

**United States District Court
For the Western District of Virginia
Harrisonburg Division**

)	
)	Criminal No: 5:13cr00028-2
UNITED STATES OF AMERICA,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
STEPHANIE JORDAN KANTZ,)	By: James G. Welsh
<i>Defendant</i>)	U. S. Magistrate Judge
)	
)	

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

As set forth in more detail in the Superseding Indictment (docket #35), the Grand Jury previously returned a multiple count Superseding Indictment charging the above-named defendant in **Count One** that beginning on a date unknown to the Grand Jury, but on or around October 2, 2013 and continuing to on or about October 22, 2013, in the Western Judicial District of Virginia and elsewhere, she knowingly and willfully conspired and agreed together, and with others known and unknown to the grand jury to commit the following offenses against the United States: (a) to possess five or more identification documents that were not issued for the use of this defendant, that appear to be issued by and under the authority of the United States, and affects interstate and foreign commerce, with the intent unlawfully to use them in violation of 18 U.S.C. § 1028(a)(3); and (b) to possess without lawful authority a means of identification

of another person, that appears to be issued by or under the authority of the United States, and affects interstate or foreign commerce, with the intent to commit a violation of federal law, or a felony under state or local law in violation of 18 U.S.C. § 1028(a)(7); all in violation of 18 U.S.C. § 371; charging the above-named defendant in **Count Two** that beginning on a date unknown to the Grand Jury, but on or around October 2, 2013 and continuing to on or about October 22, 2013, in the Western Judicial District of Virginia and elsewhere, she knowingly conspired and agreed together, and with others known and unknown to the grand jury to commit the following offenses against the United States: (a) with the intent to defraud, to use access devices the defendants were not authorized to use, through which the defendants obtained items valued at \$1,000 or more, within a one year time period ending October 22, 2013, in violation of 18 U.S.C. § 1029(a)(2); and (b) with the intent to defraud, to use access devices that had been issued to persons other than themselves for transactions during a one year time period ending October 22, 2013, and in doing so obtained items valued at \$1,000 or more in violation of 18 U.S.C. § 1029(a)(5); all in violation of 18 U.S.C. § 1029(b)(2); charging the above-named defendant in **Count Three** that on or about October 22, 2013, in the Western Judicial District of Virginia and elsewhere, she did knowingly possess, without lawful authority, a means of identification of certain other persons, during and in relation to violations of 18 U.S.C. §§ 1029(a)(2), 1029(a)(5) and 1029(b)(2); in violation of 18 U.S.C. §§ 1028A(a)(1) and 1028A(c)(4); charging the above-named defendant in **Count Four** with identification document fraud in violation of 18 U.S.C. §§ 1028(a)(3) and 2; charging the above-named defendant in **Count Five** with aggravated identity theft during and in relation to violations of 18 U.S.C. § 1028(a)(3), in violation of 18 U.S.C. §§ 1028A(a)(1) and 1028A(c)(4); charging the above-named defendant in **Count Six** with identity theft with intent to commit access device fraud in violation of 18 U.S.C. § 1029 and obtaining as a result items valued at \$1,000.00 or more in the

previous one year; all in violation of 18 U.S.C. §§ 1028(a)(7) and 2; charging the above-named defendant in **Count Seven** with credit card fraud in violation of 18 U.S.C. §§ 1029(a)(3), 1029(c)(1)(A)(i) and 2; and charging the above-named defendant in **Count Eight** with aggravated identity theft during and in relation to violations of 18 U.S.C. § 12029(a)(3); in violation of 18 U.S.C. §§ 1028A(a)(1) and 1028A(c)(4). In addition, the Superseding Indictment contains a **Notice of Forfeiture** apprising the above-named defendant that certain of her property is subject to forfeiture upon conviction of any one or more of the offenses alleged against her.

In accordance with the provisions of Title 28 U.S.C. § 636(b) a plea hearing was conducted before the undersigned on January 23, 2014. The proceeding was recorded by a court reporter. *See* Rule 11(g). The United States was represented by Drew Smith, Assistant United States Attorney. The defendant was at all times present in person and with her counsel, Joel C. Hoppe, Assistant Federal Public Defender.

After the defendant was placed under oath, she stated that she understood her obligation to testify truthfully in all respects under penalty of perjury, and she understood the government's right in a prosecution for perjury or false statement to use against her any statement that she gives under oath. *See* Rule 11(b)(1)(A). The defendant then testified that her name is STEPHANIE JORDAN KANTZ; she is twenty-one (21) years of age, and she has a high school equivalent education. She represented that she can read, write and understand the English language without difficulty, that she has no medical condition, either physical or mental, which might interfere with her ability to understand and participate fully in the proceeding, that she is using no medication or drugs which might impair her ability to understand and participate in the proceeding, and that her mind is clear. The defendant's attorney then stated that he had no reservations about his client's competency to plead guilty to certain of the charges contained in the multi-count Superseding Indictment.

DEFENDANT'S RESPONSES TO RULE 11 ENQUIRIES

The defendant acknowledged that she had received a copy of the Superseding Indictment and fully understood the charges against her. She acknowledged that she was under oath and was obligated to testify truthfully in all respects under penalty of perjury and she understood the government's right in a prosecution for perjury or false statement to use against her any statement that she gives under oath. *See* Rule 11(b)(1)(A). She stated that she had discussed the charges with her attorney and had been given enough time to do so. She stated that she understood the nature of the charges against her the Superseding Indictment, and she specifically understood each count charged a felony offense. *See* Rule 11(b)(1)(G). She testified that she had discussed any possible defenses with her attorney and that she had been given adequate time to prepare any defenses she might have to the charges. She stated that her decision to enter pleas of guilty to three of the charges had been made after consulting with her attorney and that she was fully satisfied with the services of her attorney.

She next stated that she understood she was in court for the purpose of entering pleas of guilty to three felony offenses which she could not later withdraw. Upon inquiry, the defendant's attorney represented that he had no reservations about the defendant's competency to enter pleas of guilty to the felony offenses charged in Counts One, Two and Three of the Superseding Indictment.

The defendant confirmed that she fully recognized and understood her right to have the Rule 11 hearing conducted by a United States district judge, and she gave her verbal and written consent to proceed with the hearing before the undersigned United States magistrate judge. The defendant's written consent was filed and made a part of the record.

Counsel for both parties having previously informed the court that the defendant's proposed pleas were to be made pursuant to a written plea agreement (*see* Rule 11(c)(2)),

counsel for the government then set forth the government's understanding of the plea agreement in some detail: including the agreement of the defendant to plead guilty to three of the charges alleged against her in the Superseding Indictment [¶A.1.]; the defendant's express acknowledgment that the maximum statutory penalty for the offense charged in Count One is a fine of \$250,000.00, a five year term of imprisonment, and a five year term of supervised release [*Id.*]; her express acknowledgment that the maximum statutory penalty for the offense charged in Count Two is a fine of \$250,000.00, a seven and one-half year term of imprisonment, and a three year term of supervised release [*Id.*]; her express acknowledgment that the mandatory penalty for the offense charged in Count Three is a two year term of imprisonment and that the maximum statutory also includes a fine of \$250,000.00 and two year term of supervised release [*Id.*]; her acknowledgment that she may be required to pay restitution and that her assets may be subject to forfeiture [¶¶A.1. and B.4.a.]; her express admission of her factual guilt to the offenses charged in Counts One, Two and Three [¶A.1.]; the defendant's obligation to pay a \$300.00 special assessment prior to entry of her guilty plea and the related restitution and assessment provision [¶¶A.1. and B.4.a.]; the defendant's acknowledgment of the trial rights waived by entry of a voluntary plea of guilty [¶A.2.]; the agreement's provision outlining the fact that sentencing is within the sole discretion of the court "subject to its consideration" of the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a) [¶B.1.]; the defendant's express recognition that she would not be allowed to withdraw her guilty pleas irrespective of the sentence imposed by the court [¶ B.1.]; the defendant's express acknowledgment that she would not be eligible for parole during any term of incarceration [¶ B.1.]; the defendant's stipulation that all matters pertaining to any of the counts of the charging document are relevant sentencing conduct [¶B.2]; the parties' express agreement that the 2013 edition of the Sentencing

Guidelines applies to the defendant's conduct, that a base offense level of 6 is applicable pursuant to guideline section 2B1.1(a)(2), that a +8 offense level (more than \$70,000 loss) is applicable pursuant to guideline section 2B1.1(b)(1)(E) and that a +2 offense level (more than 10 victims) is also applicable pursuant to guideline section 2B1.1(b)(2)(A) [¶B.2.]; the defendant's express acknowledgment of the government's intention to object to any sentence below the guideline range [¶B.1.]; the terms of the agreement's acceptance of responsibility provision [¶B.2.]; the terms of the agreement's substantial assistance provision [¶B.3.]; the defendant's monetary and related obligations, including the terms of her obligation to pay a mandatory assessment of \$300.00 and to pay restitution of the entire scope of her criminal conduct [¶B.4.a.]; the terms of the defendant's financial disclosure obligations [¶B.4.b.]; the terms of the parties' asset forfeiture agreement [¶C.]; the scope of the defendant's express waiver of her right of direct appeal [¶D.1.]; the scope of the defendant's express waiver of her right to make any collateral attack on any judgment or sentence imposed by the court [¶D.2.]; the defendant's waiver without limitation of any right to access any records pertaining to the investigation or prosecution of this case [¶D.3.]; the defendant's abandonment of any seized property [¶D.5.]; the defendant's various additional duties [¶D.8.]; the remedies available to the government in the event of a breach of the agreement by the defendant [¶E.]; the defendant's acknowledgment that she had been effectively represented in this case [¶F.3.]; the parties express acknowledgment that the written plea agreement constituted the entire understanding between the parties and that it did not apply to any crimes or charges not addressed in the agreement [¶F.2.]; the likelihood that the defendant will receive a substantial term of imprisonment [¶F.5.]; and the substance of the agreement's other terms and provisions. *See* Rule 11(b)(1)(B)–(N) and 11(c)(1)–(3).

After which, the defendant was asked what her understanding of the terms of the agreement was, and she testified that her understanding was precisely the same as that set forth by the government's attorney. Counsel for the defendant, likewise, represented that his understanding was the same; he further represented that each of its terms had been reviewed with the defendant, and he stated that he was satisfied that the defendant understood all of its terms.

The defendant was then shown the plea agreement, and she affirmed it to be her signature on the document. She further testified that no one had made any other, different or additional promise or assurance of any kind in an effort to induce her to enter a plea of guilty and that no one had attempted in any way to force her to plead guilty in this case. The agreement was then received, filed and made a part of the record, and it was noted for the record that the written plea agreement constitutes the best evidence of its terms, and as such it "speaks for itself."

After the range of punishment for the offenses charged in Counts One, Two and Three of the Superseding Indictment had been outlined to the defendant, she acknowledged that she understood the maximum statutory penalty provided by law for conviction of the offense alleged in Count One is a fine of \$250,000.00, a five year term of imprisonment, and a five year term of supervised release; that she understood the maximum statutory penalty for the offense charged in Count Two is a fine of \$250,000.00, a seven and one-half year term of imprisonment, and a three year term of supervised release; and that she understood the mandatory penalty for the offense charged in Count Three is a two year term of imprisonment and that the maximum statutory also includes a fine of \$250,000.00 and two year term of supervised release. *See* Rule 11(b)(H)-(I). In addition, the defendant re-acknowledged that she understood that she would be required to pay a mandatory \$300.00 special assessment. *See* Rule 11(b)(1)(L).

The defendant then acknowledged that she knew her plea, if accepted, would result in her being adjudged guilty of three felony offenses and that such adjudication may deprive her 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 any kind of firearm.

The defendant was informed, and she expressly acknowledged, that the court's determination of her sentence would include consideration of multiple factors, including: the nature and circumstances of the offense; the defendant's history and characteristics; the seriousness of the offense; the need to promote respect for the law; the need to provide for just punishment and afford adequate deterrence; the need to protect the public; any determined need to provide the defendant with educational or vocational training, medical care or other correctional treatment in the most efficient manner; the kinds of available sentences; the pertinent sentencing guidelines and policy statements; the need to avoid unwanted sentence disparities; and any need to provide for restitution. She also acknowledged that she understood the court may order her to make full restitution to any victim and would require her to forfeit certain property to the government pursuant to the terms of the plea agreement. *See* Rule 11(b)(1)(J)–(K).

The defendant testified that she and her attorney had talked about how the Sentencing Commission Guidelines might apply to her case and the court's obligation to calculate the applicable sentencing-guideline range and to consider that range, possible departures under the Guidelines and other factors under 18 U.S.C. § 3553(a). *See* Rule 11(b)(1)(M). She stated that she understood that the court will not be able to determine the recommended guideline sentence for his case until after the pre-sentence report had been completed and she and the government each had an opportunity to challenge the facts reported by the probation officer.

The defendant then acknowledged that she knew the entry of a guilty plea constituted an admission of all of the elements of a formal felony charge, and she knew that irrespective of any sentence imposed by the court she would have no right to withdraw her guilty pleas. *See* Rule

11(c)(3)(B). She acknowledged that she knew parole had been abolished and that she would not be released on parole. She further acknowledged that she knew and understood any sentence of incarceration imposed by the court would also include a mandatory period of “supervised release” (as outlined in the plea agreement), and she knew any violation of the terms or conditions of such supervised release could result in her being returned to prison for an additional period of time. *See* Rule 11(b)(1)(H).

Pursuant to the terms of the plea agreement [¶D.1.], the defendant expressly acknowledged that she understood that she was giving-up all waivable rights to appeal. Likewise, pursuant to the terms of the plea agreement [¶D.2.], she expressly acknowledged that she understood she was giving-up all waivable rights to challenge her conviction or her sentence in any post-conviction proceeding.

Each of her procedural rights surrendered on a plea of guilty was also explained: including, her right to plead not guilty to any offense charged against her and her right to persist in any such not guilty plea; her attendant right to a trial by an impartial jury; her right to counsel to assist in her defense; her presumption of innocence, the obligation of the government to prove her guilt beyond a reasonable doubt; her right at trial to see, to hear, to confront, and to have cross-examined all witnesses presented against her; her right to decline to testify unless she voluntarily elected to do so in her own defense; her right to remain silent; her right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses to testify in her defense; and her right to a unanimous guilty verdict. *See* Rule 11(b)(1)(B)–(E). The defendant testified that she understood her right to plead not guilty and the attendant trial rights that she would waive by pleading guilty. *See* Rule 11(b)(1)(F).

The defendant acknowledged that in the event she received a more severe sentence than she expected or the court did not accept any sentencing recommendation by the government, she would still be bound by her guilty plea and would have no right to withdraw it.

In direct response to further questioning, the defendant also testified that she was pleading guilty to the offenses charged in Counts One, Two and Three of the Superseding Indictment because she in fact participated in the criminal activities outlined against her in those three felony counts of the Superseding Indictment.

To permit the court to determine whether an independent basis in fact existed for the defendant's plea, counsel for the government submitted for filing as part of the record a written Statement of Facts which summarized the facts that the government was prepared to prove at trial to establish the offense charged against this defendant in Counts One, Two and Three of the Superseding Indictment. The defendant and her counsel each represented that the defendant had reviewed it, was fully aware of its contents, had signed it, and did not contest any of the facts set forth therein. With the signature of the defendant and with the acknowledgment of the defendant and her attorney that the written Statement of Facts fairly summarized the government's case, it was received, filed and made a part of the record. *See* Rule 11(b)(3).

After testifying that she had heard and understood all parts of the proceeding and after consulting further with his attorney, the defendant stated that she remained ready to plead guilty pursuant to the terms of the plea agreement. By counsel, the defendant waived her right to a reading of the Superseding Indictment. Upon being then called-upon for her pleas, the defendant entered a plea of GUILTY to the offense charged in Count One alleging her violation of Title 18 United States Code, Section 371, a plea of GUILTY to the offense charged in Count Two alleging her violation of Title 18 United States Code, Section 1029(b)(2), and a plea of GUILTY to the offense charged in Count Three alleging her violation of Title 18 United States Code,

Sections 1028A(a)(1) and 1028A(c)(4). The clerk then read the written guilty plea form to the defendant; after acknowledging it to be correct, the defendant executed it, and it was filed and made a part of the record.

After entering her pleas of guilty and after an independent basis for each plea was established, the defendant was again addressed personally. She reconfirmed that her decision to plead guilty was fully voluntary and that it did not result from any force, threats, promises of leniency or other inducement of any kind (other than that expressly set forth in the plea agreement). *See* Rule 11(b)(2). The defendant also reconfirmed her complete satisfaction with the services and assistance of her attorney.

The defendant was then informed that acceptance of the plea agreement and her guilty pleas would be recommended to the presiding district judge, that a pre-sentence report would be prepared, that she would be asked to give information for that report, that her attorney may be present if she wished, and that she and her attorney would have the right to read the pre-sentence report and to file objections to it. The defendant was then remanded to the custody of the United States Marshal pending preparation of a pre-sentence report and acceptance of his guilty plea.

GOVERNMENT'S EVIDENCE

The written Statement of Facts referenced above is incorporated herein and made a part hereof by reference.

FINDINGS OF FACT

Based on the evidence, representations of counsel, and the defendant's sworn testimony presented as part of the hearing, the undersigned submits the following formal findings of fact, conclusions and recommendations:

1. The defendant is fully competent and capable of entering an informed plea to the charge set forth in Count One of the Superseding Indictment;
2. The defendant is fully competent and capable of entering an informed plea to the charge set forth in Count Two of the Superseding Indictment;
3. The defendant is fully competent and capable of entering an informed plea to the charge set forth in Count Three of the Superseding Indictment;
4. The defendant is fully aware of the nature of the charge set forth in Count One, and she is also fully aware of the consequences of her guilty plea to said offense;
5. The defendant is fully aware of the nature of the charge set forth in Count Two, and she is also fully aware of the consequences of her guilty plea to said offense;
6. The defendant is fully aware of the nature of the charge set forth in Count Three, and she is also fully aware of the consequences of her guilty plea to said offense;
7. The defendant is fully informed, and she understands, the applicable enumerated items set forth in Rule 11(b)(1)(A)–(N);
8. The defendant’s pleas of guilty were made pursuant to a fully voluntary written plea agreement;
9. The defendant’s entry into the plea agreement and her tender of three pleas of guilty pursuant to the terms of the plea agreement were both made with the advice and assistance of counsel;
10. The defendant knowingly and voluntarily entered her said plea of guilty;
11. The defendant’s plea of guilty did not result from force, threats, inducements or promises other those promises contained in the written plea agreement;
12. The plea agreement complies with the requirements of Rule 11(c)(1); and
13. The evidence presents an independent basis in fact containing each essential element of the three felony offenses to which the defendant has entered pleas of guilty.

RECOMMENDED DISPOSITION

Based on the above findings of fact, the undersigned **RECOMMENDS** that the court **ACCEPT** the defendant’s pleas of guilty to Count One, Count Two and Count Three of the Superseding Indictment, that she be **ADJUDGED GUILTY** of each these three felony offenses,

that the government's motion to dismiss as to this defendant the remaining charges in the Superseding Indictment be **GRANTED**, and that a sentencing hearing be held on April 23, 2014 beginning at 10.:30 a.m. before the presiding district judge.

NOTICE TO PARTIES

NOTICE is hereby given to the provisions of 28 U.S.C. § 636(b)(1)(c): Within fourteen (14) 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 the rules of court. The presiding district judge shall make a *de novo* determination of those portions of the report or specified findings or recommendations to which an 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 presiding district judge may also receive further evidence or recommit the matter to the undersigned with instructions. **A failure to file timely written objections to these proposed findings and recommendations within fourteen (14) days could waive appellate review.**

The clerk is further directed to transmit a copy of this Report and Recommendation to all counsel of record, and at the conclusion of the fourteen-day period the clerk is directed to transmit the record in this matter to the presiding United States district judge.

DATED: This 28th day of January 2014.

s/ James G. Welsh
United States Magistrate Judge