

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

UNITED STATES OF AMERICA	:	CASE NO. 1:08-cr-23
	:	
vs.	:	
	:	
WILLIAM HORACE (BILLY) LONG	:	JUDGE MATTICE/LEE

**MEMORANDUM IN SUPOPRT OF MOTION FOR PSYCHOLOGICAL
EXAMINATION OF GOVERNMENT WITNESS**

COMES the Defendant, **WILLIAM HORACE (BILLY) LONG**, by and through counsel, and respectfully submits the following Memorandum in support of his Motion for Psychological Examination of Government Witness (Clarence Eugene Overstreet).

“The district court has broad discretion in determining whether to compel a witness to undergo a psychiatric examination.” United States v. Raineri, 670 F.2d 702, 709 (7th Cir. 1982).

Generally, such examinations are not ordered in the ordinary case. See Joseph v. Gov't of the Virgin Islands, 226 F.Supp.2d 726 (D.V.I. 2002); United States v. Zizzo, 120 F.3d 1338 (7th Cir. 1997); Gov't of the Virgin Islands v. Leonard, 922 F.2d 1141 (3d Cir. 1991). However this is not the ordinary case.

A Court may order such an evaluation if the defendant’s need for the evaluation outweighs: 1) the infringement of the witness’s privacy, 2) the opportunity for harassment, and 3) the possibility that an examination will deter witnesses from coming forward, thus deterring law enforcement. Raineri, 670 F.2d at 709; see also Joseph, 226 F.Supp.2d at 731; United States v. Benn, 476 F.2d 1127, 1131 (D.C. Cir.1973). This balancing test is within the discretion of the Court and has rarely been overturned on appeal. See e.g. Joseph, 226 F.Supp.2d at 731; Raineri, 670 F.2d at 709; Benn, 476 F.2d at 1131; but see State v. Butler, 143 A.2d 530, 556 (N.J. 1958).

Courts dealing with this issue generally do not delve into the theoretical underpinnings behind their authority to order psychiatric or psychological evaluations of witnesses, but those that do, derive such authority from the Courts' inherent powers. Benn, 476 F.2d at 1131 n. 12; Butler, 143 A.2d at 553. The United States Supreme Court stated in In re Peterson that

Courts have (at least in the absence of legislation to the contrary) inherent power to provide themselves with appropriate instruments required for the performance of their duties. This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties.

253 U.S. 300, 312, 40 S.Ct. 543, 547 (1920) (citation omitted). A criminal trial is “a quest for truth and justice.” United States v. Gutman, 725 F.2d 417, 431 (7th Cir. 1984) (Coffey, J. dissenting) (quoting Butler, 143 A.2d at 553) (emphasis added). Furthermore, it is the duty of a judge to “conduct a trial in an orderly way with a view to eliciting the truth and to attaining justice.” United States v. Slone, 833 F.2d 595, 597 (6th Cir. 1987) (emphasis added). Given a judge's general duty to elicit truth and justice, as well as a judge's duty to determine the appropriate sentence, it is thus within the inherent power of the Court to order a psychological examination of the government witness, Clarence Eugene Overstreet.

In this case, the balancing test tips towards ordering a psychological examination of Clarence Eugene Overstreet. The defendant is researching claims of sentencing entrapment and sentencing manipulation. These claims are difficult to prove, and there are limited ways for the defendant to gain expert psychological testimony as to Overstreet. Furthermore, unlike several of the cases where a psychiatric or psychological examination was denied, the defendant in this case is not aware of the names of any specific psychiatrists or psychologists who may have

examined the witness, and no reports of such evaluations are available to the defense. See United States v. Gates, 10 F.3d 765, 766-67 (11th Cir. 1993); Gutman, 725 F.2d at 420; United States v. Klein, 271 F.Supp. 506, 507-08 (D. D.C. 1967). Counsel for the defense has asked previously for such evidence from the Government, and Assistant United States Attorney Gary Humble has advised defense counsel that the Government doesn't have any psychiatric or psychological reports in its possession pertaining the witness, Overstreet. The factors against psychological evaluation do not overcome the defendant's great need in this case.

First, there is little fear of infringement of the witness's privacy. Overstreet has already voluntarily given several interviews for both the television news media and newspaper.. See Attachment 1 - Newspaper Articles. The defendant will make available a DVD of Overstreet's interview 40 minute interview with News Channel 9 if the Court or Government so desires. Furthermore, Overstreet has written a tell-all book on his life story and problems with cocaine and alcohol abuse. See Attachment 2 - Clarence Eugene Overstreet, From Pit to Pulpit, 14 (1994). The results of any psychological examination of Overstreet could be filed under seal to minimize an infringement of privacy. Overstreet has compromised his own privacy, and a psychological examination, sealed from the general public, would do little to infringe upon his privacy rights. When Overstreet agreed to cooperate with the Government, he had to know that issues affecting his credibility, mental health, and personal history would be raised.

Second, this motion has been made in good faith, without any motive of harassment. The defendant has a good faith basis that a psychological examination of Overstreet will significantly advance the defendant's claims of sentencing entrapment and/or sentencing manipulation. Overstreet has a history of manipulating, lying to, and cheating other people as shown in the Motion for Psychological Examination of Government Witness. A psychological examination

of Overstreet would “elicit” the truth in this matter so that the Court can make a fully informed decision on the defendant’s claims of sentencing manipulation and sentencing entrapment.

There is simply no evidence of any harassing motive in this case: the defendant is not making this request to harm or harass Overstreet, and the defendant, who has accepted responsibility for his actions through pleading guilty and resigning as sheriff, has nothing to gain by harassing Overstreet.

Third, there is no indication that this would deter witnesses from coming forward, or in any way deter law enforcement in this case or in general. As evidenced by his multiple interviews with the news media, as well as his public statements in this case, Overstreet seems to enjoy the public spotlight. See Attachment 1. In an interview with the Chattanooga Times Free Press, Overstreet stated, “[I]f the FBI needed me, I felt that as a citizen I should ... work with them in any way I could.” See Attachment 1. Furthermore, since the defendant has pleaded guilty already, an examination cannot possibly hinder law enforcement in this case. As to future cases, given the power the Government usually has over cooperating witnesses (either they work for the Government or the Government has offered them reduced punishment in their own cases), ordering a psychological examination of Overstreet would not deter cooperating witnesses from coming forward.

Finally, several cases indicate that the three balancing factors are especially implicated or primarily meant to prevent the use of a psychiatric/psychological examination in rape cases, which this is not. See Joseph, 226 F.Supp.2d at 731-32; Benn, 476 F.2d at 1131. The defendant in a rape case that wants to order an examination of the victim/witness may certainly be viewed with a high degree of skepticism by the court. After all, in those cases, the victims have been violated in egregious manners, which often results in an abnormally high need for privacy. It

also would be reasonable for the court to suspect that a defendant in a rape case may want the victim to be examined to harass the victim in hope that the harassment would hinder the prosecution. Finally, in rape cases, victims failing to report the crime due to the indignity involved in reporting may be a common problem, and therefore, procedures which discourage victims from reporting the crime should be avoided as much as possible.

This is not a rape case. Overstreet was not and is not a victim. There is no history of the defendant harming or harassing Overstreet in any way. In fact the opposite may be true - that Overstreet harassed the defendant. Finally, the guilty plea in this case eliminates the possibility that this is a strategic maneuver designed to prevent Overstreet from testifying.

There is one additional issue this case presents that is perhaps an issue of first impression. Normally, a defendant moves for this type of examination at the trial stage. If the court orders an examination and the witness refuses to undergo said examination, the court can then condition the witness's chance to testify on the witness's undergoing the examination. See e.g. Gutman, 725 F.2d at 420 (holding there was, "no question that the district judge could have conditioned [the prosecution witness's] testifying on his agreeing to take a psychiatric examination"). Here, however, the defendant has pleaded guilty, so the witness is not needed to testify to prove the Government's case.

The question is thus, what should the court do by way of remedy if the witness refuses to undergo the examination?¹ This issue is perhaps not currently ripe for decision, and may indeed

¹ There is another implication of the posture of this case. Appellate courts have cited the amount of corroborative evidence outside of the witness the defendant wishes to exam as a reason to uphold the trial court's denial of the examination. See e.g. Benn, 476 F.2d at 1131. At the trial stage, it could be argued that the best the defendant could hope for would be that the court orders an examination, the witness refuses, and the court then refuses to allow the witness to testify. Therefore, if the corroborative evidence is such that the verdict would almost certainly have been the same even without that witness testifying, the judge's refusal to order an examination is essentially a harmless error. In this case however, the defendant has pleaded guilty, so the preceding analysis is inapposite, and, in any case, there is a lack of other sources of psychological expert testimony available to the defendant on Overstreet's manipulative abilities.

never come up. However, at this stage, the defendant would submit that the proper remedy in that case would be for the Court to take the defendant's allegations as to Clarence Eugene Overstreet's manipulative abilities as true when addressing the defendant's motions on the issues of sentencing entrapment and sentencing factor manipulation.

The facts in this case indicate that the balance between — (1) the defendant's strong need with the lack of other psychiatric or psychological evidence on Overstreet being available to the defense and (2) the concerns posed by the psychological examination of the witness — justifies a psychological examination of Clarence Eugene Overstreet in the interests of eliciting truth and justice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2008, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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