

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

UNITED STATES OF AMERICA,)	CASE NO. 5:05CR00030
)	
v.)	
)	<u>REPORT AND RECOMMENDATION</u>
JOHN M. RICHARDSON,)	
)	
)	
Defendant.)	By: B. WAUGH CRIGLER U.S. MAGISTRATE JUDGE

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

DEFENDANT'S RESPONSES TO RULE 11 INQUIRY

The Grand Jury has returned an Indictment charging defendant in Count One with taking by force and violence, or by intimidation, from the person and presence of another, money, namely a sum of U.S. Currency, belonging to and in the care, custody, control, management, and possession of a bank that had its deposits insured by the Federal Deposit Insurance Corporation, in violation of 18 U.S.C. § 2113(a).

On October 3, 2005, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Count One of the Indictment. At this hearing the defendant was placed under oath and testified that his full legal name is John M. Richardson, that he was born on November 2, 1963, and that he completed the ninth grade in high school. The defendant stated that he can read, write, and understand the English language. The defendant stated that he was fully aware of the nature of the charges against him and the consequence of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol, medicine, or any drug. Defendant stated that he had no other physical or mental condition which impaired his ability to understand the nature of the proceedings being held. Defendant's counsel stated that he had no reservations as to the

defendant's competency to enter a plea of guilty to the offense.

The defendant testified that he had received a copy of the Indictment pending against him and that he had fully discussed the charges therein, and his case in general, with his counsel. The defendant stated that he was pleading guilty of his own free will because he was, in fact, guilty of the offense charged. The defendant also stated that no one had made any promises, assurances, or threats in an effort to induce his plea. The defendant testified that he understood that the offense with which he is charged in Count One is a felony and that, if his plea is accepted, he will be adjudged guilty of that offense. Moreover, the defendant testified that he understood that he will be required to pay a mandatory assessment of \$100 for the felony count. The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count One is twenty years imprisonment and a fine of \$250,000, together with supervised release. The defendant was informed that under the Sentencing Reform Act of 1984, the United States Sentencing Commission has issued guidelines for judges to follow in determining the sentence in a criminal case. The defendant was then informed that, in light of the United States Supreme Court's decision in *United States v. Booker*, 125 S.Ct. 738 (2005), the sentencing guidelines are no longer mandatory but that the sentencing judge may apply them in an advisory fashion in determining a reasonable sentence. The defendant testified that he and his counsel had discussed how the sentencing guidelines might apply in his case. The defendant also testified that he understood that the court would not be able to determine the applicable guideline range, for advisory purposes, until after a presentence report has been prepared and both parties have been given an opportunity to challenge the reported facts and application of the guidelines. He stated that he understood that the eventual sentence imposed may be different from any estimate his attorney had given him and that the court has the authority to impose a sentence that is either higher or lower than that called for by the guidelines, so long as the sentence is not greater than the statutory maximum for the offense to which the defendant is pleading guilty. The defendant stated that he knew that parole

had been abolished and that if he is sentenced to prison he will not be released on parole but on supervised release, a violation of which could result in additional incarceration.

The defendant testified that he understood that he had the right to a trial by a jury, in addition to the following rights, which will be waived or given up if his guilty plea is accepted:

1. The right to plead not guilty to any offense charged against him;
2. The right at trial to be presumed innocent and to force the government to prove his guilt beyond a reasonable doubt;
3. The right of assistance of counsel at trial and in any subsequent appeal;
4. The right to see, hear and cross-examine witnesses;
5. The right to call witnesses to testify in his own behalf and to the issuance of subpoenas or compulsory process to compel the attendance of witnesses;
6. The right to decline to testify unless he voluntarily elects to do so in his own defense;
7. The right to a unanimous guilty verdict; and
8. The right to appeal a guilty verdict.

The defendant also testified that he understood that if he is adjudged guilty of these charges, he may be deprived of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess a firearm.

The defendant stated that he was fully satisfied with the advice and representation given to him in this case by his counsel. The defendant also stated that he believed his counsel's representation had been effective. The defendant asked the court to accept his plea of guilty to Count One of the Indictment.

THE GOVERNMENT'S EVIDENCE

The defendant waived his right to have the government's Factual Summary read in open court and had no objection to the Summary. The Factual Summary having been filed in open court, the evidence presented therein regarding the offense charged is as follows:

On July 28, 2005, the defendant entered Planters Bank, 251 North Poplar Avenue, Waynesboro, Virginia, approached a teller and pointed to his left side, which the teller interpreted as meaning that the defendant was armed. The defendant indicated that this was a robbery and demanded one-hundred dollar bills and fifty-dollar bills. After the teller produced fifty-dollar notes, the defendant demanded hundreds

and fifties and said he wanted more. The teller produced more money and the defendant exited the bank. The defendant robbed the bank of approximately \$4500.

Police were notified that the defendant had left the bank on foot in the direction of a Save-a-lot store. A police officer observed the defendant walking in the Save-a-lot parking lot away from the store wearing a white baseball style hat with a white tee-shirt and dark blue work style pant. The officer asked the defendant if he would mind showing the officer identification. The officer observed the defendant retrieve his ID from a pair of tan shorts that the defendant was wearing under the blue pants. The officer then noticed that there were tags on the pants and a Dollar General price tag hanging therefrom. The defendant generally fit a description of the robber. Another officer went to the Dollar General to determine if the defendant had just left that store. The officer learned that there was a tan fishing style hat and an orange shirt under a rack of dark blue pants inside the store. (The teller stated that the robber was, in part, a black male wearing a tan fisherman's type hat, tan shorts, and an orange shirt. At least one bank employee observed the robber wearing two pairs of shorts at the time of the robbery). The officer further learned that none of the store clerks had made a transaction with the defendant nor had they seen him inside the store that day. The defendant was arrested.

When the defendant was searched, one of the officers found the bank money, still wrapped in bank labels in one of the front pockets of the dark blue pants that the defendant had been wearing. A \$10 dollar bill was located in the other front pocket; however, the defendant stated that the \$10 was his money.

During an interview of the defendant, he stated, in part, that he had a rough life and that he couldn't get a job. He admitted that he "did" the robbery and stated that he was going to use \$1,000 of the money for a down payment on an apartment. He further described clothing that he wore inside the bank and admitted that he went to the dollar store and switched clothes after the robbery.

At the time of the bank robbery, Planters Bank was an institution, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

FINDINGS OF FACT

Based on the evidence presented at the plea hearing, the undersigned now submits the following formal findings of fact, conclusions and recommendations:

1. The defendant is fully competent and capable of entering an informed plea;
2. The defendant is aware of the nature of the charges and the consequences of his plea;
3. The defendant knowingly and voluntarily entered a plea of guilty to Count One of the Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offense to which the defendant is pleading guilty.

RECOMMENDED DISPOSITION

Based upon the above findings of fact, the undersigned RECOMMENDS that the court accept the defendant's plea of guilty to Count One, and adjudge him guilty of that offense. The undersigned further DIRECTS that a presentence report be prepared. Sentencing will be set by the scheduling clerk for the presiding District Judge.

NOTICE TO PARTIES

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C): Within ten days after being served with a copy of this Report and Recommendation, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. The presiding District Judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The presiding District Judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the undersigned. The judge may also receive further evidence or recommit the matter to the undersigned with instructions.

Failure to file timely written objections to these proposed findings and recommendations

within 10 days could waive appellate review. At the conclusion of the 10-day period, the Clerk is directed to transmit the record in this matter to the presiding United States District Judge.

The Clerk is hereby directed to send certified copies of this Report and Recommendation to all counsel of record.

ENTERED: _____
United States Magistrate Judge

Date