

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 5:05CR0008-2
)	
v.)	
)	<u>REPORT AND RECOMMENDATION</u>
CHRISTINA BLOOM SMILEY,)	
a.k.a. CHRISTINA MCGOVERN,)	
)	
Defendant.)	By: B. WAUGH CRIGLER U.S. MAGISTRATE JUDGE

In accordance with the provisions of Title 28 U.S.C. § 636(b)(3) and upon the defendant's consent, this case was referred to the undersigned to conduct a plea hearing.

DEFENDANT'S RESPONSES TO RULE 11 INQUIRY

The Grand Jury has returned an Indictment charging defendant in Count One with unlawfully, knowingly, and willfully combining, conspiring, confederating, and agreeing with others to commit offenses against the United States, to wit: falsely making or counterfeiting obligations of the United States, with intent to defraud, in violation of Title 18, United States Code, Sections 471 and 2; and passing, uttering, attempting to pass, attempting to utter, possessing or concealing counterfeited obligations of the United States, with intent to defraud, in violation of Title 18, United States Code, Sections 472 and 2, all in violation of Title 18, United States Code, Section 371; and in Count Two with intent to defraud, passing or uttering, attempting to pass or utter, possessing, or concealing several falsely made, forged, and counterfeited obligations of the United States, that is, Federal Reserve Notes, which notes she then knew to be falsely made, forged and counterfeited, in violation of Title 18, United States Code, Section 472.

On November 4, 2005, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Counts One and Two of the Indictment pursuant to a plea

agreement between defendant and the government.

At this hearing the defendant was placed under oath and testified that her full legal name is Christina Bloom Smiley (McGovern), that she was born on May 21, 1977, and that she obtained a GED. The defendant stated that she can read, write, and understand the English language. The defendant stated that she was fully aware of the nature of the charges against her and the consequence of pleading guilty. The defendant further testified that she was not under the influence of alcohol, medicine, or any drug. Defendant stated that she had no other physical or mental condition which impaired her ability to understand the nature of the proceedings being held.

The defendant testified that she had received a copy of the Indictment pending against her and that she had fully discussed the charges therein, and her case in general, with her counsel. She also testified that she had read the plea agreement in its entirety and had discussed the plea agreement with her counsel before signing the agreement. She stated that she understood the terms of the agreement and that the document presented to the court set forth her agreement with the government in its entirety. The defendant specifically testified that she understood that under the terms of the agreement she was waiving any right to appeal or to collaterally attack her conviction or sentence and that she was waiving her right to have a jury determine beyond a reasonable doubt the facts alleged in Counts One and Two, including any facts related to sentencing. Defendant's counsel stated that he had reviewed each of the terms of the plea agreement with the defendant and was satisfied that she understood those terms.

The defendant stated that she was pleading guilty of her own free will because she was, in fact, guilty of the offenses charged. The defendant also stated that no one had made any promises other than those contained in her agreement with the government, or made any assurances or threats

to her in an effort to induce her plea. The defendant testified that she understood that the offenses with which she is charged are felonies and that, if her plea is accepted, she will be adjudged guilty of those offenses. Moreover, the defendant testified that she understood that she will be required to pay a mandatory assessment of \$100 per felony count. The defendant acknowledged that she consented to the administrative forfeiture, official use and/or destruction of any illegal firearms or contraband seized by any law enforcement agency from her possession or from her direct or indirect control. The defendant further acknowledged that she consented to forfeit any right, title and interest she has in assets purchased with proceeds of her illegal activity, directly or indirectly and that such a forfeiture of property is proportionate to the degree and nature of the offense she committed and does not raise any of the concerns addressed in *United States v. Austin*, 113 S.Ct. 2801 (1993). The defendant stated that she understood that she must submit to the government a complete and truthful financial statement revealing all her assets and liabilities on a form provided by the government within 30 days of the date of the plea agreement. The defendant also testified that she was waiving all rights under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of her case.

The defendant was informed that the maximum possible penalty provided by law for Count One is five years imprisonment and a \$250,000 fine, together with supervised release. The defendant was further informed that the maximum possible penalty provided by law for Count Two is twenty years imprisonment and a \$250,000 fine, together with supervised release. The defendant was informed that under the Sentencing Reform Act of 1984, the United States Sentencing Commission has issued guidelines for judges to follow in determining the sentence in a criminal case.

The defendant was then informed that, in light of the United States Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the sentencing guidelines are no longer mandatory but that the sentencing judge may apply them in an advisory fashion in determining a reasonable sentence. The defendant testified that she and her counsel had discussed how the sentencing guidelines might apply in her case. The defendant also testified that she understood that the court would not be able to determine the applicable guideline range, for advisory purposes, until after a presentence report had been prepared and both parties had been given an opportunity to challenge the reported facts and the application of the guidelines. She stated that she understood that the eventual sentence imposed may be different from any estimate her attorney has given her and that the court has the authority to issue a sentence that is either higher or lower than that called for by the guidelines, so long as the sentence is not greater than the statutory maximum for the offenses to which the defendant is pleading guilty.

The defendant stated that she understood that, contingent upon her acceptance of responsibility and continued cooperation in the sentencing process, and fulfillment of her duties under the plea agreement, the government will recommend a two-level (2) reduction under USSG § 3E1.1(a) for acceptance of responsibility, and that because she meets the listed criteria, she should also be granted an additional one-level (1) reduction under USSG § 3E1.1(b) if her offense level is 16 or greater. The defendant stated that she understood that the government is under no obligation to file a motion for substantial assistance, but that to the extent the government does exercise such discretion in this regard, she must provide such assistance in a manner set forth in the plea agreement. The defendant stated that she understood that a determination as to whether she had provided "substantial assistance" was a matter within the discretion of the United States Attorney's

Office. The defendant further stated that she understood that the government will not seek a sentence higher than recommended by the guidelines. The defendant stated that she knew that parole had been abolished and that if she is sentenced to prison she will not be released on parole but on supervised release, a violation of which could result in additional incarceration.

The defendant testified that she understood that she had the right to a trial by a jury, in addition to the following rights, which will be waived or given up if her guilty plea is accepted:

1. The right to plead not guilty to any offense charged against her;
2. The right at trial to be presumed innocent and to force the government to prove her guilt beyond a reasonable doubt;
3. The right of assistance of counsel at trial and in any subsequent appeal;
4. The right to see, hear and cross-examine witnesses;
5. The right to call witnesses to testify in her own behalf and to the issuance of subpoenas or compulsory process to compel the attendance of witnesses; and
6. The right to decline to testify unless she voluntarily elected to do so in her own defense;
7. The right to a unanimous guilty verdict;
8. The right to appeal a guilty verdict.

The defendant also testified that she understood that if she is adjudged guilty of the charges against her, she may be deprived of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess a firearm.

The defendant stated that she was fully satisfied with the advice and representation given to her in this case by her counsel. The defendant testified that she understood the possible consequences of her plea and the consequences of breaching any term of the plea agreement. The defendant asked the court to accept her plea of guilty to Counts One and Two of the Indictment.

THE GOVERNMENT'S EVIDENCE

The defendant waived her right to have the government's Factual Summary read in open court and had no objection to the Summary. The Factual Summary having been filed in open court, the

evidence presented therein regarding the offense charged is as follows:

In or about November 2003, law enforcement officers learned that counterfeit currency was being manufactured and distributed in Augusta County and Staunton area. Defendant attempted to pass a counterfeit \$20 bill in Staunton on November 14, 2003. Later that day, police conducted a car stop on a vehicle that had defendant as a passenger. During the encounter, defendant threw some drugs to the ground. She also attempted to hide some counterfeit bills that were recovered. (The bills are set forth in Count Two of the Indictment).

Police did a “knock and talk” at a residence where they believed that some of the individuals involved in the counterfeit currency scheme were living or staying. During this part of the investigation, co-defendant Jeremy Michael Cole attempted to flee out of the back of the residence with a canvas bag that contained counterfeit currency as charged in Count Three of the Indictment. Police received further information that defendant and co-defendant Charles McGovern had apparently been staying at that residence during the preceding days.

Another knock and talk was conducted at a different residence in Augusta County. An individual who fled from that location was apprehended and arrested for drug violations. When he was interviewed, he told investigators that he had received \$240 in counterfeit notes from defendant. He admitted to using the notes.

Officers executed a search warrant at a Staunton address where Charles McGovern had been renting a room as the sole renter. Various pieces of evidence, including computer equipment, art supplies, and cutting utensils, were found in his room. Some paint that was recovered was subsequently matched with the paint on counterfeit bills connected to this investigation. Counterfeit bills have been recovered from Augusta County businesses and from another individual.

Defendant was interviewed in November 2003 and June 2005 (when she was arrested). She made statements that she was aware that counterfeit currency was being manufactured. In part, defendant indicated that her co-defendants had recently purchased computer equipment and that she had provided some money for the purchase. Defendant admitted passing some bills and stated that the counterfeit money was being used to pay bills and expenses.

Charles McGovern, when initially interviewed in November 2003, made denials and asked for a lawyer. When he was arrested in June 2005, he stated, in part, that he had bought the paper and co-defendant Cole bought the printer. He further stated that he copied the bills, that Cole cut and trimmed them, and that defendant passed them. Charles McGovern denied passing any bills and denied having any intention to do so. He additionally claimed that another individual also copied bills. He further acknowledged having previously had a “problem” with fake money in Texas, but claimed that he was unaware that the money was not real.

The conspiracy operated, at least in part, in the Western District of Virginia.

FINDINGS OF FACT

Based on the evidence presented at the plea hearing, the undersigned now submits the following formal findings of fact, conclusions and recommendations:

1. The defendant is fully competent and capable of entering an informed plea;
2. The defendant is aware of the nature of the charges and the consequences of her plea;
3. The defendant knowingly and voluntarily entered a plea of guilty to Counts One and Two of the Indictment; and

4. The evidence presents an independent basis in fact containing each of the essential elements of the offenses to which the defendant is pleading guilty.

RECOMMENDED DISPOSITION

Based upon the above findings of fact, the undersigned RECOMMENDS that the court accept the defendant's plea of guilty to Counts One and Two of the Indictment and adjudge her guilty of those offenses. The undersigned further DIRECTS that a presentence report be prepared and RECOMMENDS that the presiding District Judge defer acceptance of the plea agreement until after that report has been submitted to the Court. Sentencing will be set by the scheduling clerk for the presiding District Judge.

NOTICE TO PARTIES

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C): Within ten days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. The presiding District Judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The presiding District Judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The judge may also receive further evidence or recommit the matter to the undersigned with instructions.

Failure to file timely written objections to these proposed findings and recommendations within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the presiding United States District Judge.

The Clerk is hereby directed to send certified copies of this Report and Recommendation to all counsel of record.

ENTERED: _____
United States Magistrate Judge

Date