

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

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JASON SHRAKE,

Defendant.

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ORDER

05-CR-133-S

On June 8, 2006, this court received a letter request from defendant Jason Shrake addressed to Judge Shabaz, who has passed the letter to me for action, at least on Shrake's demands regarding competency proceedings. Undoubtedly this will upset Shrake, since one of his complaints is against me because I set tight deadlines for Shrake to request subpoenas for his June 13, 2006 competency hearing.

Shrake, who is detained pending sentencing, asserts that he needs the court to purchase for him personal copies of nine sets of books, including not just the federal rules of evidence and criminal procedure, but Chapter 28 of the Code of Federal Regulations (Judicial Administration), a 2006 Black's Law Dictionary, the "newest edition" of "The Supreme Court," and books on brief-writing, trial procedures and oral argument. Shrake requests these books because the jail's law library allows him no more than three books at a time, if the books even are available when he requests them. Shrake claims that he needs these books "To properly present a case."

Either Shrake has yet to appreciate his dilemma or he is getting ahead of himself. As I tried to make clear in my May 26 order (dkt. 56), Shrake cannot represent himself at his competency hearing unless he intends to stipulate to competency, in which case we do not need the hearing at all. If Shrake continues to contend that he is not competent, then he cannot represent himself at the hearing because it would be unfair to require an incompetent person to represent himself in a criminal case.

Or would it? If Shrake truly were mentally incompetent, wouldn't this be manifest at a competency hearing at which he attempted to represent himself? And if he *is* incompetent, then he would be in no position to complain later about his lack of representation since he would not have been prejudiced by it: he would have obtained *pro se* the result he wanted, a finding of incompetency.

But all the evidence available to the court points to Shrake's legally competency. Shrake disputes this and wishes to prove otherwise at a hearing. If I were to allow Shrake to represent himself in attempting to prove his incompetence and then were to find that he is competent, how could Shrake complain later that he was prejudiced by self-representation? My finding would be merely a judicial recognition of a mental status that pre-existed the hearing.

Even so, there is a dilemma: at least as a technical matter, until the court finds Shrake competent, it cannot put any stock in his answers to the court's questions during the required colloquy on self-representation. Perhaps in this is a glorification of form over

substance in our peculiar situation: Shrake currently is representing himself *de facto* and is establishing by his words and deeds that he does understand the nature and consequences of the proceedings against him and is able not only to assist properly in his defense but is capable of—and insistent on—running it, however imprudent this choice might be.

All this being said, the court previously acquiesced to the government's request that Shrake not represent himself at the competency hearing, at least not without the assistance of a stand-by attorney. I will not roil the record further by rescinding that decision. So, we will commence the June 13 competency hearing with Shrake's current attorney acting as his titular representative in court and see what devolves thereafter.

Put another way, I am denying without prejudice Shrake's requests for personal copies of legal books. We will commence, and perhaps conclude, Shrake's competency hearing as scheduled. I will provide Shrake the opportunity to identify the witnesses he wished to subpoena to the hearing and to explain why these people were necessary for a competency determination. The court will respond as justice requires.

Entered this 12<sup>th</sup> day of June, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER

Magistrate Judge