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Attorney for Defendant, Clark

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	CR 08-20-BU-DWM
	)	
-vs-	)	
	)	SENTENCING
SHANNON MICHELLE CLARK,	)	MEMORANDUM
	)	
Defendant.	)	
	)	
	)	
	)	

Defendant, SHANNON MICHELLE CLARK, by and through her
Counsel, Morgan Modine, submits the following Sentencing Memorandum:

OBJECTIONS TO THE PRE-SENTENCE REPORT

1. Defendant objects to the depiction of the Defendant and to her
relationship with William Martel in the Pre-Sentence Report. Mr. Martel
described himself to the FBI as the Defendant's "sugar daddy". He

financially helped her out for approximately three years and stated on numerous occasions that Ms. Clark and his relationship was not a “sex for money” relationship. Over 21 CDs of surveillance conversation were in discovery, and perhaps the PSR writer did not review the discovery adequately. Defendant provided the PSR writer with specific FBI documentation stating what the relationship was between the Defendant and Mr. Martel, but the writer did not acknowledge it was provided nor modify his depiction of the relationship.

2. The amount of restitution is still in question since money was seized from the Defendant at the time of her arrest. The United States Attorney and Defense Counsel hope to have a more accurate figure to give the Court at sentencing.

BACKGROUND

(The conversations in this section are selected portions of the 21 CDs of audio surveillance provided by the United States in discovery.)

In early June, 2008, an investigation was conducted by law enforcement into a prostitution ring. William Martel was one of the suspects. A photo line-up which included his photo was shown to several people by law enforcement. Mr. Martel became aware of the investigation. Mr. Martel was involved in an ongoing intimate relationship with the

Defendant, Shannon Clark. Over several years, Mr. Martel was financially generous with Ms. Clark helping her with living expenses, educational opportunities and at one point financing her in-patient alcohol rehabilitation.

Ms. Clark had a friend, Erika Eppe. In mid-June 2008, Mr. Martel informed Ms. Clark their relationship was over. He informed her he was going to be monogamous with his wife. The following day he had sexual relations with Erika Eppe. When Ms. Clark found out, she had an argument with Ms. Eppe. After the argument, Ms. Eppe was approached by the FBI. With the promise she would not be prosecuted, Ms. Eppe agreed to cooperate with the FBI. Ms. Eppe was coached by agents and told to extract information from Ms. Clark about potential illegal activities. She wore a wire on numerous occasions engaging Ms. Clark in conversation in person and on the telephone. The case agent has stated in his affidavit in support of the original complaint that Erika Eppe, his CW “never initiated or encouraged Clark to go forward with the idea”.

On June 24, 2008 Ms. Eppe had a wired telephone conversation with Ms. Clark.

Eppe: “Oh, my gosh. I miss Shannon, so much.”

Clark: “You know I miss you, too. We need to sit down and talk, but not over the phone”.

Clark: “Well, I just thought about everything, and it’s like, you know, we’ve been friends for way too long not to go to be very honest with each other. And I want to tell you I’m very scared right now.

Epple: “So, then are you and Bill not, or, sorry, you and our friend not seeing each other then?”

Clark: “I don’t know, and that’s what I need to talk to you about in person. I don’t know. He came up with a, a quite a story that got me, frankly.”

Epple: “What kind of story are you talking about? Like I don’t trust Bill, or our friend with anything, Shannon,”

Clark: “Well, let me put it this way. I’ve been informed that my phone is tapped, so when I say we need to talk in person, that’s why.”

Epple: “I’m not trying to downplay your concerns, but I’m just saying from my research and from talking to my dad and just snooping around a little bit, it would be really, really hard, and I think our friend is just looking for an excuse again,”

Epple: “Ever since you called, I like, seriously have been so worried and I feel so alone not having you in my life.”

Ms. Clark met with Ms. Epple on the evening of June 24, 2008.

Ms. Epple dutifully quizzed her about all of her acquaintances and whether there was involvement of any type of activity that may be of interest to the FBI.

Clark: “I did nothing wrong either because it’s not against the law to have boyfriends, otherwise marriage would be illegal.”

Epple: “Right, yeah, exactly.”

Clark: “I think Bill got himself into some trouble that I don’t want to know about.”

Epple: “That has nothing to do with us.”

Clark: “It has nothing to do with us and that his excuse for blaming me is that my phone is tapped by the FBI and that is why his picture was involved.”

Epple: “No, because I called him, Bill, then. No, that is bullshit.”

Clark: “Something is going on and I don’t know who these girls are. I don’t who the other nine men involved are. I have no idea. That’s all I know.”

Ms. Clark did talk about William Martel’s request that she not mention their sexual relationship to the FBI and what she would eventually say to Mr. Martel.

Clark: “I am sorry if the FBI is listening to this, but you told me not to tell anybody that we ever had sex and that you were just helping out a single mom. Well, you need to continue helping out a single mom.”

Epple: “Bingo!”

The seed was planted.

Ms. Epple suggested to Ms. Clark that she ask Mr. Martel for money in exchange for her silence about their sexual relationship. Ms. Epple encouraged Ms. Clark. Ms. Clark was upset.

Clark: “And I just feel like, if he’s going to f... with me, I feel like I should....”

Epple: “I will f... right back!”

Epple: “Yeah, maybe you can hold that above his head if he ever answers your call.”

Clark: “That’s what I’m thinking,”

Epple: “Or you can leave him a message, or whatever.”

As the evening ended, Ms. Epple again assured Ms. Clark of their close friendship.

Epple: “I’m glad we can be there for each other right now.”

Clark: "I am too. But just please don't share this with anybody because..."

Epple: "Okay. I am in this shit."

After that meeting, Detective Velkamp picked up Ms. Epple.

Velkamp: "You did good."

Epple: "Felt like a complete wreck. I think I hit all my objectives though, right?"

Almost a month later on July 22, 2008. Ms. Clark reported to Ms. Epple that she was broke. Once again the subject of getting money from William Martel was brought up by Erika Epple.

Epple: "Well, are you going to try to still get paid by him?"

Clark: "Yeah, I am, but, I just, I gotta, I would rather sit down and talk with you about it....I really need to make sure, like we both said earlier, that I'm doing the right thing, and I...I do believe I am and I do believe that he...."

Epple: "Making sure that you get severance pay?"

Clark: "Yeah."

Epple: "Okay."

Clark: "Yeah."

Epple: “Yeah, cause otherwise you’re kinda screwed as far as that goes.”

Clark: “Oh, yeah. Way, way screwed.”

Epple: “Yeah, well, what are you gunna? Like are you going to call, then? Cause we had talked about that earlier and he probably won’t answer your call, but leave him a message.”

Clark: “Right. And so, my message will be very vague, you know, like I said earlier, like hey, we had a good run. That’s great and everything. If you don’t want to see each other, but I need a severance package and we need to talk about that, cause you got a lot more to lose than I do.”

Epple: “Right. You could easily go to someone else or his wife. And you have all those bank statements as well.”

Clark: “Well, exactly, and I don’t know what kind of shenanigans he’s, I mean, you know everything that’s going on with me and I don’t know what kind of shenanigans he’s been involved with that the FBI would even be looking at him.”

Epple: “Right. Well, what are you going to tell him? His, umm, are you going to like, go to his wife if he refuses to pay you? Like, what are you....?”

Clark: "I don't know. I don't know."

Epple: "Yeah."

Clark: "I just keep thinking he's a reasonable man. He's not going to want trouble."

Epple: "Right."

Clark: "He's not going to want anything public."

Epple: "Right, so probably just a little bit of pocket change to you which is all it is anyways."

Ms. Clark is grateful for all of Ms. Epple's good advice and friendship.

Epple: "Yeah, yeah. Well, you like, gunna plan on doing it? Like, soon, here?"

Clark: "I don't know. I'm scared cause I don't know how to handle this one. This is not my arena. And I'm sure I'll have to call him tomorrow but my heart's beating faster just thinking about it."

Epple: "Okay. Well, let me know if you need some support or whatnot."

Finally on July 23, 2008 Ms. Epple met Ms. Clark at Bennigans Restaurant. Ms. Clark asked Ms. Epple what she should say to Martel.

Epple: "Something to get his attention."

Clark: “But something to get his attention where if ever he took it to an attorney or, or the, that it doesn’t sound like I’m, you know, blackballing him. Or, what’s that?”

Epple: “Blackmailing.”

Clark: “Blackmailing. That’s illegal, right?”

Epple: “Yeah, but, I don’t know. That’s one of those, like, touchy things that like...”

Clark: “Right.”

Epple: “Like my attorney says, like, yeah, you could fight it, but it’s one of those first amendments. Everyone has the right to freedom of speech.”

Clark: “Right.”

Epple: “I mean you leave a voice mail saying, I don’t think you’d do this, then I’m going to do that...:

Clark: “Right.”

Epple: “Then that I’m sure could be construed as that.”

Clark: “Cause what, what I would be okay with, um...”

Epple: “Yeah, what, what do you want? I mean like, you know you’re not going to leave that in the message, but I want to know what you want.”

Clark: “Right. What I want is, I want him to do what he said he was going to do, and that was pay my medical bills.”

Epple: “So, are you thinking about calling him today, or, just getting it over with, cause...”

Clark: “I think I just need to get it over with.”

Epple: “Right.”

Clark: “It’s really eating at me.”

Epple: “Well, then just call him right now. He’s not even going to answer. Just leave him a message.”

Clark: “Okay.”

Finally Ms. Clark made the telephone call to Martel.

Clark: “Hey. It’s me. I got your message the other morning. I just wanted to let you know, you know, hey, we’ve got a really good run and if you really don’t want to, ah, get together anymore, that’s your decision, ah, but we need to get together and talk about, ah, an ending severance package, so nobody gets their feeling hurt here, and everybody is happy in the end, so give me a call when you have a chance to talk, and we can get into that, with, ah, further details. Okay. Thanks.”

Epple: “How’s not bad with that? You did fine.”

Clark: "I did good?"

Epple: "Ah, hum."

Clark: "I forgot to say, I don't want to hurt you, but um, I think, I did. I wasn't nasty or anything."

Epple: "Ah, huh."

Clark: "Okay."

Epple: "Nope."

Clark: "Oh, thank god, that's just over."

Epple: "Yeah."

Clark: "I don't think I'm gunna throw up."

Epple: "Um, drink more beer."

After the initial call, Mr. Martel contacted Ms. Clark and they talked about the payment as a severance package. Ms. Epple, of course was by Ms. Clark's side.

Eventually the FBI approached Martel and "convinced" him to wear a wire. The investigation had now turned to a sting on Ms. Clark. There were numerous recorded conversations between Martel and Ms. Clark. Martel was told to pay money to Ms. Clark. When money was finally given to Ms. Clark by Martel, Ms. Epple was present. Both Martel and Epple were wearing wires. Neither of them knew the other was wired. Ms. Clark

met Martel three times and on the third meeting, was arrested by law enforcement.

What began as an investigation into an alleged prostitution ring, ended with Ms. Clark charged with extortion and ultimately pleading guilty to blackmail. The entire crime was formulated, tape recorded and executed with the help of Ms. Epple and under the guidance of law enforcement.

There is a secondary prosecution of Ms. Clark by her ex-husband who is an attorney. This case has provided fodder for Mr. Clark in his pursuit of terminating Ms. Clark's visitation rights. He purchased the change of plea transcript providing copies to Ms. Clark's relatives and others. (See Michael Harrell's letter to the Court.) Ms. Clark has had to leave Bozeman because of the humiliation and notoriety of this case. She has forgone regular visitation with her children because of that move and has suffered far beyond the criminal aspects of the prosecution.

ARGUMENT

The distinction between legality and illegality is often blurred. In this particular case, Ms. Clark offered at one point to sit down with an attorney and Mr. Martel to work out a separation contract with severance payments set out in a legal and binding document. Had Ms. Clark been married to Mr. Martel, the severance package would have been called alimony. As

the laws stand now, courts do not allow a civil action for damages by mistresses against their benefactors.

Shannon Clark pleaded guilty to blackmail, a violation of 18 U.S.C § 873. As the Offer Of Proof states, Ms. Clark told Mr. Martel she would tell the FBI the truth about their relationship if she did not receive a severance package. Mr. Martel asked Ms. Clark to lie to law enforcement about the nature of their relationship. The conversations between Mr. Martel and Ms. Clark show clearly that he never would have paid her that severance package. Their relationship may very well have resumed had law enforcement not intervened.

Married men and women having affairs though morally questionable, goes on all the time. Promises are made to the mistress. Financial support is often the trade off for a clandestine relationship. What is the reasonable punishment for the mistress who is dumped by her sugar daddy, then demands money for the loss of financial support and of the relationship itself? The facts of this case do not show conduct that rises to the necessity of incarceration.

GUIDELINE CALCULATION

The guideline calculation in this case is set forth by the United States Probation Officer states the base offense level for Ms. Clark's offense is 9.

There is an additional 6 points added because the amount of money requested by Ms. Clark totaled \$60,000.00. That 6-level increase under 2B3.3(b)(1) was not the amount Ms. Clark received from Mr. Martel but was an arbitrary figure requested by Ms. Clark. She could easily have been encouraged to set another figure either higher or lower. 2B3.3(b)(1) is a very broad based and disparate guideline. It calculates the same punishment for actual amounts lost in thefts to arbitrary figures requested by Defendants in cases like this. The loss chart under 2B1.1 overstates the punishment appropriate for the conduct of Shannon Clark in this matter.

CONCLUSION

Defendant, Shannon Clark asks the Court to consider all of the sentencing factors in 18 U.S.C. 3553(a) in fashioning a fair sentence. Defendant Clark pleaded guilty to a misdemeanor. The facts and background of this case do not merit a sentence based on the guidelines. This case came to the attention of law enforcement and was developed with the hope of finding a prostitution ring involving prominent businessmen and politicians. That investigation went nowhere and the relationship between Shannon Clark and William Martel became the focus. Erika Epple helped the Defendant formulate a plan to get a severance package from

William Martel, and then helped executed it, all under the watch and instructions of law enforcement.

Defendant has attached 4 letters of support which she requests the Court take into consideration concerning her character and background.

Defendant humbly requests the Court to sentence her to a term of probation with conditions deemed appropriate for Defendant's circumstances with an order to pay back the correct amount of restitution. Ms. Clark has relocated out of state, and asks the Court to allow her to complete her probation outside of Montana.

RESPECTFULLY SUBMITTED this 7th day of September 2009.

/s/ Morgan Modine
Morgan Modine
Attorney for Defendant

CERTIFICATE OF COMPLIANCE

Pursuant to D. Mont. L.R. 7.1(d)(2) and CR 12.1(e), the attached SENTENCING MEMORANDUM is proportionately spaced, has a typeface of 14 points or more and the body contains 2868 words.

DATED this 7th day of September 2009.

/s/ Morgan Modine
MORGAN MODINE
Attorney at Law
Attorney for Defendant