

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,)
)
Plaintiff,)
)
v.)
)
ANGELO HYMAN,)
)
Defendant.)
_____)

CASE NO. ST-11-CR-31
JURY TRIAL DEMANDED

PEOPLE OF THE VIRGIN ISLANDS,)
)
Plaintiff,)
)
v.)
)
ANGELO HYMAN,)
)
Defendant.)
_____)

CASE NO. ST-11-CR-F61
JURY TRIAL DEMANDED

RENEE GUMBS CARTY, ESQ.
Assistant Attorney General
U.S. Virgin Islands Department of Justice
34-38 Kronprindsens Gade
GERS Bldg., 2nd Floor
St. Thomas, VI 00802
Attorney for Plaintiff

ARTHUR POMERANTZ, ESQ.
3562 Honduras
Suite 9
St. Thomas, VI 00802
Attorney for Defendant

SAMUEL L. JOSEPH, ESQ.
Assistant Territorial Public Defender
Office of the Territorial Public Defender
P.O. Box 6040
St. Thomas, VI 00804
Attorney for Defendant

CHRISTIAN, ADAM G., Judge

MEMORANDUM OPINION

(Filed: July 30, 2012)

Before the Court is the "Motion for Psychiatric Evaluation With Respect to Plea Offer" filed by Arthur Pomerantz, Esquire, court-appointed attorney for Defendant Angelo Hyman in

People of the Virgin Islands v. Angelo Hyman
Superior Court Case No. ST-11-CR-31 and ST-11-CR-F61
Memorandum Opinion

Case No. ST-11-CR-F61.¹ The People of the Virgin Islands (the “People”) have not responded to said motion. Based on considerations of judicial economy², the Court is consolidating these matters *sua sponte* for the purpose of addressing the issue of whether Mr. Hyman should undergo a second psychiatric evaluation to determine his mental competency to stand trial. For the reasons set forth below, the Court will grant the motion.

I. FACTUAL AND PROCEDURAL BACKGROUND.

Defendant Angelo Hyman is charged in these two (2) cases with various crimes which are alleged to have occurred within weeks of each other. In Case No. ST-11-CR-31, Mr. Hyman is charged with one count of petit larceny³ and one count of misdemeanor possession of stolen property,⁴ arising out of his alleged conduct on January 14, 2011. In Case No. ST-11-CR-F61, Mr. Hyman is charged with one count of first degree arson⁵ and one count of disturbing the peace,⁶ based on his alleged behavior on February 1, 2011.

At the February 2, 2011, advice of rights hearing for Case No. ST-11-CR-F61, the presiding magistrate directed that Mr. Hyman not be released until such time as a psychiatrist certifies that he is not a danger to the community. On May 21, 2011, the Court held a consolidated pretrial conference for these two cases, and inquired whether the evaluation had been performed. The attorney for Defendant Hyman responded in the negative.⁷ Therefore, the Court directed that Dr. Leighmin Lu perform a psychiatric evaluation of Defendant Hyman to determine whether he is competent to stand trial.⁸ The Court also directed the parties to share the cost of said evaluation. Dr. Lu issued a report dated October 16, 2011, which referenced Case No. ST-11-CR-31, but discussed the facts of Case No. ST-11-CR-F61. The report notes that Mr. Hyman initially was very unstable emotionally and mentally. However, after treatment with certain medications, Dr. Lu concluded that Mr. Hyman, as of the date of the report, was competent to stand trial or enter into a plea agreement.

At a pretrial conference held on February 24, 2012, the Court directed that any final plea agreements for these cases be offered by the People by March 9, 2012, and that Defendant respond to the same by March 23, 2012.⁹ The People issued a proposed global plea agreement, dated March 14, 2012, to Defendant Hyman. Under the proposed agreement, the People request that Mr. Hyman plead guilty to first degree arson in Case No. ST-11-CR-F61, a charge which

¹ Initially, Mr. Hyman was represented by the Office of the Territorial Public Defender (the “OTPD”) in both of the above-captioned criminal cases. However, one of the witnesses in Case No. ST-11-CR-F61 is a client of the OTPD. In light of the conflict of interest, the Court granted the motion of the OTPD to withdraw as counsel for Defendant. Arthur Pomerantz, Esquire thereafter was appointed to represent Mr. Hyman in that case. *See*, V.I. CODE ANN. tit. 5, § 3503(a). The OTPD continues to represent Mr. Hyman in Case No. ST-11-CR-31.

² *See*, SUPER. CT. R. 1.

³ 14 V.I.C. §§ 1081, 1084.

⁴ 14 V.I.C. § 2101(b).

⁵ 14 V.I.C. § 252(a).

⁶ 14 V.I.C. § 622(1).

⁷ At the time, the OTPD represented Mr. Hyman in both cases. It was at this hearing that the Court granted the OTPD’s motion to withdraw as counsel for Defendant in Case No. ST-11-CR-F61.

⁸ The written Orders are dated June 2, 2011 were entered on June 3, 2011.

⁹ A written order to this effect was issued on March 1, 2012.

carries a maximum term of incarceration of twenty (20) years. In exchange for Defendant's plea of guilty to that offense, the charge of disturbing the peace in the same case, and all charges in Case. No. ST-11-CR-31, would be dismissed. As part of the plea agreement, the People also will recommend a sentence of fifteen (15) years imprisonment.

According to his affidavit, Attorney Pomerantz states that he travelled to the Bureau of Corrections on March 19, 2012 to consult with Mr. Hyman regarding the plea agreement. At that meeting, according to Attorney Pomerantz, Mr. Hyman appeared unaware of why he was being incarcerated or of the charges against him. Moreover, when Attorney Pomerantz attempted to discuss the plea agreement with his client, Mr. Hyman stared at him blankly. Based upon these circumstances, Attorney Pomerantz requests that another psychiatric evaluation of Mr. Hyman be undertaken.

II. LEGAL DISCUSSION.

It is axiomatic that a person who is not mentally competent to stand trial may not be prosecuted criminally under the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.¹⁰ The U.S. Congress has extended these constitutional amendments to the United States Virgin Islands.¹¹ The standard for determining the mental competency of a criminal defendant is "...whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding-and whether he has a rational as well as factual understanding of the proceedings against him."¹² The People bear the burden of proving a defendant's competency to stand trial by a preponderance of the evidence.¹³ The failure of the People to ensure that a mentally incompetent person is not criminally prosecuted amounts to a violation of the defendant's constitutional rights.¹⁴

The Territory of the Virgin Islands has implemented these constitutional principles via statute, and prohibited the criminal prosecution of those suffering from adverse mental conditions. "The Legislature of the Virgin Islands may not adopt or enforce a local law, ordinance, resolution or rule having the force of law that includes being mentally disturbed, drinking, being a common drunkard, being found in an intoxicated condition or being found under the influence of drugs as a criminal offense."¹⁵ Under Virgin Islands statutory provisions, a mentally disturbed person is one who cannot meet the usual obligations imposed on those who

¹⁰ *Government v. Durant*, 49 V.I. 366, 376 n. 11 (V.I. 2008) (citing *Medina v. California*, 505 U.S. 437, 453 (1992)).

¹¹ See, Revised Organic Act of the Virgin Islands 1954, as amended, § 3, 48 U.S.C. § 1561, reprinted in V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 86-88 (1995) (preceding V.I. CODE ANN. tit. 1).

¹² *Dusky v. United States*, 362 U.S. 402 (1960).

¹³ *United States v. Velasquez*, 885 F.2d 1076, 1089 (3d Cir. 1989) (citing *United States v. Digilio*, 538 F.2d 972, 988 (3d Cir. 1976)).

¹⁴ *Medina v. California*, 505 U.S. 437, 449 (1992) ("A State's 'failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial.'" (quoting *Drope v. Missouri*, 420 U.S. 162, 172 (1975))).

¹⁵ 19 V.I.C. § 727(a).

People of the Virgin Islands v. Angelo Hyman
Superior Court Case No. ST-11-CR-31 and ST-11-CR-F61
Memorandum Opinion

live freely in our society.¹⁶ The local statutory definition of a mentally disturbed person encompasses, and exceeds in scope, the description of a person who is not competent to stand trial under the Due Process Clause.

Based upon Virgin Islands statutory provisions, the Court also concludes that the Department of Health is statutorily responsible for assisting the prosecution in meeting its burden of proof when a criminal defendant's mental competency is at issue. "The Commissioner **shall** establish comprehensive and coordinated programs for the **treatment** of the **mentally ill**, alcoholics, intoxicated and drug dependent persons."¹⁷ The term "**treatment**" is expansive and includes a "...broad range of emergency, outpatient, intermediate and inpatient services and care, **including diagnostic evaluation**, medical, **psychiatric, psychological** and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons."¹⁸ Further, the Department of Health is directed to expend its funds, from whatever source they are obtained, in the execution of the foregoing statutory duties.¹⁹

At this juncture in these proceedings, the specific issue before the Court is whether Mr. Hyman has the legal capacity to enter into a plea agreement. However, just as a criminal defendant must be mentally competent to stand trial, one must have the same level of competency to enter into a plea agreement.²⁰ Further, the fact that Dr. Lu previously found Mr. Hyman to be competent to stand trial is not dispositive of the matter presently facing the Court. The earlier report was issued nine months ago and was not a ringing endorsement of Defendant Hyman's mental competency. The report noted several concerns about Mr. Hyman suffering from hallucinations, having an extensive history of drug abuse, and possessing a limited intellectual function. The Court must be guided by the tenet that where there is a debatable issue regarding a criminal defendant's competency to stand trial, a trial court has a duty to continuously ensure that the person meets the requisite constitutional mental state to stand trial or enter into a plea agreement throughout the entire proceeding.²¹

¹⁶ 19 V.I.C. § 711(15). (A "'Mentally disturbed person' means a person whose mental functions are sufficiently impaired to interfere grossly with his capacity to meet the ordinary demands of life, the result of which is that such person's thinking, mood, and behavior have become irrational or distorted from reality, whether such condition has been caused by organic brain tissue damage or by psychological causes.").

¹⁷ 19 V.I.C. § 717(a) (emphasis added).

¹⁸ 19 V.I.C. § 711(12) (emphasis added).

¹⁹ 19 V.I.C. § 717(e) ("All appropriate public and private resources shall be coordinated with and utilized in the program if possible."). See also, 19 V.I.C. § 1101(6) ("The Commissioner of Health may - receive and expend all funds made available to the Department of Health by the Federal Government, the Government of the United States Virgin Islands, or from other sources for such purposes.").

²⁰ *Taylor v. Horn*, 504 F.3d 416, 430-431 (3d Cir. 2007) ("The foundation of these competency claims is the well-established due process right not to be tried, **or plead guilty**, while incompetent.") (citations omitted) (emphasis added). See also, *United States v. Morrisette*, 429 F.3d 318, 322 (1st Cir. 2005) ("Competence to enter a guilty plea is determined by the same criteria as those governing competence to stand trial: whether the defendant is able to understand the proceedings and assist his counsel with a reasonable degree of rationality.").

²¹ See, *McGregor v. Gibson*, 248 F.3d 946, 954 (10th Cir. 2001) ("We stress that the due process requirement is continuing; a defendant must be competent throughout the entire trial.") (citing *Drope v. Missouri*, 420 U.S. 162, 171-172 (1975)). See also, *State v. Chambers*, 182 P.3d 736, (Kan. Ct. App. 2008) ("Once a trial court makes a determination that a defendant is competent either to waive counsel or to stand trial or both, the court is under a continuing responsibility to observe whether that competency continues.") (citation omitted); *Gothard v. State*, 452 So.2d 889, 893 (Ala. Crim. App. 1984) ("Even where the issue of competency to stand trial has not been raised by

People of the Virgin Islands v. Angelo Hyman
Superior Court Case No. ST-11-CR-31 and ST-11-CR-F61
Memorandum Opinion

The circumstances presented in these cases indicate that as early as the advice-of-rights stage, there were articulated concerns about Defendant Hyman's psychiatric status. Now, based on counsel's recent face-to-face interview with Mr. Hyman, the worry has reappeared. The previous report of Dr. Lu is several months old. And, while that document indicates that Mr. Hyman was competent to stand trial at the time it was issued, it also suggests there are underlying problems with his psychiatric status. Under the plea agreement at issue, Mr. Hyman would plead guilty to a felony, and the People intend to pursue a fifteen (15) year period of imprisonment. If the plea were accepted by the Court, Mr. Hyman faces the loss of his liberty for an extended period of time, and, upon release, would lose certain legal rights as a convicted felon. In light of these conditions and this Court's duty to continuously monitor the mental competency of criminal defendants, the most appropriate course of action is to order a second psychiatric examination and evaluation of Defendant Angelo Hyman. Consistent with the above-cited statutory provisions, the examination and evaluation shall be conducted and prepared by the Department of Health. The results of the examination and evaluation will be utilized to determine whether Mr. Hyman is competent to stand trial and/or enter into a plea agreement in both of the above-captioned criminal cases.

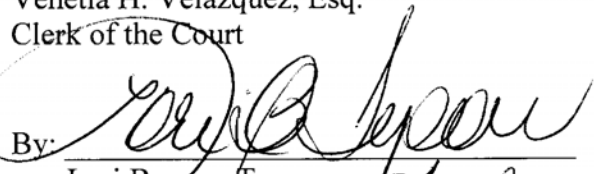
III. CONCLUSION.

Because there are viable reasons in the record before the Court to be concerned about the current mental competency of Defendant Angelo Hyman, the Motion for Psychiatric Evaluation With Respect to Plea Offer filed by Arthur Pomerantz, Esquire will be granted in an appropriate order of even date. Also, all further proceedings in these cases will be stayed pending the submission of the report by the Department of Health.

Dated: July 30, 2012


Hon. Adam G. Christian
Judge of the Superior Court
of the Virgin Islands

ATTEST:
Venetia H. Velazquez, Esq.
Clerk of the Court

By: 
Lori Boynes-Tyson
Court Clerk Supervisor 7/30/12

defense counsel, '(t)he trial judge has an ongoing and continuing responsibility to prevent the trial of an accused unable to assist in his defense.'") (citations omitted).