



In the context of the competency hearing, the Court credited Dr. Ballenger's evaluation that the defendant suffers from "Social Anxiety Disorder, a Mixed Substance Abuse Disorder, a Schizoid Personality Disorder, depression by history, and a possible Autistic Spectrum Disorder." Dkt. No. 656 at 12. Although the Court denied a defense request for an independent competency evaluation focused on autism, the defense offered evidence of an autism diagnosis by a highly-qualified autism expert at the hearing.<sup>2</sup> *See* Tr. 11/22/16; Def. Ex. 12 (Declaration of Rachel Loftin, Ph.D.). The Court also heard evidence at the hearing that the defendant's high IQ is compromised by a significant discrepancy between his ability to comprehend and to process information and a poor working memory. *See* Tr. 11/22/16; Court Ex. 3 at 6.

These disabilities have had easily-observable effects, which we documented in Dkt. No. 745, but they also have effects that are more difficult for the public and the Court to see. Counsel have documented those effects in our competency pleadings, especially Dkt. No. 562-1 and our affidavit to Dr. Ballenger. Generally, they include:

- A detail-focused or "part-oriented" approach;
- Excessive focus on non-essential details, and lack of big-picture orientation;
- Difficulty processing multiple, simultaneous sources of information and shifting between subjects and activities;

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<sup>2</sup> The Court also heard testimony from MUSC psychologist Laura Carpenter, an autism expert, who described some of the ways in which autism is disabling even in people with high IQ.

- Trouble retaining information when required to focus on more than one thing at a time;
- An extreme need for predictability and routine, including rules and scripts, where possible, to anticipate what will take place;
- Anxiety about things that cannot be predicted;
- Difficulty adjusting to unexpected events; and
- A tendency to become easily overwhelmed.

In addition to the obvious implications on the defendant's ability to focus and participate with counsel in the courtroom, these symptoms also rapidly drain the defendant's energy, because of the effort that he must exert in his efforts to manage them.

Without some accommodation, the defendant's disabilities will impair his ability to participate in his trial, in violation of his Fifth Amendment rights to due process and equal protection, his Sixth Amendment right to a fair trial, and his Eighth Amendment right to heightened reliability of the proceedings. *Cf. United States v. Crandall*, 748 F.3d 476, 478 (2014) ("We hold that the Sixth Amendment requires reasonable accommodations for hearing impaired criminal defendants during judicial proceedings and that such accommodations must be commensurate with the severity of the hearing impairment."). We have, from the beginning, sought assistance from our experts to guide our interactions with the defendant based on his disabilities. Based on what we have learned, and what is in the record, we request that the Court provide the following accommodations:

- Provide short breaks between direct examination and cross-examination, and between each witness, so that we may consult with the defendant to explain what is occurring and to receive his input;
- Shorten the court day and/or sit a shorter week (choosing, for example, to begin later or end earlier, not to sit Wednesdays or Fridays, to sometimes sit half days, or to provide a longer lunch break to permit consultation and recovery);
- Require the government to, insofar as possible, provide two days' notice of the witnesses it plans to call so that counsel can discuss them with the defendant in advance;<sup>3</sup> and
- Permit the defense to request a break as-needed when the defendant is becoming overwhelmed by the volume of information.

Should the Court so desire, we are prepared to provide testimony in support of these requests. We believe, however, that the testimony and evidence received at the competency proceeding adequately supports them.

Respectfully submitted,

s/ Sarah S. Gannett

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<sup>3</sup> The government has agreed to provide notice the evening before the next day's testimony. We are concerned that this will not provide us sufficient time to discuss proposed witnesses with the defendant and to prepare with him for their testimony.

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