

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Action No. 98-357
)	(EGS)
RUSSELL EUGENE WESTON, JR.,)	
)	
Defendant.)	
)	

O R D E R

The defendant, Russell Eugene Weston, Jr., has been charged in a six-count indictment with the murders of United States Capitol Police Officers Jacob J. Chestnut and John M. Gibson, the attempted murder of United States Capitol Police Officer Douglas B. McMillan, and three counts of carrying and use of a firearm during a crime of violence. The government contends that all of these events occurred on the grounds of the United States Capitol on July 24, 1998, while the victims were engaged in their official duties as federal law enforcement officers.

I. BACKGROUND

On October 15, 1998, pursuant to a joint request by the government and the defendant, this Court appointed Sally C. Johnson, M.D., Associate Warden Health Services, Mental Health Division, Federal Correctional Institution-Butner, to conduct an outpatient psychiatric examination of the defendant to assist the Court in determining whether the defendant is competent to stand trial. In her November 12, 1998 report, Dr. Johnson concluded that the defendant is incompetent to stand trial.

The government initially stated that it would challenge Dr. Johnson's opinion, in part, because it allegedly contained "significant gaps," including no discussion of the defendant's history of having brought numerous lawsuits. The government, therefore, moved the Court to have its mental health expert, Dr. Debra DePrato, examine the defendant so that the expert could offer testimony regarding the issue of the defendant's competence. The Court granted the government's motion and, out of an abundance of caution in an area where experts often disagree, ordered the defendant to undergo a second psychiatric evaluation by a court-appointed expert. See *United States v. Weston*, No. Cr. 98-357, 1999 WL 85525, at *4 (D.D.C. Feb. 12, 1999).

The defendant was then transferred to the United States Medical Center for Federal Prisoners at Springfield, Missouri. While at that facility, however, the defendant refused to speak with experts there, including Dr. James Wolfson, Staff Psychiatrist, or with Dr. DePrato. The defendant's refusal to cooperate was brought to the Court's attention in late February, and he was returned to this jurisdiction. Since the defendant returned to the District of Columbia, he has steadfastly refused to speak with Dr. Wolfson, Dr. DePrato, or Dr. Johnson when she attempted to conduct a follow-up interview, although the defendant has spoken with defense expert Dr. Phillip J. Resnick. At a status hearing held in this case on April 13, 1999, the government announced that it was withdrawing its objection to a

finding of the defendant's present incompetency.

II. DISCUSSION

To determine whether the defendant is competent to stand trial, the Court considers whether the defendant is (1) "presently [] suffering from a mental disease or defect," that (2) "render[s] him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him," (3) "or to assist properly in his defense." 18 U.S.C. § 4241(a). The Court will hold an evidentiary hearing to determine a defendant's mental competency to stand trial only when there is reasonable cause to do so. See *id.*; *United States v. Morrison*, 153 F.3d 34, 47 (2d Cir. 1998 (District court did not err in not holding a hearing to determine defendant's competence to stand trial because the report upon which the judge made her determination amply supported her conclusion that defendant was competent.); accord *United States v. Downs*, 123 F.3d 637, 641 (7th Cir. 1997); *United States v. Lebron*, 76 F.3d 29, 32-33 (1st Cir. 1996).

The Court is of the opinion that there is no reasonable cause to hold an evidentiary hearing in this case in view of the ample and largely uncontroverted evidence supporting a judicial determination that the defendant is presently incompetent to stand trial. In reaching this conclusion, the Court is persuaded by the "Defendant's Memorandum In Support Of A Finding Of

Incompetency" and the attachments thereto,¹ the "Government's Withdrawal Of Its Objection To A Finding Of The Defendant's Current Incompetency," and the report of the government's expert, Dr. DePrato, for the reasons set forth therein. Indeed, the parties have stipulated that the substantive reports and videotapes on file with the Court support a judicial determination of the defendant's present incompetency to proceed to trial pursuant to 18 U.S.C. § 4241(a). Accordingly, in view of the Court's personal review and consideration of those reports and videotapes, the Court concludes that as a matter of law, a preponderance of the evidence supports the finding that the defendant, Russell Eugene Weston, Jr., presently suffers from a mental disease or defect that renders him incapable of understanding the nature and consequences of the proceedings against him and that precludes him from properly assisting in his

¹These attachments are:

1. Report of Dr. Sally Johnson, November 12, 1998;
2. Addendum to Report of Dr. Sally Johnson, April 11, 1999;
3. Report of Dr. James K. Wolfson, February 28, 1999 (revised March 10, 1999);
4. Addendum to Report of Dr. James K. Wolfson, March 29, 1999;
5. Psychological Report of Dr. Robert L. Denney, March 26, 1999;
6. Report of Dr. Phillip J. Resnick, April 10, 1999;
7. Curriculum vitae of Dr. Resnick;
8. Video-tape of interview between Dr. Resnick and Mr. Weston, January 31, 1999;
9. Transcript of video-taped interview of January 31, 1999;
10. Video-tape of interview between Dr. Resnick and Mr. Weston, March 27, 1999;
11. Transcript of video-taped interview of March 27, 1999;
12. Video-tape of interview of Mr. Weston at the CIA on July 29, 1996;
13. Transcript of video-taped interview of July 29, 1996

defense. Therefore, pursuant to 18 U.S.C. § 4241(d), the Court will commit the defendant to the custody of the Attorney General for hospitalization to determine whether there is a substantial probability in the foreseeable future that the defendant will attain the capacity to permit the trial to proceed.

III. CONCLUSION

Accordingly, it is hereby

ORDERED that the defendant, Russell Eugene Weston Jr., is committed to the custody of the Attorney General, pursuant to 18 U.S.C. § 4241(d). The Attorney General shall hospitalize the defendant for treatment in a suitable facility for a reasonable period of time, not to exceed four months, to determine whether there is a substantial probability in the foreseeable future that the defendant will attain the capacity to permit the trial to proceed; and it is

FURTHER ORDERED that prior to the expiration of this four month period, the facility in which the defendant will be hospitalized shall inform the Court whether there is a substantial probability in the foreseeable future that the defendant will attain the capacity to permit the trial to proceed; and it is

FURTHER ORDERED that medical personnel at the facility in which the defendant will be hospitalized shall **FORTHWITH** examine the defendant's right arm to determine if medical treatment is required; and it is

FURTHER ORDERED that should qualified medical personnel within the Bureau of Prisons, in the course of defendant's treatment, decide that the administration of psychotropic medications is appropriate, and should it appear that defendant will not provide voluntary written informed consent to the administration of such medication, then the Bureau of Prisons may follow the administrative procedures under 28 C.F.R. § 543, provided that counsel for Mr. Weston receive reasonable notice before a hearing commences under § 543. The Court and counsel for the parties shall be immediately notified of all determinations made within the administrative process and shall be provided copies of the written report required under § 543(a)(5), and also shall be provided copies of any decision by the institution's mental health division administrator should an administrative appeal be taken. No administration of psychotropic medications to defendant against his will shall occur without the prior approval of this Court in a written Order; and it is

FURTHER ORDERED that consistent with this Circuit's ruling in *United States v. El-Sayegh*, 131 F.3d 158 (D.C. Cir. 1997), the Clerk of the Court is hereby **DIRECTED** to unseal the following pleadings filed in this case: (1) "Defendant's Memorandum In Support Of A Finding Of Incompetency" and the attachments thereto, filed April 13, 1999; (2) the "Government's Withdrawal Of Its Objection To A Finding Of The Defendant's

Current Incompetency," filed April 9, 1999; and (3) the report of the government expert, Dr. DePrato, filed April 7, 1999; and it is

FURTHER ORDERED that a Status Hearing shall be held in this case on **September 9, 1999 at 10:00 a.m.** in Courtroom 11; and it is

FURTHER ORDERED that copies of the documents and videotapes the Court has relied upon in making this determination shall be available upon request at a cost from:

ITS, Inc.
1231 20th St., N.W.
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(202) 857-3837
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DATE

EMMET G. SULLIVAN
United States District Judge

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