

CASE NO. 18-5752

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA, Appellee,

- vs -

HEATHER ANN TUCCI-JARRAF, Appellant.

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

OPENING BRIEF OF APPELLANT HEATHER ANN TUCCI-JARRAF

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to FRAP 34(a)(1) and 6th Cir. R. 34(a), the appellant in this case, Heather Ann Tucci-Jarraf, requests oral argument. More than most other cases, this case needs oral argument.

The Court has already indicated that it intends to consolidate for purposes of the government's opposition brief this appeal with Case No. 18-5777. [R. 14, Ruling Letter, 10/18/18, from *United States v. Beane*, Case No. 18-5777] This second appeal involves Ms. Tucci-Jarraf's co-defendant, Randall Keith Beane. Both Ms. Tucci-Jarraf and Mr. Beane represented themselves before, during and after the trial in the lower court. Consequently, neither has had counsel speak on his or her behalf. Although the issues in both cases are not numerous, they deserve a full airing now with the benefit of counsel addressing the relevant law applicable to the facts in the record below.

This case involved a seven-day trial, now contained in eight volumes of transcripts. Additional volumes of transcripts contain pretrial proceedings plus the sentencing hearing, which this appeal also addresses. The filings in the lower court are also voluminous. Oral argument will provide counsel and the Court with a valuable opportunity to review this voluminous record and to distill from it the issues and facts that matter for purposes of adjudicating this appeal—from what is oftentimes a disorganized set of arguments typical of a situation where defendants

decide to represent themselves. As shown below, though, this appeal raises more than just concerns about self-representation. The analyses and voices of counsel, in written as well as oral argument, will help to focus and decipher this record, and ultimately assist the Court in doing the same. In sum, oral argument will be beneficial to the parties and the Court alike.

JURISDICTIONAL STATEMENT

The United States District Court for the Eastern District of Tennessee had original jurisdiction over this case pursuant to 18 U.S.C. § 3231, which gives district courts original and exclusive jurisdiction over federal crimes and subsequent violations of federal sentences. Heather Ann Tucci-Jarraf appeals as a matter of right the judgment entered against her on July 17, 2018 [R. 216, Judgment and Commitment Order, 07/19/18, PageID# 18599], the conviction adjudged against her on February 1, 2018 [R. 117, Minute Entry, 02/01/18, PageID# 3491; R. 119, Jury Verdict, 02/01/18, PageID# 3497], and various orders entered against her in the pretrial, trial, and post-trial phases of her case. 28 U.S.C. § 1291; 18 U.S.C. § 3742. Ms. Tucci-Jarraf filed a timely notice of appeal on July 19, 2018. [R. 218, Notice of Appeal, 07/19/18, Page ID# 18609] The judgment entered against her disposed of all claims, and was a final decision of the lower court. The Court thus has jurisdiction over Ms. Tucci-Jarraf's appeal pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

- I. Whether the lower court erred by failing to hold a competency hearing to determine if a defendant was competent to stand trial where the record below is replete with evidence to raise substantial doubt as to that defendant's competency.
- II. Whether the lower court erred by allowing a defendant to represent herself where, from the beginning of the proceedings to the end, the record accumulated significant evidence to raise substantial doubt as to that defendant's competency.
- III. Whether the lower court erred by applying the two-level enhancement under U.S.S.G. § 3B1.3 because the defendant was previously a licensed lawyer, even though her skills did nothing to facilitate the commission or concealment of the offense and most likely had the opposite effect.

STATEMENT OF THE CASE

On July 18, 2017, the government charged Ms. Tucci-Jarraf with one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). [R. 3, Indictment, 07/18/17, Page ID# 8] The government also charged her co-defendant, Randall Keith Beane, with six substantive counts of money laundering in addition to the conspiracy count. The alleged conduct involved Mr. Beane's efforts to procure certificates of deposit through unlawful online means, then cash those CDs to pay off credit card debt, insurance bills, and the like as well as to purchase a motor coach valued at almost a half million dollars. The primary bank involved was an online financial institution known as the United Services Automobile Association.

Law enforcement officers arrested Ms. Tucci-Jarraf in Washington, D.C. Shortly thereafter, she appeared before a United States magistrate judge where she asked to represent herself. At first, the court accepted her waiver, but reversed that decision moments later. [R. 174-1, Removal Hrg. Tr., 08/04/17, PageID# 17803, 17809] When she appeared in Knoxville, Tennessee, the United States magistrate judge revisited the issue of pro se representation. The court found that Ms. Tucci-Jarraf had waived her right to counsel, and appointed elbow counsel with very limited responsibilities. [R. 39, Detention Hrg. Tr., 08/29/17, PageID# 1840-41]

That arrangement remained throughout the rest of the proceedings. No competency hearing was ever held.

From the start, Ms. Tucci-Jarraf challenged the court's jurisdiction along with other aspects of the case. She did so by filing a rash of documents that for the most part contained nonsensical ramblings. [R. 18, Orig. Due Decl., 08/08/17, PageID# 119-403] The rambling nature of these documents matched the rambling nature of many of her in-court statements. After a hearing, the lower court denied the motion to dismiss, and later made the underlying documents subject to an in limine order. [R. 62, Report and Recommendation, 11/16/17, PageID# 2895-2910; R. 69, Memo. Op. and Order, 12/05/17, PageID# 2998-3002; R. 90, Memo. Op. and Order, 01/19/18; PageID# 3204-3211]

Trial began in the case on January 23, 2018 and continued through January 31, 2018. The following day, the jury convicted Ms. Tucci-Jarraf along with Mr. Beane on all counts. [R. 119, Jury Verdict, 02/01/18, PageID# 3493-97] On July 17, 2018, the lower court sentenced Ms. Tucci-Jarraf to 57 months in prison and two years of supervised release to follow with no fine or restitution. [R. 216, Judgment and Commitment Order, 07/19/18, PageID# 18599-18604] This timely appeal followed. [R. 218, Notice of Appeal, 07/19/17, Page ID# 18609]

SUMMARY OF THE ARGUMENT

This appeals addresses the importance of 18 U.S.C. § 4241. This statute empowers the lower court on its own motion or on a motion by the prosecution or defense to hold a hearing to determine the mental competency of the defendant. This statute was never mentioned in the record below. It should have been.

Section (a) of this statute provides that the lower court “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.” By failing to hold this hearing, the lower court abused its discretion and committed plain error, thus requiring the conviction against Ms. Tucci-Jarraf to be vacated and this case remanded for further proceedings.

For similar reasons, the lower court committed error by allowing Ms. Tucci-Jarraf to represent herself in the proceedings below. The record is replete with evidence and red flags regarding her competency both to stand trial and to represent herself. To have allowed her to proceed pro se, along with her co-defendant who also represented himself, was contrary to the prerogative, indeed duty the lower court has to inquire into a defendant’s competency whenever there is reasonable cause to believe the defendant is incompetent to stand trial.

The lower court also erred by applying a two-level enhancement under U.S.S.G. § 3B1.3 to Ms. Tucci-Jarraf's guideline offense level. The enhancement requires that she significantly facilitated the commission or concealment of the conspiracy due to her special legal skills. This conclusion is contrary to the trial testimony of victim representatives. In fact, Ms. Tucci-Jarraf's involvement through the preparation of purported legal documents more likely had just the opposite effect—providing instead a reason to question the transactions given the “frivolous” nature of the documents, as the lower court itself described them.

The task of dealing with and simply understanding mental illness in all its permutations is challenging for everyone involved. That reality does not change in the criminal justice system, which demands that constitutionally guaranteed due process protections never weaken or fail in the face of that challenging task. To ensure those guarantees, remand is the appropriate remedy here.

ARGUMENT

I. The lower court committed reversible error by failing to order a competency hearing for Ms. Tucci-Jarraf.

A. Standard of Review

A district court's decision not to conduct a competency hearing is reviewed for abuse of discretion. *United States v. Heard*, 762 F.3d 538, 541 (6th Cir. 2014). When a defendant fails to raise the issue below and the lower court does not order a hearing *sua sponte*, the Court has used both abuse of discretion and plain error as standards of review. *United States v. Dubrule*, 822 F.3d 866, 879 (6th Cir.), *cert. denied*, ___ U.S. ___, 137 S. Ct. 252 (2016); *United States v. Coleman*, 871 F.3d 470, 474 (6th Cir. 2017); *United States v. Alfadhili*, Case No. 18-1266, slip op., 2019 WL 386952, at *3 (6th Cir. Jan. 30, 2019). An abuse of discretion requires a “definite and firm conviction that the trial court committed a clear error of judgment.” *Garner v. Cuyahoga Cty. Juvenile Court*, 554 F.3d 624, 634 (6th Cir. 2009) (quotation omitted). Plain error is an even more deferential standard of review, requiring an error that is “clear” or “obvious,” *United States v. Webb*, 403 F.3d 373, 381 (6th Cir. 2005), or a “clear error of judgment.” *Dubrule, id.* Plain error requires a showing that an error occurred in the lower court, the error was obvious or clear, the error affected defendant's substantial rights, and this adverse impact seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* (quoting

United States v. Gardiner, 463 F.3d 445, 459 (6th Cir. 2006), and *United States v. Emuegbunam*, 268 F.3d 377, 406 (6th Cir. 2001)).

B. Argument

The first two sections of 18 U.S.C. § 4241 provide the fundamental law for defining a district court's obligation to order a competency hearing for a defendant in a criminal case.

a) Motion To Determine Competency of Defendant. — At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, or at any time after the commencement of probation or supervised release and prior to the completion of the sentence, 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.

(b) Psychiatric or Psychological Examination and Report. — Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

18 U.S.C. § 4241(a), (b). As noted above, neither provision was discussed at all in this case.

The reasonable cause requirement has eluded strict definition. “While there is no exact definition of ‘reasonable cause’ within this context, the Supreme Court has held that any significant doubt as to the defendant’s competency requires a psychiatric or psychological evaluation.” *United States v. McGraw*, Case No. 3:05-CR-127, slip op., 2006 WL 3254515, at *1 (E.D. Tenn. Nov. 9, 2006) (citing *Pate v. Robinson*, 383 U.S. 375, 385 (1966)). “When evidence raises ‘sufficient doubt’ about the defendant’s competency, the lack of an adequate competency hearing is a violation of due process.” *United States v. Alfadhili*, *supra*, 2019 WL 386952, at *2 (quoting *Pate v. Robinson*, *supra*, 383 U.S. at 387).

Similarly vexing has been the task of defining clearly what it means to “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.” A panel of the Court last week held that “a defendant is not competent if ‘he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense.’” *United States v. Alfadhili*, *supra*, 2019 WL 386952, at *2 (quoting *Godinez v. Moran*, 509 U.S. 389, 396 (1993), and *Drope v. Missouri*, 420 U.S. 162, 171 (1975)). “[T]he bar for incompetency is high: a criminal defendant must lack either a ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ or ‘a rational as well as

factual understanding of the proceedings against him.” *United States v. Miller*, 531 F.3d 340, 350 (6th Cir. 2009) (quoting *Drope, supra*, 420 U.S. at 172). *See also United States v. Coleman, supra*, 871 F.3d at 475 (applying same standard).

Because Ms. Tucci-Jarraf represented herself at trial and at her sentencing hearing, the portion of the standard dealing with the ability to consult with counsel is not germane here. Rather, our focus needs to be on whether the lower court has sufficient doubt about whether Ms. Tucci-Jarraf had a rational as well as a factual understanding of the proceedings against her. Stated another way, the inquiry is whether Ms. Tucci-Jarraf had the capacity to understand the nature and object of the proceedings against her.

A further inquiry might ask whether Ms. Tucci-Jarraf had the capacity to prepare her defense. There was nothing to assist at in this regard. She was, after all, her own lawyer preparing the entirety of her own defense. Section II of this brief addresses this inquiry.

“In determining whether a defendant is competent, a court should consider evidence of irrational behavior, the defendant’s demeanor at trial, and any prior medical opinion concerning competence to stand trial.” *Coleman, id.* (citing *Miller, supra*, 531 F.3d at 348, and *Drope, supra*, 420 U.S. at 180). But this tightly worded standard also defies simple application, especially in a case such as this one where no prior medical opinions were made available for consideration, because neither

the lower court nor the prosecutor ever voiced the need to hold a competency hearing.

A review of law from the Supreme Court and this Circuit suggests a more nuanced approach when determining whether a defendant is possibly incompetent so as to require a hearing.

The import of our decision in *Pate v. Robinson* is that evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors standing alone may, in some circumstances, be sufficient. There are, of course, no fixed or immutable signs which invariably indicate the need for further inquiry to determine fitness to proceed; the question is often a difficult one in which a wide range of manifestations and subtle nuances are implicated. That they are difficult to evaluate is suggested by the varying opinions trained psychiatrists can entertain on the same facts.

Drope v. Missouri, supra, 420 U.S. at 180. A panel of the Court in *United States v. Dubrule, supra*, 822 F.3d at 879, followed this same multi-faceted analysis, noting that the lower court has not only the prerogative, but the duty, to inquire into a defendant's competency whenever there is reasonable cause to believe the defendant is incompetent to stand trial. The requirement of an ongoing duty to keep a watchful eye on defendant's competency similarly has its origins in law from both the Supreme Court and this Circuit.

The district court's prerogative to consider the issue is in no way dependent upon the tactical decisions of the parties. Indeed, under the federal statute, the district court has not only the

prerogative, but the duty, to inquire into a defendant's competency whenever there is "reasonable cause to believe" that the defendant is incompetent to stand trial. Likewise, failure to order a hearing when the evidence raises a sufficient doubt as to a defendant's competence to stand trial deprives a defendant of due process of law.

United States v. White, 887 F.2d 705, 709 (6th Cir. 1989) (per curiam) (citing *Pate v. Robinson*, *supra*, 383 U.S. at 385, *Pate v. Smith*, 637 F.2d 1068, 1071 (6th Cir. 1981), and *Noble v. Black*, 539 F.2d 586 (6th Cir. 1976)). *See also Cooper v. Oklahoma*, 517 U.S. 348 (1996) (holding that an Oklahoma law violated due process by presuming a defendant is competent to stand trial unless he proves incompetence by clear and convincing evidence rather than by a preponderance of the evidence); *Medina v. California*, 505 U.S. 437, 446 (1992) (recognizing that the rule that a criminal defendant who is incompetent should not be required to stand trial has deep roots in our common-law heritage).

Justifiably so, the law places great emphasis on the importance of ensuring the defendant is competent throughout the entire proceedings.

Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so. *Drope v. Missouri*, 420 U.S. 162, 171-172 . . . (1975).

Riggins v. Nevada, 504 U.S. 127, 139-140 (1992) (opinion of Kennedy, J., concurring in judgment). "Indeed, the right not to stand trial while incompetent is

sufficiently important to merit protection even if the defendant has failed to make a timely request for a competency determination.” *Cooper v. Oklahoma, supra*, 517 U.S. at 354 n.4 (citing *Pate v. Robinson, supra*, 383 U.S. at 384)

The most recent pronouncement from a panel of the Court acknowledged this difficulty in application, and reiterated what the Supreme Court instructed about this standard over four decades in *Drope v. Missouri*. “The question of whether further inquiry into competency is required is ‘often a difficult one in which a wide range of manifestations and subtle nuances are implicated.’” *United States v. Alfadhili, supra*, 2019 WL 386952, at *2 (quoting *Drope*, 420 U.S. at 180).

In *Alfadhili*, the Court identified a number of factors to look at when assessing whether the law requires further inquiry into competency: a defendant’s ability to participate in court proceedings by giving coherent responses to questions from the court; the ability to read and understand such things as a plea agreement, cooperate with defense counsel, engage with legal arguments, and recall past statements and events; statements by a defendant or defense counsel affirming the defendant’s competency; the ability to commit a complex crime or engage in a skilled occupation, which can be evidence of competency; and a history of mental illness, though it, like the other factors, is not dispositive. *Alfadhili, supra*, 2019 WL 386952, at *2-3.

This is not a case simply of fringe ideas—though no doubt many of Ms. Tucci-Jarraf’s ideas are far removed from reality. This is not a case of a person entangling

herself in criminal activity with the hidden aim of benefitting from that entanglement—though some would wish that were so, since that situation would be easier to understand. This is not a case of a shifting, fraudulent philosophy that vacillates to best match the person’s best self-interest—though that is often true in cases prosecuting tax protestors, sovereign citizens, and their ilk.

Rather, this case reflects what mental illness really is: an intractable, persistent, difficult to understand condition that often defies a tidy definition yet begs for a solution many caregivers are willing to provide—only to have the person who desperately needs that solution rebuff it.

From the very outset of the lower court proceedings which began in the United States District Court for the District of Columbia following Ms. Tucci-Jarraf’s arrest in that district, Ms. Tucci-Jarraf’s statements and participation were incoherent and bizarre. For example, at the initial removal proceeding on August 4, 2017 when the United States magistrate judge attempted to discern whether Ms. Tucci-Jarraf had in fact decided to represent herself, this dialogue took place:

THE COURT: Whose decision is it for you to represent yourself?

THE DEFENDANT: My decision to present and represent self is solely my decision. It is my sole authority and my sole determination.

THE COURT: Has anyone forced you to make such a decision?

THE DEFENDANT: I’m not sure where that question is coming from. There’s no facts or data entered into any record that I would be forced to move forward as myself. As I stated,

these filings here, if you had read them you would see clearly that I am competent and conscious to make these decisions, these determinations and that there is a solid proof of record of my competency to move forward and represent and present solely as self pro per.

THE COURT: Did Mr. Bos [assistant federal public defender] speak with you concerning the perils that an individual faces by electing to represent herself or himself?

THE DEFENDANT: Ma'am, my full responsibility, accountability and liability, I am completely aware of the perils of moving forward with a licensed attorney in such a matter. I'm also aware of the ramifications and the consequences of all involved in this process when there is no authority to actually hold these hearings. I'm very conscious and aware of my own responsibility and accountability and liability for every word, thought and action that I take.

[R. 174-1, Removal Hrg. Tr., 08/04/17, PageID# 17800-01]

After more of the same ramblings, the court allowed Ms. Tucci-Jarraf to represent herself—until a minute or so later when Ms. Tucci-Jarraf raised an objection.

THE COURT: Very well. I will hear your objection.

THE DEFENDANT: Thank you, Your Honor. Again as I restate, this Court does not have the authority to even hold this identification hearing, let alone I'd like to clarify and correct the record that I'm not waiving any rights, that I'm stating that there's no authority to even ask me to waive any rights.

As far as Mr. Bos being stand-in, I need no other assistance in presenting or representing as myself.

THE COURT: Very well. Thank you, you may have a seat.

THE DEFENDANT: Thank you.

THE COURT: Perhaps our record has changed. The finding that the Court just articulated was that Ms. Tucci-Jarraf waives counsel. Ms. Tucci-Jarraf has now indicated that she does not waive any right and that being the case, I believe we must proceed with you, Mr. Bos, as counsel and not stand-by counsel.

[R. 174-1, Removal Hrg. Tr., 08/04/17, Page ID# 17804]

The arraignment in Knoxville on August 24, 2017 was not much different. Although she continued to protest the court's jurisdiction over her, Ms. Tucci-Jarraf seemed to be answering questions rather coherently—until one more closely examines what she is actually saying.

THE DEFENDANT: I --

THE COURT: There's a schedule.

THE DEFENDANT: -- do not know, Your Honor. I haven't received any information. I didn't even know we were having an arraignment today. I've arrived just now from Georgia. My teams are actually here, my legal teams, and we just didn't know that there was a hearing today. So we have a court stenographer and everything to come in and make a true and accurate record.

THE COURT: So you are asking the Court to not take any other action today, but to schedule a jurisdiction hearing and initial appearance for you when, next week? When -- how -- when will you be ready for your initial appearance --

THE DEFENDANT: Well, first --

THE COURT: -- to be concluded?

THE DEFENDANT: Yes. First, Mr. Lloyd [elbow counsel] and I would have to come to some agreement, as far as the private consultant and fees and et cetera. So I have to be able to reach my teams. My teams are here. I don't have any -- so I guess I would inquire at this time whether the Court is open to letting me meet with my teams and Mr. Lloyd. That was the biggest issue in D.C. was I didn't have access to Mr. Bos, who is the federal defender --

[R. 60, Arraignment Tr., 08/24/17, PageID# 2786-87] There were in reality no legal teams, no private stenographers, and no private consultants waiting in the wings.

With the next United States magistrate judge to handle the detention hearing, Ms. Tucci-Jarraf's dialogue became even more bizarre, rambling, and out of touch with reality—even with regard to such simple things as an oath.

THE COURTROOM DEPUTY: Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God? If so, please say, "I do."

THE DEFENDANT: I am source of all that is.

THE REPORTER: I'm sorry. I can't hear you.

THE DEFENDANT: I am source of all that is. I swear to speak true, accurate, and complete.

THE COURT: I don't know what that means. I didn't ask you what your source was. We just asked you if you are going to swear or if you're going to affirm that you will tell the truth.

THE DEFENDANT: I just said I swear to speak true, accurate, and complete.

THE COURT: Is that different?

THE DEFENDANT: Yes.

THE COURT: What is it? What's different about that and telling the truth?

THE DEFENDANT: Truth is a matter of perception, whereas speaking true, accurate, and complete gives you a full accurate record.

THE COURT: But it's not necessarily the truth?

THE DEFENDANT: It is the truth. I only speak truth. True, accurate, and complete.

THE COURT: Well, then I ask you, will you affirm to tell the truth?

THE DEFENDANT: I'm not trying to be difficult here. I'm saying that I will speak only true --

THE COURT: You are being difficult.

THE DEFENDANT: -- and complete --

THE COURT: You are being difficult, because I just asked you will you tell the truth.

THE DEFENDANT: I will speak truthfully.

THE COURT: And is that different than telling the truth?

THE DEFENDANT: No, it's the same thing.

THE COURT: Okay.

THE DEFENDANT: The truth -- anyway.

THE COURT: That's good. Telling the truth and speaking truthfully are the same thing.

THE DEFENDANT: The other version means that there is room for perception. There's room for not speaking truth -- true, accurate, and complete. I'm telling you I speak only true, accurate, and complete.

THE COURT: All right. So when you told me you had a JD. Is that truthful?

THE DEFENDANT: It is true and it is truthful.

[R. 39, Detention Hrg. Tr., 08/29/17, PageID# 1829-30]

The dialogue between Ms. Tucci-Jarraf and the court was similarly bizarre and disconnected from reality on the point of whether she was going to represent herself going forward.

THE COURT: All right. You realize, Ms. Tucci-Jarraf, that if you choose to represent yourself, as you're asking, you're on your own. And I mean by that, I can't tell you how to try your case. I can't give you any legal advice or any advice on how to try the case. Do you understand that?

THE DEFENDANT: I am aware of those issues, yes.

THE COURT: Okay.

THE DEFENDANT: I'm aware of what you're stating, and I get that I would be on my own.

THE COURT: Is that different than understanding?

THE DEFENDANT: Yes. I am aware. I am aware of everything that you're speaking to and --

THE COURT: But you don't understand it. Because if you don't understand it, I can't let you represent yourself.

THE DEFENDANT: Okay.

THE COURT: I mean, that's what the rule says, and it's very simple.

THE DEFENDANT: Yes. And I get the implications, and I understand the implications of the word "understand." So I am aware, and I'm agreeing that I'm going to be going forward and doing my own case.

[R. 39, Detention Hrg. Tr., 08/29/17, PageID# 1833] And it continued within the next minute or two.

THE COURT: Okay. So it is still then your desire to represent yourself and give up your right to be represented by an attorney.

THE DEFENDANT: It is my preference. And it is my choice that I'm going to implement to move forward as myself to present as myself and to present this case by my own –

THE COURT: Is it going to be that any descriptive word I use you're going to pick another word?

THE DEFENDANT: You know, after you get -- it's really –

THE COURT: Because I've tried so hard to be –

THE DEFENDANT: I'm just trying to create the record here. That's all. If there's any corrections, I can go ahead and go back and file corrections to anything.

THE COURT: I'm just figuring out if I say, "Is it your desire to represent yourself" –

THE DEFENDANT: It is my desire to move forward --

THE COURT: I'm sorry. I didn't mean to interrupt you.

THE DEFENDANT: I'm sorry. I'm answering questions. I desire to move forward, and I choose to move forward, and I implement that choice now to move forward by myself as myself.

THE COURT: And I'm going to let you. I'm just trying to figure out if I say, as I've said –

THE DEFENDANT: Yeah.

THE COURT: -- to -- I'm sorry.

THE DEFENDANT: Please.

THE COURT: Can I finish?

THE DEFENDANT: No, please.

THE COURT: Thank you. If I say to you, "Do you desire to represent yourself," most everybody I've had before says, "Yes." You won't say yes because you want to change wording. Okay. And what I'm trying to figure out, you say, "I want to make the record," does that mean that the record you're making is of something other than a choice to represent yourself? Because if it is, you need to tell me that now.

THE DEFENDANT: No. I -- Your Honor, my record is just to establish that I am here, I am present, and I am moving forward as myself. Because of the legal standings, I agree that -- excuse me, I acknowledge that you and I disagree as to legal standings between pro se, pro per, sui juris, and all of that. I get that. So I'm just explaining to you that I will be moving forward as myself, not representing myself on behalf -- excuse me, not representing on behalf of myself, but representing or presenting as myself to the Court, speaking truthfully, true, accurate, and complete. So, yes, just to make it easy, yes.

THE COURT: Yeah. Yes. You desire to represent yourself. Yes?

THE DEFENDANT: Yes. I'll go back and correct it later. Yes.

THE COURT: And you give up your right to be represented by an attorney?

THE DEFENDANT: I know that you said not to bring this up, but without prejudice of reservation of the jurisdiction, I will -- which is why I didn't want to address the issue of pro se, pro per, et cetera until after we had done jurisdiction.

THE COURT: Okay. Let's suppose I find jurisdiction --

THE DEFENDANT: Okay.

THE COURT: -- is appropriate here.

THE DEFENDANT: Okay. If -- whether you find it or you don't, the point was, is that there is a difference between me presenting on behalf of myself and me presenting as self, that I am myself. I'm not here on behalf of anyone. I'm not an attorney representing myself as an attorney. I am one and the same. I'm just me. And I'm going to be moving forward.

THE COURT: Every human that comes into this court has a right to represent themselves. You have that same right as every other person. They don't have the right to represent anybody else.

THE DEFENDANT: Uh-huh.

THE COURT: Only a lawyer can do that. And only a lawyer that's properly in this court can do that. So the only person you are representing is yourself.

THE DEFENDANT: And that's just --

THE COURT: That's all I'm asking you.

THE DEFENDANT: And that is a matter of difference in legal status. And I'm just trying to say --

THE COURT: It isn't.

THE DEFENDANT: -- the correct legal status.

THE COURT: That's legal --

THE DEFENDANT: I know you disagree.

THE COURT: That's just legal wrong. It's just mumbo jumbo. It really isn't anything.

THE DEFENDANT: Okay.

THE COURT: Are you giving --

THE DEFENDANT: To answer your question, yes, I will go forward.

THE COURT: All right. And are you giving up your right, waiving your right to be represented by a lawyer? That's a yes or no.

THE DEFENDANT: Without prejudice, yes.

THE COURT: Okay. And is your decision completely voluntary on your part?

THE DEFENDANT: Without prejudice, yes.

THE COURT: All right. All right. I am prepared to find that the defendant has knowingly and voluntarily waived her right to counsel, and I will permit her to represent herself. Do you have any disagreement or objection to that finding, Ms. Davidson?

MS. DAVIDSON [AUSA]: No, Your Honor.

THE COURT: Okay. Any misstatement as far as you understand, Mr. Lloyd?

MR. LLOYD [elbow counsel]: No, Your Honor.

[R. 39, Detention Hrg. Tr., 08/29/17, PageID# 1837-41]

The next hearing on the joint motion to dismiss, held on October 18, 2017, not surprisingly got off on the wrong foot.

THE COURT: Okay. So if I understand right, you contend that you can order this Court to do certain things?

MS. TUCCI-JARRAF: Based on the UCC filings that were supplied to everybody in this room, that is actually a perfected judgment, which was also supplied to -- at the time, Department of Justice had a public integrity, Jack Smith, who -- well, until last month --

THE COURT: I think you're doing what you do in your filings, which is going on and on and not --

MS. TUCCI-JARRAF: I'm giving you the legal basis for actually having the authority to deliver a praecipe.

THE COURT: I will ask you that probably in a minute.

MS. TUCCI-JARRAF: Okay.

THE COURT: That wasn't what I asked you.

MS. TUCCI-JARRAF: Based on my authority --

THE COURT: No.

MS. TUCCI-JARRAF: -- that is in the UCCs --

THE COURT: That wasn't what I asked you.

MS. TUCCI-JARRAF: That is why the praecipe -- I'm not commanding any office in this room, but I am just stating, based on the judgment that was provided to everyone, this is the command of how to move forward.

THE COURT: A praecipe is an order to do certain things.

MS. TUCCI-JARRAF: Correct.

THE COURT: Is it your position that you can order me to do certain things?

MS. TUCCI-JARRAF: It is my position that I have the authority to -- with the filings, this Court does not exist. The positions of the United States of America, United States, the alleged defendant -- or excuse me, the alleged plaintiff in this Court does not exist, and all proof has been provided to show it was foreclosed and terminated. And, therefore, Anne-Marie Svolto [AUSA] -- and, I'm sorry, Cynthia's last name.

MS. DAVIDSON: Davidson.

MS. TUCCI-JARRAF: Davidson. Thank you, Ms. Davidson.

They are here of -- in their own personal responsibility. So there's been no proof to show that it exists or the authority or authorization. So it's not that I'm commanding anybody. If we're in an official capacity, it is that their official capacities do not even exist.

THE COURT: So this is not a motion to dismiss your indictment?

MS. TUCCI-JARRAF: It is not a motion. It's a praecipe -

-

THE COURT: Okay.

MS. TUCCI-JARRAF: -- for dismissal with prejudice based on the authority and UCCs, which are still unrebutted.

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2806-2808]

The dialogue devolved further after Ms. Tucci-Jarraf explained that she had canceled her law license.

MS. TUCCI-JARRAF:

* * * * *

However, when I canceled my bar license and worked with the judges and DOJ at the time, it was the praecipe that -- you have to have standing to be able to do a praecipe. So that's what we have here. My standing has -- and authority has already been supplied to everybody in this room. And that's what this praecipe is.

THE COURT: And when you say you have to have standing to file a praecipe, what's the legal authority for that statement? Where do you find something that says you have to have standing to file a praecipe?

MS. TUCCI-JARRAF: Well, if I'm commanding someone, it's the judgment that I provided you in the UCC. It's a perfected, registered, and duly noticed, and secured judgment that was done five years ago in 2012.

THE COURT: What's the judgment? What's it entitled?

MS. TUCCI-JARRAF: The judgment -- well, the declaration of facts, is that the document that you're referring to?

THE COURT: You prepared a declaration of facts, and you consider that a legal judgment?

MS. TUCCI-JARRAF: No. There was a declaration of facts. In 2012, a foreclosure occurred, not just on the corporation called the United States of America, but also on every single corporation, private corporations, operating under the guise of government. So all of those corporations were actually closed and terminated. And that was with the assistance and the help of those in the Department of Justice, those in the federal and state courts here, as well as internationally.

THE COURT: Do you have a document entitled "Judgment"?

MS. TUCCI-JARRAF: The UCC, under the UCC, there is no -- you don't need a courtroom for a judgment. In fact, most -

THE COURT: I didn't ask about a courtroom. You kept saying that you have a judgment.

MS. TUCCI-JARRAF: It's a perfected judgment. There was no rebuttal of the declaration of facts. And DOJ, as well as the U.S. Secretary of Treasury, the Secretary of Commerce, Secretary of State, everybody was notified, as well as IMF, IRS, Counsel of Privy -- Privy's Counsel, everybody involved, World Bank, United Nations, you have Secret Service. Everybody was involved in that foreclosure back in 2012 and 2013.

THE COURT: All right.

MS. TUCCI-JARRAF: So when it went unrebutted, it's a matter of law at that point. A declaration unrebutted stands as law. And it was entered into the Uniform Commercial Code, which is a notification system, and that is actual due notice. However, there were courtesy copies and courtesy notices, personal service done around the world on top of that.

THE COURT: All right. I've read all that. And not one of those things was what I asked you.

MS. TUCCI-JARRAF: You asked me about my authority.

THE COURT: I did not ask you that. You keep saying that. I've never asked you that.

MS. TUCCI-JARRAF: You asked me if I could command you.

THE COURT: That was way back.

MS. TUCCI-JARRAF: Okay.

THE COURT: If you will actually listen -- if you want to go ahead and finish your speech, I'll listen to it.

MS. TUCCI-JARRAF: No, that's all right. Please --

THE COURT: But whenever you're ready to answer my questions, if you'll just listen to them, most of them are yes or no or very specifically focused.

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2810-2811]

Things never really improved in this hearing in terms of Ms. Tucci-Jarraf's understanding of even what the court's role was.

THE COURT: Okay. So if I understand that right, then anyone could commit a federal crime and we would not be able to prosecute them. Correct?

MS. TUCCI-JARRAF: Again, these are -- all goes to legal advice, which we -- you and I personally agreed I would not go into.

THE COURT: I'm not asking you for your legal advice. I'm asking you, is that part of your position, because I'm trying to figure out how it works. So if it works as to you, and if it works as to everyone --

MS. TUCCI-JARRAF: This court is a bank. It's just a bank teller. Okay?

THE COURT: Okay.

MS. TUCCI-JARRAF: This court operates as a banking function.

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2826]

Even basic questions from the magistrate judge went unanswered or were answered in nonsensical ways.

THE COURT: You understand, don't you, that that cite is just a definitional cite under the Federal Debt Collection Procedure Act, don't you?

MS. TUCCI-JARRAF: I am very aware of the United States being a corporation after working at the highest levels of bank trade and finance, and that it is actually a corporation that had been operating in fraud.

THE COURT: No, ma'am. It is not. And your only reference to it does not even say that, does it?

MS. TUCCI-JARRAF: I would be happy, because this is a bankrupt -- this was a bankrupt corporation. I actually went in and cleaned up the bankruptcy and it was satisfied. So as far as -- this is all banking.

THE COURT: You went in and cleaned --

MS. TUCCI-JARRAF: This is all law.

THE COURT: Okay.

MS. TUCCI-JARRAF: You know, I am completely aware that yourself and others are not aware of the actual current law. I get that.

THE COURT: Well, in your mind, I appreciate that you feel that way. What I'm asking you is, the legal cite that you filed doesn't support what you claim. Correct?

MS. TUCCI-JARRAF: How does it not support? It was a corporation operating under the guise of government and it was a bankrupt corporation.

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2831-32]

The questions from the court were designed to elicit information from Ms. Tucci-Jarraf, but it is hard to imagine the court expected the type of answers it got.

THE COURT: Does your government have judges?

MS. TUCCI-JARRAF: My government doesn't -- I -- right now, I do not have -- subscribe to any corporate government, no.

THE COURT: All right. So just --

MS. TUCCI-JARRAF: However, as far as we're not going to be creating criminals, like we have been, to be able to feed into the prison systems, which are all money based. There are tons of undercover agents that I even met with while I was in there who have been gathering evidence for over the last five years, as well as marshals that were working as marshals while I was there. This is all stuff that's going to be coming out. I completely respect you, Anne-Marie Svolto, and Cynthia Davidson, Mr. Parker Still, Randy Beane, Steve, and Francis, everyone that's in this courtroom, I respect you all. I'm here because I spent the last 20 years working with those inside the industries to clean this up. I'm saying, yes, we can move forward. Yes, we can have court. We can have different systems, but we are not answering to a banking entity, into the banking families. That's what I'm saying. It's slavery via monetary instruments. And that's the fraud that was stopped.

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2833]

The law places on the lower court “not only the prerogative, but the duty, to inquire into a defendant’s competency whenever there is ‘reasonable cause to believe’ that the defendant is incompetent to stand trial.” *White, supra*, 887 F.2d at 709. While this law may be subject to a variety of interpretations and applications, it surely does not include the prerogative of making the defendant feel as if the tribunal is making of fun of her. Yet that is what happened at this hearing.

THE COURT: Have you gone and gotten yours, your 5 billion?

MS. TUCCI-JARRAF: Everything is ledgered over to BIS [Bank of International Settlements]. So, yes -- and I was actually given the -- I was, until I was threatened and said that I could only use mine and a small group of my friends, but they didn’t want the word out to anybody else, because too many people were --

THE COURT: So you’ve gotten yours, but nobody else can get --

MS. TUCCI-JARRAF: No. I rejected everything.

THE COURT: We don’t --

MS. TUCCI-JARRAF: I rejected everything. If everyone is to have access to their accounts, you have accounts --

THE COURT: That was magnanimous of you to give up your 5 billion because everybody else couldn’t get it, huh?

MS. TUCCI-JARRAF: I have much more. These are ledgered accounts. And I know that you are making fun of things right now, but I’m being very, very serious right now. And I spent 20 years of my life to make sure the fraud and slavery stopped.

THE COURT: I was interested to see if there was anything to your argument. And that’s why I asked you the 40 questions before this --

MS. TUCCI-JARRAF: I don’t have argument --

THE COURT: -- because once you --

MS. TUCCI-JARRAF: -- I have declaration.

THE COURT: Once you have no concept of the law in my mind, then all this other stuff has no moment and no merit. I wanted to see if you would agree with the basic principles of law and the statute and the constitution. And if you did, then I would have to say, "Wow, maybe I ought to look at this." But once I heard you say that -- you know, all the things you said, then it pretty well confirmed to me, and here's why. Let me --

MS. TUCCI-JARRAF: I'm sorry. I didn't understand that last piece. Could you please repeat it?

THE COURT: No. Did you -- let me ask you this. Maybe this will help you. Did you study the UCC in law school?

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2852-53] And elsewhere.

THE COURT: I have determined that based on what you've said, that my official and formal appointment from the United States government would not be acceptable to you because you've said it doesn't exist, I don't exist.

MS. TUCCI-JARRAF: If you want to hand it to me and -
-

THE COURT: No.

MS. TUCCI-JARRAF: -- with your signature and everything, I will definitely look at it.

THE COURT: No. I don't have to do that.

MS. TUCCI-JARRAF: I've asked you for that.

THE COURT: I understand that.

MS. TUCCI-JARRAF: You have not provided it to me ever. So I'm asking you for it. And now are you refusing to give it to me?

THE COURT: I don't have it for you, nor do I have any signature from Jeff Sessions, nor his fingerprints, nor his biometric seal.

MS. TUCCI-JARRAF: You asked me earlier, so now you're --

THE COURT: I do not have it.

MS. TUCCI-JARRAF: -- you're making fun of me. I am just saying at this point, I do not have anything from you. I would be more than willing to look at -- I've never seen your appointments. I don't know what Tennessee's looks like. If you

want to hand that to me, that would be great. Anne-Marie Svolto and Cynthia Davidson --

THE REPORTER: I need you to slow down. I cannot type that fast.

MS. TUCCI-JARRAF: I apologize.

THE COURT: When the record -- listen, when the record isn't accurate, in your mind, it will be because you were repeatedly advised to slow down and you wouldn't. I just want that on the record.

MS. TUCCI-JARRAF: I'm not trying to intentionally upset you or to even speak fast, it is just a natural flow for me. So I will consciously make sure that I maintain a pace that you can record. So my apologies for any inconvenience.

[R. 61, Motion to Dismiss Hrg. Tr., 10/18/17, PageID# 2860-61]

After all of this discussion, the lower court denied the motion to dismiss. [R. 62, Report and Recommendation, 11/16/17, PageID# 2895-10; R. 69, Memo. Op. and Order, 12/05/17, PageID# 2998-3002] Neither the report and recommendation nor the order mentioned in any way the defendants' competence, though the report and recommendation held that defendants' claims "[d]efy [c]ommon [s]ense" and that the defendants had a "fantastical legal theory." [R. 62, Report and Recommendation, 11/16/17, PageID# 2903, 2905 n.15]

Voluminous filings made both pre- and post-trial contained the same incomprehensible ramblings about trusts, so-called factualized trusts, corruption within the government "at the highest levels," and ways in which Ms. Tucci-Jarraf had previously worked to clean up that corruption. Her work with trusts was, in her mind, part and parcel of that clean-up.

Ms. Tucci-Jarraf's rambling and seemingly delusional story that she laid out pretrial for the court continued during trial. In her examination of witnesses, she referred to some of her earlier odd filings with the court. For example, in her cross-examination of Lauren Palmisano, Senior Investigator for Whitney Bank, Ms. Tucci-Jarraf asked whether Ms. Palmisano had received a copy of the Paradigm Report and a variety of UCC records. [R. 164, Trial Tr., 01/25/18, Page ID# 16750-53, 16765] In Ms. Tucci-Jarraf's mind, the Paradigm Report and the other attachments were indispensable insofar as they would provide the "further transparency" that would enable Whitney Bank to understand that Randall Beane had not withdrawn the wire from USAA. [R. 164, Trial Tr., 01/25/18, Page ID# 16765]

The Paradigm Report is attached as Annex 21 to the Original Due Declaration of Addendum of Law, Presumption, and Perpetuity; Cancellation of True Bill that Ms. Tucci-Jarraf filed on August 8, 2017. [R. 18, Orig. Due Decl., 08/08/17, PageID# 248-264] It begins with the following:

1. THE PRIVATE-MONEY-FOR-PUBLIC-USE BANKING SYSTEM, THE FEDERAL RESERVE BANK, IS A THREAT TO:

- A) ALL HUMANITY AND ITS INALIENABLE RIGHT AND LIBERTY
- B) STATE AND NATIONAL AMERICAN SECURITY
- C) INTERNATIONAL SECURITY
- D) GLOBAL SECURITY
- E) THE SECURITY OF THE HEAD OF THE PRINCIPALS TO THE FEDERAL RESERVE
- F) COMMERCE: STATE; NATIONAL; INTERNATIONAL; GLOBAL

G) JUSTICE.

[R. 18, Orig. Due Decl., 08/08/17, PageID# 250] To a person with a healthy mental make-up, nothing in the Paradigm Report really makes much sense.

The cross-examination of her co-defendant is more evidence of reasonable cause to make further inquiry of Ms. Tucci-Jarraf's competence to stand trial. For approximately 110 pages of cross-examination, Ms. Tucci-Jarraf questioned Mr. Beane about his conduct for which he was indicted. Her questions elicited detailed information about how Mr. Beane went about obtaining the CDs at issue and buying the RV. In other words, the question and answering effectively convicted her co-defendant. But that question and answering also effectively convicted her, since Ms. Tucci-Jarraf asked Mr. Beane to detail her own involvement, including how she had asked for his help in understanding the computer steps for accessing accounts, her preparation of the trust documents, and her delivery of those documents to Buddy Gregg Motor Homes LLC and Whitney Bank. [R. 159, Trial Tr., 01/29/18, PageID# 15994-95, 16023-24, 16036-40, 16057]

These actions were plainly against Ms. Tucci-Jarraf's self-interest. These were not actions of a person of a sound mind who, even under the minimal standards of the law, was competent to stand trial or to carry out her own defense or even knew what was going on at least sufficiently to understand the consequences of her own actions.

The opening statement Ms. Tucci-Jarraf delivered to the jury touched upon the same themes. In short, nothing changed.

MS. TUCCI-JARRAF: Thank you. Okay. Good afternoon. This case is so much bigger than what anyone knows. You're going to hear evidence that's presented to give you an insight to what some have called a war. I personally call it a cleanup. And you're going to hear that testimony about things that have been going on behind the scenes, and there have been reasons why it's been going on behind the scenes.

Only until recently, until October of last year, you're going to hear that in October of last year, everything changed.

And you're going to hear testimony about not just one man, Randall Keith Beane, but of hundreds of thousands of people; not just here in America, but also people all over the world who were put out to be human fodder within this secret war or cleanup that has been going on since before I was born.

You're also going to be hearing testimony about the actions that were taken in July 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.

[R. 159, Trial Tr., 01/29/18, PageID# 16103-04]

Then for 175 pages of testimony stretched over two days, Ms. Tucci-Jarraf provided direct testimony through her own narrative, touching on how she hob-knobbed with American politicians overseas including Nancy Pelosi, how she worked with the world's biggest banks, how birth certificates are monetized in an elite field of finance, how she was tasked with ferreting out corruption at sources as diverse as NASDAQ and the former Panamanian president, how she traveled the world to meet with the highest levels of finance and government, how she helped

create factualized trusts for every country around the planet—for the most part all illogical and implausible stories. [R. 159, Trial Tr., 01/29/18, PageID# 16121-22, 16131, 16136, 16142, 16165, 16197; R. 166, Trial Tr., 01/30/18, PageID# 17063]

For example:

And so during this time, of course, my whole goal was that things got cleaned up. I really didn't care who was committing what, who was using what. What mattered was that things were cleaned up so that there wouldn't be any problems.

So this is really the start of me just sort of going in and saying everything needed to be transparent. And I changed my own protocols with this job that I took back in 2000 to do the universal cleanup with a number of teams from around the world, and it was the first time I made myself public. But I did it in, I guess, not such a transparent way.

I would not work with anyone. My greatest concern was people getting hurt. So what I did was I put up my own home for this particular part of discovering the mechanics that went all the way through the court systems to -- through the banking systems and then back out on the stock exchanges.

So that house was used, and there were four people involved in deciding which house would be used.

In order for me to control the whole thing -- because I was an attorney at the time, in order to control every aspect as much as possible because there was no way we could decide or even determine what the emotional, the spiritual, or the pressure, because, mind you, when you do a lot of work in the actual field where this fraud is coming from, in my experience, growing up and working was that people are not too happy when they're presented with a fraud within their own organizations, but especially if the public knows what's going on.

[R. 159, Trial Tr., 01/29/18, PageID# 16144-45] In fact, in Ms. Tucci-Jarraf's mind, the trial is not about the guilt or innocence of two people, but rather about a purported

worldwide “clean-up” of corruption in the world of finance to save the American people.

There has been a transparent cleanup that’s going on, and personally in -- my part of the cleanup has been to maintain the communication and the transparency at all levels, even though most people on this planet, to go and talk to them about this stuff, there would be no point of reference except for Hollywood and whatnot.

So that’s why it was so important to have some of the cleanup come out and be visible prior to the moments of this case. And the setup of what this case truly was about was so that those would come out. Okay?

So I’m not going to go through the rest of them, but these particular documents that you have gotten, this is -- this is -- the significant part is that this factualized trust, everything is energetic. We moved everything from biometric securities to energetic securities during the cleanup in 2012.

Actually, March 18th of 2013 is when it was all completely finished. So everything is by energetic signature or moving into that.

[R. 159, Trial Tr., 01/29/18, PageID# 16205] Moreover, Ms. Tucci-Jarraf continued to incriminate herself with meandering and meaningless explanations of why she did what she did.

So as far as July 4th, I put out a Facebook post with the video and all on. And all on was our code for anything having to do with the universal cleanup. But it’s specifically with the terminating the threat that was escalating to imminent against the president of the United States.

So I gave them the -- I posted that video so that everyone could see that, and at that point with the 30 million, I already knew that Randall was going to be a target, but possibly a whole bunch of others.

It’s human fodder. And I worked on the Haiti -- on different -- on the Haiti scenario where the Clinton -- President Clinton

at the time and his foundations, there was tons of money. All these wires went in before the tsunami.

I was involved in all of that particular data after the tsunami happened with cleanups and whatnot, and it was a big coverup. But it was a money theft laundering operation. There was similar things where certain groups and certain persons were put out.

[R. 159, Trial Tr., 01/29/18, PageID# 16214-15] And further.

However, Mr. Beane was fast, escalated to a very serious and grave matter, in my experience. And so I actually issued my own factualized trust and put it on my website, which is where I archived different things that the intelligence agencies, the government, the different branches that are involved in the cleanup, and the bankers that are involved in the cleanup would know to go look at. As long as it's on my website, they know that that's something I've issued and that I'm standing behind.

So I went and issued the same exact factualized trust, but with my identifiers on the same day, approximately about eleven o'clock in the morning, and then had that put on my website.

[R. 166, Trial Tr., 01/30/18, PageID# 17088] And still further.

I did receive a phone call from [FBI Special Agent] Mr. Still. At that point, we were trying to coordinate between the different military intelligence agencies and everyone else that had already been involved in the cleanup since my time in the last 20 years, but also because the Federal Reserve Bank has their own police force, their own force that they use, so there was a lot of details trying not to make this visible.

This is that war that I was talking about that's been going on behind the scenes. It bled out. And, unfortunately, Mr. Beane, in order to protect him and everybody else involved who don't know about what's going on in the financial system and amongst the -- within the government of the world, as well as the agencies, departments, and branches, these are the actions that I took.

These are the actions that I took to be able to assist in ferreting all this out, which has resulted since this particular case has been filed. The indictment has resulted in a lot of things

becoming visible, even yesterday the FBI deputy director resigning in a large part due to this case.

* * * * *

So the -- my particular intent with even involving myself was to be able to create a situation where I would be able to go in and lay an evidentiary trail for law enforcement, corruption, collusion, and ignorance that resulted in crimes against -- not just the American people but also humanity throughout, from July 7th all the way through to today.

And that's what we've been hearing about in this trial.

[R. 166, Trial Tr., 01/30/18, PageID# 17111-12]

Ms. Tucci-Jarraf's closing argument contains the same type of meandering, illogical explanations. [R. 181, Trial Tr., 01/31/18, PageID# 18096-113] Instead of asking for mitigation and a lenient sentence as one might expect, she continued with these kinds of explanations at her sentencing hearing on July 17, 2018.

Throughout this particular case, I have been ridiculed. I have been made fun of by Ms. Davidson, as well as C. Clifford Shirley for essentially what is not just my beliefs but my experiences at the top levels of bank trade and finance globally, as well as in America.

The due declaration of lack of authority and jurisdiction, this was not something to upset everyone. It wasn't a matter of make-believe or fabrication. This was actually the truth of the state of affairs that we are in today.

America was sold out a long time ago, and The Paradigm Report, which was a field report from the investigations that were done to be able to solve the pandemic of financial fraud globally, as well as in the United States -- and I apologize because I'm not sure. It was entered into trial. The Paradigm Report was actually entered into trial. And it goes through not just bank trade and finance and the financial system, but it also went through our judicial because it was piggybacked with judicial, because it's all

interrelated, digital corruption as well as law enforcement corruption.

And then we had to take a look at subversion, collusion with foreign actors and our different branches of government.

This is 20 years of experience in my life and prudent application, prudent investigation in the course of actual titled jobs, as well as professional experience while I was a Bar attorney, but also while not being a Bar attorney of 2011 and onward.

That Paradigm Report was made available to a very few at the highest levels of bank trade and finance, as well as institutional investors, and that was done on March 6, 2011, and you can actually see in the markets the cause was not known at the time publicly, but you can actually see it and piece it together.

[R. 239, 07/17/18, PageID# 18918-21]

A short time later, Ms. Tucci-Jarraf stated, “This case is and was for the purpose -- and I’ve always stated this -- was for the purpose of showing this particular flaw and the corrupt state.” [R. 239, 07/17/18, PageID# 18918-21] And later in the hearing, she claimed, “Those protections were factualized trusts, not just for me, not just for Mr. Beane, but also for everyone in this room, everyone that was involved in this particular operation, because the point was only to expose it and then to correct it, to change it.” [R. 239, 07/17/18, PageID# 18931] These types of claims made no sense at the beginning of the case—or “the operation” to use her terminology. They made no sense at the end.

Only one time during the lower court case did someone question Ms. Tucci-Jarraf’s competence to stand trial. In the rebuttal portion of her closing argument, the lead prosecutor wondered out loud, “And it’s – maybe she’s crazy.” [R. 181,

Trial Tr., 01/31/18, PageID# 18116] She quickly countered her own statement by asserting that both defendants are sane.

The lower court's prerogative, indeed duty, to inquire into a defendant's competency whenever there is "reasonable cause to believe" that the defendant is incompetent to stand trial must mean more than this. "[T]he statute [18 U.S.C. § 4241] in no way limits the court to a single inquiry into a defendant's competency. Indeed, § 4241 contemplates inquiry over a wide period of time . . . and the holding of additional hearings, in light of the court's ultimate duty to search for the truth, is not contrary to the policy of the statute." *United States v. White*, *supra*, 887 F.2d at 709 (citing *United States v. Davis*, 365 F.2d 251, 254-55 (6th Cir. 1966), and *Feguer v. United States*, 302 F.2d 214, 239-40 (8th Cir.), *cert. denied*, 371 U.S. 872 (1962)).

The above examples alone from the trial record raise sufficient doubt about Ms. Tucci-Jarraf's competence to stand trial. The failure to order a competency hearing for her deprived Ms. Tucci-Jarraf of due process of law under the Fifth Amendment of the U.S. Constitution, and requires that her conviction now be vacated.

II. The lower court committed reversible error by allowing Ms. Tucci-Jarraf to represent herself throughout the entire proceedings below.

A. Standard of Review

The Court reviews *de novo* a lower court’s conclusion of law that a defendant has waived her right to counsel. *United States v. McBride*, 362 F.3d 360, 365 (6th Cir. 2004) (citing *United States v. Kimball*, 291 F.3d 726, 730 (11th Cir. 2002), *United States v. Turner*, 287 F.3d 980, 983 (10th Cir. 2002), and *Lopez v. Thompson*, 202 F.3d 1110, 1116 (9th Cir. 2000) (en banc)). It has on occasion applied the plain error standard of review when no objection is made below as to the self-representation. *McBride*, *id.* (citing *United States v. Modena*, 302 F.3d 626, 630–31 (6th Cir. 2002), and *United States v. Herrera–Martinez*, 985 F.2d 298, 301 (6th Cir. 1993)). The Court reviews a lower court’s determination of whether there is reasonable cause to question a defendant’s competence and to grant a competency hearing under an abuse of discretion standard. *United States v. Jones*, 495 F.3d 274, 277 (6th Cir. 2007). Competence itself is a question of fact which the Court reviews for clear error. *United States v. McCarty*, 628 F.3d 284, 294 n.1 (6th Cir. 2010). *United States v. Ross*, 703 F.3d 856, 867 (6th Cir. 2012).

B. Argument

A defendant can waive the right to counsel if the waiver is knowing, voluntary, and intelligent. *Benitez v. United States*, 521 F.3d 625, 630 (6th Cir. 2008) (citations omitted). “A violation of a defendant’s right to counsel at a critical stage is a structural error, and is therefore not subject to an analysis of whether the error was harmless or prejudicial.” *Benitez*, *id.* (citing *United States v. Gonzalez-*

Lopez, 548 U.S. 140 (2006), and *United States v. Barnett*, 398 F.3d 516, 526 (6th Cir. 2005)).

On August 4, 2017, the United States magistrate judge in the district court for the District of Columbia found that Ms. Tucci-Jarraf had waived her right to counsel, and then rescinded that order. [R. 174-1, Removal Hrg. Tr., 08/04/17, PageID# 17803, 17809] On August 29, 2017, the United States magistrate judge in the district court for the Eastern District of Tennessee revisited the issue. The court found that Ms. Tucci-Jarraf had waived her right to counsel, and appointed elbow counsel with very limited responsibilities. [R. 39, Detention Hrg. Tr., 08/29/17, PageID# 1840-41]

As argued in Section I, the lower court committed error by failing to hold a hearing to determine whether Ms. Tucci-Jarraf was competent to stand trial. “The threshold for finding that a defendant may be incompetent to stand trial is lower than the baseline for competency to represent oneself.” *Ross, supra*, 703 F.3d at 869 (citing *Indiana v. Edwards*, 554 U.S. 164, 177-78 (2008)). Because this lower standard was not met, the higher standard for determining competence to represent oneself was also not met. Ms. Tucci-Jarraf joins the additional arguments made by Randall Keith Beane regarding the lower court’s erroneous decision to allow self-representation as such arguments are applicable to her. [R. 16, Opening Brief of Appellant Randall Keith Beane, Case No. 18-5777, PageID# 25]

III. The lower court erred by applying a two-level enhancement pursuant to U.S.S.G. § 3B1.3, since Ms. Tucci-Jarraf did not use her legal skills in a manner that significantly facilitated the commission or concealment of the offense.

A. Standard of Review

The Court reviews the lower court’s factual finding regarding the application of the special skills enhancement of U.S.S.G. § 3B1.3 for clear error. *United States v. Wilson*, 345 F.3d 447, 449 (6th Cir. 2003) (citing *United States v. Lewis*, 156 F.3d 656, 658 (6th Cir. 1998)). The Court reviews the lower court’s legal conclusions regarding the sentencing guidelines *de novo*. *United States v. Volkman*, 797 F.3d 377, 399 (6th Cir.), *cert. denied*, ___ U.S. ___, 136 S. Ct. 348 (2015) (quoting *United States v. Moon*, 513 F.3d 527, 540 (6th Cir. 2008)). Similarly, *de novo* review applies to the lower court’s interpretation of the guideline definition of “special skills.” *United States v. Tatum*, 518 F.3d 369, 372 (6th Cir. 2008) (citing *United States v. Kaminski*, 501 F.3d 655, 665 (6th Cir. 2007), and *United States v. Godman*, 223 F.3d 320, 322 (6th Cir. 2000)).

B. Argument

At sentencing, the lower court enhanced Ms. Tucci-Jarraf’s sentencing guideline calculation by two levels by applying U.S.S.G. § 3B1.3, which reads in relevant part as follows:

Abuse of Position of Trust or Use of Special Skill: If 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, increase by 2 levels.

U.S.S.G. § 3B1.3.

The government sought to apply the special skills portion of this enhancement, because Ms. Tucci-Jarraf represented herself as Mr. Beane's attorney or lawyer (she sees a distinction between the two) on several occasions when communicating with Buddy Gregg Motor Homes LLC and Whitney Bank, assuring them that Mr. Beane's transactions were legitimate. [R. 239, Sentencing Hrg. Tr., 07/17/18, PageID# 18876-79] The government also argued that the enhancement should apply in conjunction with the rescinded purchase of a vehicle from Ted Russell Ford, though this conduct is not specifically alleged in the indictment and was not a part of the probation office's reasoning for this enhancement.

Ms. Tucci-Jarraf's elbow counsel objected to the enhancement, arguing that a person with a law degree, whether practicing law appropriately or not, cannot have for a client the other party to the challenged transaction; and that in any event it would be inappropriate for a dealership or a bank to rely on a lawyer retained by the other party. [R. 239, Sentencing Hrg. Tr., 07/17/18, PageID# 18874, 18876]

Without going into specifics, the lower court overruled the objections to the enhancement, finding that "the defendant utilized her special skill in a manner that significantly facilitated the commission or concealment of the offense." [R. 239 Sentencing Hrg. Tr., 07/17/18, PageID# 18889]

It is impossible to understand how Ms. Tucci-Jarraf's representation as Mr. Beane's lawyer or attorney could have significantly facilitated the commission or concealment of the offense—whether we apply the enhancement as written to Ms. Tucci-Jarraf's offense alone or more broadly to Mr. Beane's offenses as well. As discussed in Section I, Ms. Tucci-Jarraf's nonsensical explanations and documents about so-called factualized trusts facilitated nothing. No bank or vendor would look at the Paradigm Report, for example, and gain any greater level of trust in the legitimacy of the transaction. In fact, the opposite would occur.

Moreover, in the interactions with personnel from Buddy Gregg Motor Homes LLC and Whitney Bank, Ms. Tucci-Jarraf's involvement did not concern the transaction but rather how the motor coach would be titled. Representatives from the vendor and bank explained this in court.

The vendor stated that “Randall Beane owned the motor home the second we got the wire transfer on the 8th,” and took possession “[t]he moment the wire transfer cleared.” [R. 163, Trial Tr., 01/24/17, PageID# 16586-87] This is before Ms. Tucci-Jarraf even got involved with titling issues, which had nothing to do with the vehicle transfer which had already occurred. The conference call in which she participated occurred two days after the purchase had already been finalized. [R. 163, Trial Tr., 01/24/17, PageID# 16589]

The bank representative made clear that the only thing she was looking for was a letter from Mr. Beane—not from anyone else—stating that he had initiated the wire transfer and did not recall it. [R. 164, Trial Tr., 01/25/18, PageID# 16721, 16725, 16736, 16738] In fact, Ms. Tucci-Jarraf’s involvement probably had the opposite impact from the one justifying the enhancement.

Whitney Bank’s representative testified that she had been involved in “hundreds” of financial fraud investigations. [R. 163, Trial Tr., 01/25/17, PageID# 16754] With that level of professional experience, it bends credulity to believe that the purported trust and other documents Ms. Tucci-Jarraf sent the bank investigator would bolster anyone’s confidence in the legitimacy of the transaction. These are, after all, from the same group of documents the lower court made subject to an in limine order because the filings were “frivolous and devoid of intelligible argument.” [R. 90, Memo, Op. and Order, 01/19/18, PageID# 3207] The far better argument here is that Ms. Tucci-Jarraf’s involvement was instead a red flag—contrary to the rationale underlying the guideline enhancement.

CONCLUSION

For the reasons set forth in this brief, Heather Ann Tucci-Jarraf requests this Court vacate her conviction or, in the alternative, vacate her sentence, and remand for further proceedings below.

Respectfully submitted,

/s/ Dennis G. Terez

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February 4, 2019

CERTIFICATION OF COMPLIANCE

I hereby certify that the above brief is comprised of 11,943 words and therefore complies with FRAP 32(a)(7)(B).

/s/ Dennis G. Terez
Attorney for Appellant Heather Ann
Tucci-Jarraf

CERTIFICATION OF SERVICE

I hereby certify that on February 4, 2019, a copy of the foregoing Opening Brief of Appellant Heather Ann Tucci-Jarraf 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.

/s/ Dennis G. Terez
Attorney for Appellant Heather Ann
Tucci-Jarraf

DESIGNATION OF DISTRICT COURT DOCUMENTS

Pursuant to 6th Cir. R. 28(b)(1) and 30(g), appellant Heather Ann Tucci-Jarraf hereby designates the following relevant district and appellate court documents:

Record Entry #	Document Description	PageID#
R. 12	Presentence Investigation Report, filed Aug. 7, 2018	N/A
R. 3	Indictment, July 18, 2017	3-10
R. 18	Original Due Declaration of Addendum of Law, Presumption, and Perpetuity; Cancellation of True Bill, Aug. 8, 2017, PageID# 248-264]	119-403
R. 62	Report and Recommendation re Motion to Dismiss, Nov. 16, 2017	2895-2910
R. 69	Memorandum Opinion and Order re Motion to Dismiss, Dec. 5, 2017	2998-3002
R. 90	Memorandum Opinion and Order re Motion in Limine, Jan. 19, 2018	3204-3211
R. 119	Jury Verdict, Feb. 1, 2018	3493-3497
R. 216	Judgment and Commitment Order, July 19, 2019	18599-18604
R. 218	Notice of Appeal, July 19, 2018	18609

Record Entry #	Hearing Transcripts	PageID#
R. 174-1	Removal Hearing Before Hon. Deborah A. Robinson, Aug. 4, 2017	17788-17925
R. 60	Initial Appearance and Arraignment Before Hon. H. Bruce Guyton, Aug. 24, 2017	2778-2802

R. 39	Detention Hearing Before Hon. C. Clifford Shirley, Jr., Aug. 29, 2017	1817-1905
R. 61	Hearing on Motion to Dismiss Before Hon. C. Clifford Shirley, Jr., Oct. 18, 2017	2803-2894
R. 239	Sentencing Hearing Before Hon. Thomas A. Varlan, July 17, 2018	18859-18967