

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA)	
)	
v.)	CASE NO.: 2:15-CR-472
)	
DYLANN STORM ROOF)	

MOTION TO CONTINUE COMPETENCY HEARING

Standby counsel move the Court to continue the competency hearing currently scheduled for January 2, 2017. Dkt. No. 835. The only reason for scheduling the hearing with one business day's notice and on a federal holiday appears to be the anticipated beginning of the penalty phase of the defendant's trial on January 3, 2017. Although we recognize and sympathize with everyone's desire to complete these painful legal proceedings as soon as possible, we know that the Court, the government, and the community all share a common interest in an outcome that is fair, reliable, and final. Moving forward under these time constraints is unreasonable and risks the reliability of the competency hearing, and therefore any sentence that follows.

Counsel filed the competency motion which triggered the Court's decision to conduct a hearing less than twenty-four hours after the defendant announced at the December 28, 2016 status conference that he would present *no* case in mitigation at the penalty phase of his capital trial.¹ This defendant's announcement that he will not defend

¹ A hearing is required under 18 U.S.C. § 4241(a) when the Court finds "reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering

himself against the death penalty – following an government presentation that is expected to involve more than 38 additional witnesses and hundreds more exhibits – raises in especially stark fashion the question of whether the defendant is actually *unable* to defend himself. At a minimum, it suggests that he may lack the mental capacity to assume the role of his own lawyer. *Indiana v. Edwards*, 554 U.S. 164 (2008).² The Court should permit counsel the time to adequately prepare for a hearing to explore these concerns.

The Court’s evaluator and defense experts will be attempting to meet with the defendant between now and January 2. These conditions are not optimal, but even if they are adhered to, the parties will require time to review the results of those evaluations in order to assure a full and accurate presentation to the Court. We therefore suggest a one-week continuance to permit the evaluators to complete their work, the parties to review it, and the witnesses to make travel arrangements.

We anticipate that some may view our request for a determination of the defendant’s current competency, and our need for a brief continuance of the hearing date set by the court, as a “tactic.” It is not. As everyone does, we regret this situation. But when the government asks for the death penalty, there arises a special need accuracy that can slow and delay the legal process in ways that noncapital sentencings do not. During

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.”

² As we have argued previously, it also demonstrates the unconstitutionality, under the Fifth, Sixth, and Eighth Amendments, of permitting anyone to face the death penalty without counsel. We acknowledge the Court’s denial of these motions. *See* Dkt. No. 741.

the course of these proceedings, we have respected the Court's schedule and have completed our work as expeditiously as the circumstances have allowed. In order that we may adequately present the facts related to the defendant's competency at the hearing ordered by the Court, we request that the Court grant a reasonable continuance of the January 2, 2017 hearing date.

Respectfully submitted,

s/ David I. Bruck

David I. Bruck
Washington & Lee School of Law
Lexington VA 24450
540-458-8188
bruckd@wlu.edu

Sarah S. Gannett
Assistant Federal Public Defender
Federal Public Defender for the District of Arizona
850 W. Adams Street, Suite 201
Phoenix, AZ 85007
602-382-2862
sarah_gannett@fd.org

Kimberly C. Stevens
Capital Resource Counsel
Assistant Federal Public Defender for the
District of Oregon
1070-1 Tunnel Road, Suite 10-215
Asheville, NC 28805
336-788-3779
kim_stevens@fd.org

Emily C. Paavola
900 Elmwood Ave., Suite 200
Columbia, SC 29201
803-765-1044
Emily@justice360sc.org

Standby Counsel for Dylann S. Roof