

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | |
| |) | Docket no. 00-CR-27-B-S |
| RICKY DEAN BUSBEE, |) | |
| |) | |
| Defendant |) | |

ORDER FINDING DEFENDANT COMPETENT

SINGAL, District Judge

Presently before the Court is a dispute over whether or not Defendant Ricky Dean Busbee is competent to stand trial. Also before the Court is Government's Motion to Reopen the Factual Record.

Based on the following discussion, the Court finds that Defendant is COMPETENT to stand trial. Because the Court arrives at this conclusion without considering the new allegations proffered by the Government, the Motion to Reopen the Factual Record is MOOT.

I. BACKGROUND

On April 24, 2000, Defendant Ricky Dean Busbee was arrested for allegedly possessing a firearm subsequent to being convicted for felonies, in violation of 18 U.S.C. § 922(g)(1). Since then, Defendant allegedly has evinced a lack of comprehension of his circumstances, and the United States requested a hearing to determine whether Defendant is competent to stand trial.

On January 5, 2001, the Court held such a competency hearing, at which three witnesses testified: Dr. Mark Brooks, a forensic psychologist for the Federal Bureau of

Prisons; Dr. Charles Robinson, a private forensic psychologist retained by Defendant; and Matthew Saylor, a special agent with the United States Customs Service.

Dr. Robinson's conclusions regarding Defendant differed markedly from his previous statements describing Defendant's mental condition. Based on his change of opinion, the Government asks the Court to reopen the factual record and consider several allegations outlined in the Government's Motion.

II. BURDEN OF PROOF

At the end of the competency hearing, the Court ordered both parties to file briefs on which party bears the burden: whether Government must prove that Defendant is competent to stand trial, or whether Defendant must prove that he is incompetent and cannot be tried. The relevant statutory provision reads

If, after the hearing, the court finds 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, the court shall commit the defendant to the custody of the Attorney General.

18 U.S.C. § 4241(d). Although the statute defines the standard of proof, it does not expressly allocate the burden of proof to either party. See, e.g., United States v. Nichols, 56 F.3d 403, 410 (2nd Cir. 1995). Furthermore, the United States Supreme Court has not interpreted section 4241(d) as allocating the burden either way. See, e.g., Medina v. California, 505 U.S. 437, 446-47 (1992). Indeed, the Supreme Court and other courts avoided parsing which party bears the burden because “the allocation of the burden of proof to the defendant will affect competency determinations only in a narrow class of cases where the evidence is in equipoise....” Id. at 449.

Although several circuit courts of appeal previously placed the burden of proof on the Government, see, e.g., Nichols, 56 F.3d at 410 (listing cases), in Cooper v. Oklahoma, 517 U.S. 348 (1996), the Supreme Court stated in dicta that “Congress has directed that the accused in a federal prosecution must prove incompetence by a preponderance of the evidence.” Id. at 362. In the context of Cooper’s analysis, however, this statement pertained to the level of proof – preponderance of the evidence versus clear and convincing evidence – rather than upon which party the burden lay. See id. Citing nothing more than the statutory provision, 18 U.S.C. § 4241, the Supreme Court made this statement without further discussion. See id. Nevertheless, this Court relies on recent dicta from the Supreme Court because its precedential value outweighs older rulings from the circuit courts. See, e.g., United States v. Morgano, 39 F.3d 1358, 1373 (7th Cir. 1994); United States v. Gigante, 996 F. Supp. 194, 199 (E.D.N.Y. 1998); United States v. Simmons, 993 F. Supp. 168, 170 (W.D.N.Y. 1998). Therefore, the Court concludes that the burden is on Defendant to prove by a preponderance of the evidence that he is incompetent.

III. DISCUSSION

A criminal defendant is incompetent if “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(d). “The ‘test must be whether he 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. Soldevila-Lopez, 17 F.3d 480, 489 (1st Cir. 1994) (quoting Dusky v. United States, 362 U.S. 402, 402 (1960)).

Both sides agree that Defendant suffers from mild retardation. They disagree on whether or not Defendant presently suffers from depression. Defendant's witness, Dr. Robinson, testified that he found Defendant to be clinically depressed, rendering him unable to communicate adequately with his lawyers or to understand fully the proceedings. On the other hand, the Government's witness, Dr. Brooks, testified that he concluded Defendant was not depressed, but was merely pretending to be depressed.¹

Dr. Robinson testified that based on his initial 35- or 40-minute interview with Defendant, he concluded that Defendant was not depressed. Dr. Robinson memorialized this meeting and his findings in a letter, which was submitted to the Government. When preparing for trial, the Assistant United States Attorney relied on this letter and assumed that Dr. Robinson's in-court testimony would adhere to his previous opinion.

However, subsequent to their initial encounter, Dr. Robinson again met with Defendant. At this meeting, Dr. Robinson testified, Defendant exhibited grave signs of depression. Based on Defendant's allegedly worsened condition, Dr. Robinson revised his opinion, and testified during the hearing that Defendant was too depressed to face trial.

However, Government's witness, Dr. Brooks, testified that although Defendant exhibited signs of antisocial personality traits, Defendant is not depressed and that he is capable of understanding the proceedings and cooperating with his attorney. The second

¹ Dr. Brooks would not go so far as to say that Defendant was "malingering," instead stating that Defendant purposefully would not respond to many of Dr. Brooks' questions. Dr. Brooks testified that Defendant was uncooperative and "not putting his best foot forward," which the Court interprets as malingering. (See Tr. 36, l. 15.)

Government witness, Special Agent Saylor, testified that when Defendant was being arrested and while he was being processed, he interacted coherently with law enforcement personnel. Also, Saylor read from a police report quoting Defendant's past girlfriend, who stated that Defendant has never suffered from any mental disorders.

Which party bears the burden of proof is of the utmost importance to this case because the evidence is "in equipoise." Defendant's expert witness testified that Defendant is depressed; Government's expert witness testified that Defendant is not depressed. Hearsay statements proffered by Special Agent Saylor and the two psychologists suggest that Defendant acted competently in the past, but the Court does not find these pieces of hearsay testimony particularly convincing of Defendant's current mental well-being. Indeed, the Court finds that both parties have submitted credible evidence, but that neither party has proven its case by a preponderance of the evidence. Defendant has not proven that he is unable to consult with his lawyer with a reasonable degree of rational understanding nor has he proven that he lacks a rational and factual understanding of the proceedings. Therefore, because the onus is on Defendant to prove his incompetence by a preponderance of the evidence, the Court concludes that he is competent to stand trial.

IV. CONCLUSION

For the foregoing reasons, the Court finds that the Defendant is COMPETENT to stand trial. Because the Court finds that Defendant has not met his burden of proof, Government's Motion to Reopen the Factual Record is MOOT.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 21st day of February, 2001.

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