

No. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

ANGELA ARMENTA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the  
Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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## QUESTIONS PRESENTED

1. Is a defendant deprived of due process where the absence of evidence constitutes probative evidence of proof beyond a reasonable doubt?
2. Are the Fifth and Sixth Amendments to the United States Constitution violated where a federal district court increases a defendant's incarceration exposure based upon facts not found by the jury.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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## PETITION FOR A WRIT OF CERTIORARI

### DECISION BELOW

The opinion of the Court of Appeals (App. A) is reported at 883 F.3d 1005 (7<sup>th</sup> Cir. 2018). The oral ruling of the district court denying Ms. Armenta's post trial motion is unreported, but that oral ruling is attached as Appendix B.

### JURISDICTION

The Seventh Circuit entered Judgement in this case on March 5, 2018. No petition for rehearing was filed. This Petition is being filed within 90 days after entry of the judgment below, so it is timely under Rule 13.1. The jurisdiction of this Court rests on Title 28 U.S.C Section 1254(1).

### STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Title 18 U.S.C. Section 1347 provides in pertinent part:

**(a)**Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—

**(1)**

to defraud any health care benefit program; or

**(2)**

to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program,

in connection with the delivery of or payment for health care benefits, items, or services, shall be fined under this title or imprisoned not more than 10 years, or both. If the violation results in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under this title or imprisoned not more than 20 years, or both; and if the violation results in death, such person shall be fined under this title, or imprisoned for any term of years or for life, or both.

**(b)**

With respect to violations of this section, a person need not have actual knowledge of this section or specific intent to commit a violation of this section.

## STATEMENT OF THE CASE

Petitioner, Angela Armenta, (hereinafter “Angela Armenta”) was charged with four counts in an indictment containing eighteen counts (R. Doc. 25).<sup>1</sup> Five other defendants were charged. Angela Armenta was the only defendant who

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<sup>1</sup> Citations are to the record on appeal in the court below. See, Docket, *United States v. Armenta*, 17-2296 (7<sup>th</sup> Cir. March 5, 2018).

proceeded to trial (R. Doc. 162). Angela Armenta was charged with four violations of 18 U.S.C. Section 1347 (R. Doc. 25). On February 24, 2016, one of the four counts, count ten, was dismissed on the government's oral motion. Angela Armenta pled not guilty and proceeded to a jury trial which took place over the course of the following days: February 29, March 1, March 2, March 3, March 4, March 7, and March 8, 2016. At the trial's conclusion, the jury returned a verdict of guilty as to all three counts (R. Doc. 162). Angela Armenta was sentenced on June 19, 2017 to 20 months incarceration, 2 years supervised release, and \$1,670,000.00 in restitution. A timely notice of appeal was filed to the United States Court of Appeals for Seventh Circuit on June 23, 2017 (R. Doc. 266).

At trial, the government presented evidence that a person named "Angela Armenta" was a certified nursing assistant, generally referred to as a "CNA", a supervisor of some certified nursing assistants, and later a compliance officer at a health care agency called Passages Hospice, LLC (Tr. 73-74, 164, 423, 427, 529-530). Passages Hospice, LLC, "Passages", provided end-of-life care or hospice care for terminally ill patients. Passages was owned and operated by an individual named Seth Gilman and was paid by Medicare and Medicaid for its services (Tr. 69-70, 75, 161, 1630). The government presented evidence that a person by the name of "Angela Armenta" told registered nurses to place Medicare patients on a level of care which was not medically warranted so that she and other individuals



could obtain additional money from Medicare (Tr. 73-74, 86-99, 162-166). The higher level of care was labelled “general in patient” and was generally referred to as “GIP”. The additional money generated by inappropriately placing hospice patients on GIP was distributed to individuals in the form of a “bonus” to their respective salaries (Tr. 86-99). The Passages’ process for placing a patient on GIP was that a registered nurse would propose placing a patient on GIP and another registered nurse had to approve placing the patient on GIP (Tr. 598-599, 609-610, 646, 723-725, 734, 1172-1176). The criteria used by Passages Hospice, LLC was inappropriate and inconsistent with Medicare rules and regulations (Tr. 852, 868-869, 870-882, 886-894). On several occasions, training was given, and materials were distributed as to the correct Medicare criteria for placing hospice patients on a higher level of care (Tr. 431-435, 553-557, 559, 691-694, 701-706, 712-715). A person named “Angela Armenta” was supposedly at these training sessions, received the training materials, and made statements (Tr. 553-555). However, none of the government’s witnesses made an in-court identification of defendant Angela Armenta as the person who made statements, was present at any location or performed any action (R. 222, p. 7, line 18-19). The district court denied Angela Armenta’s post trial motion.

Angela Armenta objected before and at her sentencing to her guideline score being increased based upon the district court’s determination that she committed

perjury when she testified at trial and that the trial evidence indicated that at some point, she and other defendants had obstructed a Medicare audit even though she was not charged with obstructing the Medicare audit. (R. 220, R. 231, R. 281 Sentencing Transcript, June 19, 2017, 14-17). The district court found these facts which had not been found by the jury and used these facts to increase Ms. Armenta's incarceration exposure under the advisory guidelines. (R. 281 Sentencing Transcript, 14-17 June 19, 2017).

On appeal, the Seventh Circuit affirmed Angela Armenta's conviction. The court of appeals acknowledged that identifying Angela Armenta as the person who made statements and took actions was an element of the offense that the prosecution must prove beyond a reasonable doubt and acknowledged that none of the government's witnesses identified Angela Armenta as the person making any statement or taking any action.<sup>2</sup> The court appeals affirmed the conviction because the name "Angela Armenta" appeared on the indictment; the name "Angela Armenta" was mentioned by witnesses; the named "Angela Armenta" appeared in documents, the negative fact that no witness said that it was not the Angela Armenta sitting in the courtroom;<sup>3</sup> that defense counsel's opening statement

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<sup>2</sup> *Armenta*, at 1007.

<sup>3</sup> Specifically, the Seventh Circuit Court of Appeals stated quoting from the Seventh Circuit's opinion in *United States v. Weed*, 689 F.2d 752, 755 (7<sup>th</sup> Cir. 1982), "that the failure of any of the witnesses to point out that the wrong man had been brought to trial [can be] eloquent and sufficient proof of identity." *Armenta*, at 1008.

discussed Angela Armenta and what he expected the evidence to be presented to the jury; the fact that defense counsel failed to present any argument to the jury to cause the jury to question to whom the witnesses were referring since they did not identify anyone;<sup>4</sup> and the fact that defense counsel did not object to witnesses testimony on the basis that they had not identified defense counsel's client.<sup>5</sup> *United States v. Armenta*, 883 F.3d 1005, 1008 (7<sup>th</sup> Cir. 2018).

As to the sentencing issue, the Seventh Circuit stated that if the sentence is within the statutory maximum, the district court may make any findings of fact that it so chooses without offending the Constitution. *Armenta* at 1009.

#### REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because basic notions of due process must be set forth and reinforced by this Court. The court of appeals has set forth a doctrine that the lack of probative evidence constitutes proof beyond a reasonable doubt. Also, the court of appeals indicated that the fact that a defendant does not challenge, or object constitutes probative evidence. This is a radical new method of proof or type of evidence in criminal cases which conflicts with the fundamental principles of our Constitution. As to the sentencing issue, the court of appeals set

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<sup>4</sup> Defense counsel argued to the jury that there had been no identification (Tr. 1535-1536).

<sup>5</sup> Defense counsel objected numerous times that there was no foundation for the witnesses' testimony. The objection was overruled by the district court and it became futile for defense counsel to continue objecting before the jury and run the risk that the jury would view defense counsel as being an obstructionist (Tr. 459-462).

forth the principle that district courts may find facts that increase a defendant's incarceration exposure. This principle conflicts with the Fifth and Sixth Amendment to the United States Constitution.

I. The Decision Below is Wrong; A Defendant Is Deprived of Due Process Where the Absence of Evidence Constitutes Probative Evidence of Proof Beyond a Reasonable Doubt.

This Court has stated at least as far back as 1970 that due process requires that the government must submit to the finder of fact proof beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 361-364 (1970). The Court has restated this fundamental principle over the years. *Clark v. Arizona*, 548 U.S. 735, 766 (2006); *Hurst v. Florida*, \_\_\_ U.S. \_\_\_, 136 S.Ct. 616, 621 (2016). The Court has admonished the nation's criminal justice system regarding proof beyond reasonable doubt. In *Estelle v. Williams*, 425 U.S. 501, 503 (1976), this Court stated, "...courts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." Never has this Court adopted reasoning and principles such as those set forth by the Seventh Circuit of Appeals that the absence of probative evidence constitutes probative evidence; that the failure of defense counsel to object and to tell the government about some deficiency in the government's proof constitutes probative evidence; or that the failure of defense counsel to argue the lack of probative evidence constitutes probative evidence. Taken together, the Seventh Circuit has

provided an analysis and set forth a principle that the absence of evidence constitutes probative evidence which can fulfil the constitutional due process requirement of proof beyond a reasonable doubt. This is a radical departure from the principles of our Constitution and from this Court's decisions.

## II. At a Sentencing Hearing, a District Court Cannot Increase a Defendant's Incarceration Exposure Based Upon Facts Not Found by the Jury.

The Seventh Circuit held that the district court had the power to find facts without the aid of the jury and increase a defendant's incarceration exposure if the findings did not increase the statutory maximum sentence. Angela Armenta objected to this procedure in the district court. The facts found by the district court increased Angela Armenta's guideline score and increased her incarceration exposure. The Seventh Circuit, consistent with other courts of appeals, has disregarded this Court's Fifth and Sixth Amendment jurisprudence. See, *United States v. Cassius*, 777F.3d 1093, 1097 (10<sup>th</sup> Cir. 2015); *United States v. Goosen*, \_\_\_ Fed.Appx \_\_\_, 2018 WL 635997 (January 31, 2018). This Court has interpreted the Fifth and Sixth Amendment to require "[a]ny fact that increases the penalty to which a defendant is exposed constitutes an element of a crime, *Apprendi v. New Jersey*, 530 U.S. 466, 483, n.10, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), and "must be found by a jury, not a judge, *Cunningham v. California*, 549 U.S. 270, 281, 127 S.Ct. 856, 166 L.Ed.2d 856 (2007)". *Jones v.*

*United States*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 8, 190 L.Ed.2d 279 (2014) (Scalia, J., dissenting from the denial of certiorari); *United States v. Sabillon-Umana*, 772 F.3d 1328, 1331 (10<sup>th</sup> Cir. 2014). This Court should finally make clear to the lower courts the applicability of its Fifth and Sixth Amendment jurisprudence and eliminate the confusion in the courts of appeals.

### CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



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## **APPENDIX A**

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 17-2296

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*v.*

ANGELA ARMENTA,

*Defendant-Appellant.*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.  
No. 14 CR 33-5 — **Thomas M. Durkin**, Judge.

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ARGUED JANUARY 9, 2018 — DECIDED MARCH 5, 2018

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Before FLAUM, KANNE, and ROVNER, *Circuit Judges*.

KANNE, *Circuit Judge*. The government charged Angela Armenta with health care fraud, but at her trial it failed to ask any of its witnesses to identify her in court. Nevertheless, the jury convicted Armenta. At her sentencing, the district court increased Armenta's Guidelines range by two levels after it concluded she had obstructed justice. It then sentenced her to a term of imprisonment well below that increased range. She appeals her conviction and sentence.



Because the evidence of Armenta's identity was sufficient to support her conviction and because the district court appropriately applied the obstruction of justice enhancement, we affirm.

### **I. BACKGROUND**

Angela Armenta worked at Passages Hospice—a company that provided nurses for hospice care at nursing homes and other facilities throughout Illinois—first as a certified nursing assistant and later as a regional director of certified nursing assistants. Passages billed its services to Medicare, which in turn reimbursed Passages at different rates depending on the level of care a patient received. For example, Medicare would pay approximately \$180 per patient per day for routine services, but would pay as much as \$700 per patient per day for general inpatient services (GIP). In 2009, Passages began paying bonuses to directors based on the number of patients on GIP per day per pay period. The number of patients on GIP significantly increased after the bonus structure was implemented, in part because directors like Armenta were instructing nurses and nursing assistants to place patients on GIP who did not need that level of care.

In August 2009, Passages received an audit request for patient files from a Medicare contractor. In response to the audit, Armenta and several other Passages employees met to enter information consistent with GIP care and billing into patient files. For example, they created records that visits had occurred when they had not. Passages submitted the altered files to the contractor.

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In 2010, a legal nurse consultant trained Passages employees, including Armenta, on the proper requirements for placing a patient on GIP. After the legal nurse left, Armenta told the other nurses present to disregard the training. Just a month later, Armenta attended a teleconference with an outside consultant who reiterated the proper requirements for GIP. Still, Passages's GIP procedures and bonus structure did not change.

Eventually, Armenta and a number of other Passages employees were charged with health care fraud. Armenta was the only defendant to proceed to trial. At the close of the government's case-in-chief, Armenta filed a motion for a judgment of acquittal because none of the government's witnesses identified her in court. The district court reserved ruling on the motion until the close of the defense's case. Armenta then testified, the defense rested, and the district court denied the motion for a judgment of acquittal. The court reasoned that all the facts and circumstances were sufficient to establish Armenta's identity.

The jury found Armenta guilty of three counts of health care fraud. At sentencing, the district court increased Armenta's Guidelines range two levels after it found that she had obstructed justice by lying on the stand when she testified and by altering records during the Medicare audit at Passages. With that two-level enhancement, her Guidelines imprisonment range was 63 to 78 months. The district court sentenced Armenta to 20 months' imprisonment, imposed two years' supervised release, and ordered her to pay \$1.67 million in restitution. She appeals the district court's denial of her motion for a judgment of acquittal and its calculation of her Guidelines range.

## II. ANALYSIS

Armenta challenges her conviction, arguing that the evidence was insufficient to support a finding that she was the Angela Armenta to whom the government's indictment and evidence referred.

She also challenges her sentence, arguing that the district court erred in imposing the two-level enhancement for obstruction of justice.

*A. The evidence was sufficient to establish Armenta's identity.*

We review the denial of a defendant's motion for a judgment of acquittal *de novo*, but the standard is "in essence the same as a review of the sufficiency of the evidence." *United States v. Johns*, 686 F.3d 438, 446 (7th Cir. 2012). We ask whether a rational jury "could have found the essential elements of a crime beyond a reasonable doubt," at the time the motion was brought, viewing the evidence in the light most favorable to the government. *United States v. Clarke*, 801 F.3d 824, 827 (7th Cir. 2015) (quoting *United States v. Foley*, 740 F.3d 1079, 1082–83 (7th Cir. 2014)); see also *United States v. Wilson*, 879 F.3d 795, 802 (7th Cir. 2018); *Johns*, 686 F.3d at 446.

Though an in-court identification of the defendant is preferred to prove identity—for reasons this appeal illustrates—one "is not required if the defendant's identity can be inferred from the circumstances." *United States v. Thomas*, 763 F.3d 689, 693 (7th Cir. 2014). "[T]he defendant's identity is nothing more or less than an element that must be established beyond a reasonable doubt." *Id.* at 694.

Even in the absence of an in-court identification of Armenta, a rational jury could conclude from all the facts and

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circumstances that the government proved her identity beyond a reasonable doubt.

Armenta had the same name as the person who was indicted and was referred to by witnesses and in documents submitted into evidence. *See United States v. Doherty*, 867 F.2d 47, 67 (1st Cir. 1989) (finding the evidence of identity sufficient when, in part, the defendant had the same name and nickname “as the person indicted and about whom the witnesses spoke”). Witnesses testified about their familiarity with “Angela Armenta,” and not one of them suggested that the person they were talking about was not in the courtroom. *See United States v. Weed*, 689 F.2d 752, 755 (7th Cir. 1982) (noting “that the failure of any of the witnesses to point out that the wrong man had been brought to trial [can be] eloquent and sufficient proof of identity”). And the jury was presented with several stipulations between the government and “defendant Angela Armenta,” most notably a stipulation where Armenta agreed the government’s exhibit was “a true and accurate portion of a résumé that Angela Armenta provided to prospective employers.” (R. 173 at 146–47.) That exhibit indicated that Angela Armenta was employed at Passages from 2008 to 2012, including as “Regional CNA Director,” (*id.* at 148), which corroborated witness testimony as well as remarks made by Armenta’s counsel during his opening statement, (*see, e.g.*, R. 222 at 10–12).

These remarks, along with others by Armenta’s counsel during opening statement, made clear that the Angela Armenta that witnesses would testify about was the same one in

the courtroom.<sup>1</sup> Moreover, her counsel “did not present any argument to the jury that might have caused it to question” his client’s identity as the defendant, *Thomas*, 763 F.3d at 695, and he did not object to any witness’s testimony on the basis that they had not identified his client, *Weed*, 689 F.2d at 756. See *Thomas*, 763 F.3d at 694 (noting that “the jury had no cause to doubt that the right man was on trial” given “his lawyer’s trial strategy, which was inconsistent with an identity-based defense”). The defense was free to argue to the jury that the Angela Armenta in the courtroom was not the same Angela Armenta involved in the fraudulent scheme. *Id.* It did not do so, and the jury rationally concluded that the evidence established her identity beyond a reasonable doubt notwithstanding the lack of an in-court identification.

*B. The obstruction of justice enhancement was appropriate.*

We review *de novo* whether a defendant satisfies the requirements of the obstruction of justice enhancement, but we review the district court’s factual findings for clear error. *United States v. Nichols*, 847 F.3d 851 (7th Cir. 2017). The district court concluded that Armenta obstructed justice by (1) changing and creating documents during the Medicare audit, and (2) committing perjury when she testified in her own defense. Armenta raises two challenges to this enhancement.

She first contends that the district court violated her Fifth and Sixth Amendment rights when it increased her Guidelines range based on facts that were not found by the jury. Her challenge is one to the district court’s well-accepted ability to

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<sup>1</sup> For a sampling of the relevant portions from her counsel’s opening statement, see the district court’s oral ruling on Armenta’s motion for a judgment of acquittal. (R. 222 at 9–11.)

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make factual findings under the Sentencing Guidelines without the aid of a jury or the defendant's consent. Though defendants certainly have a right for any fact that increases a statutory minimum or maximum to be submitted to a jury and proved beyond a reasonable doubt, *see Alleyne v. United States*, 570 U.S. 99 (2013); *Apprendi v. New Jersey*, 530 U.S. 466 (2000), "[w]e have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range." *United States v. Booker*, 543 U.S. 220, 233 (2005) (citation omitted). "For when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant." *Id.*; *see also, e.g., United States v. Warren*, 454 F.3d 752, 762–63 (7th Cir. 2006) (finding no error in the district court making the necessary factual findings to support an obstruction of justice enhancement).

Here, the district court found that Armenta obstructed justice and increased her Guidelines range—but not her mandatory minimum or maximum sentence—accordingly. It thus did not violate the Fifth and Sixth Amendments.

Apart from the alleged constitutional violation, Armenta also contends the district court erred in finding that she obstructed justice by perjuring herself. It's true that the district court did not find the requisite elements to impose the enhancement based on perjury, *see United States v. Brown*, 843 F.3d 738, 742 (7th Cir. 2016), but the district court had a second, independent basis for imposing the enhancement: Armenta's alteration and creation of patient files. We agree that this conduct constitutes obstruction of justice. *See* U.S.S.G. § 3C1.1 cmt. nn.3–4. The enhancement was undoubtedly proper on this basis alone.

### III. CONCLUSION

Even without an in-court identification of Angela Armenta, the jury convicted her of health care fraud, rationally concluding from all the facts and circumstances that the government had proved her identity beyond a reasonable doubt.

At Armenta's sentencing, the district court considered the evidence presented at trial that Armenta altered and created patient files and appropriately imposed a two-level enhancement for obstruction of justice.

For these reasons, the district court's judgment is AFFIRMED.

**UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



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**FINAL JUDGMENT**

March 5, 2018

Before: JOEL M. FLAUM, Circuit Judge  
MICHAEL S. KANNE, Circuit Judge  
ILANA DIAMOND ROVNER, Circuit Judge

No. 17-2296	UNITED STATES OF AMERICA, Plaintiff - Appellee  v.  ANGELA ARMENTA, Defendant - Appellant
<b>Originating Case Information:</b>	
District Court No: 1:14-cr-00033-5 Northern District of Illinois, Eastern Division District Judge Thomas M. Durkin	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

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## **APPENDIX B**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, ) Docket No. 14 CR 33-5  
)  
Plaintiff, ) Chicago, Illinois  
) October 20, 2016  
v. ) 8:56 a.m.  
)  
ANGELA ARMENTA, )  
)  
Defendant. )

TRANSCRIPT OF PROCEEDINGS - Rulings on Post-Trial Motions  
BEFORE THE HONORABLE THOMAS M. DURKIN

APPEARANCES:

For the Government: HONORABLE ZACHARY T. FARDON  
United States Attorney by  
MR. STEPHEN CHAHN LEE  
MS. ABIGAIL L. PELUSO (present as noted)  
MR. JAMES P. DURKIN  
Assistant United States Attorneys  
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For the Defendant: LAW OFFICES OF PHILLIP A. TURNER by  
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Official Court Reporter  
219 S. Dearborn Street, Room 1432  
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1 (In open court.)

2 THE CLERK: 14 CR 33, United States of America v.  
3 Angela Armenta.

4 MR. LEE: Good morning, your Honor. Stephen Lee and  
5 James Durkin for the United States.

6 THE COURT: Good morning.

7 MR. TURNER: Phillip Turner on behalf of the  
8 defendant, Ms. Armenta.

9 THE COURT: All right. I had by minute order denied a  
10 motion for a new trial, and I was going to set a sentencing  
11 date, but I did say I would put my reasons for denial of the  
12 Rule 29 motion actually on the record at this time. So I'll do  
13 that.

14 You can all have a seat if you want. It will take a  
15 few minutes. I have other cases that I may interrupt this  
16 recitation for. And then at the close of it, I'm going to set  
17 a sentencing date.

18 So okay. You can all have a seat, though, if you'd  
19 like.

20 All right. The defendant has filed a motion for  
21 judgment of acquittal pursuant to Rule 29 of the Federal Rules  
22 of Criminal Procedure. For the reasons set forth below, the  
23 Court denies defendant's motion.

24 The -- several issues were raised, but in some form or  
25 another, the issue was raised as to whether or not evidence was

1 sufficient to sustain a conviction. I'll get into the details  
2 of the particular issues raised by the defendant.

3 But in challenging the sufficiency of the evidence, a  
4 defendant bears a heavy, indeed, nearly insurmountable burden.  
5 This is according to numerous 7th Circuit cases, but I'll  
6 simply cite one: *United States v. Warren*, 593 F.3d 540, 546  
7 (7th Cir. 2010).

8 The Court needs to view the evidence in the light most  
9 favorable to the prosecution, and the defendant must be able to  
10 convince the Court that even in that light, no rational trier  
11 of fact could have found her guilty beyond a reasonable doubt.

12 The inquiry is whether evidence exists from which any  
13 rational trier of fact could have found the essential elements  
14 of a crime beyond a reasonable doubt. In other words, a court  
15 will set aside a jury's guilty verdict only if the record  
16 contains no evidence, regardless of how it was weighed, for  
17 which a jury could have returned a conviction.

18 It follows that under Rule 29, courts do not reassess  
19 the weight of the evidence or second-guess the trier of fact's  
20 credibility determinations. This strict standard is recognized  
21 and has a recognition that sorting the facts and inferences is  
22 a task for the jury.

23 7th Circuit teaches "... the critical inquiry on  
24 review of the sufficiency of the evidence to support a criminal  
25 conviction must ... not simply [be] to determine whether the

1 jury was properly instructed ... but to determine whether the  
2 record evidence could reasonably support a finding of guilt[y]  
3 beyond a reasonable doubt."

4 But this inquiry does not require a Court to ask  
5 itself whether it believes that the evidence at trial  
6 established guilt beyond a reasonable doubt. Indeed, "The  
7 relevant question is whether, after viewing the evidence in ...  
8 light most avertable [*sic*] to the prosecution, any rational  
9 trier of fact could have found the ... elements of the crime  
10 beyond a reasonable doubt."

11 And that's *United States v. Moore*, 572 F.3d, 337,  
12 quoting a Supreme Court case *Jackson v. Virginia*, 443 U.S. 307  
13 (1979).

14 So with that standard in mind, I'll now review the  
15 evidence.

16 All right. The defendant filed what was titled a  
17 Rule 29 Motion And/Or Post-Trial Motion and dated it May 6th --  
18 and it was dated and filed May 6, 2016. That's Document 175.

19 The government responded June 9th, 2016. That's  
20 Document 178.

21 And defendant's reply was filed June 23rd, 2016.  
22 That's Document 179.

23 And then, finally, I denied the Rule 29 motion by  
24 minute order, Document 194, on October 18, 2016.

25 There was a Rule 29 motion for a directed verdict

1 which was filed on March 7th at the close of the government's  
2 case. At that time the defendant raised four separate issues:  
3 said there was no in-court identification of the defendant,  
4 there was nothing to tie the defendant to the patients listed  
5 or referred to in the three counts of the indictment, said the  
6 grand jury indictment couldn't be modified at this point, and  
7 although it was duplicitous, it could not be amended by the  
8 government because jeopardy had attached. And he also raised  
9 an issue about the lack of proof of interstate commerce.

10 I reserved ruling, which I'm allowed to under  
11 Rule 29(b), and said I would decide the motion based on the  
12 state of evidence as it existed at the time the motion was  
13 filed.

14 For purposes of this analysis, I will assume and look  
15 at the evidence as it existed at the close of the government's  
16 case. Obviously, issues of identification of the defendant  
17 were no longer of great moment once the defendant testified,  
18 but as I had promised on March 7th, I'll review the evidence as  
19 it existed at the close of the government's case.

20 The jury trial began on March 1st, 2016, and a jury  
21 returned a verdict on March 8th, 2016, finding the defendant  
22 guilty of all three counts of the indictment. There were a  
23 number of witnesses called by both sides.

24 Before I go through that, we're going to stop this  
25 reading of my ruling, and we're going to call other cases that

1 are waiting, and then we'll come back to this.

2 All right.

3 (The Court attends to other matters.)

4 THE CLERK: Okay. Back to Armenta?

5 THE COURT: Back to Armenta.

6 THE CLERK: Okay. 14 CR 33, United States of  
7 America v. Angela Armenta.

8 MR. LEE: Good morning --

9 THE COURT: All right.

10 MR. LEE: -- your Honor. Oh.

11 THE COURT: We're all -- same parties are here, and  
12 I'm just going to continue.

13 MR. LEE: Yes, your Honor.

14 THE COURT: I think Ms. Peluso has joined the  
15 government's table, so the record should reflect that.

16 All right. There were a number of witnesses called at  
17 trial: Mary Whitmer, who was the finance manager at Passages;  
18 Karen Wilson, who was a registered nurse; Christian Eslinger,  
19 who was the director of information department at Passages;  
20 Karl Kraywinkle, an FBI agent; Martha Hitt-Gundrum, an RN;  
21 Alice Amro, a social worker at Passages; Carmen Velez, a  
22 codefendant; Abraham Carillo, who was a staff nurse at  
23 Passages; Pamela Matzen, who was an RN at Passages; Ashley  
24 Marina, who was a data supervisor at Advanced -- AdvanceMed;  
25 Dr. Joanne Nowak, who was a palliative care and hospice medical

1 director who came in and reviewed the medical records and  
2 offered opinions about whether or not GIP care was necessary;  
3 Lydia Wagoner, who was an RN; Katherine McArdle, who was an RN,  
4 worked at Passages; Joan Moore, an investigator with the  
5 U.S. Attorney's Office; James O'Leary was one of the case  
6 agents; Donna Langley, who was an investigator for  
7 TrustSolutions; Alicia Woldeit, who was a nurse case manager;  
8 Cynthia Fohrman, who was an RN; Kimberly Lange, who was an RN.

9 The defendant called a number of witnesses: Miranda  
10 Miller, who was a nurse; Cassandra Sebogodi, who was a CNA;  
11 Renita Merkson, who was a CNA; Esther Wolf, who was a CNA;  
12 Trina Ingram, who was a CNA; Paulina Garcia, who was a CNA;  
13 Aisa Lopez, who was a CNA; and, of course, Angela Armenta, the  
14 defendant.

15 Those were the witnesses called during this trial.

16 The first issue raised, and really the primary issue  
17 raised in the motion, relates to the issue of the  
18 identification of the defendant. There were no government  
19 witnesses that actually identified the defendant during the  
20 government's case in chief, which is unfortunate because it  
21 could have easily been done.

22 And certainly it was required -- it's required that  
23 the government prove -- that the government's proof be tied to  
24 the person sitting in court as the defendant. Usually that's  
25 done in the simplest of ways. All the witnesses who said they



1 had face-to-face, telephone, or e-mail contact with the  
2 defendant could have identified the person sitting next to  
3 Mr. Turner, the defendant in court, as the person they had  
4 those communications with. But that was not done.

5 But the case law is very clear that an in-court  
6 identification of the defendant is not required and that  
7 identification can be inferred from all the facts and  
8 circumstances that are in evidence.

9 There's a number of cases that hold this: *U.S. v.*  
10 *Weed*, 689 F.2d 752; *U.S. v. Prieto*, 549 F.3d 513; *U.S. v.*  
11 *Thomas*, which is 763 F.3d 689; and then there's a 6th Circuit  
12 case, *U.S. v. Boyd*, which collects a number of cases from  
13 around the country. That's 447 Fed. Appx. 684.

14 I'll just quote from the *Thomas* case, which sets forth  
15 the law as clearly as any of these cases.

16 And in that case, the Court states that "Though  
17 in-court identification is preferred to prove identity, it is  
18 not required if the defendant's identity can be inferred from  
19 the circumstances." Then it quotes the *Prieto* case, and it  
20 also notes the facts in the *Weed* case.

21 Then the Court says: "In the final analysis, the  
22 defendant's identity is nothing more or less than an element  
23 that must be established beyond a reasonable doubt in order to  
24 demonstrate guilt. That is, of course, a demanding standard,  
25 and if there [was] any reason to think that" -- in this case

1 they use the word "Chapman," but I'll substitute the word  
2 "Armenta."

3 "If there was any reason to think that ['Armenta'] in  
4 the courtroom [is] not the same ['Armenta'] involved in the  
5 scheme, the defense was free to make this argument, and the  
6 prosecution would have borne the risk of uncertainty.  
7 Identity, in short, is not a unique issue that can be proved  
8 only by someone pointing a finger at the defendant in the  
9 courtroom."

10 "Judged against [the] standard, a reasonable jury  
11 could find that [Armenta's] identity as the ['Armenta']  
12 identified by the evidence was established beyond a reasonable  
13 doubt."

14 Now, the reasons -- some of the reasons for that I'll  
15 set forth now.

16 I listed out -- you can really begin almost with the  
17 opening statement in the case. And in that, Mr. Turner made a  
18 number of statements that made very clear that the Armenta in  
19 court was the Armenta that the people who were going to be  
20 testifying later -- was, in fact, the defendant.

21 To quote Mr. Turner in his opening statement: "And I  
22 listened very closely as Ms. Peluso spoke to you, and the one  
23 thing I noticed at the beginning was she didn't emphasize or  
24 say very much about the fact that Ms. Armenta, Angela here, was  
25 a CNA, certified nursing assistant, sometimes referred to as a

1 nurses' aide. She wasn't a nurse at all. She was a nurses'  
2 aide."

3 Later Mr. Turner said, referring to her, "So then in  
4 2008, she got her first real job at this place Passages as a  
5 certified nurses' assistant, a nurses' aide."

6 And then later he says, "And obviously this is  
7 Angela's first job in this hospice thing."

8 "But getting back to Angela here, she gets her first  
9 job at Passages, first job in hospice."

10 Then he states later, "So Angela is a certified  
11 nurses' aide or assistant at Passages."

12 And then he says, "And everyone who sees patients that  
13 she's dealt with sees how clean they are, how well-kept they  
14 are, which is a great advertising tool for the company because  
15 people walk in a nursing home, and they see people who are  
16 visited by Passages' CNAs, nursing assistants like Angela and  
17 some of the 70-some CNAs that she supervised at one point."

18 Then Mr. Turner later says, "But Angela works hard,  
19 very hard. And after a while, she's promoted to regional  
20 certified nursing assistant or nursing aide director in  
21 Region B."

22 Then later Mr. Turner says, "And you'll hear what that  
23 consisted of is that she had to deal with every issue that the  
24 nursing assistants had."

25 There are a number of references throughout the

1 opening to "Angela" or what he calls "Angela here," throughout  
2 the opening statement.

3 And the significance of that is that among the indicia  
4 of identification identified, in the cases I noted earlier,  
5 include statements about -- that counsel for a defendant  
6 referring to her as the person who's identified with the  
7 evidence.

8 For instance, in the *Boyd* case, the Court noted,  
9 "Finally, Boyd's attorney identified his client as Jonathan  
10 Boyd to the jury and never objected to the government's  
11 repeated references to 'Jonathan Boyd, the defendant here,' nor  
12 did ... defense [counsel] challenge witnesses on cross-  
13 examination whose testimony implied that the man seated at  
14 counsel table was, in fact, the Jonathan Boyd with whom they  
15 had dealings.

16 There was not a suggestion in opening statement that  
17 Ms. Armenta, who was present in court, was not the individual  
18 who was referenced throughout the case as the "Armenta" who  
19 worked for Passages and that all the witnesses were going to be  
20 talking about because Mr. Turner in his opening referred to  
21 what that evidence would be.

22 Similarly, when I went through the list of witnesses,  
23 it was very clear from their testimony that the person who was  
24 being testified about by government witnesses was the  
25 individual in the courtroom. Mary Whitmer, for instance, said

1 Angela Armenta was a CNA supervisor.

2 Mr. Turner asked her at page 115 of the transcript:  
3 "Ms. Whitmer, isn't it a fact that as recently as  
4 February 18th, 2016, you called Angela Armenta 'a major  
5 bitch'?"

6 And at page 143: Spoke to Angela Armenta at least  
7 "several times a week, sometimes daily."

8 These are the types of questions that indicate that --  
9 not that there's some confusion or that the person sitting in  
10 court was different than the person that the witness referred  
11 to, but, in fact, was the Angela Armenta in court.

12 There are references throughout the various witnesses.  
13 Karen Wilson interviewed Angela Armenta, didn't like her and  
14 didn't want to hire her, but, again, reference to the actual  
15 "Armenta" in -- Angela Armenta that circumstantially would be  
16 the -- at the very least, would be the Angela Armenta in court.

17 Christian Eslinger saw Angela Armenta several times a  
18 month. Carmen Velez talked to Angela Armenta daily, worked  
19 closely with Angela Armenta, knew Angela Armenta even before  
20 Passages at a doctor's office they worked at together, and  
21 Angela Armenta called her to recruit her to work for Passages.

22 So I could go through -- Alice Amro. Angela Armenta  
23 called her regarding Medicare audit.

24 I could go through nearly every witness who worked at  
25 Passages, and each one of them who had dealings with Angela

1 Armenta did so in a way that at least would allow a jury  
2 circumstantially to infer that the person they were talking  
3 about was the individual who was in court.

4 Similarly, it was -- Government Exhibit 418 was the  
5 résumé of Angela Armenta that was put in evidence. And that  
6 made clear that all the information about Ms. Armenta that  
7 talked about her jobs at Passages were corroborated by the  
8 actual witnesses who testified to those same facts.

9 So -- and then, finally, there was no objection on  
10 foundation that they were not talking about defendant Angela  
11 Armenta when they testified. Mr. Turner made proper objections  
12 about conclusory statements by witnesses or other evidentiary  
13 deficiencies he identified by -- when there was foundation  
14 issues he thought needed to be corrected, but none of them were  
15 "You have not tied that conversation to my client."

16 If that had been an issue in the case, it would have  
17 been raised by Mr. Turner properly at the time of the admission  
18 of the testimony.

19 So there's overwhelming evidence that the defendant,  
20 Angela Armenta, is the person who was the subject of testimony  
21 and the documents in the government's case in chief when her  
22 name was being used.

23 Now, at page 3 of Mr. Turner's reply, he argues there  
24 was a Sixth Amendment confrontation issue: "Defendant was  
25 unable to cross" -- "cross-examine witnesses who testified in a

1       conclusory manner to the gist of alleged statements made by  
2       someone whom the witness never identified other than only  
3       saying a name."

4               That's a frivolous argument. You could have  
5       objected -- you, the defense, could have objected to the  
6       conclusory statements, if, in fact, those were conclusory  
7       statements, and sometimes you did. You could have asked to  
8       have the witnesses' testimony stricken if you didn't believe  
9       their testimony applied to your client.

10              Neither of those things occurred. There was no Sixth  
11       Amendment confrontation issue here. You had the full  
12       opportunity, which you availed yourself of very well, of cross-  
13       examining each one of these witnesses fully about any  
14       conversations they had with Angela Armenta, the defendant in  
15       this case.

16              So for those reasons, I don't believe that the failure  
17       of witnesses to identify the defendant specifically in court is  
18       a basis to overturn a verdict or to dismiss the case at the  
19       close of the government's evidence, and so on that basis, the  
20       Rule 29 motion is denied.

21              The defendant contends that there was no evidence on  
22       the issue of the effect of the scheme on interstate commerce.

23              Well, there's two instructions that -- actually, one  
24       instruction that deals specifically with this. And one of  
25       those instructions is Instruction -- well, first instruction is

1 Instruction 16, which was the elements instruction, and that  
2 required that the defendant -- among other things, that the  
3 government must prove the element that "There was a scheme to  
4 defraud a health care benefit program, as charged in the  
5 indictment."

6 Then Instruction 17 defines a health care benefit  
7 program as "any public or private plan or contract, affecting  
8 commerce, under which any medical benefit, item, or service is  
9 provided to any individual, and includes any individual or  
10 entity who is providing a medical benefit item, or service for  
11 which payment may be made under the plan or contract. A health  
12 care program affects commerce if the health care program [has]  
13 any impact on the movement of any money, goods, services, or  
14 persons from one state to another.

15 "The government need only prove that the health care  
16 program itself either engaged in interstate commerce or that  
17 its activity affected interstate commerce to any degree. The  
18 government need not prove that a defendant engaged in  
19 interstate commerce or that the acts of a defendant affected  
20 interstate commerce."

21 Now, the government is -- was free to examine the  
22 evidence and, based on this instruction, reached the  
23 unremarkable conclusion that Medicare is a health care benefit  
24 program that affects commerce, and it has an impact on --  
25 because it has some impact on the movement of any money, goods,



1 services, or persons from one state to another.

2 The government argued that there was plenty of  
3 evidence in the documents admitted -- plenty of evidence in the  
4 documents that were admitted as exhibits, that the Medicare  
5 auditor was located in California, and Passages sent patient  
6 information to it -- to it during the audit and that that would  
7 support a -- an impact on the movement of any money, goods,  
8 services, or persons from one state to another.

9 Defense argues that these were not supported by any  
10 document numbers that would -- and it was an undeveloped  
11 argument, in effect, because they didn't support it with any  
12 document numbers or transcript references.

13 Well, Donna Langley of TrustSolutions testified  
14 Medicare is a health care program run and funded by the federal  
15 government. Angela -- or Ashley Marina testified that Medicare  
16 paid the GIP claims submitted to Passages.

17 And I looked up certain exhibits, and just a cursory  
18 examination of a couple -- in Exhibit 70, which was a multipage  
19 exhibit, I just picked out two letters from Passages Hospice.  
20 One in particular was dated December 18th, 2009, to  
21 investigator Rick Hampton of Benefit Integrity  
22 TrustSolutions -- of the Benefit Integrity section of  
23 TrustSolutions, LLC, in Camarillo, California, sent from  
24 Passages Hospice, 134 North McLean, Elgin, Illinois.

25 And it was a letter signed by Seth Gillman relating to

1 patient Gloria Kersten, K-E-R-S-T-E-N, sending her a variety of  
2 medical documents relating to her clinical condition,  
3 presumably to support the propriety of putting her on GIP.

4 Similarly, there was another letter dated the same  
5 date to the same person from Seth Gillman relating to patient  
6 Marion Carlson, C-A-R-L-S-O-N, again sending out medical  
7 records to support the finding of the appropriateness of a GIP  
8 designation level of care for that patient.

9 So I believed that there were numerous documents and  
10 testimonial evidence supporting the fact that -- at least  
11 allowing a jury to reach the conclusion that the interstate  
12 commerce aspect of the elements has been met. And for that  
13 reason, I deny the Rule 29 motion as it relates to that.

14 There were three counts in the indictment. Count I --  
15 the defendant claims that there was nothing to tie the  
16 defendant, Angela Armenta, to the three counts of the  
17 indictment.

18 Well, Count I related to the submission of a false GIP  
19 claim to a Medicare contractor for Patient H -- turned out to  
20 be Jeanne Robertson -- from February 12th, 2010, to -- I'm  
21 sorry -- December 12th, 2010, to December 14th, 2010.

22 Well, the evidence was the patient was in Region B,  
23 which was the defendant's region. Dr. Nowak testified that  
24 this patient should not be on GIP. The evidence was that the  
25 defendant told nurses to place patients on GIP for the reasons

1 Robertson, in fact, was placed on GIP, which was improper. So  
2 she caused Robertson to be placed on GIP, not specifically, but  
3 as part of a scheme. She got an \$18,000 bonus that month.

4 Count II deals with a patient named Sylvester  
5 Frontczak. False claim was alleged to have occurred from  
6 January 19th, 2011, to January 20th, 2011. He also should not  
7 have been on GIP but was placed on GIP by Abraham Carillo, who  
8 said he did it without doctor approval because that's how  
9 Passages did it. He did it because of Passages' criteria,  
10 which was improper.

11 Frontczak also was in Region B. And two weeks --  
12 within a two-week period, when Frontczak got -- Frontczak's  
13 claim was submitted, the defendant got a bonus of \$11,300.

14 Count III deals with a patient named Isreal Cruz.  
15 Medicare submission was May 12th, 2011, to May 14th, 2011.  
16 Cruz was in Region B. He should not have been on GIP. CMS  
17 paid a claim of \$1,383 on this. The defendant again received  
18 bonuses during this time.

19 The defendant doesn't have to directly tell a  
20 particular person to put each of these patients on GIP. She  
21 doesn't have to submit claims herself. She doesn't have to  
22 personally perform every act of a crime as long as she aids or  
23 induces that crime to occur and does that knowingly.

24 A lot of people were in this scheme, and she played  
25 her role and got paid for it. Her role was to instruct other

1 people within Passages to follow criteria related to GIP that  
2 was improper. That was part of the scheme to defraud.

3 Ms. Armenta was not the most culpable defendant in the  
4 scheme, nor was she the least culpable, but without a doubt she  
5 was culpable. She was engaged in the scheme, and she caused  
6 through engaging in a scheme these three submissions to take  
7 place, which were improper and which defrauded Medicare.

8 So the tying of her to these particular patients  
9 wasn't necessary. What was necessary was the tying of her to a  
10 scheme that caused submissions to be made for these three  
11 patients, and I believe there was overwhelming evidence to  
12 support that.

13 So for that reason, that portion of the Rule 29 motion  
14 is also denied.

15 Finally, defendant contends the indictment as returned  
16 by the grand jury was duplicitous. No one brought this up  
17 before trial. Certainly the defendant did not in any way move  
18 to dismiss the indictment before trial. The government does  
19 not agree it was the duplicitous indictment.

20 Duplicity, at least in the legal sense, results from  
21 charging of two or more offenses in a single count. The case  
22 of *Loughrin v. U.S.* decided by the Supreme Court in June of  
23 2014, which was after the indictment in this case, held that  
24 the bank fraud statute under 18 U.S.C. § 1344, which I believe  
25 is analogous to the health care fraud statute in this case,

1 18 U.S.C. 1347, described in Sections (1) and (2), the bank  
2 fraud statute -- noted that the -- Sections (1) and (2) of the  
3 bank fraud statute constitute two different crimes, not two  
4 ways of committing the same crime.

5 18 U.S.C. § 1347(1) and (2) I believe similarly  
6 describe two crimes such that the indictment returned in this  
7 case had a problem of, in single counts, describing two  
8 separate crimes. In particular, in paragraph 2 of the  
9 indictment, when the scheme is described, it noted that a  
10 number of defendants -- it listed them out -- "did participate  
11 in a scheme to defraud a health care benefit program, as  
12 defined by 18 U.S.C. § 24(b), namely, Medicare and Medicaid."  
13 That's 1347(a)(1).

14 Then it said "and to obtain, by means of materially  
15 false and fraudulent pretenses, representations, and promises,  
16 money under the custody and control of that program in  
17 connection with the delivery of and payment for health care  
18 benefits and services." That's 1347(a)(2).

19 So I believe what the indictment did then was  
20 describe, in essence, not two ways of committing a single  
21 crime, but two separate crimes. That's -- creates a problem of  
22 duplicity. And the reason that's a problem in the legal sense  
23 is that a jury may find a non -- may reach a non-unanimous  
24 verdict. Some may find defendant guilty of 1347(a)(1). Others  
25 may find her guilty of 1347(a)(2). But not all 12 may

1 necessarily find a defendant guilty of one or the other.

2 And that's why I raised the issue, and the government  
3 amended the indictment here and chose to proceed on 1347(a)(1).

4 The government can amend without resubmission to the  
5 grand jury only if the alteration makes no material change and  
6 there's no prejudice to the defendant. Here the indictment was  
7 narrowed. The proof was not altered. An amendment that  
8 dropped 1347(a)(2) as one of the means of committing a crime  
9 actually worked to the benefit of the defendant.

10 If, for example, the indictment had been returned with  
11 six counts instead of three by breaking out the two separate  
12 crimes in 1347, there would certainly be no complaint by  
13 defendant if the government dropped three of those six counts  
14 either before trial or during trial. That's essentially what  
15 happened here.

16 So to be clear, the charges were not broadened, which  
17 would be improper, without returning to the grand jury to get a  
18 new indictment. The defendant's claim that she was entitled to  
19 be tried on the indictment as it was returned by the grand jury  
20 is only correct insofar as you can't broaden charges without a  
21 return trip to the grand jury. She can't complain about the  
22 dropping of a part of a duplicitous count and can't complain  
23 any more than she could complain if separate counts of an  
24 indictment were dropped.

25 So for all those reasons, defendant's Rule 29 motion

1 at the close of the government's case is denied; and similarly,  
2 to the extent the motion is renewed post-trial, for those same  
3 reasons, it is denied.

4 Anything else we need to discuss on the Rule 29  
5 motion? First from the government.

6 MR. LEE: No, your Honor.

7 THE COURT: From the defense.

8 MR. TURNER: No, Judge.

9 THE COURT: Okay. We need to set a sentencing date  
10 and then order a presentence report to be prepared.

11 We extended the date for sentencing for a number of  
12 the other defendants into January, I believe. Is that correct?  
13 Or is it even later than that?

14 MR. LEE: Actually, it's even later, your Honor.  
15 Let's see. Seth Gillman and Passages are set for sentencing on  
16 February 27th.

17 THE CLERK: Mm-hmm.

18 MR. LEE: And the other defendants in this case and  
19 the related cases are set for sentencing later that week and  
20 the following week.

21 THE CLERK: Mm-hmm.

22 MR. LEE: So given that, if Ms. Armenta could be  
23 scheduled for around that same time period, perhaps later in  
24 the week of February 27th, that might be more efficient.

25 THE COURT: All right. Sandy, is there a date that

1 works?

2 THE CLERK: Yeah. I think we could do -- so you want  
3 to do it -- Julie Parker is set for the 1st, right?

4 MR. LEE: Yes.

5 THE CLERK: So are you talking maybe the 2nd or the  
6 3rd?

7 MR. LEE: Yes.

8 THE CLERK: Yeah, I think either of those dates --

9 THE COURT: 2nd or 3rd of March?

10 THE CLERK: Yeah, it would be the 2nd or 3rd of March  
11 because we're not on trial.

12 THE COURT: All right. Mr. Turner, how does that work  
13 for you?

14 MR. TURNER: March would be fine. I would prefer sort  
15 of towards the middle of March because I'm -- at the end of  
16 February, I'll be gone for a couple of weeks.

17 THE CLERK: The problem is you've got the Johnnie  
18 Pernell trial beginning on March 13th, which is supposed to I  
19 think last through the month.

20 THE COURT: Right.

21 Mr. Turner, you can't do it the 2nd or 3rd of March?

22 MR. TURNER: Well, I know you have the trial. Would  
23 it be possible then the next week or something just --

24 THE COURT: How about the week of the 6th, Sandy? Is  
25 there --



1 THE CLERK: We could do -- I think the 8th maybe --

2 MR. TURNER: Okay.

3 THE CLERK: -- we didn't set anybody. Let me double-  
4 check because I know we've got someone on the 6th, 7th, and  
5 9th, right? Yeah, we could do the 8th.

6 MR. LEE: Yes.

7 MR. TURNER: Oh, March 8th.

8 THE COURT: Does that work better, Mr. Turner?

9 MR. TURNER: That would be great. That would be  
10 great, Judge.

11 MR. LEE: Your Honor, if we may, I think the  
12 government would prefer having the noncooperating defendants  
13 sentenced prior to the cooperating defendants. If we could  
14 maybe switch -- Carmen Velez is scheduled for March 6th.  
15 Perhaps we could have Ms. Armenta sentenced on March 6th and  
16 then have Ms. Velez scheduled later in the week, something like  
17 that.

18 THE COURT: All right. And the reason you want to do  
19 the cooperators last?

20 MR. LEE: Your Honor, it just helps us in terms of our  
21 sentencing recommendations. It helps us to see kind of --  
22 obviously, that might be -- depending on what happens with the  
23 noncooperating defendants, that may change the government's  
24 position in terms of the cooperators.

25 THE COURT: All right.

1                   How is the 6th, Mr. Turner?

2                   MR. TURNER: Well, if that's what we're going to do  
3 for that reason, then I guess I'll have to do the 6th.

4                   THE COURT: All right. Well, it's not much different  
5 than the 8th. So let's do it the 6th, and we'll move Velez to  
6 the 8th. We'll -- I think since we have five months to deal  
7 with the new dates, that should work.

8                   So we'll do the sentencing of Ms. Armenta on  
9 March 6th.

10                  THE CLERK: Mm-hmm.

11                  THE COURT: And let's have a presentence report  
12 completed -- move the dates up a little bit -- by January 23rd,  
13 any objections to the presentence report filed by  
14 February 13th, any response to the objections by February 17th,  
15 along with any sentencing memos. That will give me enough time  
16 to look it over.

17                  Okay. Anything else we need to discuss today?

18                  MR. LEE: The government would request that you order  
19 probation to provide a copy of the sentencing recommendation,  
20 as well as the PSR.

21                  THE COURT: Yes, I'll make that order so that  
22 Mr. Turner and the government have a copy of whatever the  
23 probation office recommends.

24                  MR. TURNER: Oh, that's fine, Judge.

25                  And I -- obviously, I know that the government will

1 give me anything that mitigates sentencing since that's  
2 pursuant to the *Brady* doctrine.

3 And the only other thing I'd ask is this, Judge. I  
4 had gotten the transcript, and I'm wondering if you can enter  
5 an order so that I get today and also the sentencing so I don't  
6 have to do a whole lot of more jumping around to get it, if  
7 that's possible.

8 THE COURT: Well, you're -- are you on the --

9 MR. TURNER: Yeah, I'm appointed --

10 THE COURT: You're appointed on this.

11 MR. TURNER: -- in this matter.

12 THE COURT: Let's go off the record for a minute.

13 (Off-the-record discussion.)

14 THE COURT: Back on the record.

15 Yeah, Mr. Turner, I think on the -- on getting today's  
16 transcript and the sentencing transcript, you simply have to  
17 order it through the eVoucher system. If you have trouble with  
18 that, contact my courtroom deputy, and she'll try and walk you  
19 through it. But I think you're familiar enough or will become  
20 familiar with it.

21 MR. TURNER: Unfortunately, I am.

22 THE COURT: Okay. All right.

23 That then, I think, Mr. Lee, accounts for every  
24 defendant in this indictment having a sentencing date?

25 MR. LEE: Yes, your Honor.

1 THE COURT: Okay. Then we'll proceed that way.

2 Anything else from the government?

3 MR. LEE: No, your Honor.

4 THE COURT: From the defense?

5 MR. TURNER: No, Judge. Thank you.

6 THE COURT: All right. Thank you all.

7 MR. LEE: Thank you, your Honor.

8 (Concluded at 9:38 a.m.)

9 C E R T I F I C A T E

10 I certify that the foregoing is a correct transcript of the  
11 record of proceedings in the above-entitled matter.

12

13 /s/ LAURA R. RENKE March 10, 2017  
14 LAURA R. RENKE, CSR, RDR, CRR  
15 Official Court Reporter  
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