No. _____

In the
Supreme Court of the United States

OCTOBER TERM, 2024

LEE RAY BOYKIN, JR.

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the District Court err by violating Mr. Boykin's fundamental right to a fair trial under the Fifth and Sixth Amendments to the United States Constitution by failing to have Mr. Boykin evaluated by a qualified mental health professional for the purposes of competency determination ?

2. Did the District Court err by finding that Mr. Boykin was competent to stand trial in the absence of a report by a credentialed mental health professional?

   Mr. Boykin's trial counsel raised the issue of competency in a pre-trial motion and noted that he had been diagnosed with PTSD after his military combat service in Afghanistan. The District Court denied the request for a mental health evaluation but held the competency hearing anyway. Despite the evidence that Mr. Boykin had a previous mental health diagnosis, the trial court denied the defense request for a psychiatric evaluation. The District Court found Mr. Boykin competent and the trial proceeded. The failure to properly evaluate Mr. Boykin's competency and the finding that he was competent in the absence of a report violated his fundamental rights to due process and right to counsel.

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The decision of the Court of Appeals for the Fifth Circuit is reported as *United States v. Boykin*, No. 23-20487 (5th Cir. January 17, 2025)(not published). It is attached to this Petition in the Appendix.

JURISDICTION

The decision by the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment of conviction and sentence in the Southern District of Texas.

Consequently, Mr. Boykin files the instant Application for a Writ of Certiorari under the authority of 28 U.S.C., § 1254(1).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in the United States District Court for the Southern District of Texas because Mr. Boykin was indicted for violations of Federal law by the United States Grand Jury for the Southern District of Texas.

CONSTITUTIONAL PROVISIONS

The Fifth Amendment says to the federal government that "no person shall be. . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The Fourteenth Amendment prohibits state governments from doing the same. U.S. Const. amend. XIV.

U.S. CONST. Amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

STATEMENT OF THE CASE

1. Procedural History.

On June 2, 2022, five-Count Superseding Indictment was filed in the Southern District of Texas, Houston Division, charging Lee Ray Boykin, Jr., in Counts 1S and 4S with Deprivation of rights under color of law, a violation of 18 U.S.C. § 242. The offenses occurred on or about August 7, 2020 (Count 1), and on or about August 3, 2020 (Count 4). Mr. Boykin was charged in Counts 2S and 5S with Destruction, altercation, or falsification of records in federal investigations, a violation of a violation of 18 U.S.C. § 1519. The offenses occurred on or about August 7, 2020 (Count 2), and on or about August 3, 2020 (Count 5). Mr. Boykin was charged in Counts 3S with Carry and use of a firearm in a crime of violence, a violation of 18 U.S.C. § 924 (c)(1)(A), This offense occurred on or about August 7, 2020. ROA. 182-184.[1]

Mr. Boykin entered a plea of "not guilty" and the case proceeded to a jury trial. Voir dire commenced on January 9, 2023. A jury was selected, seated and sworn. The Government presented the testimony of witnesses and introduced numerous exhibits. Mr. Boykin rested without presenting evidence. The record does not indicate that

[1]In the references to the Record on Appeal, references are made according to the pagination assigned by the Clerk of the Court.

either side closed evidence. After the last witness finished testifying, Mr. Boykin made a Rule 29 motion. ROA. 1618-1620. The District Court denied this motion. ROA. 1620-1621.

On January 13, 2023, the jury returned a "guilty" verdict against Mr. Boykin on four counts. ROA.1769-1771. Mr. Boykin was found guilty of the four counts involving deprivation of civil rights and falsification of records, but he was acquitted of the firearms count. The District Court subsequently sentenced Mr. Boykin to a 516-month total term of imprisonment. A notice of appeal was then timely filed.

Thereafter, Mr. Boykin filed a Notice of Appeal. The Fifth Circuit affirmed his conviction and sentence in an unpublished opinion on January 17, 2025.

3. Statement of Facts.

This criminal case arose from a report from a homeless man who claimed a DPS trooper sexually assaulted his common-law wife, A.B.. ROA.958. Emergency dispatch records showed at approximately 8:30 p.m. on August 7, 2020, A.B.'s husband called 9-1-1 and requested assistance for his wife, who had reported to him she had been forced to perform oral sex on a DPS trooper. The Houston Police Department and the Texas Rangers responded to the incident and the investigation commenced. The initial 9-1-1 phone call was played for the jury, without objection, as Exhibit 301-A. ROA. 960. Victim A.B. testified during the trial that, on August

7, 2020, she and her common-law husband of 19 years (T.S.), were panhandling in Houston at a highway intersection. The Government played Government Exhibit 120 during her testimony. ROA. 1290.

At around 8:00 p.m. A.B. and TS began walking to a nearby motel, the Express Inn. ROA. 1287. As the couple was walking, a friend of theirs named Ricky Haddock drove by and stopped. AB sat down in the front passenger seat of the vehicle to get a ride to the Express Inn. Her husband did not get inside the vehicle because it was filled with junk. While Haddock was driving to the Express Inn, a marked DPS patrol vehicle, with its emergency lights activated, pulled them over. ROA.1289. Haddock pulled over in the parking lot of the Express Inn and the trooper, identified as Mr. Boykin, advised Haddock the reason for the stop was due to the failure to signal a lane change. Boykin obtained Haddock's driver's license and issued him a written warning.

Mr. Boykin then stated that alleged victim A.B. was under investigation for prostitution. Mr. Boykin's body camera footage and dash camera footage captured the initial portion of the traffic stop and audio recording. The Government alleged that Mr. Boykin's body-worn camera showed he manipulated his dash camera, which was linked to his body-worn camera, such that his body-worn camera ceased to recording audio. AB testified that Mr. Boykin told her to get inside his patrol vehicle.

According to AB, Mr. Boykin drove her to a location and forced her to perform oral sex. ROA. 1303. Afterwards, he told her to walk back to her motel. ROA.1307. Mr. Boykin drove away.

Texas Rangers then identified a second victim, "D.C.". GPS and video records showed Mr. Boykin was previously located in the back parking lot of 10700 North Freeway on August 3, 2020, following an interaction with alleged victim D.C. This was the same location A.B. reported being assaulted. D.C. testified at trial about an incident involving a state trooper that occurred on August 3, 2020, around 10:30 p.m. to 11 :30 p.m. D.C. recognized Mr. Boykin from the news and identified him in a photo line-up. Based on the physical description D.C. provided to the interviewers, GPS records, and footage from Mr. Boykin's body-worn camera, investigators confirmed the state trooper D.C. discussed was Mr. Boykin. D.C. testified that Mr. Boykin forced her to perform oral sex on him during their encounter. Testimony during the trial indicated that Mr. Boykin's dashcam and personal body-cam were not recording during parts of their encounter.

The Government alleged that Mr. Boykin was a DPS trooper, who while on patrol and fully uniformed, executed traffic stops and committed sexual assaults on the two afore-mentioned individuals. The alleged sexual assaults while on duty and the manipulation of the dash cameras and body cameras constituted the underlying

criminal conduct that comprised the charges for which Mr. Boykin was convicted after a jury trial. ROA.1769-1772.

The PSR officer prepared the Pre Sentence Report (PSR).[2] For Count 1S, Deprivation of rights under color of law, the guideline for a violation of 18 U.S.C. § 242 is USSG §2H1.1. Pursuant to §2H1.1(a)(1), 2A3.1 includes the underlying offense of aggravated sexual abuse and is to be used when determining the offense level. The base offense level for aggravated sexual abuse is 30. USSG §§2H1.1(a)(1) and 2A3.1(a)(2). The PSR found that Mr. Boykin was found guilty of aggravated sexual abuse of Victim #1 on August 7, 2023. Since the PSR found that the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), the PSR officer increased the offense level by 4 levels. USSG § 2A3.1(b)(1). The PSR also found that Mr. Boykin abducted Victim #1 when he took her to a different location against her will. Pursuant to USSG § 2A3.1(b)(5), the PSR officer applied a 4-level increase.

The PSR officer also found that the victim told Mr. Boykin that she was a panhandler and not a prostitute. The PSR officer found that Mr. Boykin knew or should have known was she was a vulnerable victim. The PSR officer applied a 2-level increase. The PSR officer also found that Mr. Boykin was a Trooper with the

[2]"PSR" refers to the Presentence Investigation Report filed by the United States Probation Department (under seal). In the citations to the PSR, the numeral(s) to the left of "PSR" refer to page numbers and the numeral(s) to the right of "PSR" refer to paragraph numbers.

Texas Department of Public Safety and was on duty when he committed the instant offense. The PSR found that Mr. Boykin abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense and therefore applied a 2-level increase. These calculations resulted in an Adjusted Offense Level of 42. ROA. 2151.

For Count 2S, Destruction, altercation, or falsification of record in federal investigations, the guidelines state that, for a violation of 18 U.S.C. § 1519, the guideline is USSG §2J1.2. The cross reference at §2J1.2(c)(1), though applicable, did not result in a higher offense level. Therefore, the PSR officer found that the base offense level should remain 14. Pursuant to USSG §2J1.2(b)(3)(A), the PSR officer found that the offense involved the destruction, alteration, or fabrication of a substantial number of records, documents or tangible objects. Therefore, the PSR Officer applied a 2-level increase. The adjusted total offense level was 16. ROA.2152.

For Count 4S: Deprivation of rights under color of law, the PSR Officer found that the guideline for a violation of 18 U.S.C. § 242 is USSG §2H1.1. Pursuant to §2H1.1(a)(1), 2A4.1 includes the underlying offense of kidnapping and is to be used when determining the offense level. The base offense level for kidnapping is 32. USSG §§2H1.1(a)(1) and 2A4.1. 32. The PSR also found that, since Victim #2 was

sexually exploited, pursuant to USSG § 2A4.1(b)(5), a 6-level increase should be applied. The PSR also found that Victim #2 was kidnapped by Mr. Botkin for the purpose of aggravated sexual abuse. Pursuant to USSG § 2A4.1(b)(7)(A), the PSR stated that "increase to the offense level from the Chapter Two offense guideline appliable (sic) to that other offense if such offense includes an adjustment for kidnapping, abduction, or unlawful restraint, or otherwise takes such conduct into account" . ROA. 2152. Based on the Chapter 2 Adjustments for said offense, the PSR officer found that the Base Offense Level of 30, pursuant to USSG §2A3.1(a)(2) is applicable. Additionally, the PSR officer found that the following special offense characteristics should apply: a 4-level increase because the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), pursuant to USSG § 2A3.1(b)(1), and a 4-level increase for abduction since it found that Mr. Boykin abducted Victim #2 when he took her to a different location against her will. Pursuant to USSG § 2A3.1, the offense level is 38; thus, the offense level is equal and not greater than the resulting offense level above. The PSR officer determined that Mr. Boykin was a Trooper with the Texas Department of Public Safety and was on duty when he committed the instant offense. The PSR officer found that, since the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense a 2-level

increase should be applied. This made the Adjusted Total Offense Level 40. ROA. 2153.

For Count 5S: Destruction, altercation, or falsification of record in federal investigations the PSR officer found that the applicable guideline for a violation of 18 U.S.C. § 1519 is USSG §2J1.2. The cross reference at §2J1.2(c)(1) is applicable; however, it does not result in a higher offense level. Therefore, the base offense level remains 14. Pursuant to USSG §2J1.2(b)(3)(A), if the offense involved the destruction, alteration, or fabrication of a substantial number of records, documents, or tangible objects, increase by 2 levels. These calculations resulted in an Adjusted Offense Level of 16. ROA. 2153.

The PSR officer then used the Multiple Count Adjustment. Units are assigned pursuant to USSG §3D1.4(a), (b) and ©. One unit is assigned to the group with the highest offense level. One additional unit is assigned for each group that is equally serious or from 1 to 4 levels less serious. One-half unit is assigned to any group that is 5 to 8 levels less serious than the highest offense level. Any groups that are 9 or more levels less serious than the group with the highest offense level are disregarded.

Group/Count Adjusted Offense Level Units

Count 1S 42 1.0

Count 2S 16 0.0

Count 4S 40 1.0

Count 5S 16 0.0

Total Number of Units: 2.0

Greater of the Adjusted Offense Levels Above: 42

The PSR officer determined that the offense level is increased pursuant to the number of units assigned by the amount indicated in the table at USSG §3D1.4. The Combined Adjusted Offense Level is determined by taking the offense level applicable to the Group with the highest offense level and increasing the offense level by the amount indicated in the table at U.S.S.G. §3D1.4. 44

Although the Total Offense Level was 44, pursuant to Chapter 5, Part A (comment n.2), in those rare instances where the total offense level is calculated in excess of 43, the offense level was treated as a level 43.

Because Mr. Boykin proclaimed his innocence and proceeded to trial, no downward adjustment for acceptance of responsibility was made. Based upon a total offense level of 43 and a criminal history category I, the advisory guideline range of imprisonment was life. ROA.2159.

The Government did not file any objections to the PSR M. Boykin filed objections to the PSR. ROA.2105-2106; 1804-1805. The District Court overruled these objections.

The District Court also explained the sentence, stating:

> **THE COURT**: It's a downwards variance of the sentence, because the guidelines provide for life. Given the history and characteristics of this Defendant and the need for deterrence, I find that a sentence less than life is appropriate in this matter.

The District Court sentenced Mr. Boykin to a total term of 516 months imprisonment. The Fifth Circuit affirmed Mr. Boykin's conviction and sentence in an unpublished opinion released on January 17, 2025.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. THE DISTRICT COURT VIOLATED MR. BOYKIN'S CONSTITUTIONAL RIGHT TO DUE PROCESS BY DENYING MR. BOYKIN'S REQUEST FOR A COMPETENCY EXAMINATION BY MENTAL HEALTH PROFESSIONALSAS REQUIRED BY 18 USC § 4244.

THE DISTRICT COURT ALSO VIOLATED MR. BOYKIN'S CONSTITUTIONAL RIGHT TO DUE PROCESS AND HIS SIXTH AMENDMENT RIGHT TO COUNSEL BY FINDING MR. BOYKIN COMPETENT IN THE ABSENCE OF A CONTEMPORARY COMPETENCY EVALUATION.

The Fifth Circuit wrongly determined that Mr. Boykin's right to due process was not violated by the District Court's determination that he should not be examined by a credentialed mental health professional and by finding him competent in the absence of such a report. The District Court erred by denying Mr. Boykin's request for a mental competency examination made pursuant to 18 USC § 4244.

The right to due process is violated when a legally incompetent person is tried for a criminal offense. *Pate v. Robinson*, 383 U.S. 375, 385 (1966); *Cooper v. Oklahoma*, 517 U.S. 348, 369 (1996). In other words, a criminal defendant may not

be tried unless he is competent. *Drope v. Missouri*, 420 U.S. 162, 171 (1975). The *Dusky* standard for competence to stand trial 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." *Id* at 172; *see* also *Dusky v. United States*, 362 U.S. 402 (1960).)

"The due process clause also guarantees to a criminal defendant procedures adequate to guard his right not to stand trial or suffer conviction while incompetent." *United States v. Agbonifo*, 20-20293, 2022 WL 808001, at *4 (5th Cir. Mar. 16, 2022); *Flores-Martinez*, 677 F.3d at 706. A motion to determine competency may be filed at any time after prosecution commences and before the accused is sentenced. 18 U.S.C. § 4241(a). The court is required to grant a motion to determine competency if there is "reasonable cause" to believe that the accused is "presently 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." *Id.*

The statutory duty of a District Court regarding a competency motion is plain and direct; yet, the District Court in this case did not comply with it. When a motion is made under 18 USC § 4244 that is neither frivolous nor lacking in good faith,

setting forth a ground constituting reasonable cause to believe the accused may be presently so incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, the court is then under a mandatory duty to grant a § 4244 examination. *See*, e. g., *Featherston v. Mitchell*, 418 F.2d 582 (5th Cir. 1969), *cert. denied*, 397 U.S. 937 (1970); *United States v. Wilkins*, 334 F.2d 698 (6th Cir. 1964); *Lewellyng v. United States, supra*; *Caster v. United States*, 319 F.2d 850 (5th Cir. 1963), *cert. denied*, 376 U.S. 953 (1964); *Kenner v. United States,* 286 F.2d 208 (8th Cir. 1960); *Krupnick v. United States, supra; Lebron v. United States*, 97 U.S.App.D.C. 133, 229 F.2d 16 (1955) *cert. denied*, 351 U.S. 974 (1956); *see* also *United States v. McEachern*, 465 F.2d 833 (5th Cir. 1972).

When a motion for competency sets forth reasonable cause to believe the accused is incompetent, the Court **must** grant an examination. *See McEachern*, 465 F.2d at 837. While a defendant's demeanor at trial might be relevant to the ultimate decision as to his sanity, it cannot be relied upon to dispense with a hearing on that very issue. *Pate v. Robinson*, 383 U.S. 375, 386 (1966). Further, mental alertness and understanding displayed before the court does not justify a court's ignorance of a defendant's medical history. *See id.*

In determining whether there is a reasonable cause to declare the defendant incompetent, appoint an examiner, or to order a hearing on that question, a trial court

must consider all evidence before it, including evidence of irrational behavior, the defendant's demeanor at trial, and medical opinions concerning competence. *See Drope*, 420 U.S. at 180; *Fallada v. Dugger*, 819 F.2d 1564, 1568 (11th Cir. 1987); *Thompson v. Blackburn*, 776 F.2d 118, 123 (5th Cir. 1985). "[E]ven one of these factors standing alone may, in some circumstances, be sufficient." *Drope*, 420 U.S. at 180.

Before the trial, Mr. Boykin's attorneys filed a written motion requesting that Mr. Boykin be evaluated by a mental health professional to determine his competency to stand trial. ROA.175-179. The District Court did not order an evaluation. Instead, the District Court held a competency hearing on May 26, 2022, without the benefit of any contemporary mental health evaluation. The District Court then issued a written order denying the request for a mental health evaluation by a credentialed professional. ROA. 188-199.

The Error in Failing to Order an Examination

In determining whether there is a reasonable cause to declare the defendant incompetent, appoint an examiner, or to order a hearing on that question, a trial court must consider all evidence before it, including evidence of irrational behavior, the defendant's demeanor at trial, and medical opinions concerning competence. *See Drope*, 420 U.S. at 180; *Fallada v. Dugger*, 819 F.2d 1564, 1568 (11th Cir. 1987);

Thompson v. Blackburn, 776 F.2d 118, 123 (5th Cir. 1985). "[E]ven one of these factors standing alone may, in some circumstances, be sufficient." *Drope*, 420 U.S. at 180. Significantly, there was no contemporary examination of Mr. Boykin for the Court to evaluate.

The heart of the query for competence centers around the ability of a defendant to assist in his own defense. A defendant is mentally competent to stand trial if "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and [if] he has a rational as well as factual understanding of the proceedings against him." *Dusky*, 362 U.S.at 402; *Sterling*, 99 F.4th at 800. The "key [to a competency determination] is a defendant's ability to assist counsel and understand the charges." *See Battle*, 419 F.3d at 1299; *see* also *United States v. Vertuies Wall*, No. 20-10730 (11th Cir. Sep 06, 2024); *see* also *Medina v. Singletary*, 59 F.3d 1095, 1107 (11th Cir. 1995).

Mr. Boykin's attorneys filed the motion for a competency determination based on their experiences with him regarding their communications with him. ROA. 176. The evidence proffered by the Government does not address this aspect–the ability of a defendant to understand and communicate with his attorneys-- of competency. Mr. Boykin's attorneys—those with the "best-informed view of [his] ability to participate in his defense," *Medina v. California*, 505 U.S. 437, 450 (1992)—stated

that they had reasons to suspect Mr. Boykin had a competency issue. *See*, e.g., ROA. 176.

During the competency hearing, Mr. Boykin's attorneys presented the issue regarding their need to have Mr. Boykin evaluated:

> **MR. WILLIAMS**: Your Honor, as a matter of -- and I probably am the second voice, but it was my impression that a motion had been filed on the behalf of Mr. Boykins as to whether or not he should be evaluated to determine whether he is competent or incompetent to stand trial. That as a result of it, the Government filed a motion in opposition to the Court even considering whether or not the motion should be granted, that he at least be examined. His competency here, certainly we don't have enough information to make that determination or even stand here as his lawyers and vouge [sic] for all of the information we received. However we are only saying that the information we received, that we filed in our motion, was sufficient enough to raise the question as to whether or not a person who is qualified in these matters, can make a determination, do an evaluation, and then present to the Court and to us, whether or not we should proceed on that issue. And, of course, those issues that you've just indicated now would be upon the Court's discretion as to how it would rule on them based upon what the professional said, the psychiatrist or psychologist. We're novices. We can't make a determination to say our client is competent, incompetent. But the information that we receive from third parties, as well as observations, and we can't go through all of them in the Court, in the presence of the Government, since it is privileged contact with our client, that if there's additional information, we need from some of the people who made have said something, to vouch what we were told, we're prepared to do that. But to show that he's competent or incompetent, we are not prepared, and we are not qualified to make that determination. We are only ensuring that this trial only be had once. And that that question be properly vetted. ROA. 604-605.

The District Court then appeared to conflate the evidentiary burden for a competency hearing with a competency examination:

> **THE COURT**: Okay. My understanding is once the issue -- once the request for a competency hearing is held, the Court grants -- well, the standard, the bar for competency hearing is pretty low. I mean all you have to do is basically request it, and then the Court grants the competency hearing. And then at the competency hearing, it's my understanding that the parties present their evidence as to whether he's competent or not competent. ROA. 605.

Mr. Boykin's trial attorneys then attempted to explained the importance of a contemporaneous psychological examination instead of just proceeding to a competency hearing without such a report:

> **MR. WILLIAMS**: Our view was is that the request to have him evaluated is the issue here, that -- and I noticed that it kept coming out a competency hearing. He hasn't been evaluated. There has been no determination by any authority that -- and in the cases where I have presented in federal Court involving competency, the Court will either grant a motion to have the person examined, if the person refused to be examined. And the person who is supposed to be doing the examination makes a determination that based on what they investigate and find out. Then they write out a report to the Court. Both sides have an opportunity to present it. And usually at that time everybody would rely upon what it is that the expert said or didn't say.
>
> **THE COURT:** Okay.
>
> **MR. WILLIAMS:** And I don't believe that we're really right there at this time. And we couldn't even -- we don't have enough to even tell the Court no, he is not competent. We believe that the issue has been raised by the indicators that we have, that something isn't right. ROA. 605-606.

"An abuse of discretion standard is applied to the district court's denial of the defense's motion for a mental competency evaluation." *United States v. Flores-Martinez*, 677 F.3d 699, 706 (5th Cir. 2012). In evaluating competency, the district court may consider various sources of evidence, "including, but not limited to, its own observations of the defendant's demeanor and behavior; medical testimony; and the observations of other individuals that have interacted with the defendant." *United States v. Porter* , 907 F.3d 374, 380 (5th Cir. 2018). This court reviews a district court's competency determination "using a 'species of clear error' review." *Porter* , 907 F.3d at 380. This Court's "task is ... to take a 'hard look' at the facts to determine whether the district court's competency finding was 'clearly arbitrary or unwarranted.' " *United States v. Joseph* , 333 F.3d 587, 589 (5th Cir. 2003).

The District Court erred by denying Mr. Boykin's request for a mental competency examination made pursuant to 18 USC § 4244. The lack of a competency examination rendered the finding that Mr. Boykin was competent to stand trial as arbitrary, unwarranted and insufficient.

The Government Did Not Meet Its Burden to Prove Mr. Boykin's Competence

The Government introduced evidence that purportedly demonstrated that Mr. Boykin was, at some point in time, competent. The District Court relied heavily on the Government's arguments– which notably did not take into consideration Mr. Boykin's contemporary ability to understand the proceedings or consult with his trial counsel, the touchstone of competency-- to find that reasonable cause did not exist. *Compare Edwards*, 554 U.S. at 175 ("Mental illness itself is not a unitary concept.").

Further, the Court relied on evidence that Mr. Boykin himself stated in the past that he did not have mental health issues. As this Court has explained, "the existence of even a severe psychiatric defect is not always apparent to laymen." *Bruce v. Estelle*, 536 F.2d 1051, 1059 (5th Cir. 1976). A "genuinely mentally ill person typically lacks the ability to recognize that he is hallucinating or experiencing delusional thoughts." *United States v. Porter*, 907 F.3d 374, 379 (5th Cir. 2018). Rather, "[w]hether the individual is mentally ill … turns on the meaning of the facts which must be interpreted by expert psychiatrists and psychologists." *Addington v. Texas*, 441 U.S. 418, 429 (1979).

Competency to stand trial in federal court is a matter of both statutory application and constitutional significance. In federal court, the defendant and the Government have the statutory right to move for a hearing to determine a defendant's mental competency. 18 U.S.C. § 4241(a). "If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently 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," the court shall commit the defendant to federal custody for further examination, treatment, and, if possible, restoration of his competency. *Id.* § 4241(d). The Government bears the burden of proving that the defendant is competent. *United States v. Hutson*, 821 F.2d 1015, 1018 (5th Cir. 1987). "[T]he criminal trial of an incompetent defendant violates due process." *Cooper v. Okla.* , 517 U.S. 348, 354 (1996).

In evaluating competency, the district court may consider various sources of evidence, "including, but not limited to, its own observations of the defendant's demeanor and behavior; medical testimony; and the observations of other individuals that have interacted with the defendant." *United States v. Porter* , 907 F.3d 374, 380 (5th Cir. 2018); *see* also *United States v. Simpson*, 645 F.3d 300, 306 (5th Cir. 2011).

This court reviews a district court's competency determination "using a 'species of clear error' review." *Porter* , 907 F.3d at 380; *Simpson*, 645 F.3d at 306. This Court's "task is ... to take a 'hard look' at the facts to determine whether the district court's competency finding was 'clearly arbitrary or unwarranted.' " *Simpson* , 645 F.3d at 306; *see* also *United States v. Joseph*, 333 F.3d 587, 589 (5th Cir. 2003).

Various mental defects or diseases may render a defendant incompetent to stand trial. E.g., *United States v. McKown*, 930 F.3d 721, 724 (5th Cir. 2019) ("grandiose and persecutory delusional disorder"); *United States v. Brennan*, 928 F.3d 210, 212 (2nd Cir. 2019) (severe alcoholism); *United States v. Arenburg*, 605 F.3d 164, 166 (2nd Cir. 2010) ("paranoid schizophrenia"); *United States v. Filippi*, 211 F.3d 649, 650 (1st Cir. 2000) ("vascular dementia"); *United States v. Shawar*, 865 F.2d 856, 858 (7th Cir. 1989) ("mental retardation").

Given Mr. Boykin's previous medical diagnosis, there was reasonable cause for counsel to motion the court to determine competency. *See White v. United States*, 470 F.2d 727, 728 (5th Cir. 1972) (there were sufficient grounds to require an examination for determination of competency where defendant was recently committed for an undetermined amount of time, had a nervous breakdown, and was released against medical advice); *United States v. McEachern*, 465 F.2d 833, 839 (5th Cir. 1972), *cert. denied*, 409 U.S. 1043 (1972) (there was reasonable cause to believe

the defendant might lack the requisite competency, entitling the defendant to a competency examination, based on conclusions of medical officers during a previous confinement that the defendant was psychotic).

Here, the district court relied heavily on the Government's arguments– which notably did not take into consideration Mr. Boykin's ability to understand the proceedings or consult with his trial counsel, the touchstone of competency-- to find that reasonable cause did not exist. *Compare Edwards*, 554 U.S. at 175 ("Mental illness itself is not a unitary concept.").

The District Court, however, simply proceeded to the competency hearing without ordering the report. This was error. Mr. Boykin's attorneys presented sufficient evidence to justify the District Court ordering an evaluation. The District Court's failure to do so constitutes reversible error.

As discussed above, "[o]ne need not be catatonic, raving or frothing, to be unable to understand the nature of the charges against him and to be unable to relate realistically to the problems of his defense." *Lokos v. Capps*, 625 F.2d 1258, 1267 (5th Cir. 1980). That defendant can recite the charges against him, list witnesses, and use legal terminology are insufficient to demonstrate that he had a rational, as well as factual, understanding of the proceedings." *McGregor v. Gibson*, 248 F.3d 946, 952 (10th Cir. 2001). The Government has the burden to prove competency and,

without a contemporaneous mental health competency evaluation by a credential mental health professional, it failed to meet this burden.

Mr. Boykin's Trial Violated His Right to Due Process

In this case, the record demonstrates that Mr. Boykins' attorneys stated that Mr. Boykin had mental health issues that impacted his competency. The trial court had objective reason to doubt Mr. Boykin's competency just before and during his trial. Instead of inquiring into Mr. Boykin's current competency and ordering a competency examination, however, the trial court proceeded as if the Government's evidence from past years allegedly establishing Mr. Boykin's mental health was sufficient. This evidence was not sufficient. The standards established in *Drope, Pate, Dusky*, and their progeny require more. The trial court's failure to grapple with this inquiry under those standards was an objective failure to demonstrate to this Court that it ensured that Mr. Boykin was prosecuted, convicted, and sentenced in accordance with his Fourteenth Amendment rights. Accordingly, the district court abused its discretion in failing to grant the motion for a competency determination, which would have resulted in a necessary medical evaluation for Mr. Boykin. Mr. Boykin's mental health statued required a competency examination to determine whether he is, in fact competent to stand trial consistent with the Constitution.

This Court should grant this petition for certiorari, vacate the decision of the Fifth Circuit, and remand this case back to the District Court. This Court should reverse the district court's determination that Mr. Boykin was competent to stand trial, reverse Mr. Boykin's convictions on all counts, and remand for further proceedings under 18 U.S.C. § 4241 including a competency examination of Mr. Boykin by a qualified medical professional. *See Whalen v. United States*, 367 F.2d 468, 470 (5th Cir. 1966); *United States v. Day*, 333 F.2d 565, 568 (6th Cir. 1964); *Lewellyng v. United States, supra*, 320 F.2d at 106; *United States v. Walker*, 301 F.2d 211, 215 (6th Cir. 1962); *see* also *United States v. McEachern*, 465 F.2d 833 (5th Cir. 1972).

Accordingly, the district court abused its discretion in failing to grant the motion to determine competency which would have resulted in a necessary medical evaluation for Mr. Boykin. The case should be remanded to the District Court which shall order a psychiatric examination of appellant. *See Whalen v. United States*, 367 F.2d 468, 470 (5th Cir. 1966); *United States v. Day*, 333 F.2d 565, 568 (6th Cir. 1964); *Lewellyng v. United States, supra*, 320 F.2d at 106; *United States v. Walker*, 301 F.2d 211, 215 (6th Cir. 1962); *see* also *United States v. McEachern*, 465 F.2d 833 (5th Cir. 1972).

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Fifth Circuit should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

/s/ Amy R. Blalock
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RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 17, 2025, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

Carmen Castillo Mitchell
US Attorney's Office,
Southern District of Texas,
Houston, Texas, 77002

Lee Ray Boykin, Jr.
USM #36162-509
FCI PEKIN
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5000
PEKIN, IL 61555

/s/ Amy R. Blalock
AMY R. BLALOCK

No. _____

In the

Supreme Court of the United States

OCTOBER TERM, 2024

LEE RAY BOYKIN, JR.,

Petitioner,

V.

UNITED STATES OF AMERICA

Respondent.

APPENDIX

OPINION OF THE UNITED STATES COURT

OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
January 17, 2025
Lyle W. Cayce
Clerk

No. 23-20487
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LEE RAY BOYKIN, JR.,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:21-CR-204-1

Before WIENER, HO, and RAMIREZ, *Circuit Judges*.

PER CURIAM:[*]

Defendant-Appellant Lee Ray Boykin, Jr., was convicted following a jury trial on two counts of deprivation of rights under color of law, in violation of 18 U.S.C. § 242, and on two counts of destruction, alteration, or falsification of records in a federal investigation, in violation of 18 U.S.C. § 1519. He was sentenced to 516 months in prison for the § 242 counts and

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

to 240 months in prison for the § 1519 counts. He was also ordered to serve all the sentences concurrently. He asserts three issues on appeal.

Boykin first contends that the district court erroneously denied his pretrial motion for a competency evaluation. He maintains that he asserted a good faith and nonfrivolous reason why an examination was necessary, i.e., that he suffered from post-traumatic stress disorder (PTSD), sleeplessness, and anxiety. We review the district court's denial of that motion for abuse of discretion. *See United States v. Flores-Martinez*, 677 F.3d 699, 706 (5th Cir. 2012).

The record does not support that there was reasonable cause for the district court to conclude that Boykin was suffering from a mental disease or defect that rendered him unable to understand the nature and consequences of the proceedings against him or to aid properly in his defense. *See* 18 U.S.C. § 4241(a). The record does not reflect a history of irrational behavior by Boykin, nor does he dispute the district court's observation that his courtroom demeanor suggested that he was competent. *See United States v. Messervey*, 317 F.3d 457, 463 (5th Cir. 2002). Further, the record includes no medical opinions as to Boykin's competency. *See id*. Even if he has PTSD or any mental health issues, he has not shown that such conditions interfered with his ability to consult with his counsel, assist in his defense, or understand the proceedings. Boykin has thus not shown that the district court abused its discretion. *See Flores-Martinez*, 677 F.3d at 706; 18 U.S.C. § 4241(a).

Boykin also contends that the district court wrongly assessed a four-level adjustment under United States Sentencing Guideline (U.S.S.G.) § 2A3.1(b)(5). He maintains that the Sentencing Guidelines do not adequately define "abducted" because the term signifies a substantial change in location tantamount to protracted custody, captivity, or substantial isolation or that the term must exclude movement that is only incidental to the commission

of the underlying sexual offense. We review his unpreserved claim for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

When interpreting the Guidelines, we begin with the text, then consult the relevant commentary. *See Stinson v. United States*, 508 U.S. 36, 38 (1993); *United States v. Vargas*, 74 F.4th 673, 677–83 (5th Cir. 2023) (en banc), *cert. denied*, 144 S. Ct. 828 (2024). In this instance, the commentary provides a definition of "abducted" which the district court used in determining that the adjustment was justified. *See* U.S. SENT'G GUIDELINES MANUAL § 1B1.1 cmt. n.1(A) (U.S. SENT'G COMM'N 2023). Boykin has not shown that the district court clearly or obviously erred in applying the commentary rather than his proposed definition, which has no support in our caselaw or in the Guidelines. *See Puckett*, 556 U.S. at 135. Moreover, while he likely has abandoned a challenge to the factual application of the adjustment by failing to brief it, see *Yohey v. Collins*, 985 F.2d 222, 224–25 (5th Cir. 1993), the record establishes that the adjustment was properly assessed because Boykin forced a victim to accompany him to another location, *see* § 1B1.1 cmt. n.1(A); *United States v. Redmond*, 965 F.3d 416, 419 (5th Cir. 2020); *United States v. Hefferon*, 314 F.3d 211, 225–27 (5th Cir. 2002).

Finally, Boykin contends that the district court erred in applying a two-level enhancement under U.S.S.G. § 3A1.1(b)(1). We review that claim for clear error. *See United States v. Swenson*, 25 F.4th 309, 321 (5th Cir. 2022).

Boykin has not shown that the district court clearly erred. His claim that the adjustment should not apply because he did not target the victim on the basis of her vulnerability is misguided. *See United States v. Dock*, 426 F.3d 269, 274 (5th Cir. 2005). Neither has he established that our caselaw requires a nexus between the victim's vulnerability and the success of the crime. The

record otherwise reflects that Boykin knew or should have known that a victim of one of his § 242 offenses was particularly vulnerable to the criminal conduct. *See* § 3A1.1(b)(1); *United States v. Myers*, 772 F.3d 213, 220 (5th Cir. 2014); *United States v. Lambright*, 320 F.3d 517, 518 (5th Cir. 2003) (per curiam).

The judgment of the district court is AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
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NEW ORLEANS, LA 70130

January 17, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 23-20487 USA v. Boykin
USDC No. 4:21-CR-204-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

By:_____
Dantrell L. Johnson, Deputy Clerk

Enclosure(s)

Mrs. Amy Howell Alaniz
Ms. Amy R. Blalock
Ms. Carmen Castillo Mitchell