

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

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UNITED STATES OF AMERICA,  
Plaintiff,

v.

MARVIN BAKER,

Defendant.

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ORDER

05-CR-61-S

At an unscheduled and unrecorded December 2, 2005 telephonic conference, attorneys for the government and for defendant Marvin Baker jointly asked the court to return Baker to FMC-Springfield for a supplemental competency examination and report. I granted the request.

As reported in previous orders, since returning to this district Baker has refused to meet with his attorney or to speak with anyone associated with this case. At the court's direction, Dr. Thomas Moran, a local forensic psychologist, performed a cursory examination of Baker and opined that Baker now might be suffering from depression and might benefit from the administration of antidepressant medication. As a result of this examination, this court, the prosecutor and Baker's attorney learned for the first time that Baker had attempted suicide while detained at the Jefferson County Jail and was transferred for a time to the Mendota Mental Health Institute.<sup>1</sup> The court had not asked Dr. Moran to perform a full competency examination, so he did not opine directly on Baker's current competency to stand trial. As a psychologist, Dr. Moran cannot prescribe medication for Baker.

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<sup>1</sup> This is information the jail should have provided immediately to the U.S. Marshals Service, which should have immediately alerted the court. We are exploring why this did not happen.

To proceed with a competency hearing on this record would be futile. It is not clear whether Baker has spiraled into depression since leaving FMC-Springfield or whether he merely is sulking, but there is no principled way to determine his actual mental status without a followup examination. It is quickest and most efficient to return Baker to Springfield so that the original examiner can make that determination.

Also, FMC-Springfield has the capability to prescribe and administer psychotropic medication to Baker if in fact he needs it. Staff at FMC-Springfield also are qualified to report to the court on the need to administer medication to Baker involuntarily pursuant to *Sell v. United States*, 539 U.S. 166 (2003), if we get to that stage.

Therefore, it is ORDERED that:

1. Defendant Marvin Baker is committed to the custody of FMC-Springfield for a period not to exceed 30 days, not counting transportation time, for a supplemental psychiatric or psychological examination.

2. The examiner shall prepare a supplemental 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) Baker's present symptoms;
- (2) A description of the psychiatric, psychological, and medical tests that employed during re-examination and their results;
- (3) The examiner's findings;
- (4) The examiner's opinions as to diagnosis, prognosis, and the examiner's opinion whether Baker currently is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he currently 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 provide FMC-Springfield with all additional relevant reports generated regarding Baker.

4. The 30 day period of commitment may be extended by up to 30 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 supplemental 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. The calendar in this case is stricken and will be replaced upon a determination of defendant's competency. Time continues to be excluded from computation under the Speedy Trial Act pursuant to 18 U.S.C. §§ 3161(h)(1)(A) and (H).

Entered this 2<sup>nd</sup> day of December, 2005.

BY THE COURT:  
/s/  
STEPHEN L. CROCKER  
Magistrate Judge