United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-3079 **September Term, 2019**

FILED ON: DECEMBER 27, 2019

UNITED STATES OF AMERICA,
APPELLEE

v.

MICHAEL LAWRENCE ROSEBAR,
APPELLANT

Consolidated with 17-3094

Appeal from the United States District Court
for the District of Columbia
(No. 1:16-cr-00018-1)

Before: MILLETT and KATSAS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

JUDGMENT

The Court has considered these appeals on the record from the United States District Court for the District of Columbia, and on the parties' briefs and oral arguments. The Court has afforded the issues full consideration and has determined they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is

ORDERED that the judgments of the District Court be affirmed.

A jury convicted Michael Rosebar of sixteen offenses relating to his fraudulent home contracting business. The district court sentenced Rosebar to ten years of imprisonment and three years of supervised release, and it later ordered deferred restitution. Rosebar appealed the original judgment and the subsequent restitution order. We consolidated the appeals.

Rosebar contends that he was deprived of his right to cross-examine witnesses at a suppression hearing. This claim fails because no witnesses testified at that hearing. *See Cooper v. California*, 386 U.S. 58, 62 n.2 (1967). Instead, the district court held that live testimony was unnecessary, and Rosebar did not challenge that ruling on appeal. In any event, Rosebar sought to exclude records obtained by the government from third parties, and the district court held that he had no Fourth Amendment right to do so. J.A. 195; *see United States v. Miller*, 425 U.S. 435

(1976). Rosebar also has not challenged that ruling, which provides an independent ground for affirming the denial of his motion to suppress.

Rosebar further contends that his counsel in prior civil proceedings were ineffective. The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defense." As this text makes clear, "the Sixth Amendment does not govern civil cases." *Turner v. Rogers*, 564 U.S. 431, 441 (2011). In this criminal case, it does not matter whether Rosebar's civil counsel were ineffective.

Rosebar next challenges his own competency, both to stand trial and to represent himself. As to the former, "[a] criminal defendant is legally incompetent to stand trial if he lacks 'a rational as well as factual understanding of the proceedings against him' or 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.'" *United States v. Perez*, 603 F.3d 44, 47 (D.C. Cir. 2010) (quoting *Drope v. Missouri*, 420 U.S. 162, 172 (1975)). Congress has established procedures to ensure prompt and accurate competency determinations:

> At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant … 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.

18 U.S.C. § 4241(a). Since no party moved for a competency hearing, we ask whether the district court abused its discretion in declining to order one on its own. *See Perez*, 603 F.3d at 47. It did not, for Rosebar cites no evidence that he lacked the minimal competency required to stand trial. He points to one stray remark in which a prosecutor queried "whether there needs to be a competency hearing." J.A. 163. As is clear from context, the prosecutor was concerned not that Rosebar was incompetent, but that Rosebar's litigation strategy was a "setup" to produce "issues on appeal." *Id.* Likewise, Rosebar points to statements made in his own pro se motion to withdraw counsel, including unsupported allegations of in-court misconduct by the district judge, a law clerk, and the court reporter. But judges have no obligation to hold a competency hearing every time a pro se litigant makes unfounded allegations. To the contrary, "the trial judge … will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant." *Indiana v. Edwards*, 554 U.S. 164, 177 (2008). Here, the district court did not abuse its considerable discretion.

Rosebar seeks to distinguish competency to stand trial from competency to represent himself. In *Edwards*, the Supreme Court held that the government *may* "insist upon representation by counsel for those competent enough to stand trial … but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves." 554 U.S. at 178. Subsequently, we declined to determine whether the government *must* insist on counsel for such barely competent defendants. *United States v. McKinney*, 737

F.3d 773, 777 (D.C. Cir. 2013). We may also reserve that question here, for *Edwards* applies only to defendants suffering from a "severe mental illness," 554 U.S. at 178, and Rosebar has pointed to no evidence suggesting that he has such an illness. Thus, even if *Edwards* were extended into a constitutional prohibition against self-representation by barely competent defendants, and even if trial courts were obligated to raise the issue on their own, the district court would not have abused its discretion in declining to order counseled representation here.

For these reasons, the district court's judgments are affirmed. The Clerk is directed to withhold the issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk