

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	
)	No. 10-0162-16-CR-W-FJG
THEODORE WIGGINS,)	
)	
Defendant.)	

ORDER

On February 21, 2012, the Court held a pretrial conference in this matter, where counsel for the defendant raised the issue of defendant's mental status. Counsel for the defendant made an oral motion for a continuance, to allow for a judicial determination of defendant's mental competency. In support of his motion, Defendant states as follows:

1. Defendant Theodore Wiggins allegedly has been the recipient of Social Security disability payments since sometime in his childhood due to mental disabilities caused by a head injury, and this grant of Social Security benefits was unknown to defendant's counsel until a few days ago;
2. Counsel for Defendant Theodore Wiggins met with Defendant prior to the February 21, 2012 trial setting, and noted that Defendant had a strong belief that any verdict in the present matter would be reversed on appeal; and
3. Counsel for Defendant Theodore Wiggins indicated that Defendant seemed more concerned about his grooming products than preparing for trial.

Counsel seeks a continuance to further examine whether Defendant may presently be 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 finds that, in light of the facts outlined above, the defendant might

presently be 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 further believes that prior to conducting a hearing in respect to defendant's mental competency to stand trial, defendant should undergo a psychological examination. See 18 U.S.C. §§ 4241(a) and (b).

Furthermore, with respect to continuance, the Speedy Trial Act of 1974, as amended, mandates the commencement of the trial of a defendant within 70 days from the defendant's first appearance before a judicial officer of the court in which the charge is pending. In computing the 70-day time period, the periods of delay set forth in 18 U.S.C. § 3161(h) are to be excluded. Any period of delay resulting from a continuance granted at the request of a defendant is excludable if the court finds the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial, provided the court sets forth the reason for such finding.

In light of the circumstances described above, the Court find that the ends of justice served by removing this criminal action from the trial docket which was to commence on February 21, 2012, and continuing the trial until the joint criminal jury trial docket which will commence June 4, 2012, outweigh the best interest of the public and the defendant in a speedy trial.

In accordance with § 3161(h)(7)(C), congestion of the court's calendar was not considered in deciding to remove this case from the trial docket which was set to commence February 21, 2012.

Therefore, it is

ORDERED that defendant be committed to a United States Medical Center for

Federal Prisoners or other appropriate facility, pursuant to 18 U.S.C. § 4247(b), to undergo a psychological examination, pursuant to 18 U.S.C. § 4241(b), to be conducted by a licensed or certified psychologist employed by that institution to determine whether 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. It is further

ORDERED that the commitment to the United States Medical Center for Federal Prisoners or other appropriate facility shall not exceed 30 days unless that time is extended for an additional period of time not to exceed 15 days upon a showing of good cause that the additional time is necessary to observe and evaluate defendant. It is further

ORDERED that, upon completion of the examination, the examining psychologist prepare and file a report in accordance with the provisions of 18 U.S.C. §§ 4247(b) and (c). It is further

ORDERED that the United States Marshal for the Western District of Missouri forthwith transport defendant to a United States Medical Center for Federal Prisoners or other appropriate facility. It is further

ORDERED that, upon completion of the examination, defendant shall promptly be returned before the court for a hearing to determine whether or not he is presently suffering from a mental disease or defect which renders 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. It is further

ORDERED that the United States Marshal notify Magistrate Judge Robert E. Larsen

promptly upon completion of defendant's examination. It is further

ORDERED that the United States Pretrial Services Office for the Western District of Missouri (1) obtain a copy of the indictment, (2) obtain a copy of defendant's medical records, and (3) provide the indictment and the medical records to the Medical Center or other appropriate facility for use in conducting the psychological examination. It is further

ORDERED that the examining psychologist contact Pretrial Services at (816) 512-1450 to provide an address or fax number where defendant's medical records can be sent. It is further

ORDERED that this criminal action is removed from the docket which was set to commence February 21, 2012. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence June 4, 2012. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7), the time between the date of this order and June 4, 2012, shall be excluded in computing the time within which the trial of this criminal action must commence.

IT IS SO ORDERED.

Date: February 22, 2012
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge