for a sanity evaluation months earlier. *See* ECF No. 85-1 (showing communications between defense counsel and FMC Butner regarding an expected sanity evaluation dating back to July 2020 and referencing communications in May 2020). If Jordan was serious about maintaining the January 25, 2021 trial date, he could have filed his notice sooner.[2]

Finally, Jordan's argument that transfer to a BOP facility would hinder his medication regime and unnecessarily subject him to COVID-19 has no merit. BOP facilities like FMC Butner

[2] Indeed, the Court attempted to order a sanity evaluation along with the initial competency evaluation in May 2019, but Jordan objected. ECF Nos. 11 and 13.

are fully aware of and capable of maintaining Jordan's medication regime. In fact, Jordan's medication regime was initially developed and implemented by medical professionals at FMC Butner, and Jordan has already been transferred to and from FMC Butner with no interruptions in his medication. Nor did Jordan have any known exposure to COVID-19 while at FMC Butner or throughout the prior transfer process, which occurred during the pandemic. The BOP has implemented numerous safety precautions to decrease exposure to COVID-19. Jordan has not identified any medical conditions that would place him at increased risk of complications from COVID-19 and, regardless, there is no guarantee that a BOP facility would put him at any greater risk of contracting the virus than his current detention at SWVRJ.

CONCLUSION

Accordingly, the Court should grant the United States' Motion for Custodial Sanity Evaluation and deny the defendant's Motion for Local Sanity Evaluation (ECF No. 82).

Respectfully submitted,

DANIEL P. BUBAR

Acting United States Attorney

/s/ Lena L. Busscher
Lena L. Busscher, VSB 82353
Assistant United States Attorney
Zachary T. Lee
Lena L. Busscher
180 West Main Street
Abingdon, Virginia 24210
(276) 628-4161
(276) 628-7399 (Fax)
USAVAW.ECFAbingdon@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on Monday, September 28, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for defendant.

/s/ Lena L. Busscher

Assistant United States Attorney