No. _____

In The

Supreme Court of the United States

GARY LYNN GATLIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. **SHOULD COURTS EVALUATE EVIDENCE SUPPORTING MOTIONS FOR COMPETENCY EVALUATIONS DIFFERENTLY WHEN THE CLAIMED BASIS FOR INCOMPETENCY IS INTELLECTUAL DISABILITY RATHER THAN MENTAL ILLNESS?**

II. **WHAT IS THE CORRECT STANDARD FOR REVIEWING DENIED MOTIONS FOR COMPETENCY EVALUATIONS UNDER 18 U.S.C. § 4241(A) AND CONSTITUTIONAL DUE PROCESS WHEN THE ISSUE IS WHETHER INTELLECTUAL DISABILITY AFFECTS A DEFENDANT'S COMPETENCY?**

III. **DID THE TRIAL COURT VIOLATE THE STANDARDS FOR GRANTING A MOTION FOR A COMPETENCY EVALUATION AND HEARING WHEN THE DENIED MOTIONS WERE SUPPORTED BY DECLARATIONS OF COUNSEL AND A PSYCHIATRIC REPORT INDICATING THAT DEFENDANT'S INTELLECTUAL DISABILITY INTERFERED WITH DEFENDANT'S ABILITY TO UNDERSTAND THE CHARGES AND PARTICIPATE IN HIS DEFENSE?**

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OPINION BELOW

The decision of the Fourth Circuit affirming Defendant Gatlin's conviction and sentence was issued on August 30, 2023 and is unpublished. The opinion is reprinted as Appendix A to this Petition. (Appendix A pp. 1, infra).

STATEMENT OF SUPREME COURT JURISDICTION

The jurisdiction of the Supreme Court is invoked under 28 U.S.C. § 1254(1) to review the decision rendered by the United States Court of Appeals for the Fourth Circuit on August 30, 2023.

STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides:

> No person shall be * * * deprived of life, liberty, or property, without due process of law; * * *

18 U.S.C. § 4241(a) provides:

> At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering 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.

STATEMENT OF THE CASE

An indictment returned in the Eastern District of North Carolina charged the Defendant Gary Gatlin with one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922, one count of assaulting federal officials in the course of

their duties in violation of 18 U.S.C. § 111, and one count of using, carrying and discharging a firearm in further of a crime of violence in violation of 18 U.S.C. § 924(c). The Defendant pled not guilty. Prior to trial the government and the defendant filed a stipulation that defendant was a convicted felon, that he knew he was a convicted felon, and that firearms had traveled in interstate commerce prior to February 8, 2019.

A jury trial began on April 20, 2021 before the Honorable Louise Flanagan. Blake Harrell, a Lumberton police detective assigned to an ATF task force he was working with ATF agent Wishon on February 9, 2019 to investigate a tip that two persons would be trafficking firearms. Because of the difficulty in finding a concealed place to watch the suspects' residence Harrell and Wishon parked their unmarked vehicle on Gatlin Drive where they could watch the residence. Both agents were in plain clothes and somewhat scruffy in appearance. Their car was parked between "no trespassing" signs and bore out of state tags.

A short time later an American Indian female and black male walked up and asked the agents what they were doing. The agents told them a false story that they were there to work on the nearby water tower. The couple told the agents that they were on their father's land, there had been some thefts recently, that Defendant Gatlin didn't like people on his land, and that they should leave. The agents did not leave. A short time later, Defendant Gary Gatlin drove up on a lawn tractor and irately told the agents that they were on his land. After telling Gatlin the false story about working on the water tower, the agents told him it was none of his business

what they were doing there and to call the police if he wasn't satisfied. Gatlin told them that he would blow their heads off if they didn't leave his land and drove off on his lawn tractor. About five minutes later Mr. Gatlin walked back up carrying a shotgun and fired a shot into the air. Gatlin subsequently fired two shots at the car. After Blake pulled out a handgun, Gatlin fired two more shots and the agents drove off.

After calling for help from the sheriff's department, the agents return to the scene and Defendant Galin was arrested. The scene was processed and searched. Wadding and spent shotgun shells were found slightly to the left of a car parked immediately behind the residence. Ammunition, a rifle and a shotgun, and a .22 rifle were found in a barn on the property. A shotgun and .22 rifle were found in the Gatlin residence, and a shotgun in a shed at the rear of the residence.

Mr. Gatlin told an ATF agent on the day of the incident that he was cutting grass at his house and that after seeing an unfamiliar vehicle on his property near the water tower he sent his daughter and his son-in-law to find out who was in the vehicle. Gatlin told the agent when his daughter and son-in-law came back they told him the men said they worked for the county. Gatlin told the agent he knew the men didn't work for the county because there wasn't a symbol on the vehicle and that he thought they were drug dealers.

The district court denied defendant Gatlin's Rule 29 motion and the defense offered no evidence. Defendant Gatlin was convicted on April 21, 2021 of all charges.

On May 4, 2021, Mr. Gatlin mailed a handwritten motion from jail asking for an extension of time to file for a new trial and for appointment of new counsel. After new counsel was retained, Mr. Gatlin's new counsel filed a motion for a competency evaluation, and a supplemental motion to extend the time to file a motion for new trial until 30 days after the competency evaluation was received. This motion was supported by an affidavit from Defendant's trial counsel questioning defendant's understanding of the proceedings. After reciting the basis for his opinions, trial counsel stated:

> 9. I am executing this affidavit because I have doubts as to Mr. Gatlin's competency at trial, and competency in this proceeding going forward.
>
> 10. My communications with Mr. Gatlin have created a bona fide impression that Mr. Gatlin is presently suffering from a mental defect and is therefore unable to assist in his defense at trial and unable to understand the nature and consequences of the proceedings against him.

The government opposed the motion for a competency evaluation. On August 9, 2021, the district court denied the motion for a competency evaluation but extended the time to file a motion for new trial for 30 days until September 8, 2021. Relying on the magistrate judge's pretrial interactions with Defendant Gatlin, and its own observations at trial, the district court ruled that counsel's affidavit was not credible and did not establish reasonable grounds for granting the motion for a competency evaluation.

Despite the denial of the motion for a competency evaluation, Mr. Gatlin's new counsel obtained an evaluation by James H. Hilkey, Ph.D., a forensic psychologist.

Dr. Hilkey's report was not issued until September 10, 2021 two days after the deadline for filing a motion for new trial. In his report, Dr. Hilkey found that:

> Based on current testing, Mr. Gatlin has significant intellectual limitations, as reflected in a Verbal Comprehension Index score of 61, which places him in the extremely low range and at the 0.5 percentile of his peers. This is further compounded by Mr. Gatlin's Processing Speed Index Score of 56, which is extremely low. His Full-Scale IQ score is a 63, which is extremely low. Functioning at this level would create significant problems in his understanding of the legal process, including weighing various options or assisting counsel.

Dr. Hilkey recommended a full competency evaluation.

On November 10, 2021, Mr. Gatlin's counsel filed a renewed motion for a competency evaluation and requested the trial verdict be vacated. This motion was supported by trial counsel's statement and Dr. Hilkey's report. The government again opposed a competency evaluation. On January 31, 2021, the district court denied the renewed motion for a competency evaluation. Again relying on the magistrate judge's pretrial interactions with Defendant Gatlin, the probation officer's interactions with the defendant and its own observations at trial, the court rejected the conclusions in Dr. Hilkey's report, and again ruled the proffered evidence did not establish reasonable grounds for granting the motion for a competency evaluation.

At the sentencing hearing held on February 25, 2022, the district court sentenced Mr Gatlin to imprisonment of 12 months on Counts 1 and 2 to run concurrently, and to a mandatory minimum 120 month sentence on Court 3 to run consecutively to the 12 months imposed on Counts 1 and 2.

On March 11, 2022, Defendant Gatlin filed a motion for new trial and on March 14, 2022, a corrected Motion for New trial based upon the intellectual disabilities

disclosed in Dr. Hilkey's report. The government opposed the motion for new trial. On May 18, 2022, the district court denied the motion for new trial. Defendant Gatlin filed his notice on appeal on May 26, 2022.

On appeal, Defendant Gatlin raised three issues: (1) the trial court's failure to correctly instruct the jury on the issue of self defense, (2) the trial court's denial of the motions for a competency evaluation and new trial and (3) whether trial counsel provided ineffective assistance of counsel. In its short opinion, the Court of Appeals affirmed the conviction finding no reversible error on the first two issues and dismissing the third issue as not established on the record in the direct appeal.

REASONS FOR GRANTING THE WRIT

CERTIORARI IS NEEDED TO REMEDY SPLITS OF AUTHORITY BETWEEN THE CIRCUITS AND TO SETTLE IMPORTANT ISSUES OF CONSTITUTIONAL LAW.

18 U.S.C. § 4241(a) requires courts to hold competency hearing, "if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering 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."

While the Supreme Court has addressed the standards on what constitutes mental competency[1], it has not addressed the standards for judging when a

[1]The standard for mental competency is whether the defendant "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." *Dusky v. United States*, 362 U.S. 402, 402 (1960).

competency evaluation should be conducted under 18 U.S.C. § 4241(a).[2] The Court and the appellate courts further have not addressed whether there are any differences in how to judge whether to order a competency evaluation when the alleged issue is defendant's intellectual disability versus his or her mental illness.

The Courts of Appeal, however, have adopted differing approaches to what showing is necessary to order a competency evaluation. For example, the Court of Appeals for the Fourth Circuit has ruled that in determining whether there is reasonable cause to order a competency hearing, the "district court should examine all of the record evidence pertaining to the defendant's competence, including: (1) any history of irrational behavior; (2) the defendant's demeanor at and prior to sentencing; and (3) prior medical opinions on competency." *United States v. Moussaoui*, 591 F.3d 263, 291 (4th Cir. 2010). The district court in the present case explicitly followed this directive on what evidence to examine. In following this standard, the district court used the first two factors to discount the medical opinions of Dr. Hilkey and the observations of trial counsel.

While these general directives may serve well where the asserted basis of incompetency is mental illness, these standards do not work well when defendant's problems are based on intellectual disability because persons with intellectual disability frequently do not display behaviors that would recognized by courts as impairing or irrational. The difficulties facing persons with intellectual disabilities in

[2] The Court has addressed the issue of a state court's refusal to consider a competency evaluation in the context of apparent mental illness in *Drope v. Missouri*, 420 U.S. 162, 95 S. Ct. 896 (1975).

the criminal justice system have been repeatedly articulated by organizations focused on assisting those with intellectual disabilities.

As explained by ARC, a leading national advocacy group for the rights of the intellectually disabled:

> Individuals with IDD are frequently undiagnosed or misdiagnosed, especially by evaluators, including law enforcement personnel, who are not trained in assessment of individuals with intellectual disability and who do not recognize common characteristics such as individuals' attempts to hide their disability. Defendants with IDD are often denied a fair evaluation of whether they are entitled to legal protection as having IDD on the basis of false stereotypes about what individuals with IDD can and cannot understand or do.[3]

Similarly, the American Association on Intellectual and Developmental Disabilities recognizes that those with intellectual disabilities have a tendency to deny or hide their disabilities while in the criminal justice system. AAIDD notes in its materials:

> [P]eople living with IDD who enter the criminal justice system encounter unique problems not faced by their nondisabled peers, such as:
>
> Failing to have their disability correctly identified by authorities who lack the expertise to discern the presence and nature of their disability (especially when the disability is denied by the person or somewhat hidden).
>
> ...
>
> Experiencing inappropriate assessments for competency to stand trial even when the individual cannot understand the criminal justice proceeding or is unable to assist their lawyer in their own defense;[4]

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[3] The ARC, Position Statement on the Criminal Justice System, available at https://thearc.org/positionstatements/criminal-justice-system.

[4] The AAIDD Position Statement is available on the internet here: https://www.aaidd.org/news-policy/policy/position-statements/criminal-justice.

Moreover, the information from these and other organizations[5] indicate that, standing alone, intellectual disability without mental illness can render it unlikely that these persons can understand their rights, understand the proceedings, and assist in their own defense.

The district court in Mr. Gatlin's case relied on the factors that both ARC and AAID have criticized to deny Mr. Gatlin's motions for a competency evaluation. The district court relied on Mr. Gatlin's responses at his arraignments and its observation of his demeanor to deny the motions and rejected information from trial counsel and Dr. Hilkey who had closely interacted with Mr. Gatlin.

As noted, the Supreme Court has not examined the question of how to determine competency in the context of intellectual disability. It has, however, addressed the issue of whether intellectual disability can render the imposition of the death penalty inappropriate. In *Hall v. Florida*, 572 U.S. 701, 134 S. Ct. 1986 (2014), the Supreme Court recognized that a multifaceted examination was needed in evaluating how intellectual disability affects culpability in the criminal justice systems. The Court noted that special care is required in this situation:

> These persons face "a special risk of wrongful execution" because they are more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel. Id., at 320-321, 122 S. Ct. 2242, 153 L. Ed. 2d 335.

572 U.S. at 709.

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[5] See for example a report from the Rand Corporation, Joan R. Petersillia, CRIMINAL JUSTICE POLICIES TOWARD THE MENTALLY RETARDED ARE UNJUST AND WASTE MONEY, available on the internet here:
https://www.rand.org/pubs/research_briefs/RB4011.html.

The Courts of Appeal also use differing appellate standards to review the denial of a motion for an evaluation. The appellate review standard used in the Fourth Circuit to review a district court's decision compounds the danger of improperly treating the intellectually disabled defendants. That appellate review standard is abuse of discretion. See *United States v. Banks*, 482 F.3d 733 (4th Cir. 2007). This lax standard of review ensures that the district court's denial of a competency evaluation will be affirmed so long as the district court considers the various types of evidence presented. In cases of intellectual disability such a standard allows the district court to rely on the type of evidence criticized as invalid by organizations who are familiar with the peculiar vulnerabilities of the intellectually disabled in the criminal justice system. This problem can only be remedied by the courts of appeals or this Court adopting a different standard of review for these cases or by directing the district courts to weigh the factors differently in cases involving intellectual disabilities.

In contrast to the Fourth Circuit's approach, the Court of Appeals for the Ninth Circuit has stressed primary reliance on medical opinions in determining whether a trial court should order a competency evaluation. The Ninth Circuit has repeatedly held this test satisfied "any time 'there is any evidence which, assuming its truth, raises a reasonable doubt about the defendant's competenc[e].'" *United States v. Duncan*, 643 F.3d 1242, 1247-50, fn.2 (9th Cir. 2011); *Moore v. United States*, 464 F.2d 663, 666 (9th Cir. 1972) ("due process evidentiary hearing is constitutionally compelled at any time that there is 'substantial evidence' that the defendant may be mentally incompetent to stand trial" (citing *Pate v. Robinson*, 383 U.S. 375 (1966)); U.S. Const. amends. V, VI.

The Ninth Circuit also employs a different appellate review standard. Instead of the abuse of discretion standard where a formal competency-hearing motion was denied, the Ninth Circuit has applied "'comprehensive' review of the evidence, ... 'not limited by either the abuse of discretion or clearly erroneous standard,'" in asking "whether a reasonable judge, situated as was the trial judge who denied the motion, should have experienced doubt with respect to the defendant's competence." *Duncan*, 643 F.3d at 1247; see also *De Kaplany v. Enomoto*, 540 F.2d 975, 980-81 (9th Cir. 1976) (en banc).

Although these issues involving the intellectually disabled in the criminal justice system have not been addressed by the courts, the problems potentially affect large numbers of defendants. While there appears to be limited information available on how many defendants are impacted by intellectual disabilities, available studies indicated that it is a large, but unrecognized, problem. For example, a recent study has estimated that between 3.1% and 9.9% of persons in custody are likely affected by intellectual disabilities.[6] Another study which screened criminal defendants for intellectual disabilities found about 4% of defendants were intellectually disabled.[7] If the incident is similar for federal defendants, these issues would potentially affect several thousand defendants each year in the federal criminal justice system.

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[6] See Penelope Brown, Ioannis Bakolis, Elizabeth Appiah-Kusi, Nicholas Hallett, Matthew Hotopf, and Nigel Blackwood, in PREVALENCE OF MENTAL DISORDERS IN DEFENDANT AT CRIMINAL COURT, 8 BJPsych Open. 3: e92 (2022), Table 3 available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9169500/.

[7] See McCarthy, J., Chaplin, E., Harvey, D., Marshall-Tate, K., Ali, S. and Forrester, A RECOGNIZING & RESPONDING TO DEFENDANTS WITH INTELLECTUAL DISABILITIES IN COURT SETTINGS; 4 Forensic Science International: Mind and Law Journal p. 100116; available at https://openresearch.lsbu.ac.uk/item/93185.

Certiorari is required to preserve these fundamental rights of the intellectually disabled and the uniformity of precedent protecting them, and to address the split of authority regarding the appropriately "comprehensive," unlimited, standard of review for failures to hold competency hearings.

CONCLUSION

Petitioner respectfully requests that the Supreme Court grant his petition to review this case and order a remand to the Court of Appeals for consideration of the effect of the decision on this case.

This the 28th day of November 2023

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