

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

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 1:15CR00033
	:	
STACEY POMRENKE	:	

SENTENCING MEMORANDUM

Comes now, the United States, by counsel and hereby requests the court sentence the defendant to the high-end of the range established by the United States Sentencing Guidelines, namely, 78 months imprisonment. The government is also requesting a forfeiture money judgment be ordered in the amount of \$34,546.18, restitution be ordered to the Internal Revenue Service in the amount of \$15,450.06, and a fine be ordered in the amount of \$125,000.00. The government believes that a 78 month sentence of imprisonment and the other requested penalties will adequately punish the defendant and also deter other similarly situated public servants from committing similar crimes in the future.

At sentencing,

“[t]he Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a). Specifically, the Court must consider the following goals when determining a sentence: “(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.”

18 U.S.C. § 3553(a)(2).

In addition, the Court must consider the following six factors when calculating a sentence: (1) the nature and circumstances of the offense and the history and characteristics of

the defendant; (2) the kinds of sentences available; (3) the Guidelines and Guideline range; (4) the Guidelines' policy statements; (5) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and (6) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a)(1) and (3)-(7); *United States v. Green*, 436 F.3d 449, 455-56 (4th Cir. 2006).

In this case, a sentence within the advisory Guideline range is supported by the Section 3553(a) factors. Of course, a “sentencing court does not enjoy the benefit of a legal presumption that the Guidelines sentence should apply,” *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007), and “may not presume that the Guidelines range is reasonable,” *Gall v. United States*, 552 U.S. 38, 128 S. Ct. 586, 596-97 (2007); *Nelson v. United States*, 129 S. Ct. 890, 892 (2009).

Examination of the § 3553(a) factors, however, shows that a sentence at the high-end of the guidelines is warranted in this case.

In order to justify a sentence at the high end of the guidelines, the government intends on relying upon the evidence at trial and presenting evidence at the sentencing hearing in a number of categories. This evidence will demonstrate that the history and characteristics of the defendant, combined with the proven offense conduct, necessitate a sentence of imprisonment of 78 months. The government will present evidence at sentencing that the defendant has a long history of fraudulent conduct, both prior to working at BVU and also during her employment at BVU. This is evidence that is in addition to the evidence adduced at trial. The government will also produce evidence that will clearly demonstrate that the the defendant's tenure at BVU was a dreadful demonstration of management, accounting, and oversight, and did not make her “the most important employee at BVU”¹, as was argued in closing arguments. Instead, the

¹ <http://wjhl.com/2016/02/26/jury-to-begin-deliberations-in-bvu-cfo-stacy-pomrenke-corruption->

government will present evidence that a forensic audit of BVU by the Virginia Auditor of Public Accounts has revealed that Stacey Pomrenke's tenure as Chief Financial Officer of BVU has left BVU's accounting and finances in disarray. The government will also present evidence and argument at sentencing regarding the appropriate amount of fines, restitution and forfeiture that should be imposed by the court.

I. A Long History of Fraudulent Conduct

The defendant, Stacey Pomrenke, unlike many of her co-conspirators, did not participate in fraudulent conduct only while employed at BVU, but instead has a long history of deceit and dishonesty. The government intends on proving that the defendant not only committed similar conduct to what she stands convicted of, but also other types of deception in order to advance her career and standing.

A. Employment at Evan Energy

The government will present evidence relating to Stacey Pomrenke's employment prior to BVU at the Evan Energy, an oil and gas company, where she was employed as the Vice-President of Finance during the late 1990's and up until 2003 when she was hired by BVU. The government will present testimony from former employees of Evan Energy who will testify that the defendant used company funds, without authority, to pay for personal vacations and other personal expenses. Specifically, the defendant used company funds to pay for a five or six day "girl's trip" shopping vacation to New York City that had no legitimate business purpose and was attended by Pomrenke, two other employees, and one employee's mother. Pomrenke utilized an Evan Energy business credit card to pay for plane tickets, hotel rooms, and theater tickets for all individuals on the trip. The government will also present testimony that these

trial/

expenditures were later discovered by Evan Energy management and the defendant was required to justify the expenses. Only after these expenses were challenged did the defendant falsely state that she and the other employees had always intended to pay the company back for the expenditures on their “girl’s trip.” The government believes the evidence will demonstrate that the other employees in attendance on this trip had no belief that the expenses would have to be repaid to Evan Energy because the defendant had stated it was authorized for Evan Energy funds to pay for the trip. Only after the expenses were challenged by Evan Energy management did the other employees realize they would have to pay back the expenses of the trip, contrary to the prior representations of Pomrenke.

The government will also present evidence that while working at Evan Energy, the defendant misrepresented the financial standing of Evan Energy to the CEO during regular meetings. Witnesses will testify that while Evan Energy was struggling financially, Pomrenke provided information that indicated Evan Energy was on firm financial footing.

B. Fraudulent Representation of Education Qualifications

The Government will present evidence that since the defendant’s employment at BVU, the defendant routinely and intentionally misrepresented her education qualifications both in matters related to BVU business and also in seeking awards and recognition as the Chief Financial Officer.

The government will present evidence that on March 16, 1998, the defendant was found guilty of cheating by a Judicial Panel of the Graduate Honor System Constitution at Virginia Tech University while enrolled in a Masters of Business Administration program. *See* Exh. A. The defendant never completed the coursework necessary to be awarded a Masters of Business Administration degree from Virginia Tech and that degree was never awarded to the defendant.

However, the evidence will demonstrate that this fact did not deter the defendant from claiming throughout her professional career that she had obtained this degree.

In approximately 2004, Pomrenke prepared sworn written testimony that was submitted to the Virginia State Corporation Commission in ongoing litigation involving BVU. In this sworn testimony, the defendant was asked to summarize her educational background. The defendant, under oath, stated, “[i]n 1998 I earned a Masters degree in Business Administration, Finance from Virginia Polytechnic Institute and State University.” Exh. B at 1. This sworn testimony was given under oath as being true to the best of the defendant’s knowledge and witnessed by a Notary Public. Additionally, a copy of the defendant’s resume was included with this testimony, which also stated, “**M.B.A.**, Finance, Virginia Polytechnic Institute and State University (Virginia Tech), December 1998.” *Id.* at 8.

On April 29, 2007, the defendant sent an email to Robert Gillespie, in which she provided a brief biography of herself. In this biography, the defendant stated, “Ms. Bright earned a B.S. degree in Accounting from the University of Virginia² and an MBA, Finance from Virginia Polytechnic Institute and State University.” Exh. C.

In July 2010, the defendant was awarded the Virginia Business CFO of the Year award for nonprofit organizations. In April 2010, during the application process for this award, the defendant was required to provide a resume which included her education and qualifications. The defendant stated, “A native of St. Paul, Va., Ms. Bright was the daughter of a coal miner and the first in her family to attend college. She earned an accounting degree at the University of Virginia’s College at Wise in 1994, and four years later she completed her master’s degree at

² The defendant also did not graduate from the University of Virginia, which is located in Charlottesville, VA, but instead graduated from the University of Virginia at Wise, located in Wise, VA.

Virginia Tech in Blacksburg.” Exh. D at 5.

On September 6, 2011, a profile of the defendant was published in the Bristol Herald-Courier, a newspaper that covers news in the BVU service area. In that article, entitled, “Stacey Pomrenke credits old-fashioned hard work for success”, there are two references to the defendant having a Masters Degree from Virginia Tech. The article states, “[w]hile attending the former Clinch Valley College in Wise, she worked as a waitress and a bank teller. And while earning her master’s degree from Virginia Tech, Pomrenke became an accountant for Penn-Virginia Oil and Gas in Kingsport, Tenn.” Exh. E at 1. Furthermore, the profile lists the defendant’s Education as, “Masters degree in finance from Virginia Tech; bachelor’s degree in accounting from Clinch Valley College.” *Id.* at 5.

Finally, on February 4, 2016, the defendant learned that the government had discovered her fraudulent representations regarding her educational achievements. On that date, she sent an email to numerous individuals, all potential witnesses in her upcoming trial, in which she further misrepresented the circumstances surrounding her being found guilty of cheating, failure to obtain her Masters of Business Administration degree, and her continued fraudulent representations that she had been awarded the degree. In this email, she stated,

20 years ago I made a mistake, I continued with my classes at Va Tech so I could “make right” the bad semester I had, to only learn that any grade below a C would not allow me to get my degree. I was devastated. This [Masters of Business Administration degree] was already on my resume when I went to Evan Energy because I was set to graduate, thinking the extra 6 credit hours I took would take care of my bad semester. It did not. ***I made the mistake of letting that fall over onto my BVU resume / not thinking much about it.***

.....

When hired at Evan Energy, my resume included that I would graduate in December 1998 (started Evan in Oct 1998) because I continued with my classes and thought I “could make them up”. ***Yes, that did fall over on my***

BVU resume – I quickly gathered it as they hurriedly wanted my resume.

Exh. F at 2 (*emphasis added*).

While the defendant may claim, as she did in the email to the government's witnesses, that these misrepresentations are a trivial matter, the government's position is that but for these material and egregious misrepresentations of her qualifications it is likely that the defendant never would have been hired as the Vice President of Accounting of BVU and been promoted to the position of Chief Financial Officer. In fact, the picture that is painted today of an organization rife with corruption would likely be very different had the Chief Financial Officer at BVU been someone other than the defendant, a person who was unwilling to engage in criminal conduct and instead be a watchful public servant and gatekeeper over the rate payer and tax payer funds at BVU's disposal.

C. Fraudulent Statements Related to Insurance Claim

The government will present evidence that on July 22, 2010, the defendant's BVU owned vehicle, was involved in an auto accident at a shopping mall in Asheville, NC. The defendant's husband, Kurt Pomrenke, was driving the vehicle at the time, even though he was not a BVU employee and no longer was a BVU Board Member. *See* Exh. G at 1-2. When the driver of the vehicle hit by Kurt Pomrenke filed an insurance claim against BVU's insurance company, Bruce Hagy, Senior Claims Specialist, Cincinnati Insurance Company, contacted Stacey Pomrenke to determine who was driving the vehicle. Mr. Hagy will testify that the defendant falsely stated that her husband was not driving the vehicle at the time of the accident, but instead she was driving the vehicle and the other witnesses were incorrect in stating that Kurt Pomrenke had been driving. *See* Exh. H. The government will call witnesses, namely, the operator of the vehicle hit by Kurt Pomrenke and the responding police officer to testify that Kurt Pomrenke was the actual

driver of the BVU vehicle at the time of the accident and to prove that Stacey Pomrenke intentionally misrepresented the events to Bruce Hagy.

While again, the defendant may argue that this is a trivial matter and very well may have not affected the payment insurance claim, it demonstrates the character of the defendant in that she has no hesitation to defraud her own company and others when she believes it may be in her best interest. If the defendant was willing to lie in regards to a \$1,330.33 insurance claim, it is clear she would have no difficulty committing the same or more egregious conduct in weightier matters, whether it be related to her professional or personal life. It also demonstrates that the other fraudulent behavior for which she was convicted was not an aberration.

II. Management and Financial Oversight at BVU

The government will also be presenting testimony of DeAnn Compton, Audit Director – Capital Asset Management, Auditor of Public Accounts, Commonwealth of Virginia, to testify regarding her office’s state mandated audit of BVU which has been ongoing since May 2016. The government believes that Ms. Compton will testify regarding a number of troubling issues that have come to her attention regarding the financial management of BVU and its assets, all of which occurred during the tenure of the defendant as Chief Financial Officer.

Specifically, she will testify that in 2007 BVU Optinet improperly eliminated \$9,097,739 in debt and \$4,643,549 in interest it owed to the BVU Electric operation. *See* Exh. I. Proper accounting principles and state law precluded such elimination and require that this debt be reallocated to BVU Optinet. *Id.* This re-allocation of \$13,741,288 to BVU Optinet as a debt changes the financial picture of BVU Optinet dramatically and could “affect the potential sale of the Authority’s Optinet Division because it will increase the amount of debt that the Authority must pay-off with proceeds from the sale and will reduce the amount of funds available to satisfy

grantors with claims on the Authority's assets.” *Id.* at 3.

Additionally, the government believes that Ms. Compton will testify regarding concerns her auditors had with employee discounts in excess of 50% for Optinet services that did not comport with Internal Revenue Service regulations on the taxation of fringe benefits and employee compensation which may require the re-issuance of W-2 forms to approximately 60 employees, a failure of BVU to adequately account for costs associated with pole attachment fees, and a myriad of other concerns that will be presented in greater detail at the sentencing hearing.

All of these findings significantly affect the financial position of BVU and call into serious question whether “Pomrenke’s financial acumen” was a benefit to BVU or will be its biggest hindrance in the future. *See* Trial Tr. 5, Feb. 25, 2016, ECF No. 166.

III. Forfeiture, Fines and Restitution

A. Forfeiture

The government asserts that the court should impose a money judgment in the amount of \$34,546.18, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in that such sum in aggregate was obtained directly or indirectly as a result of the offenses charged in the indictment for which the defendant was convicted.

It is difficult to quantify the value of all the benefits that the defendant and her co-conspirators obtained from their criminal conduct in shaking down contractors and vendors. However, the defendant and her co-conspirators obtained the following funds and things of value via illegal solicitations directed at vendors for BVU which can be quantified:

BVU ICF & 10,000 Customer Event – 2009 (Gov. Trial Exh. 85, ECF No. 110-15 & Gov. Trial Exh. 5 – ECF No. 126-16)

\$1,500.00 from Infinera Networks

\$1,000.00 from Calix

\$500.00 from Martin Group
\$1,000.00 from Level3
\$3,000.00 from Alcatel

BVU Thanksgiving Lunch – 2012 (Gov. Ex. 77, ECF No. 106-5)

\$2,850.00 from ETI Software

BVU Children's Christmas Party – 2012 (Gov. Ex. 151, ECF No. 113-29)

\$5,800.00 from Alcatel

BVU Employee Christmas Party – 2012 (Gov. Ex. 75, ECF No. 126-9)

\$12,297.18 from Edwards Telecommunication, Inc.

Scoreboard for Tri-Cities Christian Academy 2012 (Trial Trans. 2/24/16 at 33)

\$4,125.00

Cincinnati Reds Baseball Tickets (Trial Trans. 2/19/16 at 105)

\$544.00 from Burke, Powers, & Harty.

Keeneland Race Tickets (Trial Trans. 2/19/16 at 105)

\$80.00 from ViaMedia

Gift Cards from Edwards Telecommunication, Inc. (2013) (Gov. Trial Exh. 80, ECF No. 126-6; Gov. Trial Exh. 79, ECF No. 126-7)

\$100.00 Home Depot
\$100.00 Home Depot
\$100.00 Home Depot
\$100.00 Home Depot
\$100.00 Belk

Gift Cards from Edwards Telecommunication, Inc. (2012) (Gov. Trial Exh. 82, ECF No. 126-5)

\$200.00 Martha Washington Inn
\$250.00 Bass Pro Shops
\$200.00 Bass Pro Shops
\$200.00 Bass Pro Shops

Gift Cards from Edwards Telecommunication, Inc. (2010) (Gov. Trial Exh. 78, ECF No. 126-3)

\$250.00 Martha Washington Inn

Gift Cards from Edwards Telecommunication, Inc. (2009) (Gov. Trial Exh. 76, ECF No. 126-2)

\$250.00 Martha Washington Inn

Total: \$34,546.18

B. Restitution

In regards to restitution, the government believes that the only restitution awardable under the applicable statutes would be to compensate BVU for harm caused by the crimes alleged in Count One which relate to the tax fraud allegations and to pay tax liability to the Internal Revenue Service.

BVU has incurred loss due to the need to hire independent counsel to provide legal advice on these issues, re-issuance of W-2's to employees, and payment of previously unpaid tax and penalties. However, Pomrenke's co-conspirator, Wesley Rosenbalm, CEO, has already paid \$150,000.00 in restitution to BVU for this same conduct. The government does not have any information that this payment of restitution by Rosenbalm did not satisfy any outstanding loss incurred by BVU for the crimes alleged in Count One.

The government, as argued and supported by evidence at trial, urges the court to order the defendant to pay to the Internal Revenue Service \$15,450.06, in taxes past due and owing. *See* Gov. Trial Exh. 40, ECF 119-16.

C. Fine

The Sentencing guidelines call for a fine range in this case from \$12,500.00 to \$125,000.00. In determining an appropriate fine, U.S.S.G. §5E1.2(d) states:

In determining the amount of the fine, the court shall consider:

- (1) the need for the combined sentence to reflect the seriousness of the offense (including the harm or loss to the victim and the gain to the defendant), to promote respect for the law, to provide just punishment and to afford adequate deterrence;
- (2) any evidence presented as to the defendant's ability to pay the fine (including the ability to pay over a period of time) in light of his earning capacity and financial resources;
- (3) the burden that the fine places on the defendant and his dependents relative to alternative punishments;
- (4) any restitution or reparation that the defendant has made or is obligated to make;
- (5) any collateral consequences of conviction, including civil obligations arising from the defendant's conduct;
- (6) whether the defendant previously has been fined for a similar offense;
- (7) the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed; and
- (8) any other pertinent equitable considerations.

The amount of the fine should always be sufficient to ensure that the fine, taken together with other sanctions imposed, is punitive.

The government believes a fine at the high end of this range is appropriate and warranted. The defendant's net worth is \$419,406.60, having significant assets in two retirement plans (\$351,410.) and equity in her home (\$96,622.00) along with other assets. A monetary penalty of \$125,000.00 is even more appropriate based upon the facts in this case, which demonstrate that Stacey Pomreneke utilized her position at BVU to enrich herself in unfathomable ways.

In addition to the conduct found by the jury in this case in convicting her at trial, the defendant and her co-conspirator Rosenbalm utilized their positions at BVU to secure outrageously beneficial ten year "rolling contracts" that in all but a narrow set of circumstances precluded the defendant from being terminated without BVU having to pay the remaining nine years of the contract's salary and benefits. This contract prevented her from being terminated

even though in 2014 it was clear that she, as Chief Financial Officer of BVU, and others had intentionally violated federal tax laws in the payment of “off the books” compensation in the form of cash and pre-paid debit cards to their employees for at least a decade. At the time of her conviction and termination by BVU, the defendant was also receiving a total compensation package of at least \$220,773.54. This salary and her additional benefits continued to be paid until the defendant’s conviction at trial. The fact that she had the protection of this outlandish contract also vitiates any arguments that she feared for her job or was in some fashion under pressure not participate with other BVU management in illegal or unethical business practices.

Additionally, in July 2006, the defendant utilized her position and authority at BVU to have BVU pay off her and her husband’s personal auto loan of \$31,558.56. This was nothing more than unjust enrichment for the defendant at the expense of BVU, its ratepayers, and the taxpayers. No business need justified, nor did any financial benefit for BVU accrue from this decision. As demonstrated in an email from Rosenbalm regarding the subject, he stated, “I do things for you that I would never do for anyone else. . . .I bought the Tahoe which was not smart on my part (PR or politically wise) and will come back and bite me at some point.” Gov. Trial Exh. 155 at 2, ECF No. 126-11. Pomrenke responded stating, “As for the Tahoe, if I could have personally come (*sic*) out whole on a trade/sell of the Tahoe, I would have.” *Id.* at 1. Clearly, the only motivation for the payoff of the loan was due to the fact that Pomrenke was “underwater” on the loan, as most persons will at some time find themselves when taking on an automobile loan. The only difference in this situation was that Pomrenke had the cash reserves of BVU at her disposal to pay off the loan and become whole again and the complicity of Wes Rosenbalm to enter in to the unseemly deal.

The defendant also benefitted significantly from having BVU employees at her beck and

call to complete personal tasks. As demonstrated from the evidence adduced at trial, Dale Blevins and other BVU employees completed a myriad of personal tasks for the defendant, including, hauling trash from Pomrenke's residence to BVU dumpsters using BVU's truck (Gov. Trial Exh. 167, ECF No. 126-19), taking the defendant's personal property to the Salvation Army for donation (Gov. Trial Exh. 163, ECF No. 126-21), hauling BVU tables to Pomrenke's house for a yard sale (*See* Gov. Trial Exh. 162, ECF No. 126-14), and delivering and setting-up BVU owned tables and chairs for the defendant's wedding to Kurt Pomrenke (Gov. Exh. 164, ECF 126-33), all while Blevins and the other BVU employees were being paid by BVU and on the clock.

Finally, the defendant utilized her BVU credit card to pay for an extravagant amount of meals and other personal items that benefitted her personally. *See* Govt. Trial Exhs. 131 through 134, ECF 110-23 through 110-27. While the defendant may claim that these types of transactions were "authorized" or "within policy", she cannot overcome the fact that not only were these in violation of federal tax law (Govt. Exh. 147, ECF No. 110-17), but also only authorized or within policy based upon decisions made by her and Rosenbalm, both of whom now stand convicted of multiple frauds perpetrated upon BVU, the federal government, and the citizens of Southwest Virginia. Finally, there is no evidence of any written policy that would support such a defense.

For all these reasons, the government believes that a punitive financial penalty is appropriate and that fine in the amount of \$125,000.00 is warranted based upon the circumstances of the offenses charged, the history and characteristics of the defendant, and the ability of the defendant to pay such a fine.

IV. Detention Upon Pronouncement of Sentence

The government requests that the defendant be ordered into custody at the time of the pronouncement of sentence. The defendant has flagrantly violated the court's orders regarding discovery and contact with witnesses during the pendency of her proceedings. Additionally, the defendant has failed to accept any responsibility for her conduct that led to the criminal convictions which now stand. The defendant has known that she was a target of prosecution since the Summer of 2015 and has been on bond since her indictment in November 2015. The government requested at the conclusion of her trial that the defendant be taken into custody and her bond revoked. The court denied the motion, but scheduled contempt proceedings to take place at the time of her sentencing. At that time, the defendant was put on notice that her release was in jeopardy and she should have begun making preparations for incarceration. For all of these reasons, the government, at sentencing, will ask this court to take the defendant into the custody of the Attorney General pending designation by the Bureau of Prisons.

CONCLUSION

Since 2003, the defendant has used BVU to enrich herself and her co-conspirators, all at the expense of the rate payers, tax payers, and vendors doing business with BVU. These criminal actions were not done out of financial necessity, quite the contrary, the defendant's lavish salary and benefit package secured a very comfortable living. These actions were instead carried out due to the defendant's greed and hubris - a belief that BVU's financial resources were to be used to benefit her and her co-defendants, to secure lavish parties for BVU employees, and to secure premium sporting events tickets at no cost – in essence, to live the lavish lifestyle of a corporate mogul in the private sector. This type of attitude and action by a public servant who controls millions of dollars of public monies is unconscionable. For this reason, the government requests that the defendant be sentenced at the high end of the guidelines and be imprisoned for a

total term of 78 months, be ordered to pay a fine of \$125,000.00, be ordered to pay a money judgment forfeiture of \$34,546.18, and be ordered to pay to the Internal Revenue Service \$15,450.06, in taxes due and owing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on Wednesday, August 03, 2016, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel for the defendant.

/s/ Zachary T. Lee
Assistant United States Attorney