




# UNITED STATES V. DIMARTINO

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 April 8, 2020

 [Case Summary](#), [Criminal Law](#), [Evidence](#), [Second Circuit](#), [Tax](#)

 [Connecticut](#)

 [Christian Ramos](#)

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Seal of the United States Court of Appeals for the Second Circuit ([Source](#)).

## ABSTRACT

**Case Name:** United States v. DiMartino, 949 F.3d 67 (2d Cir. 2020).

**Jurisdiction:** United States Court of Appeals, Second Circuit.

**Appellee:** Terry DiMartino.

**Defendant-Appellant:** United States of America.

**Concepts:** Tax; Criminal Law; Evidence.

**Nature of Case:** Whether the United States District Court for the District of Connecticut, abused its discretion in denying DiMartino's request for a competency hearing and giving no weight to Defendant's psychologist's report prepared at counsel's request?<sup>1</sup>

**Lower Ct. Decision:** The District Court found that the psychological report was unreliable and DiMartino's behavior observed during and before trial, indicated that DiMartino understood the charges against him and participated meaningfully in his defense.<sup>2</sup>

**Appellate Decision:** N/A

## INTRODUCTION

Terry DiMartino found success as an insurance agent and is a follower of the Sovereign Citizen Movement.<sup>3</sup> Beginning with his 1996 tax year filing, DiMartino has failed to file accurate returns or file no return at all.<sup>4</sup> DiMartino received numerous delinquency notices from the IRS.<sup>5</sup> DiMartino believes that the U.S. Government, IRS, and Department of Justice are private corporations.<sup>6</sup> The IRS would communicate frequently with DiMartino regarding his belief that the federal government lacks legal or constitutional authority to collect taxes, sending him educational material that debunked many of his arguments.<sup>7</sup>

In 2014, DiMartino was charged with one count of corruptly endeavoring to obstruct the IRS, two counts of filing false tax returns, and five counts of willful failure to file tax returns.<sup>8</sup> DiMartino chose to represent himself at trial and participated in a lengthy *Faretta* hearing where he stated he was in good health and that his mind was clear.<sup>9</sup> The District Court ruled that DiMartino knowingly, voluntarily, and intelligently waived his right to counsel.<sup>10</sup>

After trial, but before sentencing, DiMartino retained counsel who moved for a hearing to determine whether he had been competent to stand trial.<sup>11</sup> Counsel presented a psychological report.<sup>12</sup> The District Court held a *Daubert* hearing, finding that: 1) the report was unreliable because it ignored the sovereign citizen context; and 2) DiMartino's behavior observed by the court before and during trial, indicated that he understood the charges against him and participated meaningfully in his defense.<sup>13</sup>

Final judgment was entered, sentencing DiMartino to seventy months' imprisonment.<sup>14</sup> DiMartino appealed, and believes the District Court abused its discretion by: 1) denying him a

competency hearing; and 2) assigning no weight to the psychological report.<sup>15</sup>

DiMartino argued that he was protected under [18 U.S.C. § 4241\(a\)](#), that the psychological report met the standard set out by [18 U.S.C. § 4247\(c\)](#), and, thus, required a competency hearing. Moreover, DiMartino stated that the District Court incorrectly analyzed the psychological report under Federal Rule of Evidence 702.<sup>16</sup>

The Court of Appeals found that 1) the District Court did not abuse its discretion in denying DiMartino's competency hearing request nor did it abuse its discretion in assigning no weight to the psychological report.<sup>17</sup>

The main issues here are whether the District Court abused its discretion in denying a competency report to a self-identified Sovereign Citizen and how one's actions, and evidence they present, will be weighed in deciding if a competency hearing is required. This case is important because, the Second Circuit Court of Appeals, prior to this case had not considered the competency of a self-identified Sovereign Citizen in a published opinion.

## BACKGROUND

A *Faretta* hearing allows a defendant to waive their right to counsel and represent themselves in a criminal proceeding.<sup>18</sup> The Judge must ensure that the defendant is acting, 1) knowingly, 2) intelligently, and 3) with awareness of the dangers of self-representation.<sup>19</sup>

A *Daubert* hearing is used to determine the admissibility of expert witness testimony in federal court.<sup>20</sup>

Federal Rule of Evidence 702, "establishes a standard of evidentiary reliability."

A competency hearing is used to determine if a defendant is mentally competent to stand trial.<sup>21</sup>

The conviction of a defendant while mentally incompetent violates due process.<sup>22</sup>

In exercising its discretion, district courts must “make findings on the record concerning the defendant’s competency where the facts presented to the court warrant such as inquiry.”<sup>23</sup>

**18 U.S.C. § 4241(a)**, requires district courts to hold a competency hearing if , at any time prior to sentencing, “there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.”<sup>24</sup>

**18 U.S.C. § 4247(c)**, prescribes formal requirements for a psychological report if such report is “offered” by the court.<sup>25</sup>

A Sovereign Citizen, is one who “follow[s] their own set of laws’ and, accordingly, ‘do not recognize federal, state, or local law, policies or regulations’ as legitimate.”<sup>26</sup>

This case is important because, the Second District had not before, in a published opinion, considered the competency of a self-identified Sovereign Citizen.<sup>27</sup>

## CASE DESCRIPTION

In *United States v. DiMartino*, 949 F.3d 67 (2d Cir. 2020), the Second Circuit United States Court of Appeals first looked at and analyzed the competency of a Sovereign Citizen.<sup>28</sup> DiMartino and his attorney argued that he should have been granted a competency hearing and that the lower court abused its power in not holding one.<sup>29</sup> However, the Court of Appeals looked at **18 U.S.C. § 4241(a)**, and found that the lower court did not abuse its discretion.<sup>30</sup>

The Court of Appeals found that DiMartino participated in his defense and rather than suffering from delusions, which would trigger a competency hearing, he knew, studied, and invested money in learning about the tax laws and disregarded them while following the ideology of Sovereign Citizens.<sup>31</sup> The lower court weighed its observations, taken during the whole proceeding, and weighed them against the only evidence offered for incompetency—DiMartino’s lawyer’s affidavit, stating that his client suffered from delusions, and Dr. Meisler’s

report, which was compiled in a short amount of time between retention and filing the motion for competency.<sup>32</sup>

The Court of Appeals then turned to addressing the claim that the lower court abused its discretion in assigning no weight to Dr. Meisler’s report, which drafted at the direction of Mr. DiMartino’s attorney<sup>33</sup>

The lower court held a *Daubert* hearing to determine the reliability of Dr. Meisler’s report. The Court of Appeals found that the report was unreliable, as it was flawed and did not consider an individual’s membership in a subculture as this is an “important” factor in determining whether one’s beliefs are delusional.<sup>34</sup> The lower court’s view was also supported by the court appointed-expert, who had experience evaluating Sovereign Citizens. Dr. Meisler’s approach to fact-gathering only looked at trail transcripts and did not speak to DiMartino’s family, friends, or other tax protesters.<sup>35</sup>

The Court of Appeals found that the Dr. Meisler’s report could not be relied upon to support a finding of reasonable cause to hold a competency hearing.<sup>36</sup>

## CONCLUSION

The Court of Appeals first analyzed the competency of DiMartino, a Sovereign Citizen. The Court looked at how he presented himself before the lower court, the testimony of his attorney, and the doctors’ report, but concluded that the lower court did not abuse its discretion in denying a competency hearing and giving no weight to DiMartino’s psychologist’s report prepared at counsel’s request.

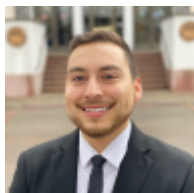
The Court of Appeal found that DiMartino: actively participated in his defense; was competent in his beliefs; and simply followed a shared ideology he believed in rather than suffered from delusions.

The lower court’s decision was affirmed.<sup>37</sup>

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1. United States v. DiMartino, 949 F.3d 67, 69 (2d Cir. 2020). ↵
2. *Id.* ↵
3. *Id.* ↵
4. *Id.* ↵
5. *Id.* ↵
6. DiMartino, 949 F.3d 70 (2d Cir. 2020). ↵
7. *Id.* ↵
8. *Id.* ↵
9. *Id.* ↵
10. *Id.* ↵
11. DiMartino, 949 F.3d 69 (2d Cir. 2020). ↵
12. *Id.* ↵
13. *Id.* ↵
14. *Id.* ↵
15. *Id.* ↵
16. DiMartino, 949 F.3d 74 (2d Cir. 2020). ↵
17. DiMartino, 949 F.3d 75 (2d Cir. 2020). ↵
18. DiMartino, 949 F.3d 72 (2d Cir. 2020). ↵
19. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). ↵
20. United States v. DiMartino, 949 F.3d 74 (2d Cir. 2020). ↵
21. DiMartino, 949 F.3d 71 (2d Cir. 2020). ↵
22. See Pate v. Robinson, 383 U.S. 375, 378 (1966). ↵
23. United States v. DiMartino, 949 F.3d 67, 71 (2d Cir. 2020). ↵
24. *Id.* ↵
25. DiMartino, 949 F.3d 74 (2d Cir. 2020). ↵
26. DiMartino, 949 F.3d 67, 69 (2d Cir. 2020). ↵
27. DiMartino, 949 F.3d 69 (2d Cir. 2020). ↵
28. *Id.* ↵
29. *Id.* ↵
30. DiMartino, 949 F.3d 71 (2d Cir. 2020). ↵
31. DiMartino, 949 F.3d 73 (2d Cir. 2020). ↵
32. *Id.* ↵
33. DiMartino, 949 F.3d 74, 75 (2d Cir. 2020). ↵
34. *Id.* ↵
35. *Id.* ↵
36. DiMartino, 949 F.3d 75 (2d Cir. 2020). ↵

37. DiMartino, 949 F.3d 73, 74, 75 (2d Cir. 2020). ↩



## Posted by Christian Ramos

Christian Ramos is currently enrolled in the J.D. Program at the Golden Gate University (GGU) School of Law, where he has taken classes in both the Tax and Estate Planning LLM Programs. Mr. Ramos has interned at Donahue Fitzgerald LLP, Hedemark Law, and Legal Assistance for Seniors, where he was exposed to the problems that face the senior community and their financial goals. He has worked and interned in the Estate Planning legal community since 2016, learning and growing through his exposure to high value estate plans that achieve both the client's goals, while also being the most tax advantageous. He holds a a B.A. in Government from California State University Sacramento with Minors in both Philosophy and Sociology. Mr. Ramos is expected to Graduate from GGU Law in May 2020 and plans to sit for California Bar Exam in July 2020.



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