IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 10-20283-STA**
	)	
TERRENCE YARBROUGH,	)	
a/k/a "T-Rex"	)	
	)	
Defendant.	)	

ORDER GRANTING THE GOVERNMENT'S MOTION FOR *FARETTA* HEARING AND ORDER TERMINATING DEFENDANT'S SELF-REPRESENTATION

Before the Court is the government's Motion for *Faretta* Hearing (D.E. # 107) filed on June 13, 2011. The Court conducted a special report date in this matter on November 10, 2011. For the reasons stated in the Court's bench ruling and the additional reasons set forth below, the government's Motion is **GRANTED**. Accordingly, the Court orders that Defendant's self-representation is terminated and that the Clerk of Court appoint Defendant new counsel from the CJA panel.

BACKGROUND

On January 12, 2011, a superseding indictment charged Defendant Terrence Yarbrough with thirteen counts of sex trafficking in violation 18 U.S.C. § 1591(a) and (b)(1), and one count of conspiring with two other individuals to commit food stamp fraud in violation of 7 U.S.C. § 2024(b). Defendant elected to proceed pro se in this case after the United States Magistrate Judge discharged

Defendant's fifth attorney on May 27, 2011. The government then filed a motion for *Faretta* hearing, clarification on the CJA's application to a pro se defendant, and appointment of stand-by counsel.

The Court conducted an initial *Faretta* hearing on June 20, 2011, in which Defendant was questioned about his competency to represent himself in this matter. In the course of the *Faretta* inquiry, Defendant repeatedly stated to the Court that he did not understand any of the charges in the fourteen-count indictment against him. Based upon Defendant's responses to the Court's questions, the government moved to have a psychiatric evaluation of Defendant. The Court concluded that an evaluation to determine Defendant's ability to comprehend the charges against him, present a defense, and represent himself at trial was necessary to assure that Defendant's rights were protected. On June 22, 2011, the Court entered its written Order Granting the United States's Motion for Pretrial Psychiatric Examination (D.E. # 117).[1] The psychiatric examiner deemed Defendant competent to stand trial, and the Court finds that the case is now ready to proceed.

At the special report date on November 10, 2011, the Court took up the United States's Motion for *Faretta* Hearing and conducted a colloquy with Defendant to assess whether Defendant should be allowed to represent himself for all further proceedings. The Court posed to Defendant the thirteen questions and the "strongly worded admonishment" about self-representation prescribed in the model inquiry set out in the Bench Book for United States District Judges.[2] The Court emphasized to Defendant that parties with representation provided under the Criminal Justice Act

[1] Defendant filed a Notice of Appeal based on this Order. The Sixth Circuit denied Defendant's motion to stay the psychiatric examination, and this Court denied Defendant's motion to reconsider the Order (D.E. # 126).

[2] *United States v. McBride*, 362 F.3d 360, 366 (6th Cir. 2004).

("CJA") are entitled to additional resources for the preparation of their cases. Should Defendant represent himself, Defendant would not be eligible to receive these additional services, hampering his ability to present a defense.[3] The Court further discussed with Defendant that all parties, including those acting pro se, were expected to conform to the highest standards, both in court and out of court, and comply with all court orders and rules. Defendant affirmed that he would so conduct himself. Subsequently, the Court reviewed all fourteen counts of the superseding indictment and asked Defendant whether he understood the charges. Putting aside Defendant's argument that the indictment contained defects, Defendant responded for each count, "I comprehend."

In its argument to the Court, the government cited a number of examples of irregularities in Defendant's conduct, all in support of the contention that Defendant was not competent to represent himself in these proceedings. During his initial *Faretta* hearing, Defendant had maintained that he did not understand the charges in the indictment. The government pointed to a number of motions and other papers Defendant filed with the Court, including an "Affidavit of Judicial Notice,"[4] in which Defendant rejected the Court's jurisdiction and refused to obey its orders. Defendant's filings also cite the Federal Rules of Civil Procedure, the Uniform Commercial Code, and the Supplemental Rules for Admiralty Claims. Not only did Defendant defy the Court's order to cooperate in his own psychiatric evaluation, Defendant refused to accept a copy of the evaluation, once through hand-delivery by the United States Marshall Service and in open court, because Defendant believed the

[3] Defendant objected that the government had produced a volume of discovery in digital format on CD-ROM and requested that the Court order the government to provide hard copies of these materials. The Court denied Defendant's request to have all discovery materials produced on paper.

[4] *See* D.E. # 137, Sept. 26, 2011.

document to be "fraudulent." The government argued that under the circumstances Defendant has demonstrated an intent to hinder the administration of justice. In light of Defendant's continuing conduct, the government asked the Court to terminate Defendant's self-representation, or in the alternative appoint stand-by counsel in the event Defendant's self-representation had to be terminated at a later time.

Defendant was given an opportunity to respond to the government's Motion. Defendant initially focused on his Affidavit of Judicial Notice, arguing that the affidavit was "submitted under the law" and therefore placed the burden on the government to rebut the affidavit point-by-point with evidence. Defendant further demanded that the government "certify the indictment." As for his right to represent himself, Defendant stated that he would not accept appointment of counsel unless the Court could guarantee "conflict-free counsel." Although Defendant informed the Court that the parties "were at a standstill" on the Court's jurisdiction, Defendant stated his willingness to comply with the Court's orders and policies. Defendant also complained that the government's filings in the case had degraded him and that the Court was not impartial enough to recognize this fact.

ANALYSIS

The accused in a criminal case retains the right under the Sixth Amendment to represent himself in the proceedings against him. *Faretta v. California*, 422 U.S. 806, 818-32 (1975). Nevertheless, a defendant does not have "license to abuse the dignity of the courtroom" or refuse "to comply with relevant rules of procedural and substantive law." *Id.* at 834 n.46. Therefore, a trial court has the prerogative to "terminate self-representation by a defendant who deliberately engages in serious and obstructionist conduct." *Id.* The Sixth Circuit has held that where a defendant acting pro se engages in an "unbroken pattern of misconduct both inside and outside of the courtroom," a

district court is not required "to undertake the empty and time-consuming formality of granting his right to self-representation only to revoke it days later." *United States v. Gabrion*, 648 F.3d 307, 332 (6th Cir. 2011). Furthermore, the Sixth Circuit has held that in order to make a valid waiver of the right to counsel, a defendant must convince the Court that he apprehends (1) the nature of the charges against him; (2) the statutory offenses included in them; (3) the range of allowable punishments; (4) possible defenses to the charges and any mitigating circumstances; and (5) all other facts essential to a broad understanding of the whole proceeding. *United States v. Carradine*, 621 F.3d 575, 578-79 (6th Cir. 2010) (citing *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948)).

The Court concluded at the hearing and restates its holding here that Defendant is not competent to represent himself. The Court is not convinced that Defendant apprehends all of these factors to make a valid waiver of his right to counsel. The Court also finds that Defendant has engaged in serious and obstructionist conduct. As a result, the Court is terminating Defendant's self-representation.

First, the Court is not satisfied that Defendant is able to understand the nature of the charges against him. The Court has now examined Defendant on this point on two occasions. During the Court's initial hearing on June 20, 2011, Defendant was adamant that he did not understand any of the allegations of the superseding indictment. During the more recent hearing, Defendant again stated that he did not understand the elements of the charges against him but that he did "comprehend" them. The Court finds that rather than demonstrating his understanding of the nature of the charges, Defendant intentionally chose to be coy and evasive with the Court. The Court also notes that Defendant addressed a letter to the government on October 31, 2011, in which Defendant

purported to reject the superseding indictment pursuant to the terms of the UCC.[5] Defendant attached to the letter a copy of the superseding indictment with the words "VOID AND REFUSED FOR CAUSE" written across the top of the first page. The letter states that Defendant no longer believes that this is a criminal proceeding against him but a lawsuit, presumably a civil matter. Under the circumstances, the Court finds that Defendant has not demonstrated an understanding of the nature of the charges against him.

Second, the Court is satisfied that Defendant understands the statutory offenses and the range of allowable punishments he could face should he be convicted. The Court has explained to Defendant the statutory penalties for the offenses with which he is charged, including the possibility of incarceration, monetary fines and special assessments. Defendant stated to the Court that he understood the range of possible punishments. The Court would hasten to add that Defendant has openly questioned whether the laws of the United States apply to him and whether this Court has jurisdiction to hear his case and enter judgment. Defendant has filed an "Affidavit of Judicial Notice" in which he demands proof of the Court's "contract" with Defendant and denies that "the Constitution of the United States of America appl[ies] to the [Defendant] as well as the laws, polices, and/or statutes of the incorporated government of the United States of America."[6] Defendant goes on to reject the legitimacy of the Court's orders and judgments because the Court has not provided Defendant with a "verified proof of claim." Defendant has even refused to accept correspondence from the Court because Defendant believes the Court's correspondence to be fraudulent, an apparent reference to the Court's lack of jurisdiction. Despite the obvious lack of merit in Defendant's

[5] D.E. # 147-1.

[6] Aff. of Judicial Notice 4-5, Sept. 26, 2011.

position on jurisdiction in this case, the Court is satisfied that Defendant understands the statutory offenses and the potential penalties for violation of these statutes.

Third, the Court finds that in light of Defendant's failure to understand the nature of the charges against him, Defendant will have difficulty in formulating his defense. The government has stated to the Court that the parties have completed discovery. Nevertheless, to date the only possible defense Defendant has espoused involves a conspiracy theory in which the United States Attorney's Office, the FBI special agents assigned to investigate his case, the five attorneys who previously represented Defendant in this matter, and even the members of this Court have all arrayed themselves against him.[7] In his "Affidavit of Judicial Notice," Defendant posits that these parties and others such as the British Accreditation Regency ("BAR") are all bound to protect the interests of the government and assist the government in obtaining his conviction.[8] Because his former counsel was part of this conspiracy, Defendant asks to change his not guilty plea because former counsel coerced him into entering it.[9] Defendant has cast other aspersions on the officers of this Court, accusing the United States Magistrate Judge of being "corrupted" and biased against the Defendant because "he is being falsely accused of sex trafficking white females and minors."[10] In

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[7] Defendant has also sought production of the grand jury transcripts, arguing that the government knowingly presented "perjured information" to the grand jury. *See* D.E. # 102, June 6, 2011. The Court has denied Defendant's request for this information. In other motions, Defendant has requested evidence about the government grant of immunity to any witness (D.E. # 113); copies of witness statements and the criminal records of the alleged victims (D.E. # 122); and background information on FBI special agents assigned to Defendant's case and records concerning his detention in the Eastern District of Missouri (D.E. # 123).

[8] Aff. of Judicial Notice 2.

[9] *Id.* at 7. Defendant does not specify what new plea he would enter.

[10] *See* Def.'s First Mot. to Strike and Sanction, 5 (D.E. # 111), June 20, 2011.

a letter to the government, Defendant stated that the undersigned has committed treason by disclosing to Defendant that the Constitution does not apply to him.[11] In light of these bizarre and largely irrelevant assertions, the Court has serious concerns that Defendant will be able to represent himself and formulate a coherent, meritorious defense.[12]

Finally, the Court finds that Defendant has not demonstrated a grasp of other facts essential to a broad understanding of the whole proceeding against him. Defendant admittedly has no formal legal training and cites inapposite rules of civil procedure and rules for admiralty and forfeiture claims. Defendant has increasingly cited sections of the UCC as the basis for many of his legal theories, such as his rejection of the Court's authority to enter orders and judgment in this case and the legitimacy of the government to bring these charges against him. As already discussed, Defendant has relied on the UCC to "void" the superseding indictment and decline court papers and orders sent via U.S. Mail. The Court finds that Defendant's misplaced reliance on the UCC is part and parcel with his other irregular conduct in this case. Defendant has adopted the practice of signing his papers and correspondence with the following:

> Terrence-Arnett: Yarbrough
> For confusio: Terrence Yarbrough
> UCC §§ 1-308, 3-402(b)
> "Without Prejudice"

At the hearing, Defendant recited a statement that he was the "representative" of Terrence Yarbrough

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[11] D.E. # 147-1.

[12] The government has also argued that a pro se defendant is not entitled to the same resources the CJA provides for a represented defendant. The Court need not reach this issue because the Court is terminating Defendant's self-representation. Assuming that the government's position is correct, however, this is another serious obstacle to Defendant's ability to formulate his defense.

"appearing in propria persona."[13] The Court has already highlighted a number of instances where Defendant has accused the government and the officers of the Court itself of fraud and other misconduct, all without any factual support. In addition to his motion practice, the Court finds that Defendant's courtroom conduct has generally been disruptive. The Court has had to instruct Defendant during his court appearances not to speak over the Court and threatened to have Defendant removed from the courtroom. In response to questions from the Court, Defendant often chooses not to answer the Court's questions directly or to pose questions of his own in an attempt to be argumentative. Based on Defendant's conduct up to this point, the Court does not believe that Defendant apprehends the facts essential to a broad understanding of the whole proceeding against him.

Having determined that Defendant does not fully understand the proceedings against him, the Court concludes that good cause exists to terminate Defendant's self-representation. The Court finds that Defendant has engaged in a pattern of conduct that is inconsistent with the sound administration of justice. In a case where trial is anticipated to last at least two weeks, the better course is to appoint new counsel for Defendant now who will represent Defendant for all further proceedings. This will give new counsel ample time to file pre-trial motions before the January 6, 2012 deadline and prepare for trial, which is set to begin March 26, 2012. The Court's determination about Defendant's inability to represent himself in no way affects the conclusion of the forensic evaluation that Defendant is competent to stand trial. Therefore, the Clerk of Court is directed to

[13] *See also* Aff. of Judicial Notice 1 ("The Alleged Defendant TERRENCE ARNETT YARBROUGH, by its Authorized Representative, Terrence-Arnett: Yarbrough [Terrence Arnett (family of) Yarbrough] (hereinafter Affiant), appearing specially, in propria persona and in Admiralty, pursuant to Fed. R. Civ. P. Supp. E(8), in the original and alternative restricted appearance . . . .").

appoint new counsel for Defendant from the CJA panel.

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
UNITED STATES DISTRICT JUDGE

Date: November 18, 2011.