

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

UNITED STATES OF AMERICA,)
)
)
v.)
) REPORT AND RECOMMENDATION
ROBIN LYNN IRVINE,)
)
)
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 a single count Indictment charging defendant in Count One with knowingly and willfully executing or attempting to execute a scheme or artifice to defraud and to obtain by means of false and fraudulent pretenses, representations, and promises, money under the custody and control of the Virginia Medical Assistance Program, a health care benefit program as defined by Title 18, United States Code, Section 24(b), in connection with the delivery of and payment for health care benefits, items, and services, all in violation of Title 18, United States Code, Sections 2 and 1347.

On November 15, 2006, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One of the Indictment. At this hearing the defendant was placed under oath and testified that her full legal name is Robin Lynn Irvine, that she was born on July 10, 1969, and that she completed the eleventh grade in high school and received 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 to those charges. 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. 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 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. The defendant stated that she was pleading guilty of her own free will because she was, in fact, guilty of the offense charged. 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 any facts alleged in Count One. The defendant testified that she also understood that the government retained all of its rights to appeal. The defendant stated that no one had made any promises, assurances, or threats to her in an effort to induce her plea. The defendant agreed that if for any reason the plea agreement is withdrawn or otherwise not consummated she waived her right to be proceeded against by indictment and her right to raise the defense of the statute of limitations. The defendant testified that she understood that the offense with which he is charged in Count One is a felony and that, if her plea is accepted, she will be adjudged guilty of that offense. Moreover, the defendant testified that she understood that she will be required to pay a mandatory assessment of \$100 and that she is jointly and severally liable for restitution in the amount of \$57,797.83. 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 acknowledged that she consented to the forfeiture of all items obtained by law enforcement officials during the course of the investigation of her case. The defendant stated she was aware that any statements made by her could be used against her and that she agreed to waive any right she might have to suppress or exclude these statements from being admitted into evidence.

The defendant was informed that the maximum possible penalty provided by law for the offense with which she is charged in Count One is a \$250,000 fine and/or imprisonment for a term of ten years, plus a period of supervised release. The defendant was further informed that her assets might be subject to forfeiture.

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 has been prepared and both parties have been given an opportunity to challenge the reported facts and application of the guidelines. She stated that she understood that the eventual sentence imposed may be different from any estimate her attorney had given her 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 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 stated that she agreed to accept responsibility for her conduct and 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), and if applicable, the government will also recommend that she be granted an additional one-level (1) reduction under USSG § 3E1.1(b). The defendant stated that she understood that even if she fully cooperates with law enforcement officials, the government is under no obligation to file a motion for substantial assistance. The defendant was informed that if she fulfilled her obligations under the plea agreement and accepted responsibility for her conduct the government would not seek an upward departure from the applicable sentencing guidelines range and would not oppose her being sentenced at the lower end of the applicable sentencing guidelines range. The defendant stated she was aware that the government would object to any motion for downward departure that she might make, and defendant agreed not to make a motion for downward departure. The defendant stated that she and the government agreed that she should be sentenced in a manner consistent with Chapters One through Eight of the guidelines. The defendant acknowledged that the government could prove that the financial loss caused by her actions was between \$30,000 and \$70,000, which would result in a base level of 12 under USSG § 2B1.1(b).

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;
6. The right to decline to testify unless she voluntarily elects to do so in her own defense;
7. The right to a unanimous guilty verdict; and
8. The right to appeal a guilty verdict.

The defendant also testified that she understood that if she is adjudged guilty of these charges, 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 also stated that she believed her counsel's representation had been effective. The defendant testified that she understood the possible consequences of her plea. The defendant asked the court to accept her plea of guilty to Count One 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:

If the matter were to go to trial, the United States of America would prove beyond a reasonable doubt with admissible and relevant evidence the following:

Robin Lynne Irvine, Stacey Irvine Meadows, Sandra Kaye Irvine, and Kristy Amy Humphreys were all employees of Advantage Care of Shenandoah (Advantage Care). Advantage Care provides Personal Care services to elderly and disabled persons in western Virginia, carrying out business in

several offices. Each of the four defendants was employed by Advantage Care in the Covington office.

Robin Lynne Irvine devised a scheme to obtain money for herself and others by falsifying Personal Aide logs and having the logs submitted to the Department of Medical Assistance Services for payment. She enlisted the assistance of Stacey Irvine Meadows, Sandra Kaye Irvine and Kristy Amy Humphreys to carry out the scheme. The four defendants gained compensation for themselves from the Department of Medical Assistance Services to which they were not entitled by knowingly causing bills to be submitted to Medicaid for Personal Care Services which were not performed. To carry out the scheme to defraud, they created Personal Care logs in the names of Sandra Kaye Irvine, Kristy Amy Humphreys, and other unknowing Personal Care Aides.

Having sent the falsified documents to Medicaid for payment, the Personal Care Aides would then be compensated by Advantage Care for the hours which were submitted on the falsified Aide logs. The signatures of several Personal Care Aides were forged on Personal Care logs by Robin Irvine and Stacey Irvine Meadows. Robin Irvine and Stacey Irvine Meadows forged and cashed the paychecks for the Personal Care Aides whose time sheets were fraudulently submitted for payment. The proceeds would then be divided among the four co-defendants. The defendants received \$57,797.83 as a result of their fraud.

Sandra Kaye Irvine and Kristy Amy Humphreys knowingly signed Personal Care logs for hours which they did not work and signed black Personal Care logs. Each received compensation as a result of the falsified documents.

On January 6, 2006, Robin Irvine was interviewed by Special Agent Robert Wardlow and Investigator Kevin Johnson regarding the fraud allegation. She admitted that she and other defendants carried out the scheme to defraud Medicaid. She falsified aide logs, submitted them for payment,

forged signatures on the paychecks of unsuspecting parties and took them to the bank to be cashed, and kept the money for herself and the other defendants.

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 Count One 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 One and adjudge her guilty of that offense. The undersigned further DIRECTS that a presentence report be prepared. A sentencing hearing hereby is scheduled for February 8, 2007 at 9:00 a.m. before the presiding District Judge in Harrisonburg.

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

