

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

UNITED STATES OF AMERICA,	)	CASE NO. 5:05CR00005-1
	)	
v.	)	
	)	<u>REPORT AND RECOMMENDATION</u>
CHRIS GREGG DEZZUTTI,	)	
	)	
	)	By: B. WAUGH CRIGLER
Defendant.	)	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 multiple count Superseding Indictment charging defendant in Count One with unlawfully and knowingly combining, conspiring, confederating, and agreeing with persons known and unknown to the Grand Jury to commit offenses against the United States, to-wit: To knowingly and intentionally distribute and possess with the intent to distribute 50 grams or more of methamphetamine and 500 or more grams of a substance containing a detectable amount of methamphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1); in Counts Five, Ten, Eleven, and Twelve with being an unlawful user of and addicted to any controlled substance, did knowingly possess in or affecting commerce a firearm, all in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a)(2); in Count Fourteen with knowingly and intentionally possessing methamphetamine, a Schedule II controlled substance, all in violation of Title 21, United States Code, Section 844; and in Count Seventeen with using and carrying a firearm during and in relation to a drug trafficking crime and possessing a firearm in furtherance of a drug trafficking crime, all in violation of Title 18, United States Code, Sections

924(c)(1)(A) and (c)(1)(A)(I).

On November 28, 2005, a plea hearing was conducted before the undersigned, and the defendant entered a plea of guilty to Counts One, Five, Ten, Eleven, Twelve, Fourteen, and Seventeen of the Superseding Indictment. The government has agreed to dismiss the remaining counts of the Superseding Indictment upon acceptance of plaintiff's guilty plea.

At this hearing the defendant was placed under oath and testified that his full legal name is Chris Gregg Dezzutti, that he was born on December 4, 1965, and that he completed the twelfth grade. 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 offenses.

The defendant testified that he had received a copy of the Superseding 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 offenses charged. The defendant also stated that no one had made any promises, assurances or threats to him in an effort to induce his plea. The defendant testified that he understood that the offenses with which he is charged in Counts One, Five, Ten, Eleven, Twelve, and Seventeen are felonies and Count Fourteen is a misdemeanor, and that if his plea is accepted, he will be adjudged guilty of those offenses. Moreover, the defendant testified that he understood

that he will be required to pay a mandatory assessment of \$100 per felony count and \$25 per misdemeanor count, and that, at the discretion of the court, he may also be denied federal benefits, as that term is defined in 21 U.S.C. § 862(a), for a period of years or indefinitely, as set forth in the plea agreement. The defendant specifically testified that he understood that under the terms of the agreement he was waiving any right to appeal or to collaterally attack his conviction or sentence and that he was waiving his right to have a jury determine beyond a reasonable doubt the facts alleged in Counts One, Five, Ten, Eleven, Twelve, Fourteen, and Seventeen, including any facts related to sentencing. The defendant further acknowledged that he consented to the forfeiture of property as set forth in the plea agreement and that such a forfeiture of property is proportionate to the degree and nature of the offenses he committed and does not raise any of the concerns addressed in *United States v. Austin*, 113 S.Ct. 2801 (1993). The defendant stated that he understood that he must submit to the government a complete and truthful financial statement revealing all his assets and liabilities on a form provided by the government within thirty days of the date of the plea agreement. The defendant stated that he was waiving his right to raise the defense of the statute of limitations if for any reason the plea agreement is withdrawn or otherwise not consummated. The defendant also testified that he was waiving all rights under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of his case.

The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count One, is forty years imprisonment and a fine of \$2,000,000, together with supervised release. The defendant was also informed that Count One has a mandatory minimum of five years imprisonment. The defendant was informed that the maximum

possible penalty provided by law for the offenses with which he is charged in Counts Five, Ten, Eleven, and Twelve, is ten years imprisonment and a fine of \$250,000, together with supervised release. The defendant was informed that the maximum possible penalty provided by law for the offense with which he is charged in Count Fourteen, is one year imprisonment with a fine of a mandatory \$1,000 and up to \$100,000, and a period of supervised release. The defendant was further informed that the maximum possible penalty provided by law for the offense with which he is charged in Count Seventeen, is a mandatory minimum sentence of five years imprisonment which must be served consecutive to any other sentence and up to life imprisonment, a fine of \$250,000, together with supervised release. Finally, defendant was informed that his assets may be subject to forfeiture.

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 was informed that for the purposes of sentencing he will be held responsible for at least 350 grams but less than 500 grams of methamphetamine. Additionally, the defendant was informed that the enhancement for possession of a dangerous weapon pursuant to USSG § 2D1.1(b)(1) is not applicable to his case. The defendant stated that he understood that, contingent upon his acceptance of responsibility and continued cooperation in the sentencing process, and fulfillment of his duties under the plea agreement, the government will recommend a two-level (2) reduction under USSG § 3E1.1(a), and because he

meets the listed criteria, he should be granted an additional one-level (1) reduction under USSG § 3E1.1(b). The defendant also stated that he and the government had agreed that his base offense level would not be increased or decreased based upon his role in the offense.

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 testified that he understood the possible consequences of his plea. The defendant asked the court to accept his plea of guilty to Counts One, Five, Ten, Eleven, Twelve, Fourteen, and Seventeen of the Superseding 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 offenses charged is as follows:

Between the fall of 1998 and January 18, 2005, an agreement existed in the Western District of Virginia between two or more persons to distribute and possess with intent to distribute methamphetamine. Defendant knew of the agreement, and he knowingly and voluntarily became a part of the conspiracy.

Defendant was the "enforcer" in 1998 for the Shenandoah County, Virginia, chapter of the Warlocks Motorcycle Club. Various members of the club supplied each other with controlled substances, including methamphetamine, as well as distributing methamphetamine to and purchasing methamphetamine from individuals outside the club.

In or about the fall of 1998, Pamela Richards introduced Michael Saylor to defendant as a source for methamphetamine. Pamela Richards brought Michael Saylor over to defendant's residence,

where Michael Saylor sold one-eighth ounce of methamphetamine to defendant. Pamela Richards was present on a number of occasions in the following year when Michael Saylor came to defendant's residence to sell him ounce quantities of methamphetamine for redistribution. Defendant was armed with a pistol on most of these occasions.

Beginning in or about May 2001, Shane Newman observed defendant distribute methamphetamine to other coconspirators. Beginning in or about August of 2001 and continuing to March 2002, defendant supplied Shane Newman with quantities of methamphetamine of between one-eighth and one-half ounce. Defendant was armed with a pistol during these transactions.

In or about the late spring to early summer of 2001, defendant and George Paul Framelli traveled to Florida to obtain methamphetamine from a Warlocks Motorcycle Club member in Brevard County, Florida. Shane Newman gave Framelli \$900 to purchase methamphetamine on this trip. Framelli and defendant obtained several ounces of methamphetamine, and William Shire received one-half ounce of this quantity. Framelli distributed one half ounce of the methamphetamine to Shane Newman.

Beginning in or about July 2001 until September 2001, defendant supplied William Shire with ounce quantities of methamphetamine for redistribution in the northern Shenandoah Valley. Defendant was armed with a pistol during these transactions. After September 2001, William Shire ceased obtaining large quantities of methamphetamine from defendant, but defendant continued to distribute one-half to one gram quantities to William Shire approximately twice per month from October 2001 to July 24, 2003.

Beginning in the summer of 2001 and continuing until March 2002, Roger Ayers supplied defendant with methamphetamine. Initially, defendant received one-eighth ounce quantities, then those

quantities increased to one to two ounces at a time. Defendant distributed this methamphetamine to Shane Newman and other individuals in the northern Shenandoah Valley. Defendant was armed during these transactions with Roger Ayers. Defendant and Ayers stopped dealing with each other following defendant's arrest for unrelated state charges on February 2, 2002.

On July 24, 2003, a search warrant was executed at the residence of defendant located at 719 Massanutten Park, Mount Jackson, Virginia. Agents recovered methamphetamine residue, packaging materials, scales, and firearms from the bedroom occupied by defendant.

The total amount of methamphetamine reasonably foreseeable to defendant for his part in the conspiracy was at least 350 but less than 500 grams of a mixture or substance containing methamphetamine.

On January 18, 2005, law enforcement officers arrested defendant on a warrant based on the indictment in this case. When arrested, defendant was in possession of a Taurus .357 magnum caliber revolver, Model 66, SN 5137235, and .06 grams of methamphetamine in two packages in his wallet. Defendant consented to a search of his residence, and agents found a small quantity of marijuana and drug paraphernalia at the residence. Defendant had not withdrawn from the drug conspiracy as of January 18, 2005. Defendant did not brandish the firearm, but the firearm facilitated and had the potential to facilitate the ongoing drug trafficking crime. The presence of the firearm was not the result of accident or coincidence.

On the dates charged in Counts Five, Ten, Eleven, and Twelve, defendant knowingly possessed the firearm described in each respective count. At the time he possessed the firearms, defendant was an unlawful user of controlled substances as that term is defined under federal law. Each firearm charged in each count had moved in interstate and/or foreign commerce.

As to some of the facts in this statement of facts, defendant has no personal knowledge but agrees that the United States would prove those facts beyond a reasonable doubt at trial.

### **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 Counts One, Five, Ten, Eleven, Twelve, Fourteen, and Seventeen of the Superseding Indictment; and
4. The evidence presents an independent basis in fact containing each of the essential elements of the offenses 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 Counts One, Five, Ten, Eleven, Twelve, Fourteen, and Seventeen and adjudge him guilty of those offenses. A sentencing hearing hereby is scheduled for February 21, 2006 at 2:00 p.m. before the presiding District Judge in Harrisonburg.

### **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

