

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

STEPHEN M. PATTERSON, JR., PETITIONER
v.
UNITED STATES OF AMERICA, RESPONDENT

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

**APPENDIX TO THE
PETITION FOR A WRIT OF CERTIORARI**

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SUBMITTED: December 28, 2020

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**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Filed: October 06, 2020

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Re: Case No. 19-6187, *USA v. Stephen Patterson, Jr.*
Originating Case No. : 5:17-cr-00019-1

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

cc: Ms. Vanessa L. Armstrong

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

File Name: 20a0567n.06

Case No. 19-6187

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

Oct 06, 2020

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)

Plaintiff-Appellee,)

v.)

STEPHEN PATTERSON, JR.,)

Defendant-Appellant.)

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF
KENTUCKY

BEFORE: ROGERS, SUTTON, and STRANCH, Circuit Judges.

SUTTON, Circuit Judge. After assaulting his girlfriend, Stephen Patterson was arrested, and the police found a loaded gun on him, prompting a felony possession charge. Patterson represented himself at trial, and a jury found him guilty, leading to a ten-year sentence. On appeal, he claims that he was incompetent to stand trial and to represent himself. The district court disagreed, relying on a forensic psychologist's report and its own observations of Patterson. We affirm.

In February 2017, Nicole Nichols returned home to see her boyfriend, Patterson, sitting on the floor and acting "strangely," "like an animal." R. 123 at 104, 131–32. He went from acting strangely to becoming violent. After first striking objects in the house, he hit Nichols. Then it got

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worse. He grabbed her by the neck, held a gun to her head, and told her that she “should die” and “didn’t deserve to live.” *Id.* at 132. Nichols escaped and called 911.

Patterson surrendered to the police. They searched him and discovered a loaded pistol in his pocket. Patterson admitted that the pistol was his and acknowledged that he had been “smoking a lot of spice”—synthetic marijuana. *Id.* at 88. At the station, Patterson became violent and had to be subdued by a police dog. In response, Patterson bit the dog “because th[e] dog bit me and that was the only way to defend myself.” R. 120 at 8.

Indicted for being a felon in possession of a firearm, Patterson gave some odd statements at his initial appearance. Asked whether his name was Stephen Patterson, he replied: “That name belongs to the United States of America.” R. 126 at 6. After probing by the court, he said, “I was a representative of or agent of Mr. Patterson, which I wish no longer to be a representative of.” *Id.* at 6–7. Patterson’s attorney moved for an evaluation of whether he was competent to stand trial.

Dr. Allison Schenk, a psychologist with the Federal Bureau of Prisons, examined him. Based on five clinical interviews and several meetings, the observations of other prison staff, and camera footage of Patterson’s arrest, Dr. Schenk concluded that Patterson was “competent to proceed with his legal case” and did “not have a severe mental disease or defect that would have an adverse impact on his ability to reason.” *Id.* at 12. She found that Patterson’s answers at the first hearing reflected an effort not to cooperate. As for Patterson’s behavior during the arrest, Dr. Schenk concluded it was most likely “volitional . . . [or] related to concurrent substance abuse,” pointing out that it would be “highly unusual” for “an individual to have a psychotic break at the specific moment of a criminal offense having never had any psychotic episodes before and not having any thereafter.” R. 57 at 16, 20. The court agreed. Even though “Patterson holds unusual

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beliefs, and has engaged in unusual behavior,” it found, “he is fully capable of rationally understanding the proceedings against him . . . [and] assisting in his defense.” R. 32 at 6.

Patterson chose to represent himself. At trial, Patterson claimed the gun was planted on him by Nichols or the officers. The jury found him guilty, and he was sentenced to ten years.

Competence to stand trial. A criminal defendant may not be put on trial if he is incompetent. *Drope v. Missouri*, 420 U.S. 162, 171, 180–81 (1975). Eligibility for the defense requires the individual to show he has a mental illness that renders him “unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.” 18 U.S.C. § 4241(d). “Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel.” *Godinez v. Moran*, 509 U.S. 389, 402 (1993). A defendant is not necessarily incompetent even if he “suffer[s] from [a] severe mental illness.” *Indiana v. Edwards*, 554 U.S. 164, 178 (2008). All in all, incompetence is a “high” bar, heightened by clear-error review on appeal. *United States v. Dubrule*, 822 F.3d 866, 876 (6th Cir. 2016).

No error occurred, let alone a clear one. Drawing on her expertise and interviews with Patterson, Dr. Schenk found him competent and “not experiencing any symptoms of a mental illness.” R. 25 at 12. Patterson, she found, understood the nature and consequences of the proceedings against him. During interviews, he identified the charged crime, the potential ten-year sentence, the role of the various players in the process (defense counsel, prosecutor, judge, witnesses, and jury), and the consequences of pleading (or not pleading) guilty. As for Patterson’s ability to assist in his defense, he expressed willingness to work with his court-appointed attorney and “described appropriate strategies for resolving any disagreements” they might have. *Id.* at 12. He also communicated effectively with Dr. Schenk, providing coherent answers to her questions,

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using normal speech patterns, and retaining and applying information. Patterson assessed a series of hypothetical criminal fact patterns and ultimately applied them to his own case, “identify[ing] pieces of evidence and witnesses . . . [and] evaluat[ing] the relative strength or weakness of that evidence,” providing “logical, well-reasoned, and rational” answers. *Id.* at 11. Dr. Schenk’s opinion amply supports the competency finding. *See United States v. Heard*, 762 F.3d 538, 541–42 (6th Cir. 2014). Patterson to this day has not identified an expert who has a contradictory view of his competence to stand trial.

The district court’s on-the-scene observations confirmed Dr. Schenk’s assessment. The court asked Patterson a series of questions about his background, the crime, the proceedings, even his reading interests. Through it all, Patterson’s answers were “calm, thought out, and articulate.” R. 32 at 6. Patterson correctly identified the crime he was charged with: “I know [the government is] saying I had some ammunition and a handgun.” R. 57 at 49. He understood the attorney-client privilege and refused to waive it. Patterson gave no indication he could not or had not communicated effectively with his attorney, and his effective communication at the hearing strongly suggested just the opposite.

Nothing that happened after the competency hearing gave the trial court “reasonable cause” to call that conclusion into question. 18 U.S.C. § 4241(a); *Drope*, 420 U.S. at 181. Patterson provided a coherent reason for removing his court-appointed attorney: tactical disagreements. He evaluated the plea deal and reviewed the evidence. He participated in a bench conference about jury selection and removed several potential jurors with peremptory strikes. At trial, he had a clear and consistent defense, which he frequently articulated and pressed during cross-examination. Through it all, Patterson followed the rules about as well as can be expected of a layperson, all while interacting courteously with the court, prosecutor, jury, and witnesses. Patterson, in short,

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“knew what was going on” and was not incompetent. *United States v. Coleman*, 871 F.3d 470, 477 (6th Cir. 2017); *United States v. Tucci-Jarraf*, 939 F.3d 790, 796 (6th Cir. 2019).

Patterson tries to counter this conclusion by highlighting his “antisocial personality disorder” based on his “long-standing pattern of violating the rights of others or the laws and norms of society,” and his tendencies towards aggression and deceit. R. 57 at 9. But in making that diagnosis, Dr. Schenk noted that antisocial personality disorder generally does not affect a defendant’s “competency-related abilities,” and Patterson’s disorder was no exception. R. 57 at 11. Regrettably, “antisocials fill the nation’s prisons.” *Heard*, 762 F.3d at 542.

Patterson adds that his former attorney believed he was incompetent. Even though courts may consider an attorney’s opinion as “one factor,” *United States v. Tucker*, 204 F. App’x 518, 520 (6th Cir. 2006), that factor is outweighed in this instance by the opinions of an expert psychologist and a neutral judge. Note too that Patterson’s attorney could not “find[] a doctor that agree[d] with [her].” R. 107 at 2.

Patterson says “[t]he record is filled with examples” of his “bizarre demeanor and irrational behavior.” Appellant Br. 22. Doubtless true. But the examples do not by themselves establish incompetence. Take Patterson’s actions the night of his arrest, whether acting like an animal or the newsworthy act of biting a dog. Dr. Schenk laid this behavior at the feet of the drugs he consumed. It’s hard for Patterson to quarrel with this explanation today, as it’s the one he gave that night—that he had smoked “[t]oo much” spice. R. 123 at 125. Drug-induced eccentricities generally do not make someone incompetent to stand trial after the drugs wear off. Consider *Dubrule*. The defendant was arrested for driving while intoxicated on prescription drugs, and made “bizarre statements,” including that he was a “world-famous physician,” the government

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was “trying to kill him,” and the government caused hurricane Katrina. 822 F.3d at 871. We affirmed that competency finding. Ours is the easier case.

Patterson adds to the mix some statements he made after the arrest that seemed disconnected with reality. During an interview and at the competency hearing, Patterson was reluctant to use his name, instead calling himself a “vice generate . . . [an] overseer, leader, [or] king” sent by God to “oversee the earth.” R. 25 at 6. Patterson also claimed to “hear voices” with suggestions for self-improvement: “Sometimes it might tell me to be silent, you know. Sometimes it might tell me to better yourself, you know, work on your growth as, you know, a natural being.” R. 57 at 43–44. These statements don’t do the trick either. As Dr. Schenk explained, true delusional beliefs are “well defined” and “pervasive,” and Patterson’s were not. R. 57 at 54. For instance: Patterson used the “vice generate” label once during the interviews, otherwise “consistently respond[ing] to and identif[ying]” himself as Stephen Patterson, something “a genuine[ly] delu[ded]” person could not do. R. 25 at 10. Plus, Patterson’s “unorthodox belief[s]” did not rise to the level of genuine delusions, and Patterson denied hearing voices during four of his five interviews with Dr. Schenk. R. 57 at 54.

No less importantly, “idiosyncratic actions and unconventional beliefs” by themselves do not establish incompetence. *Tucci-Jarraf*, 939 F.3d at 796. They do little to answer the question at hand, whether the defendant understands the proceedings against him and has the wherewithal to support a defense. *See id.*; *Heard*, 762 F.3d at 542. Even assuming Patterson had delusions and heard voices, Dr. Schenk explained, he did not describe anything that would have “impacted his competency-related abilities.” R. 57 at 56. Patterson understood the proceedings against him and could support his defense. *See Coleman*, 871 F.3d at 475–76.

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Patterson insists he had trouble helping the defense, claiming not to remember much of the incident, giving verbose answers to his lawyer's questions, disagreeing with her strategic decisions, and being skeptical whether she worked for him rather than the government. None of this establishes incompetence. Memory loss does not rise to the level of mental illness, and Patterson never claims it does. As for Patterson's difficulties with his lawyer, he is asking the wrong question. The question is whether the defendant "is capable of working collaboratively with his attorney," not whether he chose to do so. *Heard*, 762 F.3d at 542; *Coleman*, 871 F.3d at 478. Patterson was more than capable of effective communication, as Dr. Schenk explained and as Patterson himself showed through his communications with the court and opposing counsel. "[A] defendant is not rendered incompetent to stand trial merely because he cannot get along with his counsel or disapproves of his attorney's performance." *United States v. Miller*, 531 F.3d 340, 349 (6th Cir. 2008). Nor is he incompetent because he believed players in the criminal justice system were conspiring against him. *See Heard*, 762 F.3d at 542.

Competence to self-represent. Patterson separately claims that, even if he was competent to stand trial, the district court should not have let him represent himself. A court may permit an individual to represent himself if (1) he knowingly and voluntarily waives his right to counsel, and (2) he has the "mental competence to quarterback his own defense." *Tucci-Jarraf*, 939 F.3d at 794. Patterson challenges only the second element.

As to the second element, however, the Court has indicated that a defendant competent to stand trial is necessarily competent to represent himself. *Godinez*, 509 U.S. at 399. Cases in our circuit, and others too, have suggested the same. *See, e.g., United States v. Gooch*, 850 F.3d 285, 289 (6th Cir. 2017); *Tucci-Jarraf*, 939 F.3d at 796; *United States v. Bernard*, 708 F.3d 583, 590 & n.11 (4th Cir. 2013) (collecting cases).

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Patterson says that *Edwards* establishes that, in view of the difficulties of conducting a trial defense, a court must meet a higher standard of competence to permit self-representation. 554 U.S. at 164. We have our doubts: *Edwards* granted *permission* to impose counsel on defendants competent enough to stand trial but not competent enough to represent themselves. *Id.* at 174. It did not *require* counsel in those circumstances. “Although trial judges *may* from time to time impose counsel on mentally-compromised defendants just competent enough to stand trial . . . they aren’t *required* to paternalize defendants in this way.” *Tucci-Jarraf*, 939 F.3d at 796.

At any rate, Patterson satisfies the higher *Edwards* standard. To recap: Patterson effectively pursued pre-trial discovery, removed potential jurors with peremptory strikes, participated in bench conferences, had a consistent defense that he pressed through cross-examination, and through it all followed the rules about as well as can be expected of a layperson. All of that, plus Dr. Schenk’s report and the district court’s record-supported observations, confirm that Patterson was fully “competent to conduct trial proceedings” under *Edwards*. 554 U.S. at 178.

Patterson adds that *Westbrook v. Arizona* requires district courts to conduct a separate hearing to determine a defendant’s competence to represent himself. 384 U.S. 150 (1966) (per curiam). But in *Westbrook* the problem was not competence; it was that the trial court never “inquir[ed]” into whether the defendant had made a knowing and intelligent waiver. *Id.* at 150. In the words of *Godinez*, “*Westbrook* stands only for the unremarkable proposition that when a defendant seeks to waive his right to counsel, a determination that he is competent to stand trial is not enough; the waiver must also be intelligent and voluntary before it can be accepted.” 509 U.S. at 401–02. No one disputes that Patterson’s waiver was intelligent and voluntary here. *Westbrook* is beside the point.

We affirm.

Case No. 19-6187, *United States v. Patterson*

United States District Court
Western District of Kentucky
PADUCAH DIVISION

UNITED STATES OF AMERICA
V.
Stephen M. Patterson, Jr.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)
Case Number: 5:17-CR-19-1-TBR
US Marshal No: 19000-033
Counsel for Defendant: *Pro-Se*
Counsel for the United States: **Seth A. Hancock, Asst. U.S. Atty.**
Court Reporter: **Terri Turner**

THE DEFENDANT:

- ☐ Pursuant to plea agreement
- ☐ Pleaded guilty to count(s)
- ☐ Pleaded nolo contendere to count(s)
which was accepted by the court.
- ☒ **Was found guilty by a JURY TRIAL on Count 1 of the Superseding Indictment on June 20, 2019 after a plea of not guilty.**

ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title / Section and Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
----------------------------------------------	-----------------------------------	--------------

FOR CONVICTION OFFENSE(S) DETAIL - SEE COUNTS OF CONVICTION ON PAGE 2


The defendant is sentenced as provided in pages 2 through 8 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☒ **The Original Indictment is dismissed on the motion of the United States.**

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and the United States Attorney of any material change in the defendant's economic circumstances.

10/16/2019
Date of Imposition of Judgment

October 16, 2019


Thomas B. Russell, Senior Judge
United States District Court

DEFENDANT: **Patterson Jr., Stephen M.**
CASE NUMBER: **5:17-CR-19-1-TBR**

COUNTS OF CONVICTION

<u>Title / Section and Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
18 U.S.C. § 922(g)(1) - FELON IN POSSESSION OF FIREARM, a Class C Felony	02/18/2017	1SInd.

DEFENDANT: **Patterson Jr., Stephen M.**
CASE NUMBER: **5:17-CR-19-1-TBR**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **120 months as to Count 1 in the Superseding Indictment. The term of imprisonment will run concurrent with any sentence in McCracken County, Kentucky, Circuit Cases 17-CR-000191 and 17-CR-00235, but consecutive to any sentence in Gwinnett County, Georgia, Superior Court Case 10-B-3380-3.**

☒ The Court makes the following recommendations to the Bureau of Prisons:

The Defendant be placed in a facility wherein he may participate in a Residential Drug Abuse Treatment Program (RDAP) for treatment of narcotic addiction and/or drug/alcohol abuse and be placed in a facility that is near his family.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ A.M. / P.M. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ Before 2:00 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

☐ The defendant shall continue under the terms and conditions of his/her present bond pending surrender to the institution.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ To _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

DEFENDANT: **Patterson Jr., Stephen M.**
CASE NUMBER: **5:17-CR-19-1-TBR**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **3 years as to Count 1.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. ☒ **You must cooperate in the collection of DNA as directed by the probation officer.**
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense.
7. ☐ You must participate in an approved program for domestic violence.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: **Patterson Jr., Stephen M.**
CASE NUMBER: **5:17-CR-19-1-TBR**

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **Patterson Jr., Stephen M.**

CASE NUMBER: **5:17-CR-19-1-TBR**

SPECIAL CONDITIONS OF SUPERVISION

14. The defendant must participate in a cognitive behavioral treatment program and follow the rules and regulations of that program. Such programs may include group sessions led by a counselor or participation in a program administered by the Probation Office. The defendant shall contribute to the Probation Office's costs of service rendered based upon his/her ability to pay as reflected in his/her monthly cash flow as it relates to the court approved sliding fee scale.

15. The defendant must participate in a substance abuse treatment program as approved by the Probation Office and follow the rules and regulations of that program. The defendant shall contribute to the Probation Office's costs of service rendered based upon his/her ability to pay as reflected in his/her monthly cash flow as it relates to the court approved sliding fee scale.

16. The defendant must submit to testing to determine if he/she has used a prohibited substance. The defendant shall contribute to the Probation Office's costs of service rendered based upon his/her ability to pay as it relates to the court approved sliding fee scale. The defendant must not attempt to obstruct or tamper with the testing methods.

16. The defendant shall submit his or her person, property, house, residence, vehicle, papers, computers [as defined in 18 U.S.C. § 1030(e)(1)], other electronic communications or data storage devices or media, or office to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision, (2) extend the term of supervision and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant

Date

U.S. Probation Officer/Designated Witness

Date

DEFENDANT: **Patterson Jr., Stephen M.**
CASE NUMBER: **5:17-CR-19-1-TBR**

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 100.00		

- ☒ **The fine and the costs of investigation, prosecution, incarceration and supervision are waived due to the defendant's inability to pay.**
- ☐ The determination of restitution is deferred until . An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☒ **Restitution is not an issue in this case.**
- ☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>** Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order Or Percentage Of Payment</u>
----------------------	------------------------------------	------------------------------------------	--------------------------------------------------------

- ☐ If applicable, restitution amount ordered pursuant to plea agreement. . . . \$
- ☐ The defendant shall pay interest on any fine of more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. 3612(f). All of the payment options on Sheet 5, Part B may be Subject to penalties for default and delinquency pursuant to 18 U.S.C. 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ The interest requirement is waived for the ☐ Fine and/or ☐ Restitution
- ☐ The interest requirement for the ☐ Fine and/or ☐ Restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

DEFENDANT: **Patterson Jr., Stephen M.**
CASE NUMBER: **5:17-CR-19-1-TBR**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☐ Lump sum payment of \$ _____ Due immediately, balance due
☐ not later than _____, or
☐ in accordance with C, D, or E below); or
- B ☐ Payment to begin immediately (may be combined with C, D, or E below); or
- C ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of \$ _____
Over a period of (E.g. months or years) year(s) to commence (E.g., 30 or 60 days)
after _____ The date of this judgment, or
- D ☐ Payment in (E.g. equal, weekly, monthly, quarterly) installments of \$ _____
Over a period of (E.g. months or years) year(s) to commence (E.g., 30 or 60 days)
after _____ Release from imprisonment to a term of supervision; or
- E ☒ **Special instructions regarding the payment of criminal monetary penalties:**

Any balance of criminal monetary penalties owed upon incarceration shall be paid in quarterly installments of at least \$25 based on earnings from an institution job and/or community resources (other than Federal Prison Industries), or quarterly installments of at least \$60 based on earnings from a job in Federal Prison Industries and/or community resources, during the period of incarceration to commence upon arrival at the designated facility.

Upon commencement of the term of supervised release, the probation officer shall review your financial circumstances and recommend a payment schedule on any outstanding balance for approval by the court. Within the first 60 days of release, the probation officer shall submit a recommendation to the court for a payment schedule, for which the court shall retain final approval.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons Inmate Financial Responsibility Program, are to be made to the United States District Court, Gene Snyder Courthouse, 601 West Broadway, Suite 106, Louisville, KY 40202, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ **The defendant shall forfeit the defendant's interest in the following property to the United States:**

Forfeiture shall be addressed by a separate order from the Court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH
CRIMINAL ACTION NO. 5:17-CR-19-TBR**

UNITED STATES OF AMERICA

Plaintiff

v.

STEPHEN M. PATTERSON

Defendant

OPINION AND ORDER

In May of 2017, Defendant, Stephen M. Patterson Jr., was charged with being a felon in possession of a firearm. (R. 1). In August of 2017, Patterson moved this Court for a competency hearing pursuant to 18 U.S.C. §§ 4241, 4242 and 4247. The Court granted the motion and ordered a psychologic evaluation of Patterson be conducted prior to the hearing. (R. 17). The psychological evaluation was performed at Metropolitan Correctional Center in Chicago by Dr. Schenk, a forensic psychologist. (R. 25). Based on her evaluation, Dr. Schenk prepared a report, which was filed with the Court in February of 2018. In her report Dr. Schenk determined Patterson competent to stand trial. Patterson's competency hearing was then conducted on October 4, 2018. Dr. Schenk testified at the hearing both before and after Patterson gave testimony. Her opinion remained consistent—Patterson may hold unorthodox beliefs, but he is nevertheless competent to stand trial. As explained more thoroughly herein, based on Dr. Schenk's report, and the October 4th competency hearing, the Court agrees with Dr. Schenk. Patterson is competent to stand trial.

Legal Standard

Under 18 U.S.C. § 4241 "the district court has not only the prerogative, but the duty, to inquire into a defendant's competency whenever there is 'reasonable cause to believe' that the defendant is incompetent to stand trial." *United States v. White*, 887 F.2d 705, 709 (6th Cir.

1989). “[T]he bar for incompetency is high: a criminal defendant must lack either a ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ or ‘a rational as well as factual understanding of the proceedings against him.’” *United States v. Miller*, 531 F.3d 340, 350 (6th Cir. 2008) (quoting *Drope v. Missouri*, 420 U.S. 162, 172, 95 S. Ct. 896, 43 L. Ed. 2d 103 (1975)); 18 U.S.C.S. § 4241(d). The Court’s determination must be based on a preponderance of the evidence. 18 U.S.C.S. § 4241(d). In making its determination the Court should consider the defendant’s demeanor, any prior medical opinion regarding competency, and any evidence of irrational behavior. *Drope*, 420 U.S. at 180.

Discussion

To be mentally competent to stand trial, Patterson must possess two things. First, Patterson must possess the ability to understand the nature and consequences of the proceedings against him. 18 U.S.C.S. § 4241(d). Second, Patterson must possess the ability to assist properly in his defense. 18 U.S.C.S. § 4241(d). He Possesses both.

A. Patterson has the Ability to Understand the Nature and Consequences of the Proceedings Against Him.

The evidence presented by Dr. Schenk, as well as Patterson’s testimony and demeanor convince the Court that Patterson understands the nature and consequences of the proceedings against him. Dr. Schenk is highly qualified. She attended the University of Wisconsin, where she majored in psychology and minored in criminal justice. She then went on to West Virginia University, where she received her doctorate in clinical psychology with a focus in forensic psychology. Dr. Schenk then pursued a post-doctoral fellowship specializing in forensic psychology with Georgia Regents University and East Central Regional Hospital in Augusta. Finally, in 2015, she became employed by the Federal Bureau of Prisons as a licensed psychologist.

In writing her psychological report for the Court, Dr. Schenk reviewed all the records concerning Patterson's case, but most importantly, Dr. Schenk conducted a variety of in-person interviews with Patterson over the span of roughly two months. Based on her firsthand interaction with Patterson, Dr. Schenk testified that Patterson may have some sincerely held unusual beliefs. For example, Patterson told Dr. Schenk that he was a "vice generate." When asked to define the term, Patterson told Dr. Schenk that it was "an overseer." Patterson also expressed to Dr. Schenk that he thought his name belonged to the United States Government because his mother signed his birth certificate. Patterson at one point even told Dr. Schenk that he heard voices.

But ultimately, Dr. Schenk concluded in her report and testified—before and after Patterson's testimony—that while these beliefs and behaviors are unorthodox, they are not indicative of mental illness or defect which would preclude Patterson from understanding the nature and consequences of the proceedings against him. Instead, from her interaction with Patterson, Dr. Schenk concluded Patterson to be capable of rational understanding, the ability to weigh pros and cons against one another, and a general understanding of how the justice system works. From these determinations, Dr. Schenk testified that it is her professional opinion that Patterson understands the nature and proceedings against him. The Court finds Dr. Schenk's professional opinion to be persuasive. Furthermore, based on Patterson's testimony and demeanor at his competency hearing, the Court shares in Dr. Schenk's opinion.

From Patterson's testimony, the Court finds it undeniable that Patterson sincerely holds some very unorthodox beliefs. Without detailing every single one, the Court notes some of the more prominently unusual. Patterson testified that he was, indeed, a "vice generate." When asked to define the term, Patterson testified that it was "an overseer." Patterson testified that he heard

voices that urged him to do various things such as, better himself, be still, or be aware. Patterson testified that he thought his birthday was the day he was conceived. He also testified that he owned the corporate rights associated with the name Stephen Patterson. Patterson's testimony regarding these unusual ideas and beliefs struck the Court as sincere. Patterson's testimony was not the only indication of his unusual character.

Patterson's behavior is also unusual. Patterson has jumped from a moving car—which he was driving. The car nearly went through a house. Patterson chose to be held in solitary confinement for nearly six months rather than sign his own name on booking documents. But most unusual, Patterson bit the canine unit during his most recent arrest.

But while the Court notes Patterson's unorthodox beliefs and unusual past behavior, these strange beliefs and behaviors do not necessarily demonstrate that Patterson does not understand the proceedings against him. *United States v. Gooch* 595 F. App'x 524, 527 (6th Cir. 2014) (“[M]erely believing in fringe views does not mean someone cannot cooperate with his lawyer or understand the judicial proceedings around him.”). While Patterson told Dr. Schenk he is considering “sovereign citizenship”, the unusual beliefs espoused by Patterson are not a consequence of such consideration. Nonetheless, the reasoning used by other courts in declaring sovereign citizens mentally competent applies here. Courts have held time and time again when dealing with so called sovereign citizens, that unorthodox beliefs—as unusual as they might be—do not indicate mental incompetency in the absence of mental illness or involuntary behavior. *See United States v. Coleman*, 871 F.3d 470 (6th Cir. 2017); *United States v. Neal*, 776 F. App'x 398, (6th Cir. 2016). Like sovereign citizens, Patterson holds very unusual beliefs. But the Court does not find those beliefs—unusual though they are—to interfere with Patterson's ability to understand the proceedings against him.

Indeed, the Court finds from Patterson's testimony that he is articulate, rational, and fully capable of understanding the proceedings against him. First, Patterson seemed to understand the gravity of waiving the attorney client privilege. So much so, that he declined to do so. Further, Patterson followed up by inquiring about what questions were going to be asked of him, implying that he understood that some of those questions could lead to information which could be used against him by the prosecutor.

Next, when Patterson was asked whether he thought the Grayson County Detention Center was trying to hurt him, he responded that he had no proof, but it is what he felt. This demonstrates Patterson's understanding that allegations or feelings are distinguishable from actual proof.

Further, when asked what Patterson might do if he saw something going wrong, he testified that he would be required by law to report it, and that under the law he does not have the authority to handle situations involving wrongdoing on his own. Patterson testified that he must report wrongdoing, keep it to himself, or get himself in trouble. Patterson's testimony makes it clear that he understands that there may be legal consequences to his actions if they do comport with the law.

In response to the Court's question about what the charges against him were, Patterson properly answered that "the Government says I had a gun and ammunition." When the Court asked what Patterson thought the purpose of the hearing was, Patterson again answered correctly that the hearing was to determine whether he had mental issues. When asked if he thought he had mental issues, he very rationally answered that he did not think so, but that he was not necessarily qualified to answer the question since he had no training regarding such matters. Moreover, Patterson's testimony came across to the Court as calm and articulate. On the whole,

the Court found Patterson's testimony to be calm, thought out, and articulate. Thus, the Court finds that, while Patterson holds unusual beliefs, and has engaged in unusual behavior, he is fully capable of rationally understanding the proceedings against him.

B. Patterson Possess the Ability to Assist Properly n His Defense

Dr. Schenk's testimony, as well as Patterson's, convince the Court that his capable of assisting in his defense. Dr. Schenk testified that Patterson had a cynical view regarding the criminal justice system—as do many criminal defendants—but that he was capable and willing to cooperate, communicate, and assist his counsel in crafting his defense. The Court was made aware of nothing at the hearing that indicated Patterson could not communicate with his counsel and assist with strategy. As stated above, Patterson appeared calm, articulate, and capable of rational thinking. Moreover, no indication was given to the Court that Patterson refused or could not communicate with his attorney.

The Court notes that Patterson claims not to have memory of being arrested. But Patterson's memory of the events is only one of many sources by which his counsel may obtain the information necessary to determine what happened during the arrest.¹ The fact that Patterson does not remember the arrest or the offense does not preclude him from assisting his counsel. *United States v. Marsee*, No. 6: 04-73-S-DCR, 2006 U.S. Dist. LEXIS 32596, at *14 (E.D. Ky. May 22, 2006) (holding a criminal defendant capable of assisting in his defense even though he claimed to have amnesia); *accord, United States ex rel. Parson v. Anderson*, 354 F. Supp. 1060, 1072 (D. Del. 1972) (holding that lack of memory does not mean that a defendant is mentally incompetent). Therefore, the Court determines Patterson to be fully capable of assisting in his own defense.

¹ In fact, it seems there is video footage of the arrest from the arresting officer's body cam.

The Court also notes that at the hearing, counsel for Patterson requested permission to file under seal, certain statements made to her by Patterson throughout the course of representation. Counsel was uncertain on how to proceed since Patterson had not waived the attorney client privilege. The Court was uncertain as to whether it could consider such statements since Patterson had not waived the attorney client privilege. The Court concludes that considering the proposed affidavit would be improper.

While case law on the unique issue is sparse, Black's Law Dictionary and the Code of Conduct for Federal Judges provide adequate guidance. Black's Law Dictionary defines *ex parte* as something "[d]one or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other." BLACK'S LAW DICTIONARY 616 (8th ed. 2004). The affidavit fits squarely into this definition. It would allow Patterson to communicate concerning the merits of the matter at issue (his mental competency) without facing argument from an adversely interested party—the United States. Thus, the affidavit is *ex parte* communication.

Cannon 3(A)(4) of the Code of Conduct for Federal Judges prohibits *ex parte* communications unless: (1) the communication is authorized by law, (2) the matter is emergent, (3) the matter is trivial so as not to address substantive matters, (4) the communication is written advice from an expert and both parties have had opportunity to respond and/or object to the written advice, or (5) both parties have consented and the communication is part of mediation or settlement. None of the exceptions to Cannon 3(A)(4)'s prohibition on *ex parte* communications apply to the proposed affidavit. Therefore, the proposed affidavit is improper, and the Court must decline to accept it.

Conclusion

For the reasons stated herein, Defendant Stephen A. Patterson **IS HEREBY DECLARED MENTALLY COMPETENT TO STAND TRIAL**, and this matter shall proceed accordingly.

A **telephonic further proceedings** is hereby scheduled for **November 14, 2018 at 9:00 AM Central Time**. The Court will place the call.

IT IS SO ORDERED.

The image shows a handwritten signature in black ink that reads "Thomas B. Russell". The signature is written in a cursive, flowing style. Behind the signature, there is a faint circular seal, which appears to be the official seal of the United States District Court for the District of Columbia.

**Thomas B. Russell, Senior Judge
United States District Court**

October 19, 2018

cc: Counsel

208 West Carlisle Street
Marion, Ky 42064

FILED
VANESSA L. ARMSTRONG, CLERK
JUL -8 2019

IN THE UNITED STATES DISTRICT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT PADUCAH

U.S. DISTRICT COURT
WESTERN DIST. KENTUCKY

United States of America
Plaintiff

Case No. S:17-CR-19-TB

vs.

Stephen M. Patterson, Jr
Defendant

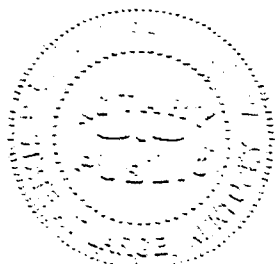
Notice of Appeal

Comes Now the defendant, Stephen M. Patterson, Jr, pro se, and hereby gives notice of appeal from the judgment by this Court on June 20, 2019.

Respectfully submitted this
28th day of June 2019.

Copy mailed this 2 day of July,
2019 to each of the following:

- U.S Department of Justice, 950 Pennsylvania Ave
- Judge Thomas B. Russell, Kelly Harris, Terri Turner
- U.S Assistant Attorney Seth Hancock
- office of the Clerk, Owensboro, Ky
- Mitch McConnell, senator
- Matt Bevin, Gov



Susan Gilliland
Jan 8th 2020

Stephen Maurice Patterson, Jr
208 West Carlisle Street
Marion, Ky 42064

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JUL 20 2019 PM 2 4



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