

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Robert Holmes Bell

v.

Case No. 1-04-cr-165

JANET MARCUSSE,

Defendant.

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ORDER

On Tuesday, November 9, 2004, an arraignment of defendant Janet Marcusse on a superseding indictment was held in this matter. During the hearing, Ms. Marcusse became visibly out of control and had to be restrained and removed by deputies from the United States Marshal Service. Further, the Court has examined a "Criminal Complaint, Affidavit of Fact made under Duress," dated October 24, 2004 (Dkt. 136), which has caused the Court concern about whether Ms. Marcusse is competent to conduct her own defense or to consult rationally with standby counsel, Ray Kent. By way of example only, Defendant Janet Marcusse seems to believe that Chief Judge Robert Holmes Bell, Magistrate Judge Joseph Scoville, Assistant United States Attorney Thomas Gezon, FBI Special Agent Samuel Moore, IRS Special Agent James Flink, and the undersigned are in a conspiracy against her.

It seems that her view of the case is very convoluted and possibly paranoid. The case against her is very complex and she faces the possibility of quite serious penalties. There is reasonable cause to believe she may not appreciate the nature of the charges against her and/or lacks the ability to either conduct her own defense or consult with Ray Kent as standby counsel.

There is a due process right for a defendant to be able to conduct or assist counsel in the conduct of her own defense. *See, e.g., Mackey v. Dutton*, 217 F.3d 399 (6th Cir. 2000). In the case of *United States v. Auen*, 846 F.2d 872 (2d Cir. 1988), the United States Court of Appeals for the Second Circuit remanded the case to the district court to determine the defendant's competency to stand trial pursuant to 18 U.S.C. § 4241. The two questions presented were: 1) whether or not the trial court erred in failing to hold a competency hearing, despite the fact that defendant exhibited bizarre behavior throughout the pretrial, trial, and sentencing; and 2) whether or not defendant was denied the right to assistance of counsel when the district court did not provide him with appointed counsel during the trial and sentencing proceedings. The defendant in the *Auen* case engaged in similar, apparently paranoid and irrational beliefs regarding the federal tax laws and took the position that his trial was an "outlaw" act by the government. *Id.* at 874. Similarly, Auen refused to have counsel represent him. Ms. Marcusse has refused representation, although Ray Kent has been appointed to represent her as standby counsel, to use as she sees fit. It appeared to the Court that during her preliminary and detention hearings, she was making at least some rational use of Mr. Kent's services. However, given her total loss of control during her arraignment on the superseding indictment, it appears doubtful that she is still utilizing his services in any effective way. Nor does she appear able to maintain sufficient control of herself to enable her to conduct her own defense.

Defendant Auen felt harassed and trapped by the government. Ms. Marcusse has made several criminal complaints and affidavits of fact made under duress, dated November 3, 2004, November 5, 2004, November 6, 2004, November 8, 2004, and September 23, 2004, accompanied by a number of exhibits, in which she espouses theories that various government employees are acting unlawfully and are conspiring against her. Although these submittals do not comport with the

filing rules of our court, they will be accepted for filing as a record of defendant's arguably irrational view of the charges against her. Although Ms. Marcusse appears intelligent, and personable at times, the Court has also observed behavior to give it reasonable cause to believe that defendant may not be competent to represent herself or to accept such assistance as Mr. Kent may offer. In the case of *United States v. Auen*, 846 F.2d 872 (2d Cir. 1988), the Circuit Court concluded that the district court erred by not making findings concerning defendant's competency to stand trial, and the court remanded the case for a competency evaluation and hearing.

For the foregoing reasons, the Court orders that Ms. Marcusse be evaluated by a psychologist or psychiatrist. The Court orders on its own motion that a psychiatric or psychological examination of defendant be conducted pursuant to 18 U.S.C. § 4241(b), and that a psychiatric report be filed in accordance with 18 U.S.C. § 4247(c). Defendant is committed to the custody of the Attorney General for placement in a suitable facility for a reasonable period, not to exceed thirty days, for purposes of a competency examination in accordance with 18 U.S.C. § 4247(b).

The evaluation shall be filed under seal, and a copy served on defendant Janet Marcusse, Assistant U.S. Attorney Thomas Gezon, and the undersigned. Defendant Janet Marcusse may also provide a copy to standby counsel if she chooses to do so. After the evaluation has been received, a competency hearing shall be held.

Date: November 30, 2004

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge