

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,  
Plaintiff,

v.

MICHAEL C. FUNK,  
Defendant.

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ORDER

10-cr-151-wmc

At an April 20, 2011 telephonic status conference, counsel for both sides jointly requested that the court determine defendant Michael C. Funk's legal competency, based on his incessant attempts at and thoughts about self harm. *See* dks. 11 and 15 (the April 15, 2011 informal update on Funk from Columbia Regional Care Center in Columbia S.C.). There is reasonable cause to believe that defendant currently is not be competent to assist properly in his defense.

Therefore, pursuant to 18 U.S.C. §§ 4241(b), 4247(b) and 4247(c), it is ORDERED that:

1. Defendant Michael Funk is committed to the custody of the Attorney General or his representative for a period of 30 days, not counting transportation time, for a psychiatric or psychological examination conducted by a licensed or certified psychiatrist or psychologist, such examination to be conducted at the suitable federal facility that is closest to the court, unless this is impractical.

2. The examiner(s) shall prepare a psychiatric or psychological report which shall be filed with this court, with copies provided to defendant's attorney and the Assistant U.S. Attorney in this case. The report shall include:

- (1) Defendant's history and present symptoms;

- (2) A description of the psychiatric, psychological, and medical tests that were employed and their results;
- (3) The examiner's findings;
- (4) The examiner's opinions as to diagnosis, prognosis, and
  - A) the examiner's opinion whether defendant 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.

3. To assist in the examination and report, pretrial services shall obtain from the following persons the following documents, which pretrial services shall send forthwith to the designated institution, along with a copy of the pretrial services report:

- (1) Clerk of Court: all documents, including any sealed documents, filed in this case;
- (2) U.S. Attorney: all Rule 16 discovery and any other documents that might assist the examiners in their evaluation; and
- (3) Defense counsel: any other documents counsel believes might assist the examiners in their evaluation, including all medical reports, evaluations and other documents generated during and as a result of the State of Wisconsin's Chapter 51 commitment proceedings.

4. The 30 day period of commitment may be extended by up to 15 days if such an extension is requested by the director of the facility and if the director shows good cause that additional time is necessary to observe and evaluate defendant.

5. After receiving the examiner's report this court shall hold a hearing pursuant to §4247(d) to determine whether defendant is competent to stand trial in this case. Further scheduling will take place thereafter as necessary.

6. Defendant has never appeared before this court for arraignment on the criminal charges brought against him last October; given the singular circumstances presented in this case, the "delay" the instant order will cause in bringing defendant before this court for arraignment is not "unnecessary" for the purpose of Rule 5(a)(1)(A), F.R. Crim. Pro. Defendant has an attorney representing him and his interests in this prosecution, and there is a consensus among defendant's attorney, the U.S. Attorney's Office and this court that defendant's personal safety requires that he be transferred directly to an appropriate federal facility for evaluation and treatment. If the Speedy Trial Act were to apply here, then this court would find that time is excludable from the day defendant first is taken into federal custody until the court's final determination of defendant's competency is excluded from computation under the Speedy Trial Act pursuant to 18 U.S.C. §§ 3161(h)(1)(A) and (F).

Entered this 25<sup>th</sup> day of April, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge