

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 24-CR-179

RICKY Q. CHAMBERS,

Defendant.

ORDER CLARIFYING ROLE OF STANDBY COUNSEL

Ricky Q. Chambers and seven others are charged with Conspiracy to Distribute and Possession with Intent to Distribute 400 grams or more of Fentanyl. He is also charged with two counts of distributing 40 grams or more of Fentanyl. The case was designated complex, and the parties are in the process of reviewing the voluminous discovery, assessing pre-trial motion practice, and negotiating plea agreements. On January 30, 2025, Mr. Chambers filed a motion to represent himself. Following a thorough hearing on the motion on February 5, 2025, the court granted Mr. Chambers' motion pursuant to *Faretta v. California*, which recognized a defendant's Sixth Amendment right to conduct his own defense. 422 U.S. 806 (1975). The court noted, however, that even though Mr. Chambers was constitutionally entitled to represent himself, standby counsel should be appointed to assist Mr. Chambers in the event he needed or requested such assistance during trial.

Although Mr. Chambers vigorously objected to the appointment of standby counsel, the court nevertheless concluded that standby counsel should be appointed under the court's inherent authority set out in THE GUIDE TO JUDICIARY POLICY, Volume 7, Chapter 2, § 220.55.30(a). That section of the Guide provides:

In circumstances in which standby counsel is appointed under the court's inherent authority, and counsel serves exclusively on behalf of the court to protect the integrity and continuity of the proceedings, and does not represent the defendant, any compensation to be paid counsel must be in the capacity of an "expert or consultant" under 5 U.S.C. § 3109.

Following the hearing, Attorney Thomas E. Hayes was appointed as standby counsel.

In light of Mr. Chambers' objection to his involvement in his defense in any capacity, Attorney Hayes requested clarification from the court as to his responsibilities. The court held a hearing by video conference to address Attorney Hayes' concerns on April 14, 2025. Mr. Chambers, who is being held in custody at the Brown County Jail, refused to attend, and the hearing proceeded in his absence. This order will recount the clarification provided to Attorney Hayes concerning his duties as standby counsel.

In *McKaskle v. Wiggins*, the Court addressed the "role standby counsel who is present at trial over the defendant's objection may play consistent with the protection of the defendant's *Faretta* rights." 465 U.S. 168, 170 (1984). In that case, the defendant objected to the fact that counsel was made available to him during the trial. He abandoned that objection after his conviction, however, and argued on appeal that his right to represent himself "was impaired by the distracting, intrusive, and unsolicited participation of counsel throughout the trial." *Id.* at 176. After exhausting his state court remedies, the defendant filed a petition for federal habeas corpus relief. The district court denied his petition, but the Court of Appeals reversed, holding that "Wiggins' Sixth Amendment right of self-representation was violated by the unsolicited participation of overzealous standby counsel." *Id.* at 173. In so ruling, the Court of Appeals announced a new rule:

[T]he rule that we establish today is that court-appointed standby counsel is "to be seen, but not heard." By this we mean that he is not to compete with the defendant or supersede his defense. Rather, his presence is there for advisory purposes only, to be used or not used as the defendant sees fit.

Id. (quoting *Wiggins v. Estelle*, 691 F.2d 266, 273 (5th Cir. 1982)).

The Supreme Court reversed. The Court first explicitly stated the rule that was implicit in *Faretta*: “A defendant’s Sixth Amendment rights are not violated when a trial judge appoints standby counsel—even over the defendant’s objection—to relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming routine obstacles that stand in the way of the defendant’s achievement of his own clearly indicated goals.” *Id.* at 184. And while the Court also affirmed the right of a *pro se* defendant “to preserve actual control over the case he chooses to present to the jury,” it rejected the rule that any participation by standby counsel violated the defendant’s right of self-representation. *Id.* at 178.

At the same time, the Court recognized that “the right to speak for oneself entails more than the opportunity to add one’s voice to a cacophony of others.” *Id.* at 177. There must be limits on what standby counsel can and should do:

the objectives underlying the right to proceed *pro se* may be undermined by unsolicited and excessively intrusive participation by standby counsel. In proceedings before a jury the defendant may legitimately be concerned that multiple voices “for the defense” will confuse the message the defendant wishes to convey, thus defeating *Faretta*’s objectives. Accordingly, the *Faretta* right must impose some limits on the extent of standby counsel’s unsolicited participation.

Id. (footnote omitted).

The Court thereupon set out two limitations on standby counsel’s role where an accused has chosen to exercise his right to self-representation. “First, the *pro se* defendant is entitled to preserve actual control over the case he chooses to present to the jury.” *Id.* at 178. Calling this “the core of the *Faretta* right,” the Court noted that “[i]f standby counsel’s participation over the defendant’s objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak instead of the defendant on any matter of importance, the *Faretta* right is eroded.” *Id.* The second limitation the

Court established is that “participation by standby counsel without the defendant’s consent should not be allowed to destroy the jury’s perception that the defendant is representing himself.” *Id.* As to this limitation, the Court explained, “[t]he defendant’s appearance in the status of one conducting his own defense is important in a criminal trial, since the right to appear *pro se* exists to affirm the accused’s individual dignity and autonomy.” *Id.* Applying these principles to the facts of the case before it, the Court concluded that while standby counsel’s conduct intruded to some extent on both of these limitations, especially in his conduct before the jury, it was not so egregious as to deprive Wiggins of his Sixth Amendment right to self-representation: “The intrusions by counsel at Wiggins’ trial were simply not substantial or frequent enough to have seriously undermined Wiggins’ appearance before the jury in the status of one representing himself.” *Id.* at 187.

It is important to note what the Court held and did not hold in *Wiggins*. The Court held in *Wiggins*, over a strong dissent, that the trial court’s decision allowing standby counsel to participate at trial over the *pro se* defendant’s objection did not violate the defendant’s right to self-representation under the facts of that case. The Court did not say that such participation by standby counsel is required. To the contrary, the Court expressly noted, “*Faretta* does not require a trial judge to permit ‘hybrid’ representation of the type Wiggins was actually allowed.” *Id.* at 183. The thrust of the Court’s decision, as well as the observations of the dissent, support the conclusion that the better practice is that standby counsel remain silent and take no action unless requested to do so by the defendant. In that way the court can ensure that there is no intrusion upon the defendant’s right of self-representation.

Accordingly, in this case, the court hereby instructs standby counsel that he is not to participate in Mr. Chambers’ defense and should remain silent unless expressly asked by Mr. Chambers or the court to participate. His principal role is to answer any questions Mr. Chambers

may have as to procedural or evidentiary matters that may arise in the course of the trial. If Mr. Chambers elects to forego any such assistance, that is his choice.

It is important for Mr. Chambers to understand, however, that the Constitution does not require judges “to take over chores for a *pro se* defendant that would normally be attended to by trained counsel as a matter of course.” *Id.* at 184. “The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law.” *Faretta*, 422 U.S. at 834 n.46. As the Court recognized in *Faretta*, “the trial judge may terminate self-representation by a defendant who deliberately engages in serious and obstructionist misconduct.” *Id.* More importantly, a trial judge can remove a defendant from the courtroom if he “insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.” *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

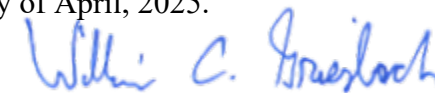
For this reason, the appointment of standby counsel serves the further goal of ensuring that the trial can proceed in the event that a defendant who elects to represent himself engages in such conduct that amounts to a waiver of his right to be present. *See* Fed. R. Crim. P. 43(c)(1)(C) (“A defendant who was initially present at trial . . . waives the right to be present . . . when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.”); *see also United States v. Shanks*, 962 F.3d 317 (7th Cir. 2020) (affirming conviction of defendant who refused to attend trial after case called outside his jail cell). In the event of such an occurrence, standby counsel will be directed to take over the defense, to the extent he is able, as an officer of the court.

This does not mean, however, that standby counsel is required to prepare for trial as adversary counsel for Mr. Chambers. Mr. Chambers has waived his right to counsel and that decision must be respected. But to ensure the case can proceed in the event Mr. Chambers waives

his right to self-representation and even his right to be present, standby counsel would be expected to step in to help safeguard the integrity of the proceeding by ensuring that procedural safeguards and evidentiary rulings are in compliance with the law. It is for this reason that the court has directed counsel for the government to apprise standby counsel of the evidence it intends to rely upon in support of the charges on which Mr. Chambers has been indicted. Standby counsel will then be in a position to offer appropriate legal challenges to such evidence or at least limit its force through appropriate cross-examination of witnesses, if called upon to do so.

In sum, as standby counsel, Attorney Hayes is to literally “stand by” and provide assistance to Mr. Chambers in terms of explaining the rules governing trial procedure and the admissibility of evidence in the event Mr. Chambers asks for such assistance. Standby counsel should also be prepared to conduct the defense as an officer of the court in the unlikely event that it becomes necessary. Finally, Mr. Chambers should also be aware that it is not too late for him to change his mind if he wishes to exercise his Sixth Amendment right to representation by counsel. The opportunity to do so, however, will not remain open indefinitely. Once a trial date is set, it will not be delayed simply because Mr. Chambers has changed his mind. The court cannot allow manipulation of the government’s prosecution and the court’s calendar in this way.

Dated at Green Bay, Wisconsin this 16th day of April, 2025.



William C. Griesbach
United States District Judge