RECORD NO. 18-5777

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RANDALL KEITH BEANE
(#52505-074),

Defendant-Appellant,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

OPENING BRIEF OF APPELLANT RANDALL KEITH BEANE

Stephen L. Braga
Sarah Crandall *(Third Year Law Student)*
Brian Diliberto *(Third Year Law Student)*
Elizabeth Joynes *(Third Year Law Student)*
Amanda Lineberry *(Third Year Law Student)*
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW
Appellate Litigation Clinic
580 Massie Road
Charlottesville, Virginia 22903-1789
(434) 924-3825
stevebraga@virginia.edu

Counsel for Appellant

LANTAGNE LEGAL PRINTING 801 East Main Street Suite 100 Richmond, Virginia 23219 (804) 644-0477
A Division of Lantagne Duplicating Services

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"I am the source of all that is . . . ," Randall Beane ("Beane") told the Court, and with that startling self-identification his *Faretta* hearing began. *Faretta* Hearing, R. 40, Page ID # 1911. When Magistrate Judge Shirley followed up and asked Beane whether he was God, Beane replied again: "I am the source of all that is." *Id*. at 1913. In response to the magistrate asking whether Beane was "the source of the sun and the moon," Beane replied – *for the eighth time* – "I am the source of all that is original." *Id*. Despite all of this (and more), the magistrate somehow found Beane competent to represent himself at trial and the district judge did nothing to revisit that finding. This appeal is about the catastrophic consequences of letting a man subject to such beliefs defend himself in a high stakes criminal trial where decades of imprisonment were on the line.

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Beane requests oral argument of this appeal because it involves fundamental constitutional issues concerning the right to a fair trial. Beane believes that counsel's discussion of these issues with the Court will aid this its examination of the merits. Because Beane represented himself in the court below, he has never had the benefit of counsel defending his interests. This appeal presents a meaningful opportunity for that to happen.

STATEMENT OF JURISDICTION

The district court had jurisdiction of this action pursuant to 28 U.S.C. § 1331 (1980) as it arose under laws of the United States, 18 U.S.C. §§ 1343–1344 (2008) and 18 U.S.C. § 1956(h) (2016). This court has jurisdiction under 28 U.S.C. § 1291 (1982) because the district court entered a final judgment against Beane on all counts on February 1, 2018, from which he timely appealed on July 25, 2018.

STATEMENT OF ISSUE FOR REVIEW

1. Whether the trial court erred in granting Beane's request to proceed *pro se*, and/or in failing to revisit that decision, in the face of Beane's repeated demonstrations throughout every stage of the proceedings below that under any objective standard he was incompetent to represent himself, especially at a joint trial where he was subject to being unduly influenced by his alleged coconspirator?

STATEMENT OF THE CASE

On July 18, 2017, Beane was indicted on five counts of wire fraud, one count of bank fraud, and one count of conspiracy to commit money laundering. Indictment, R. 3, Page ID # 3–10. Heather Anne Tucci-Jarraf ("Tucci-Jarraf") was indicted as Beane's coconspirator in the money laundering conspiracy. After a jury trial, *at which Beane and Tucci-Jarraf both represented themselves*, the defendants were convicted on all charges. Transcript, R. 168, Page

ID # 17380–82. Beane was subsequently sentenced to ten years' imprisonment for wire fraud, twelve to thirteen years' imprisonment for bank fraud, and twelve to thirteen years' imprisonment for conspiracy to commit money laundering. Judgment, R. 228, Page ID # 18763. This appeal followed.

STATEMENT OF THE FACTS

In the summer of 2017, Beane sought deferment on several of his loans from United States Automobile Association Bank ("USAA Bank"), which declined his request. Transcript, R. 165, Page ID # 16998–99. Seeking solutions, Beane watched Harvey Dent's video on YouTube, "Pay Bills Now Using Your Secret Account." Transcript, R. 181, Page ID # 18080.[1] This video informed Beane that the Federal Reserve Bank ("Federal Reserve") was in possession of his money and kept it in a secret account, and he sought to claim his money through the tools described in the YouTube video. Transcript, R. 165, Page ID # 17001.

With this new information, Beane set up an account at the Federal Reserve. *Id.* at Page ID # 16997. According to the YouTube video's instructions, this account possessed two numbers for wire transactions: (1) a routing number unique to the Federal Reserve, and (2) an account number that matched Beane's

[1] This video is still available for viewing on YouTube. "Harvey Dent" appears to be athe presenter's pseudonym, drawn from a well-known Batman Comics character of the same name. In the video, "Dent" welcomes viewers to the "Intellectual Freedom Movement" and describes the movement's unique set of beliefs.

Social Security Number. *Id.* at Page ID # 17018–19. Beane used this new account number to retrieve money from what he believed to be his account at the Federal Reserve, and he quickly used the funds to pay his credit card debt. Transcript, R. 159, Page ID # 15598.

Following this initial success, Beane created a second account with the Federal Reserve and organized this account as a trust using his Social Security Number again, changing one digit. Transcript, R. 165, Page ID # 17011. Through this account, Beane purchased thirty jumbo certificates of deposit, totaling $31 million. *Id.* at Page ID # 16997. Beane liquidated these certificates of deposit after a bank agent informed him that liquidating only incurred a small fee, and he then placed the cash in his account with USAA Bank. *Id.* at Page ID # 16997–98. Beane later made two significant purchases with this money. First, using a personal check, he bought a car for $86,000 from Ted Russell Ford. *Id.* at Page ID # 17015. Second, he bought a motor home for $500,000 from Buddy Gregg. *Id.* at Page ID # 17025. Beane paid for the motor home by executing a wire transfer from his account at USAA Bank to Buddy Gregg's account at Whitney Bank. *Id.*

Throughout these events, Tucci-Jarraf counseled Beane. She insisted there was "dirty dealing" at USAA Bank and urged Beane to title his motor home in the name of a trust rather than in his personal name. *Id.* at Page ID #17026; *id.* at Page ID # 17031. In addition, Tucci-Jarraf publicly held herself out to be Beane's

lawyer. She created and signed documents for a "factualized trust" as Beane's lawyer, and she ensured that her name appeared on the deed to Beane's motor home as his attorney. *Id.* at Page ID #17026. Tucci-Jarraf also represented herself as Beane's lawyer while she was on a call with Lauren Palmasino, an employee at Whitney Bank. *Id.* at Page ID # 17035. Perhaps most significantly, after Beane attempted to take possession of his motor home and was arrested, Tucci-Jarraf repeatedly told the law enforcement officers present at the scene that she was "Randall Beane's lawyer." Transcript, R. 166, Page ID # 17093.

Beane And Tucci-Jarraf Are Indicted

Despite Tucci-Jarraf's efforts with law enforcement, Beane was indicted on federal wire fraud and bank fraud charges. He was indicted as well on a charge of participating in a money-laundering conspiracy. Tucci-Jarraf was indicted as Beane's coconspirator in that conspiracy, which was alleged to have begun "on or about July 2017."

Beane And Tucci-Jarraf Decide To Represent Themselves

The month after their indictment, Beane and Tucci-Jarraf asserted their rights to self-representation. Motion to Review the Attorney/Client Relationship, R. 20, Page ID # 649; Minutes, R. 26, Page ID # 967. The record does not indicate how Beane, a non-lawyer, learned of this right. Tucci-Jarraf, who had legal training, was presumably fully aware of it though.

As the first step in exercising his right to represent himself, Beane filed a motion seeking the removal of his initial court-appointed counsel, Bobby Hutson, Jr. ("Hutson"). Motion to Review the Attorney/Client Relationship, R. 20, Page ID # 649. District Judge Thomas A. Varlan was assigned to Beane's case and, as frequently happens, he referred the preliminary matters in the case to be handled by a federal magistrate judge. In short order, Magistrate Shirley scheduled a *Faretta* hearing to determine whether Beane wanted to waive his Sixth Amendment right to an attorney, whether he sought to represent himself, and whether he was making these decisions voluntarily and intelligently. *Faretta* Hearing, R. 40, Page ID # 1911.

The *Faretta* Hearing

At the *Faretta* hearing, Beane and Magistrate Shirley came to an impasse almost immediately. *Faretta* Hearing, R. 40, Page ID # 1911. The trouble began when Beane supplemented his own version of the oath to be sworn in, stating: "Standing due identification correction, I am source of all that is, original nunc pro tunc, praeterea, pre terea, and I do swear to speak only true, accurate, and complete." *Id.* at Page ID # 1912. The conversation quickly devolved when the magistrate asked Beane to elaborate on the meaning of his oath, leading him to ask Beane if he was "the source" of a Kleenex Box and to state that his "guess [was] that [they'd] have to have another hearing on this." *Id.* at Page ID # 1913.

At that time, Hutson asked the court for a few minutes to counsel Beane on the "implications" of his decision not to provide the normal oath. *Id.* at Page ID # 1914. Knowing that Beane was interested in having a detention hearing, Hutson and Magistrate Shirley used this information to move Beane to changing his oath at the last minute. *Id.* After this recess, Beane acquiesced and took the traditional oath. *Id.* at Page ID # 1915.

During the hearing that followed, Magistrate Shirley expressly questioned Beane about his understanding of self-representation. *Id.* at Page ID # 1922. While doing so, the magistrate indicated that "Mr. Hutson seemed to think that [Beane] might have a different idea of what [self-representation] means from what [Hutson] told [Beane] it meant." *Id.* at Page ID # 1922–23. Assistant United States Attorney Davidson elaborated indicating that she "seemed to think [Beane] might be of the notion that [his] codefendant in this case, Ms. Tucci-Jarraf, might be able to represent [him]." *Id.* The magistrate "assure[d] [Beane] she cannot." *Id.*

Despite the foregoing "red flags," Magistrate Shirley subsequently granted Beane's request to remove Hutson and proceed *pro se*. Memorandum and Order, R. 37, Page ID # 1808–09. The magistrate granted a similar motion for Tucci-Jarraf, *id.* at Page ID # 1806–09, and appointed "elbow counsel" to assist both defendants at trial. In his order granting both Beane's and Tucci-Jarraf's motions

to proceed *pro se*, Magistrate Shirley admonished Beane that he could not have Tucci-Jarraf represent him and he similarly admonished Tucci-Jarraf that she could not represent Beane. *Id.* The magistrate's order nowhere even mentioned Beane's strange testimony at the *Faretta* hearing.

The "Praecipe" Hearing

Shortly after becoming his own counsel, Beane filed several motions. On September 26, 2017, he supplemented his filing, "Original Due Declaration of Addendum of Law, Presumption and Perpetuity, Due Cancellation of True Bill Supplement with Randall Keith Beane signature." Supplement, R. 42, Page ID # 1943–46. On October 2, 2017, he filed a "Request for Due Identification and Verification of Authority and Jurisdiction." Request for Due Identification and Verification of Authority and Jurisdiction, R. 45, Page ID # 2083. Finally, on October 16, 2017, he filed an "Original Instrument Cancelled Truebill" and an "Original Instrument Rejected without Dishonor." Original Instrument Cancelled Truebill, R. 50, Page ID # 2118; Original Instrument Rejected Without Dishonor, R. 51, Page ID # 2125.

Beane also filed some motions jointly with his codefendant, Tucci-Jarraf, including a "Praecipe to Enter Dismissal with Prejudice and Declaration of Due Cause, Praecipe and Declaration of Facts" ("Praecipe") on October 13, 2017. "Praecipe", R. 47, Page ID # 2102. The Praecipe was the foundation upon which

he and Tucci-Jarraf built their defense that the court had no jurisdiction over them. The Praecipe was obviously Tucci-Jarraf's initiative since Beane "could not explain the Praecipe to dismiss or his legal basis for claiming that the Court has no jurisdiction over him." Magistrate's Report & Recommendation, R. 62, Page ID # 2901.

During the hearing before the magistrate regarding the Praecipe, Tucci-Jarraf alleged that the United States was a corporation that had been terminated. Motion Hearing, R. 61, Page ID # 2807. Because the United States had been foreclosed upon, she alleged, the district court had no authority to exercise jurisdiction and did not exist. *Id.* at Page ID # 2829. Therefore, the Praecipe argued, any action taken by the United States prior to March 18, 2013 was legally void and unenforceable because that was the day that the United States corporation had been terminated. *Id.* at Page ID # 2843. As a result, the Praecipe insisted that the district court did not have jurisdiction over the codefendants because they were not parties to the United States Constitution, which they considered to be a contract and to which they were not signatories. *Id.* at Page ID # 2838.

During the hearing, Magistrate Shirley asked Beane if he knew what a praecipe was and whether he could explain the legal basis for his claim that the court lacked jurisdiction. *Id.* at Page ID # 2806. The court immediately called attention to Beane's *inability to answer either question*. *Id.* And although Tucci-

Jarraf argued with the magistrate at length about various "legal" issues she believed the Praecipe addressed, Beane spoke very seldom. Instead, he largely "accept[ed] and adopt[ed]" Tucci-Jarraf's statements. *Id.* at Page ID # 2892. At one point, however, Beane asked Magistrate Shirley why he could exert authority over Beane if he was not God and why he had not provided the codefendants with proof of his existence. *Id.* at Page ID # 2866.

Ultimately, the magistrate recommended and the district judge approved an order striking the Praecipe from the Record. Order Striking the Praecipe from the Record, R. 90, Page ID # 3204.[2] Beane and Tucci-Jarraf were, thus, unable to raise their jurisdictional point as a defense at trial. In the course of his recommended ruling on this Praceipe, Magistrate Shirley expressly noted that "the defendants' claims . . . defy common sense." Magistrate's Report & Recommendation, R.62, Page ID #2903.[3] The magistrate's report contained no reference to Beane's disturbing questioning of him about God at the hearing, or how that might reflect on Beane's competence to represent himself at trial.

[2] On the same grounds, the magistrate also recommended granting and the district judge ultimately granted the Government's Motion in Limine to Prohibit Jurisdictional Argument, R. 78, Page ID # 3041.

[3] District Judge Varlan similarly indicated that "[t]he Court is, frankly, unclear what these objections mean." Memorandum Opinion & Order, R. 69, Page ID # 3001.

The Presentation Of Evidence At Trial

Beane's and Tucci-Jarraf's close relationship continued throughout the proceedings. At trial, Tucci-Jarraf introduced evidence on particular issues, and Beane did not supplement her introduction of evidence. Transcript, R. 165, Page ID # 17007. Tucci-Jarraf professed to have extensive knowledge of legal issues as well. She was able to engage in oral argument and discussion with the lower court, appeared to have a working command of the Uniform Commercial Code, and possessed some limited knowledge of legal trusts and the process of criminal adjudication. Transcript, R. 159, Page ID # 16095; Transcript, R. 165, Page ID # 17031. Beane, on the other hand, was not able to do so because he had no legal training. *Faretta* Hearing, R. 40, Page ID # 1916–1917.

Beane and Tucci-Jarraf both testified at trial and continued to make confusing, and frankly nonsensical, assertions. Transcript, R. 159, Page ID # 15959; Transcript, R. 159, Page ID # 16107. During his testimony, Beane explained that "one of the things that [he] learned at some point was that [his] birth certificate was actually a trust account held in trust . . . a straw man account." Transcript, R. 165, at Page ID # 16988. He added subsequently that, even if his birth certificate did not have value to him, it must have value to someone else because it was "printed on bank bond paper." *Id.* at Page ID # 17001.

When asked about his actions, Beane responded that he relied on Tucci-Jarraf for legal counsel on the issue: "[a]ccording to speaking with [Tucci-Jarraf], she said that that was the best way to do [it] . . . , so I was just trusting that that was the right way, correct way to do it, and it made sense what she explained to me." *Id.* at Page ID # 17031. Beane testified that he was "enamored" with Tucci-Jarraf and believed he had much to learn from her. Transcript, R. 159, Page ID # 15987.

During her testimony, Tucci-Jarraf asserted that "[o]ne of [her] big family friends was actually the head of all of the U.S. National Guard. So, [she was] familiar with [the birth certificate theory]." Transcript, R. 162, Page ID # 16302. She claimed to be a high-level intelligence official who was involved with Beane and this case was part of her official investigation of "the theft scheme that the Federal Reserve and its member banks concocted by using unknowing and unsuspecting American citizens." *Id.* at Page ID # 16346.

Despite the irrationality of these assertions, and their interdependence, at no point during the presentation of evidence did District Judge Varlan raise any question about the competence of these defendants to be representing themselves before the jury.

Closing Arguments

Beane's closing arguments demonstrated the same theme that he and Tucci-Jarraf had espoused throughout trial. He continued to insist that he was seeking access to his own account with the Federal Reserve, and he implored the jury to believe that these accounts do exist and they "belong to us." Transcript, R. 181, Page ID # 18085. From Beane's perspective, the only reason these accounts had not been publicly acknowledged was the failure of others to use the "correct verbiage to prove it." *Id.* at Page ID # 18087. He urged the jury that his conduct was the result of his "duty as an informed American and sincere living man." *Id.* at Page ID # 18086.

Beane did not limit his claims to the Federal Reserve. He claimed that the federal government was a "morally corrupt and bankrupt" institution that colluded with a "corrupt financial institution, which has been proven [to be corrupt] through the mortgage crisis, the Libor scandal, the bank bailouts . . . ." *Id.* He asserted that his reason for not presenting a single objection throughout the government's case was "to see exactly how low the government was willing to go in a continuous scheme to hide the truth from the people and perpetuate a system of slavery." *Id.* at Page ID # 18087. Beane claimed that this scheme was so pervasive that the federal government murdered John F. Kennedy because of Kennedy's efforts to expose it. *Id.* at Page ID # 18088.

Beane explained to the jury that a book, *Creature from the Jekyll Island*,[4] detailed this corruption from its inception. *Id.* He stated that the federal government created a secret banking system with the intent to exert control over the American people. *Id.* at Page ID # 18089. Invoking the Bible, he begged the jury to "take a stand with [him] in exposing the evil that has undermined and camouflaged itself with the authority over all." *Id.* He claimed he was kidnapped and assaulted by federal agents because of his efforts to bring this scheme to light. *Id.* He concluded by explaining to the jury that this trial was merely another piece of the "grand scheme to put [him] away and make [him] disappear. *Id.* at Page ID # 18089–90. Beane's entire closing argument concerned an elaborate scheme that had nothing to do with the specific elements of the crimes with which he was charged.

Tucci-Jarraf's closing argument largely echoed the many difficult-to-believe themes she had raised throughout the course of the proceedings, as discussed above. And she told the jury that "inside these [defense evidence] filings, you'll see everything, all the laws, all the – everything we went through to be able to secure, and we secured it, took it back and secured it, the same way it was taken, a reversal." *Id.*, Page ID # 18113. The prosecution agreed that the jury should "review" these filings because: "They do not say what she says they say. There is

[4] This book is still available for purchase online. In it, the author "unveil[s]" many far-out conspiracy theories, including the "money magicians' secrets."

no support for a secret account. These were all filed at the Register of Deeds in Washington, D.C. That's where they're filed. They have a whole bunch of misuses of legal terms and gobbledygook. That's what these documents have." *Id*., Page ID # 18115.

In her rebuttal closing argument, with reference to Tucci-Jarraf, prosecutor Davison told the jury: "She would have you believe that she totally believes this. And it's – maybe she's crazy." *Id*., Page ID # 18116. Davison then directed the jury not to accept such a conclusion. "Neither one of these defendants are crazy. They don't believe what they're saying, and both defendants are guilty." *Id*.

Despite the incredible nature of the defendants' closing arguments and the prosecution's express argument against the jury considering them "crazy," the district judge did not revisit the competence of Beane and/or Tucci-Jaraff to have represented themselves before the jury during this seven-day trial.

The Jury Verdict

After the closing arguments and jury instructions, the jury retired to deliberate at 3:12 PM on January 31, 2018. Minute Entry, R.115, Page ID # 3488. At 4:50 PM, the jury went home for the day. *Id*. The next morning the jury returned to deliberate from 9:00 AM to 11:00 AM, when it reached a verdict. Minute Entry, R. 117, Page ID # 3491. After less than four hours of deliberations, the jury found Beane and Tucci-Jaraff guilty as charged on all counts.

SUMMARY OF THE ARGUMENT

The right to represent oneself is not absolute. A court must ensure that the defendant has knowingly and voluntarily waived his right to representation by counsel and is in fact competent to represent himself. Representing oneself requires a greater degree of competency than merely standing trial while represented. Under any objective view of the record, Beane should not have been allowed to represent himself given his strange personal beliefs, his demonstrated inability to respond to simple questions by the judge and his incredible rationales for his actions. Both the magistrate and the district judge failed Beane, and the fair administration of justice below, when they failed to follow up numerous obvious red flags as to Beane's competency to represent himself at trial.

In similar circumstances, this Court has found the defendant incompetent to represent himself or has indefinitely deferred granting the right of self-representation pending a mental competency examination of the defendant. Courts have a clear duty to monitor competency up to and throughout the trial. If the defendant's competence is called into question at any point, then the court must conduct further hearings and, if necessary, revoke a defendant's ability to proceed *pro se*. That never happened here, although it certainly should have – on multiple occasions.

For example, at the *Faretta* hearing, the judge described Beane's assertions as "nonsense," and Beane was unable to answer several of the judge's questions. At the hearing on his motion to dismiss, he not only demonstrated a lack of basic judicial procedure but also could not explain to the court the grounds for the motion. His incompetence to represent himself only became clearer when his trial began. There, Beane made delusional statements throughout the proceedings, based his defense on a massive conspiracy theory, and struggled to answer basic questions. Although the court continued to describe Beane's statements as "nonsense" and "fantastical," it took no steps to investigate his competency or impose other safeguards.

Trying Beane with his codefendant, Tucci-Jarraf, compounded the prejudice to Beane. Tucci-Jarraf had formerly represented herself as Beane's lawyer and he had relied on her legal advice in conducting the transactions underlying his charges. The court admonished Tucci-Jarraf that she could not represent Beane on multiple occasions, but that was insufficient to protect Beane. Trying the defendants together compromised Beane's ability to clearly communicate his level of culpability and lack of intent to the jury, since Tucci-Jarraf frequently undercut his lack of intent in order to protect herself. The two collaborated on their defense, but Tucci-Jarraf frequently took the most advantageous positions at trial to Beane's detriment, convincing him to present his opening statement and case-in-chief first

at the last minute even though he needed more time to prepare. The court's warnings indicate that it saw the prejudice Beane suffered, yet it took no steps to protect Beane beyond pointing out the problem.

When all is said and done, the trial court abandoned Beane to his own devices and to the whims of his codefendant without first assuring itself that Beane was competent to handle his own defense. In doing so, the court erred in its responsibility to administer a fair trial for Beane. Although it may have been trying to respect his dignity and autonomy by granting his motion to proceed *pro se*, the court's decision ultimately led to Beane's fundamentally unfair conviction.

ARGUMENT

I. BEANE SHOULD NOT HAVE BEEN ALLOWED TO REPRESENT HIMSELF IN THE TRIAL COURT

The court below should not have allowed Beane to represent himself in the serious criminal proceedings against him below. To be sure, the freedom to represent oneself in a criminal trial is a constitutional right. *See Faretta v. California*, 422 U.S. 806 (1975). But the right is not absolute. A trial court must find that a criminal defendant is both competent to conduct trial proceedings and that waiver of his constitutional right to counsel is both knowing and voluntary. *Indiana v. Edwards*, 554 U.S. 164, 177–78 (2008). Self-representation is improper when a trial court fails to adequately consider a criminal defendant's

competence to conduct the trial himself or when waiver of counsel is not both knowing and voluntary. Beane did not knowingly and intelligently elect to represent himself in this complex criminal trial alongside his trusted former attorney, nor was he competent to represent himself.

Whether a waiver is knowing and intelligent is a mixed question of law and fact and is reviewed *de novo*. *Lott v. Coyle*, 261 F.3d 594, 610 (6th Cir. 2001); *see also Moore v. Mitchell*, 708 F.3d 760, 774 (6th Cir. 2013); *Nelson v. Riddle*, 217 F. App'x 456, 460 (6th Cir. 2007).

A. Beane Was Not Competent To Represent Himself.

A criminal defendant must be competent to represent himself and must knowingly and voluntarily waive his right to counsel. Beane made it clear through his conduct before and during trial that he did not satisfy this standard. There are many examples throughout the proceedings where the district court should have, but failed to, *sua sponte* conduct and/or order further competence evaluations for Beane. Yet the court below never reconsidered its initial decision to allow Beane to represent himself, despite various examples of disturbing conduct throughout virtually every stage of the proceedings.

1. The Standard For Competency To Represent Oneself Is More Stringent Than The Standard For Competency To Stand Trial And Requires Careful Inquiry And Monitoring By The Judge.

"A person who is 'competent' to play basketball is not thereby 'competent' to play the violin." *Godinez v. Moran*, 509 U.S. 389, 413 (1993) (Blackmun, J., dissenting). In *Indiana v. Edwards*, the Supreme Court distinguished competency to stand trial (i.e. competency to consult with a lawyer) from competency to represent oneself at trial. 554 U.S. 164, 174–75 (2008) ("These standards [capacity to consult with counsel, ability to assist counsel in preparing his defense] assume representation by counsel and emphasize the importance of counsel. They thus suggest . . . that an instance in which a defendant who would choose to forgo counsel at trial presents a very different set of circumstances, which in our view, calls for a different standard.").

The Court held that the state may force counsel upon a defendant where the accused is "not mentally competent to conduct [the] trial himself," even if he is sufficiently mentally competent to be tried. *Id*. at 167; *see also id.* at 177 ("[G]iven the different capacities needed to proceed to trial without counsel, there is little reason to believe that *Dusky* alone is sufficient."). The Court recognized a need for different mental competency standards, reasoning that:

> Mental illness itself is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual's functioning at different times in different ways . . . . In certain instances an

> individual may well be able to satisfy *Dusky*'s mental competence standard, for he will be able to work with counsel at trial, yet at the same time he may be unable to carry out the basic tasks needed to present his own defense without the help of counsel.

Id. at 175–76. Thus, the threshold for competence to represent oneself is more difficult to satisfy than the threshold for competence to stand trial. *Id.*

To be found competent to stand trial, a person must have "a rational as well as factual understanding of the proceedings" as well as sufficient ability to consult with his lawyer with "a reasonable degree of rational understanding." *Dusky v. United States*, 362 U.S. 402, 402 (1960); *Drope v. Missouri*, 420 U.S. 162, 171 (1975); 18 U.S.C. § 4241 (1984) (codifying the competency principles of *Dusky*). A judge may order a competency hearing to ensure that a defendant is able to stand trial if he has reasonable cause to believe a defendant "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) (1984).

18 U.S.C. § 4241 expressly relies on the defendant, the prosecutor, or the judge to request a competency hearing if there is "reasonable cause" to do so. However, an incompetent defendant is not likely to make such a request for himself, and a prosecutor is unlikely to request a competency hearing in the midst of an adversarial proceeding. Therefore, the statute as written places a unique responsibility on the judge to observe competency throughout the proceedings and request a competency evaluation when reasonable.

Applying *Edwards*, this Court has noted that "competence needed for self-representation is greater than the competence needed to stand trial." *United States v. Gooch*, 595 F. App'x 524, 529 (6th Cir. 2014) (citing *Edwards*, 554 U.S. at 177–78). "The threshold for finding that a defendant may be incompetent to stand trial is *lower* than the baseline for competency to represent oneself." *United States v. Ross*, 703 F.3d 856, 869 (6th Cir. 2012) (italics in original) (internal citations omitted). This Court has acknowledged that the defendant's mental state is a factor in this determination. *United States v. McDowell*, 814 F.2d 245, 251 n.2 (6th Cir. 1987) (considering whether the defendant demonstrated any psychological impairments in deciding whether defendant could represent himself, though ultimately finding the physiologically unimpaired defendant to be competent).

This Court has found daylight between the standard to stand trial and to represent oneself previously. In *United States v. Carradine*, for example, the Sixth Circuit held that the district court did not abuse its discretion in denying the defendant's motion for self-representation because, though competent to stand trial, the defendant did not understand questions asked of him in his *Faretta* hearing. 621 F.3d. 575, 578–79 (6th Cir. 2010); *see also United States v. Arnold*, 630 F. App'x 432, 435–36 (6th Cir. 2015) (district court did not err in denying defendant's motion to represent himself when the defendant would not, or could not, respond adequately to even the most basic question required by the model

inquiry); *United States v. Kidwell*, 217 F. App'x 441, 446 (6th Cir. 2007) (district court did not abuse its discretion in denying defendant's motion for self-representation when defendant's assertion of the right was confusing and he was under the influence of narcotics). Thus, more than the mere assertion of one's right to defend oneself is necessary to justify allowing a defendant to represent himself. "The fact that an accused may tell [the judge] that he is informed of his right to counsel and desires to waive this right does not automatically end the judge's responsibility." *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948) (plurality).

A defendant's assertions of competency cannot necessarily be taken at face value. When holding that requiring certain defendants to be represented at competency hearings was consistent with the Constitution, this Court compared the risk presented by self-representation at a competency hearing to the danger of improper self-representation at trial, noting:

> The 'spectacle' risked by a potentially incompetent defendant representing himself at his own competency hearing touches precisely the same concerns [as those raised by the Supreme Court in *Edwards*]. Assuming that the defendant is, in fact, incompetent, the lack of a defense attorney to conduct an adequate investigation into the matter could prevent any flaws in the pro-competency position from coming to light. This is particularly true when, as here, the *pro se* defendant believes and argues that he is competent, leaving no one to *examine and challenge the evidence*.

Ross, 703 F.3d at 871 (emphasis added). In other words, competency hearings are more than a mere formality. They should be substantive and

careful inquiries into a defendant's mental abilities. Indeed, a district court within this circuit previously conducted three separate hearings of a defendant when engaging in such an evaluation. *United States v. Stafford*, 782 F.3d. 786, 790 (6th Cir. 2015). Sister circuits have also ordered medical evaluations when presented with statements by a defendant "that we can only generally call absurd." *See, e.g., United States v. Berry*, 565 F.3d 385, 387–88 (7th Cir. 2009). A searching and thorough inquiry is required whenever red flags about a defendant's competency to represent himself are present.

Further, "a competency finding is not static." *United States v. Ghane*, 490 F.3d 1036, 1041 (8th Cir. 2007). The court has a duty to monitor and investigate issues of competency throughout trial, "from the time of arraignment through the return of the verdict." *Godinez*, 509 U.S. at 403 (1993) (Kennedy, J., concurring); *see also Drope*, 420 U.S. at 180-81 ("[I]f a defendant stands trial instead of pleading guilty, there will be more occasions for the trial court to observe the condition of the defendant to determine his mental competence. Trial courts have the obligation of conducting a hearing whenever there is sufficient doubt concerning the defendant's competence."). Accordingly, "[e]ven when a defendant is found competent at the beginning of a trial, the court 'must always be alert to circumstances suggesting a change that would render the accused unable to

meet the standards of competence to stand trial.'" *Ghane*, 490 F.3d at 1041 (quoting *United States v. Robinson*, 253 F.3d 1065, 1067 (8th Cir. 2001)). The same applies for competency to represent oneself.

Throughout this entire process, the court is driven by one primary concern: ensuring that "fairness dominates the administration of justice." *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942). As the Supreme Court has stated, "evidence and truth are of no avail unless they can be adequately presented. Essential fairness is lacking if an accused cannot put his case effectively in court." *Id.*; *see also Edwards*, 554 U.S. at 177. The acknowledgement of individual dignity and autonomy that underlies the right of self-representation will also be undercut if an individual lacks the mental capacity to represent himself without the assistance of counsel, leading to proceedings "at least as likely to prove humiliating as ennobling." *Edwards*, 554 U.S. at 176–77 (quoting *McKaskle v. Wiggins*, 465 U.S. 168, 176–77 (1984)).

2. Beane's Conduct At His *Faretta* Hearing Signaled His Incompetence.

The record reflects many reasonable instances leading up to trial that should have prompted the judge to conduct a competency evaluation. While any one of these instances was enough to satisfy the reasonable cause standard, the aggregate of these instances is particularly important for the court to consider. A competency

hearing is a straightforward proceeding that serves an incredibly important purpose. Because of its importance, judges have a responsibility to err on the side of the criminal defendant to ensure their due process rights are not violated and that they receive a fair trial, even in cases that present fewer red flags than the present case. Here, the court neglected its responsibility by never once following up on Beane's clear signs of incompetency.

Courts may deny a request to proceed *pro se* based on a defendant's conduct at the *Faretta* hearing. In *United States v. Jackson*, for example, defendant Theodore Jackson was charged with armed robbery of a bank. 179 F. App'x 921, 923 (6th Cir. 2012). Jackson was initially appointed an attorney, who quickly filed a motion for a mental competency evaluation of his client. *Id.* The court granted this motion and later adopted the Forensic Report's finding that Jackson was competent *to stand trial*. *Id.* But thereafter, Jackson "filed *pro se* a number of handwritten motions basically accusing police and the government of withholding and/or destroying exculpatory evidence and of fabricating damaging evidence against him" and "claimed that he was entitled to conduct pretrial depositions of all 'government prosecutor witnesses.'" *Id.* at 924.

The lower court ultimately deferred Jackson's request to proceed *pro se*, and Jackson never reasserted this right. *Id.* This Court found that the trial judge was reasonably "sidetracked by [defendant Jackson's] statements regarding matters of

evidence, *discovery*, prior convictions, *and a conspiracy theory*." *Id.* at 927 (emphasis added). Thus, "the district court prudently deferred ruling on Jackson's motion." *Id.*; *see also People v. Rath*, 121 Ill. App. 3d 548, 549–51 (1984) (defendant required to have counsel "even against his will" when not yet determined fit to stand trial and claimed during pretrial proceedings to be the royal son of the Sultan of Turkey and Ethel Barrymore, a diplomat with immunity from prosecution, a doctor, and an attorney); *Raulerson v. Wainwright*, 732 F.2d 803 (11th Cir. 1984) (affirming the denial of a *Faretta* request when defendant walked out of hearing); *United States v. Brock*, 159 F.3d 1077 (7th Cir. 1998) (similar).

Beane's conduct was even more extreme than that of the defendant in *United States v. Jackson*, and the court below should have similarly deferred its ruling, at a minimum. During his *Faretta* hearing on August 29, 2017, Beane initially refused to take the standard oath to tell the truth. When asked by the courtroom deputy to affirm that he would tell the truth during his *Faretta* hearing, Beane responded: "No. Standing due identification correction, I am source of all that is, original, nunc pro tunc, praeterea, pre terea, and I do swear to speak only true, accurate, and complete." *Faretta* Hearing, R. 40, Page ID # 1912. Magistrate Shirley was quick to describe Beane's statement as "nonsense." *Id.*

The bizarre exchange between Beane and Magistrate Shirley that took place immediately after his refusal to take the oath is further evidence that a competency

hearing was necessary. The trial judge had reasonable cause to believe that the defendant—at various stages in the proceeding—was unable to fully appreciate the nature and consequences of the proceedings against him and to properly defend himself. Although the court noted Beane's highly unusual behavior before and throughout the trial, it failed to inquire into Beane's competency. *Id.* at Page ID # 1911.[5]

The transcript of the hearing reflects that Beane was incapable of answering basic questions posed by the judge. When Magistrate Shirley asked Beane whether he was God, Beane replied, "I am the source of all that is." *Faretta* Hearing, R. 40, at Page ID # 1913. After trying to clarify what Beane meant, Magistrate Shirley asked whether Beane was "the source of the sun and the moon," and Beane replied, for the *eighth* time, with the response: "I am the source of all that is original." *Id.* The court should then have inquired further into Beane's competency and, at the very least, deferred its decision on Beane's request to proceed *pro se*. Instead, the magistrate simply moved forward, as if nothing bizarre had happened.

[5] As the Supreme Court has indicated, "courts [are to] indulge every reasonable presumption against waiver of fundamental constitutional rights." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1983); *see also United States v. Purnett*, 910 F.2d 51, 55 (2d Cir. 1990) (finding that the trial court could not find that a defendant's waiver of counsel was knowing and intelligent when it also questioned defendant's competence, though medical evaluation ultimately showed defendant was competent to stand trial).

3. Beane's Conduct After His *Faretta* Hearing, But Before Trial, Signaled His Incompetence.

The October 18 "Praecipe" hearing offers another example of Beane's demonstrated incompetence to which the court failed to respond. The court noted that Beane subscribed to the theory that, among other things, "the United States is a corporation, which has been foreclosed"; that "the United States government (including the judicial branch) no longer exists" and so the "law . . . no longer exists"; that "the only authority over Beane was that to which he consented"; "that the courts are the functional equivalent of banks; that judges are the bank tellers; [] that the Federal Reserve and Morgan Stanley amortize all indictments"; and that he could cancel the indictment against him by writing "VOID" across each page. Praecipe Report and Recommendation, R. 62, Page ID # 2899. Clearly, Beane lacked a basic understanding of the American legal and political systems.

More than that, Beane lacked an understanding of his own case as presented by his codefendant, Tucci-Jarraf. During the October 18 hearing, "Defendant Beane . . . could not explain the Praecipe to Dismiss" or the "basis for claiming that the Court has no jurisdiction over him," even though that was the only motion under consideration at the hearing and even though his codefendant had already provided an explanation to the court. Motion Hearing, R. 61, Page ID # 2806. The court simply asked Beane to independently restate his position, which his codefendant had also just articulated. However, as the court noted, Beane was

incapable of answering the question. *Id.* at Page ID # 2806. This inability further shows that Beane could not understand the nature and consequences of the proceedings to the extent necessary to defend himself.

Beane's conduct should have put the court on notice that his inability to understand the proceedings went beyond a mere lack of legal expertise. Rather, his lack of basic understanding of the proceedings and his documented and repeated confusion by the court's questions indicate that Beane lacked the requisite competency to represent himself. Trial judges have great power over these proceedings and with great power comes great responsibility. The lower court was responsible for balancing Beane's constitutional rights with other pressing concerns like ensuring a fair administration of justice. At minimum, it should have engaged in a more searching inquiry, like the one this Court upheld in *United States v. Stafford.* 782 F.3d 786, 790 (6th Cir. 2015) (conducting three separate hearings to determine if a defendant could proceed *pro se*); *see also United States v. Berry*, 565 F.3d 385, 387–88 (7th Cir. 2009). Instead, the lower court opted to ignore Beane's demonstrated incompetence and allowed him to proceed even though he could not explain the argument he had endorsed. By doing so, the court abdicated its responsibility to monitor and ensure the competency of the defendant before it.

4. Beane's Conduct During Trial Signaled His Incompetence.

The trial itself also raised numerous red flags about Beane's competence, on which the lower court again failed to act. Beane was consistently confused when asked to respond to the most basic questions throughout the proceedings, and he made delusional statements throughout the trial that had no basis in reality. For example, he described how the government monetized his physical body at his birth and posited that he was entitled to the proceeds. Transcript, R. 159, Page ID # 15982. Beane stated, "The trust is created from the value that we have as a human being, energetically on this planet . . . ." Transcript, R. 165, Page ID # 17006. Beane told the jury that he believed that the value of his trust fund was an "infinite amount of dollars." *Id.* at Page ID # 17022.

Beane also argued in detail that his case involved a massive global conspiracy aimed specifically at him. Closing Arguments, R. 181, Page ID # 18096. At trial, he relied on the argument that this massive conspiracy included General Guanzhong Wang of the People's Liberation Army, Putin, "high level cabinet officials," "the Italian version of Jeff Sessions," Bill Gates, Sr., and "the English [Rothchilds] as well as the Swiss and the French Rothchilds]." Transcript, R. 166, Page ID # 17187. He alleged he was kidnapped on "several occasions" to "keep him quiet." Closing Arguments, R. 181, Page ID # 18089.

Throughout the proceedings, the court referred to Beane's statements as "nonsense" and "fantastical." *Faretta* Hearing, R. 40, Page ID # 1912; Praecipe Report and Recommendation, R. 62, Page ID # 2905. And, as the door closed on his chance to defend his freedom, the trial court did nothing. In the words of criminal law scholar John F. Decker, "[c]onsidering the stakes involved, one must consider the wisdom of permitting persons to enjoy the right to shoot oneself in the foot," particularly when the policy behind the Sixth Amendment is protecting the trial interests of the accused. *The Sixth Amendment Right to Shoot Oneself in the Foot: An Assessment of the Guarantee of Self-Representation Twenty Years After* Faretta, 6 Seton Hall Const. L.J. 483, 520–521 (1996). Beane's case exemplifies that point better than any law review hypothetical ever could.

B. Beane's Self-Representation Was Particularly Inappropriate When His Codefendant And Alleged Coconspirator Was His Former Attorney.

"[P]roceedings must not only be fair, they must appear fair to all who observe them." *Wheat v. United States*, 486 U.S. 153, 160 (1988) (quotation omitted). The criminal prosecution Beane faced fell below the standard of fundamental fairness required in a criminal adjudication. His case was prejudiced by the joinder of his case with Tucci-Jarraf's case. Beane did not move for a severance, which enabled Tucci-Jarraf to influence his case and limit his representation of himself. The trial court allowed this to occur despite its own

admonishment to both defendants that Tucci-Jarraf could not represent Beane. On this record, it would be "blinking reality" to suggest that Tucci-Jarraf was anything but "lead counsel" at this trial.

To be sure, the criminal trials of different defendants may be joined in certain cases. Fed. R. Crim. P. 8(b) (2002). But "[i]f the joinder of offenses or defendants in an indictment, an information, or a consolidation for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires." Fed. R. Crim. P. 14(a) (2002). As a result, a district court should grant a severance "if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

Applying *Zafiro*, a district court within the Fourth Circuit indicated the importance of severance in protecting *pro se* defendants. *United States v. Hickson*, 2011 U.S. Dist. LEXIS 85618 (Md. 2011), *aff'd United States v. Hickson*, 506 F. App'x 227 (4th Cir. 2012). There, two represented defendants–Smith and Gunn–moved to sever *pro se* codefendant Hickson's trial. The district court denied the motion, and the Fourth Circuit affirmed. Hickson had made "the occasional blunder," but the court was "able to minimize any prejudice by appointing standby

counsel," and, unlike the court below in the present case, "diligently polic[ed] Hickson's conduct throughout the trial." *Id.* at 7. Notably, the court concluded that the claims of innocence were not dependent because the codefendants could have pinned responsibility on a previously severed codefendant, Williams. *Id*. at 8 ("To the contrary, had the evidence at trial supported such a theory, the jury could well have believed that all three Defendants were persuaded by the undisputedly charismatic Andrew Williams such that they lacked the requisite intent to defraud.").

Beane's case is different. He and Tucci-Jarraf had no previously severed codefendant to take the blame *in absentia*. Instead, the person upon whom Beane could have pinned responsibility, enabling him to argue that he lacked the requisite intent to defraud, was his current codefendant and *de facto* attorney. But Beane never made a motion to sever. His failure to do so further suggests that he was not competent to represent himself. Though the lower court admonished Tucci-Jarraf not to represent Beane, the trial transcripts show that Tucci-Jarraf and Beane collaborated on their approach to the case.

This should not be surprising to anyone. Beane relied heavily on Tucci-Jarraf's legal advice prior to trial, though she is not an attorney.[6] Tucci-Jarraf held

[6] Tucci-Jarraf stated at trial that she graduated from Gonzaga University School of Law and was at one time licensed to practice law. Transcript, R. 159, Page ID # 16108; Transcript, R. 159, Page ID # 16157. However, it is undisputed that Tucci-

herself out as Beane's lawyer to bank employees and law enforcement officers. Transcript, R. 164, Page ID # 16724; Transcript, R. 166, Page ID # 17093. Tucci-Jarraf also signed documents for the factualized trust as Beane's lawyer and was listed as such on the deed for his motor home. Transcript, R. 164, Page ID # 16730, 16690. Most significantly, Beane's testimony shows that he relied on Tucci-Jarraf's legal advice to determine that the funds he withdrew were his own. *See* Transcript, R. 165, Page ID # 16988–89; Transcript, R. 159, Page ID # 15983–84; Transcript, R. 159, Page ID # 15986–87. In light of Beane's detrimental reliance on Tucci-Jarraf's counsel and the potential for prejudice, the court below would have been justified in severing the trials *sua sponte*, as it has done in other cases. *See*, *e.g.*, *McFarland v. Yukins*, 356 F.3d 688, 701 (6th Cir. 2004) (severing codefendants' trials *sua sponte* in an attempt to avoid a conflict of interest).

Moreover, Beane exhibited a strong loyalty to and trust in Tucci-Jarraf at trial. Beane stated that he was "enamored" with her and felt that he had much to learn from her about this widespread corruption. Transcript, R. 159, Page ID #

Jarraf was not a licensed attorney throughout the time she provided legal counsel to Beane in 2017. Tucci-Jarraf testified that she "cancelled" her bar license on or around March 24, 2011, following her arrest for conduct unrelated to the facts of the present case. Transcript, R. 159, Page ID # 16158. Furthermore, FBI Agent Parker Still testified that on or around July 10, 2017, his office investigated whether Tucci-Jarraf was a licensed attorney and "determined she was not licensed in the state of Tennessee or in the state of Washington." Transcript, R. 162, Page ID # 16298.

15987. She instructed Beane on the alleged corruption of the federal government. And she understood that the funds in the Federal Reserve accounts were "the people's" money. From Beane's perspective, why would Beane seek legal counsel from an attorney without this sort of specialized knowledge? This paradigm created a situation where Beane's most trusted source of counsel throughout his criminal trial was also his codefendant.

Beane's conduct at trial demonstrates detrimental reliance on Tucci-Jarraf. Beane was in a disadvantaged position in this collaboration because of Tucci-Jarraf's legal training. From the start, Beane indicated that he and Tucci-Jarraf collaborated on their defense. Beane stated early in his testimony that "[they] decided last minute [he] was going to go first," which prejudiced Beane since he "thought [he] was going to have a little more time to get ready." Transcript, R. 164, Page ID # 16605.

The court below was aware of the risk that Tucci-Jarraf would attempt to serve as Beane's counsel during their joint criminal case in which antagonistic defenses could be presented against each other. *Faretta* Hearing, R. 40, Page ID # 1922–23. Tellingly, the court sought to remind Beane of his precarious position after Tucci-Jarraf's cross-examination of another witness:

> And remind you, Mr. Beane, as I did at the final pretrial conference, that while you heard Ms. Tucci-Jarraf says she's inquiring of certain matters pertaining to you relevant, she believes, to her defense, that

> you are representing yourself, you face counts above and beyond what Ms. Tucci-Jarraf faces, and potential punishment, depending on the jury's verdict, above and beyond what Ms. Tucci-Jarraf may face. So just keep that in mind, that you are, while the questions she's asking may be relevant to your defense in your mind, you have the right to ask whatever questions you want in terms of representing yourself. In fact, you have a right to object to questions that Ms. Tucci-Jarraf may ask.

Transcript, R. 165, Page ID # 16874. The court's statement shows one example of where it intuited that Mr. Beane was being prejudiced by his codefendant. However, such accommodations, though helpful, do not satisfy the requirements of the court to make sure that a defendant's waiver is knowing and intelligent. *See United States v. Clemons*, 1999 U.S. App. LEXIS 5977, *3 (6th Cir. 1999) (unpublished) ("recogniz[ing] that the district court in this case went to considerable lengths to accommodate" the defendant, but ultimately finding that the waiver was not knowing and intelligent).

The court's attempt to assist Beane in distinguishing his case from Tucci-Jarraf's indicates that the court was worried Beane was not making decisions about the presentation of his case independently. At least one criminal law scholar, Anne Bowen Poulin, argues that such an inability should disqualify a defendant from proceeding *pro se* in order to ensure a fair trial. *Strengthening the Criminal Defendant's Right to Counsel*, 28 Cardozo L. Rev. 1213, 1284 (2006) ("[C]ourt[s] should not permit the defendant to proceed *pro se* unless the defendant has

sufficient decision-making capability to be able to make trial decisions without assistance of counsel . . . .”). Another red flag that should have been considered here as well.

However, no matter what the district judge said and obvious to all, Beane’s reliance on Tucci-Jarraf remained strong. Beane relied on evidence that Tucci-Jarraf unsuccessfully attempted to introduce. Transcript, R. 165, Page ID # 17007. He trusted her knowledge of the Uniform Commercial Code, which he did not pretend to understand. Transcript, R. 159, Page ID # 16095. Beane trusted her legal knowledge of trusts, including for the trust he put in his own name. Transcript, R. 165, Page ID # 17031; Transcript, R. 165, Page ID # 17026. Beane—almost blindly—followed her instructions, going so far as to put a thumbprint with red dye on a document as his “energetic signature.” Transcript, R. 165, Page ID # 17041.

Beane relied on Tucci-Jarraf despite the fact that her conduct at trial tended to prejudice Beane. In her testimony and examination of witnesses, she presented herself as playing a passive, merely supportive role in the scheme and her relationship with Beane, rather than one as his chief advisor and instigator. In one instance, Tucci-Jarraf stated her “actions were based on the actions that were done against Beane, which is why [she] inserted [her]self in.” *Id.* at Page ID # 16873. In Tucci-Jarraf’s cross examination of Beane, she attempted to disassociate

herself from him and highlight areas where she did not counsel him. Transcript, R. 159, Page ID # 16039.

Furthermore, Beane relied on Tucci-Jarraf despite the fact that her testimony had little basis in reality. Tucci-Jarraf claims to be a high-level intelligence official who believes that her conduct, as well as Beane's conduct, were part of a "war." Transcript, R. 166, Page ID # 17111. Referencing that "war," Tucci-Jarraf said in her opening statement that "[Tucci-Jarraf's] actions [] were taken in July [2017] to be able to mitigate, if not terminate, that particular threat against the people in America, as well as around the world. And it was in connection with a threat that was being made against the president of the United States, Donald Trump." Transcript, R. 159, Page ID # 16104. Tucci-Jarraf also stated that the present case eventually brought her to Texas to "deal[] with the Bush family" because the "unlawful" interaction between the FBI and Beane indicated that "the highest levels [of the] military" were involved. Transcript, R. 166, Page ID # 17185. When Tucci-Jarraf stated that she believed her orders in this "cleanup" came from Commander Thorak, the government was quick to point out that he is a fictional character from World of Warcraft. Transcript, R. 166, Page ID # 17186.

Notably, Tucci-Jarraf argued throughout trial that there was a meaningful distinction between representing oneself as an "attorney" and representing oneself as a "lawyer," arguing that "many people don't know the difference between

lawyer and attorney." Transcript, R. 159, Page ID # 16225. Tucci-Jarraf suggested an "attorney" must pass the bar and be licensed, while a "lawyer" can be unlicensed: "[The Department of Justice] never had licensed bar *attorneys* in there. They were just always *lawyers*." *Id.* at Page ID # 16146 (emphasis added). Tucci-Jarraf stated at trial that she was Beane's "lawyer" throughout the underlying transactions. Tucci-Jarraf made every attempt to show that she did not act as an "attorney," in order to justify her actions, but admitted at trial that even she had described herself as Beane's "attorney" in some instances. *Id.* at Page ID # 16052.

It should be noted that Beane adopted Tucci-Jarraf's odd distinction between lawyers and attorneys. During the government's questioning of Beane about a trust account, Beane made sure to emphasize, "I'm not a *lawyer* or an *attorney*," using the same distinction Tucci-Jarraf employed. Transcript, R. 165, Page ID # 17003 (emphasis added). Beane's reliance on Tucci-Jarraf—for this distinction, her detailed theories about the Federal Reserve and other corruption in the United States, and her legal advice—demonstrates Beane's incompetence to represent himself. The lower court had many opportunities to either inquire further into his fitness or find him unfit to do so; the court did neither.

When two criminal codefendants proceed *pro se*, fundamental fairness cannot be protected merely by the standard for competency to represent oneself. In

waiving the right to counsel, defendants may assume great risk, but they assume it individually and should not be placed at the mercy of their codefendants. Because Beane's and Tucci-Jarraf's cases were not severed but Beane was permitted to represent himself and proceed *pro se*, Beane's due process rights were violated. Accordingly, the district court erred either in allowing Beane to represent himself and proceed *pro se* during the proceedings below or in failing to sever the trials of Beane and Tucci-Jarraf *sua sponte*.

CONCLUSION

This is a deeply troubling case. As Justice Jackson noted long ago, "[a] codefendant in a conspiracy case occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody. It is difficult for the individual to make his own case stand on its own merits in the minds of jurors who are ready to believe that birds of a feather are flocked together." *Krulewitch v. United States*, 336 U.S. 440, 454 (1949)(Jackson, J., concurring). Now imagine that individual in that same "uneasy seat" without a lawyer because he is proceeding pro se, despite a plethora of reasons for questioning whether he is competent to do so. And finally imagine that the individual's codefendant, whom he "trust[ed]" and was "enamored" with, Transcript, R. 159 Page ID ## 17031 & 15987, is proceeding pro se right alongside of him despite potential competence issues of her own. What is a jury to make of such a three-ring circus? Guilty as charged, just as here.

For unknown reasons, the court below did the minimal amount of work necessary to inquire into Beane's competence to represent himself at trial. Magistrate Shirley's efforts in that regard were comprised almost entirely of asking Beane the prescribed fifteen questions to determine that his waiver of the right to counsel was knowing and voluntary. *See generally* Federal Judiciary Center, *Benchbook for U.S. District Judges*, § 1.02(C) (6th ed. 2013). But competency to represent oneself involves more than just the question of waiver, it also involves the question of ability to do so. Here that ability was called into question at virtually every stage of the proceeding by Beane's strange behavior, beliefs and questions, but neither judge followed up on those "red flags." It is, quite frankly, hard to imagine any judge allowing a defendant who claims to be "the source of all that is" to represent himself at trial. But here two judges did just that. There is no warrant for such a result.

Beane's difficulties at trial were also compounded by the fact that his codefendant Tucci-Jarraf was tried with him and was also proceeding pro se. To the best of our knowledge, this fact pattern appears to present a question of first impression. Our research has not uncovered any other case where two conspiracy co-defendants have been tried together with each proceeding pro se. Of course, if Beane was represented by counsel, he could have filed a motion for severance to alleviate the difficulties caused by this aspect of his situation below. But with no

legal training, Beane himself never did so. As the Supreme Court made clear in *Zafiro*, "The risk of prejudice will vary with the facts in each case, and district courts may find prejudice in situations not discussed here." 506 U.S. at 539. This is one of those situations.

Any impartial reading of this record can only leave one to wonder why Beane was deemed competent to represent himself, why Tucci-Jarraf was deemed competent to represent herself, and why they were allowed to do so together in a joint jury trial? Trial court judges have a duty to protect the rights of individual criminal defendants and to ensure the fair administration of justice. They failed to do so here. As a result, Beane's convictions should be reversed and his case should be remanded to the district court for further proceedings.

Respectfully submitted,

_____/s/_____

Stephen L. Braga (Counsel of Record)
Sarah Crandall (Third Year Law Student)
Brian Diliberto (Third Year Law Student)
Elizabeth Joynes (Third Year Law Student)
Amanda Lineberry (Third Year Law Student)
UNIVERSITY OF VIRGINIA
SCHOOL OF LAW
Appellate Litigation Clinic
580 Massie Road, SL-251
Charlottesville, VA 22903-1789
(434) 924-3825
stevebraga@virginia.edu

CERTIFICATE OF COMPLIANCE

1. This brief complies with the word limit set forth in Fed. R. App. P. 32(a)(7)(B)(i) because, according to the word-count feature of Microsoft Office Word, it contains 10,347 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Times New Roman 14 point font.

Respectfully submitted,

/s/ Stephen L. Braga

Counsel for Appellant Randall Keith Beane

Dated: December 5, 2018

CERTIFICATE OF SERVICE

I certify that I electronically filed this Brief of Appellant Randall Keith Beane with the Clerk of the Court using the CM/ECF system, which sent electronic notification to the counsel of record.

Respectfully submitted,

/s/ Stephen L. Braga

Counsel for Appellant Randall Keith Beane

Dated: December 5, 2018

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to Sixth Circuit Rule 30(g), Appellant hereby designates the following filings in the District Court as relevant documents:

DOCUMENTS

Record Entry Number	Description Of Entry	Date Document Entered	Page ID # Range
3	Indictment	7/18/2017	3–10
20	Motion to Review the Attorney/Client Relationship	8/14/2017	649
26	Minutes	8/24/2017	967
37	Memorandum and Order	8/31/2017	1806–09
42	Supplement	9/26/2017	1943–46
45	Request for Due Identification and Verification of Authority and Jurisdiction	10/2/2017	2083
47	"Praecipe"	10/13/2017	2102
50	Original Instrument Cancelled Truebill	10/16/2017	2118
51	Original Instrument Rejected Without Dishonor	10/16/2017	2125
62	Praecipe Report and Recommendation	11/16/2017	2899–2905
78	Motion in Limine to Prohibit Jurisdictional Argument	1/5/2018	3041
90	Order Striking the Praecipe from the Record	1/19/2018	3204
228	Judgment	7/25/2018	18763
230	Notice of Appeal	7/25/2018	18780

TRANSCRIPTS

Record Entry Number	Description Of Entry	Date Document Entered	Page ID # Range
40	*Faretta* Hearing Transcript	9/6/2017	1911–24
61	Praecipe Hearing Transcript	11/2/2017	2806–92
159	Trial V of VIII Transcript	3/30/2018	15598–16225
162	Trial I of VIII Transcript	4/20/2018	16298–16346
164	Trial III of VIII Transcript	4/20/2018	16605–16730
165	Trial IV of VIII Transcript	4/20/2018	16874–17041
166	Trial VI of VIII Transcript	4/20/2018	17093–17187
168	Trial VIII of VIII Transcript		17380–17382
181	Closing Argument Transcript	5/17/2018	18080–18096