

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 5:06CR55
(STAMP)

HEIDI JANELLE SILVER MYERS,

Defendant.

MEMORANDUM OPINION AND ORDER
GRANTING AS FRAMED DEFENDANT'S MOTION FOR
TELEPHONIC TESTIMONY FROM DR. SUSAN FIESTER

On Friday, August 1, 2008, defendant, Heidi Janelle Silver Myers ("Myers"), filed a motion for telephonic testimony from Dr. Susan Fiester. Defendant alleges that Dr. Fiester, who has previously submitted a psychiatric evaluation of defendant Myers based upon her examination of the defendant, would be unable to testify live at the sentencing hearing scheduled for Monday, August 4, 2008 beginning at 1:30 p.m. because of previously scheduled client appointments. Defendant asserts that Dr. Fiester's testimony is "integral to understanding the circumstances surrounding the conduct underlying Ms. Myers' criminal contempt conviction." (Def.'s Mot. for Telephonic Test. from Dr. Susan Fiester.) Defendant also states that Dr. Fiester has indicated that she will make herself available at 2:00 p.m. on Monday, August 4, 2008 to provide testimony telephonically and would be available to be reached at her office on the same date beginning at 1:30 p.m.

Also, on August 1, 2008, the United States filed its response to defendant's motion in which it objects to the motion. The

United States asserts that the motion is untimely and that, in addition, the information that would be contained in Dr. Fiester's testimony has probably already been submitted to the Court and to the government through her report. The United States argues that, therefore, Dr. Fiester's testimony, either in person or telephonically, would be "repetitive and a waste of judicial resources on the one hand and of little substantive value on the other." (Pl.'s Resp. to Def.'s Mot. for Telephonic Test. from Dr. Susan Fiester.) While this Court sees some merit in the points made in the response of the United States, it is willing to permit Dr. Fiester to testify telephonically under the following conditions:

1. Dr. Fiester shall be available telephonically at any time after 1:30 p.m. The Court will permit no interruptions in her testimony because of circumstances involving Dr. Fiester's scheduled appointments.

2. Dr. Fiester shall be prepared to testify uninterrupted after her testimony commences. Counsel for the defendant shall immediately make all arrangements necessary for the telephonic testimony through Dr. Fiester and through the Clerk of this Court.

3. Because there are a number of other matters that need to be addressed at the sentencing hearing, this Court cannot and will not permit unlimited testimony by Dr. Fiester.

4. Because Dr. Fiester has already submitted a very comprehensive report and because defendant has already submitted

additional attachments relating generally to bipolar disorder, this Court believes that it is not necessary for detailed testimony to take place that would merely be repetitive of the matters previously addressed and Dr. Fiester's direct testimony shall be limited to appropriate amplification of her report.

5. Counsel for the United States and defendant shall confer prior to Dr. Fiester's testimony to determine a possible stipulation as to Dr. Fiester's qualifications.

6. Sufficient time should be permitted to provide appropriate cross-examination of Dr. Fiester as to her testimony as well as to her report.

7. This Court will reserve the right to further control the nature and length of any testimony by Dr. Fiester.

Again, this Court stresses that it grants this motion despite its probable untimeliness in order that the Court might have the possible benefit of this testimony as it may relate to particular sentencing issues.

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the defendant, to counsel of record herein and to Robert H. McWilliams, Jr., Assistant United States Attorney.

DATED: August 4, 2008

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE