

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR-9

Plaintiff,

ORDER

v.

JASON PATRICK,

Defendant.

This matter comes before the Court on the Motion (#514) to Withdraw as Counsel and to Allow Self-Representation filed by Andrew M. Kohlmetz, counsel for Defendant Jason Patrick. In his Motion Kohlmetz indicates Defendant Patrick requests this Court to permit Patrick to proceed *pro se*. Defendant Patrick further objects to proceeding with standby counsel. For the reasons that follow, the Court **GRANTS in part** the Motion (#514) to Withdraw as Counsel and to Allow Self-Representation filed by Kohlmetz, but **OVERRULES** Patrick's objection to proceeding with standby counsel.

At a hearing on May 11, 2016, the Court advised Patrick as to the nature of the charges brought against him, the potential penalties involved in this case, and the potential dangers and disadvantages of self-representation. The Court also advised

Patrick that he must follow the Court's directions and refrain from injecting extraneous or irrelevant matter into the record, and, if Patrick fails to do so, the Court may order standby counsel to take over Patrick's representation. The Court found Patrick was mentally competent to knowingly and voluntarily waive his right to counsel and to proceed *pro se*.

The Court, nonetheless, overrules Patrick's objection to proceeding with standby counsel. In *McKaskle v. Wiggins*, the Supreme Court held:

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.


465 U.S. 168, 184 (1984). See also *Frantz v. Hazey*, 533 F.3d 724, 739-40 (9th Cir. 2008). Nonetheless, the right of a criminal defendant to proceed *pro se* "must impose some limits on the extent of standby counsel's unsolicited participation." *McKaskle*, 465 U.S. at 177.

"First, the *pro se* defendant is entitled to preserve actual control over the case he chooses to present to the jury." *Id.* at 178. As a result, standby counsel may not participate over the defendant's objection in such a way as to "make or substantially interfere with any significant tactical decisions, . . . control the questioning of witnesses, or to speak *instead* of the

defendant on any matter of importance." *Id.* (emphasis in original).

"Second, 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.* Nonetheless, a defendant's right to proceed *pro se* is "not infringed when standby counsel assists the *pro se* defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony, that the defendant has clearly shown he wishes to complete" or when counsel "helps to ensure the defendant's compliance with basic rules of courtroom protocol and procedure." *Id.* at 183.

Accordingly, on this record the Court **GRANTS in part** the Motion (#514) to Withdraw as Counsel and to Allow Self-Representation filed by Kohlmetz to the extent Kohlmetz is relieved as primary counsel for Patrick, but **OVERRULES** Patrick's objection to proceeding without standby counsel. The Court **APPOINTS** Andrew M. Kohlmetz to act as standby counsel for Patrick within the limitations imposed on the participation of standby counsel as outlined in *McKaskle*.


ANNA J. BROWN
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR-9

Plaintiff,

WAIVER OF RIGHT TO
COUNSEL

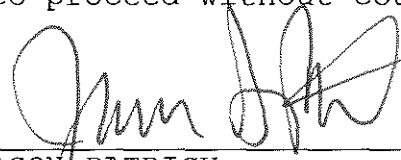
v.

JASON PATRICK,

Defendant.

I, Jason Patrick, the above-named Defendant, being accused of Conspiracy to Impede Officers of the United States in violation of Title 18, United States Code, Section 372; Possession of Firearms and Dangerous Weapons in a Federal Facility in violation of Title 18, United States Code, Section 930(b); and the Use and Carrying of a Firearm in Relation to a Crime of Violence in violation of 18, United States Code, Section 924(c)(1)(A), being advised of the nature of the charge, my constitutional right to be represented by counsel, my

constitutional right to self-representation, and the dangers and disadvantages of self-representation, knowingly and voluntarily waive my right to counsel and elect to proceed without counsel.



JASON PATRICK
Defendant

Before 

ANNA J. BROWN
United States District Judge