

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 96-3005

United States of America,

Appellee,

v.

Joseph A. May,

Appellant.

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* Appeal from the United States

* District Court for the

* Western District of Missouri.

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[UNPUBLISHED]

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Submitted: March 6, 1997

Filed: March 21, 1997

Before LOKEN, HANSEN, and MURPHY, Circuit Judges.

PER CURIAM.

After Joseph A. May pleaded guilty to criminal tax charges in violation of 26 U.S.C. § 7203, the district court ordered him to pay costs of prosecution, including the fees of two mental-health professionals who had examined May to determine his competency to stand trial. May appealed, arguing that the assessed costs were unreasonable and he was financially unable to pay. We remanded because the government initially paid the doctors, casting doubt on their status and the thoroughness of the court approval required under Federal Rule of Evidence 706. We directed the district court to review the experts' invoices with careful scrutiny and to order May to pay costs of prosecution, including whatever court-appointed expert fees the court approved and taking into account May's

financial ability to pay. See United States v. May, 67 F.3d 706
(8th Cir. 1995).

On remand, the district court¹ conducted a lengthy hearing, following which it concluded that the doctors were in fact court-appointed experts, that their fees were reasonable with one rather minor exception, and that May had the financial ability to pay costs of prosecution. On appeal, May argues that neither doctor was entitled to compensation as a court-appointed expert because one never was formally appointed, both functioned as prosecution witnesses, and the government usurped the court's power by prematurely paying them. After careful review of the record, we conclude that the district court properly construed our prior opinion, thoroughly explored the issues that prompted us to remand, and did not clearly err in its findings of fact nor abuse its discretion in awarding costs of prosecution in the amount of \$15,663.50. Accordingly, we affirm.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

¹The HONORABLE D. BROOK BARTLETT, Chief Judge of the United States District for the Western District of Missouri.