

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-CR-20

GEORGIA THOMPSON,

Defendant.

**GOVERNMENT'S RESPONSE TO DEFENDANT'S OBJECTIONS
TO MAGISTRATE JUDGE'S RECOMMENDATION**

On May 25, 2006, Magistrate Judge Gorence issued a written report recommending that Defendant Georgia Thompson's motion for a bill of particulars, motion to dismiss the indictment, and motion to dismiss count two of the indictment be denied. On June 1, 2006, Defendant Georgia Thompson filed her objections to the Magistrate Judge's recommendation.

In her objections, Thompson largely adopts, *see* Objections at 8, 12, 13, and at other points reiterates, *id.* at 2-7, arguments she made in the several briefs she filed before the Magistrate Judge. She appears to raise only one new argument regarding her motions to dismiss.

With respect to Count Two of the indictment, charging honest services fraud, Thompson contends that the Magistrate Judge incorrectly relied on the cases *United States v. Sorich*, 2006 U.S. Dist. Lexis 18227,*22-23 (N.D. Ill. 2006); *United States v.*

Munson, 2004 WL 1672880 (N.D. Ill. 2004); and *United States v. Bauer*, 2000 WL 1720245 (N.D. Ill. 2000). The Magistrate Judge cited those cases for the proposition that “providing political advantage to another as a result of the misuse of one’s public position, and thus gaining personal job security, can satisfy the requirement of personal gain,” one of the elements of honest services fraud. Mag. Rec. at 6.

Thompson suggests that the Magistrate Judge’s reliance on these cases was misplaced because the defendants in those cases “accomplished their offenses by committing underlying, independent criminal offenses or dishonest acts tending to harm the public in the end.” Objection at 8.

Thompson’s argument appears to be that the government must establish some independent violation of some other state or federal criminal law in order to prove honest services fraud in violation of 18 U.S.C. §§ 1341, 1346. Thompson’s argument finds no support in the cases he cites and, in fact, has been expressly rejected by the Seventh Circuit Court of Appeals. *See, e.g., United States v. Martin*, 195 F.3d 961, 966-67 (7th Cir. 1999) (holding that the government need not prove a violation of an underlying state offense in order to establish honest services fraud in violation of Sections 1341 and 1346).

To the extent that Thompson is arguing that she could not have engaged in honest services fraud in the performance of a discretionary act, simple common sense undermines her argument. Thompson did indeed have the discretion to evaluate the travel

services contract in this case. But the indictment alleges that she exercised that discretion dishonestly by, among other things, inflating her score on the “partner” contract, trying to cause others to do so, and ultimately causing the contract to be steered to a particular vendor for political reasons other than the merits criteria that were to govern the contract-award process. That she enjoyed discretion as a member of the evaluation committee is no defense to the charge that she deprived the citizens of Wisconsin of her honest services by abusing that discretion in manipulating the contract-award process.

Thus, the only apparently new argument that Thompson raises in her brief is without merit.

For sound reasons, the Magistrate Judge has recommended that Thompson’s motions to dismiss the indictment and her request for a bill of particulars be denied. *See* Mag. Rec., *passim*. As the Magistrate Judge correctly concluded, Count One of the indictment states an offense of misapplication of federal program funds, *id.* at 11-14, and Count Two states an offense of honest services fraud. *Id.* at 2-11.

This Court should therefore adopt the Magistrate Judge’s recommendation for the reasons set forth here and in the government’s consolidated response to the defendant’s pretrial motions (filed March 22, 2006).

Respectfully submitted, this 2nd day of June, 2006.

STEVEN M. BISKUPIC

United States Attorney

By:

s/Gregory J. Haanstad

s/Scott J. Campbell

Assistant United States Attorneys

Gregory J. Haanstad: 1036125

Scott J. Campbell: 1017721

Attorneys for Plaintiff

Office of the United States Attorney

Eastern District of Wisconsin

517 East Wisconsin Avenue, Room 530

Milwaukee, Wisconsin 53202

Telephone: (414) 297-4581, Fax: (414) 297-1738

E-Mail: greg.haanstad@usdoj.gov

scott.campbell@usdoj.gov