

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

UNITED STATES OF AMERICA, )  
 )  
v. )  
 ) REPORT AND RECOMMENDATION  
JEREMY MICHAEL COLE, )  
 )  
 ) By: B. WAUGH CRIGLER  
Defendant. ) 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 Three with being a principal or an aider and abettor, with intent to defraud, did possess or conceal several falsely made, forged, and counterfeited obligations of the United States, that is Federal Reserve Notes, which notes he then knew to be falsely made, forged and counterfeited, in violation of Title 18, United States Code, Sections 472 and 2.

On December 13, 2005, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count Three of the Indictment.

At this hearing, the defendant was placed under oath and testified that his full legal name is Jeremy Michael Cole, that he was born on May 14, 1975, and that he graduated from high school. The defendant stated that he can read, write, and understand the English language. The defendant stated that he was fully aware of the nature of the charges against him and the consequence of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol, medicine, or any drug. Defendant stated that he had no other physical or mental

condition which impaired his ability to understand the nature of the proceedings being held. Defendant's counsel stated that he had no reservations as to the defendant's competency to enter a plea of guilty to the offense.

The defendant testified that he had received a copy of the Indictment pending against him and that he had fully discussed the charges therein, and his case in general, with his counsel. The defendant stated that he was pleading guilty of his own free will because he was, in fact, guilty of the offense charged. The defendant also stated that no one had made any promises, assurances or threats to him in an effort to induce his plea. The defendant testified that he understood that the offense with which he is charged in Count Three is a felony and that, if his plea is accepted, he will be adjudged guilty of that offense. Moreover, the defendant testified that he understood that he will be required to pay a mandatory assessment of \$100. The defendant testified that he understood that under the terms of the agreement he was waiving any right to appeal or to collaterally attack his conviction or sentence and that he was waiving his right to have a jury determine beyond a reasonable doubt the facts alleged in Count Three including any facts related to sentencing. The defendant acknowledged that he consented to the administrative forfeiture, official use and/or destruction of any illegal firearms or contraband seized by any law enforcement agency from his possession or from his direct or indirect control. The defendant further acknowledged that he consented to forfeit any right, title and interest he has in assets purchased with proceeds of his illegal activity, directly or indirectly, and that such a forfeiture of property is proportionate to the degree and nature of the offense he committed and does not raise any of the concerns addressed in *United States v. Austin*, 113 S.Ct. 2801 (1993). The defendant stated that he understood that he must submit to the government a complete and truthful financial statement revealing all his assets and liabilities

on a form provided by the government within thirty days of the date of the plea agreement.

The defendant also testified that he 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 his case.

The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count Three, is twenty years imprisonment and a fine of \$250,000, 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 he and his counsel had discussed how the sentencing guidelines might apply in his case. The defendant also testified that he 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 application of the guidelines. He stated that he understood that the eventual sentence imposed may be different from any estimate his attorney had given him and that the court has the authority to impose 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 offense to which the defendant is pleading guilty. The defendant stated that he knew that parole had been abolished and that if he is sentenced to prison he will not be released on parole but on supervised release, a violation of which could result in additional incarceration.

The defendant stated that he understood that, contingent upon his acceptance of responsibility and continued cooperation in the sentencing process, and fulfillment of his duties under the plea agreement, the government will recommend a two-level (2) reduction under USSG § 3E1.1(a), and because he meets the listed criteria, he should be granted an additional one-level (1) reduction under USSG 3E1.1(b) if his offense level is 16 or greater.

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

1. The right to plead not guilty to any offense charged against him;
2. The right at trial to be presumed innocent and to force the government to prove his 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 his own behalf and to the issuance of subpoenas or compulsory process to compel the attendance of witnesses;
6. The right to decline to testify unless he voluntarily elects to do so in his own defense;
7. The right to a unanimous guilty verdict; and
8. The right to appeal a guilty verdict.

The defendant also testified that he understood that if he is adjudged guilty of these charges, he 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 he was fully satisfied with the advice and representation given to him in this case by his counsel. The defendant also stated that he believed his counsel's representation had been effective. The defendant testified that he understood the possible consequences of his plea. The defendant asked the court to accept his plea of guilty to Count Three of the Indictment.

#### **THE GOVERNMENT'S EVIDENCE**

The defendant waived his right to have the government's Factual Summary read in open court.

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. Christina Smiley 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 Smiley as a passenger. During the encounter, Smiley 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, defendant 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. There was also a genuine \$5 bill in the bag with the same serial numbers as counterfeit \$5 bills recovered from Smiley. Police received further information that Smiley and 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 Smiley. He admitted to using the notes.

Officers executed a search warrant at a Staunton address where 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. He admitted that he knew there was counterfeit money inside the bag (before the police arrived). Defendant stated that he attempted to flee with the bag to protect a friend (not either of the two co-defendants) who lived at the location. Defendant denied manufacturing any counterfeit money but admitted that he went with McGovern to purchase a printer/scanner/copier. He claimed that this was for art purposes only. Defendant admitted that his fingerprints would be on the printer because he was “messing around printing stuff,” but not counterfeit currency.

Smiley 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, Smiley indicated that her co-defendants had recently purchased computer equipment and that she had provided some money for the purchase. Smiley admitted passing some bills and stated that the counterfeit money was being used to pay bills and expenses.

McGovern, when initially interviewed in November 2003, made denials and asked for a lawyer. When McGovern was arrested in June 2005, he stated, in part, that he had bought the paper and defendant bought the printer. He further stated that he copied the bills, that defendant cut and trimmed them, and that Smiley passed them. McGovern denied passing any bills and denied having any intention to do so. McGovern 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 his plea;
3. The defendant knowingly and voluntarily entered a plea of guilty to Count Three of the Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offense 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 Count Three and adjudge him guilty of that offense. The undersigned further DIRECTS that a presentence report be prepared. A sentencing hearing is scheduled for February 21, 2006 at 12:30 p.m. before 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

