

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

UNITED STATES OF AMERICA,	)	CASE NO. 5:07CR00039-1
	)	
v.	)	
	)	<u>REPORT AND RECOMMENDATION</u>
LUKE AARON THOMAS,	)	
	)	
	)	
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 returned a Superseding Indictment charging defendant in Count One with aiding and abetting another, did by force, violence and intimidation take from a person money, namely \$10,252.00, belonging to and in the care, custody, control, management, and possession of the Shenandoah National Bank, Harrisonburg, Virginia, whose deposits were then insured by the Federal Deposit Insurance Corporation, and in committing this offense the defendant did assault and put in jeopardy the life of another person by the use of a dangerous weapon, that is a firearm described as a 9mm Glock handgun, all in violation of Title 18, United States Code, Sections 2113(a) and 2113(d), and Title 18, United States Code, Section 2; in Count Two with aiding and abetting another, did by force, violence and intimidation take from a person money, namely \$3,485.00, belonging to and in the care, custody, control, management, and possession of the Virginia Savings Bank, Strasburg, Virginia, whose deposits were then insured by the Federal Deposit Insurance Corporation, and in committing this offense the defendant did assault and put in jeopardy the life of another person by the use of a dangerous weapon, that is a firearm described as a 9mm Glock handgun, all in violation of Title 18, United States Code, Sections 2113(a) and 2113(d), and Title 18, United States Code, Section 2; in Count Three with being aided and abetted

by others, did by force, violence and intimidation take from a person money, namely \$11,011.00, belonging to and in the care, custody, control, management, and possession of the First Bank, Woodstock, Virginia, whose deposits were then insured by the Federal Deposit Insurance Corporation, and in committing this offense the defendant did assault and put in jeopardy the life of another person by the use of a dangerous weapon, that is a firearm described as a 9mm Glock handgun, all in violation of Title 18, United States Code, Sections 2113(a) and 2113(d), and Title 18, United States Code, Section 2; in Count Four with being aided and abetted by others, did by force, violence and intimidation take from a person money, namely \$24,442.00, belonging to and in the care, custody, control, management, and possession of the Pioneer Bank, Harrisonburg, Virginia, whose deposits were then insured by the Federal Deposit Insurance Corporation, and in committing this offense the defendant did assault and put in jeopardy the life of another person by the use of a dangerous weapon, that is a firearm described as a 9mm Glock handgun, all in violation of Title 18, United States Code, Sections 2113(a) and 2113(d), and Title 18, United States Code, Section 2; and in Count Five, a forfeiture allegation, with having committed one or more of the felony offenses set forth in the Superseding Indictment, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(c), as authorized by Title 28, United States Code, Section 2461, any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses alleged in the Superseding Indictment, without regard to the type of interest held, wherever located and in whatever name held.

On December 13, 2007, a plea hearing was conducted before the undersigned, and pursuant to the terms of the plea agreement<sup>1</sup>, the defendant entered a plea of guilty to Counts One through Four of the Superseding Indictment, and he admitted to the allegations contained in Count Five. At this hearing the defendant was placed under oath and testified that his full legal name is Luke Aaron

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<sup>1</sup>The government noted that handwritten corrections to typographical errors were made to the plea agreement, and the alterations were initialed by both the defendant and the government.

Thomas, that he was born on May 17, 1988, and that attended high school up to the eleventh 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 consequences of pleading guilty to those charges. The defendant further testified that he was not under the influence of alcohol, medicine, or any drug. The defendant stated that he had no other physical or mental condition which impaired his ability to understand the nature of the proceedings being held. The defendant's counsel stated that he had no reservations as to his competency to enter a plea of guilty to the offenses.<sup>2</sup>

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 in an effort to induce his plea. The defendant testified that he understood that Counts One through Four, to which he was pleading guilty, are felonies 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 \$400.

The defendant was informed that the maximum possible penalty, for each count, in Counts One through Four, is twenty-five years imprisonment and/or a fine of \$250,000, plus a period of supervised release. The defendant was further informed that parole has 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. Finally, the defendant was made aware that his assets

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<sup>2</sup>The defendant's counsel made an oral motion to withdraw his prior motion for competency and stated that he no longer contends that issues of competency exist. The undersigned notes that the defendant responded appropriately and in a courteous manner to questions posed to him during the hearing.

were be subject to forfeiture under Count Five.

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 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 offenses to which the defendant is pleading guilty. The defendant was informed that the plea agreement was limited to the Western District of Virginia and not binding on other federal districts or State and local authorities. The defendant stated that he was aware that pursuant to USSG § 1B1.3 he is accountable for the burglary at Hunters Paradise and Antique Barn at the Shenandoah Farmer's Market, and the rare coins and handguns taken were recovered from him and would be returned to the owner or added to his restitution. The defendant acknowledged he knew that the sentencing judge could add or subtract up to four sentencing points to his sentencing level based upon his role in the offenses. 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 was informed that if he fulfills his obligations under the plea agreement and accepts responsibility for his conduct, the government will recommend that he receive a sentence of incarceration at the low end of the applicable Sentencing Guidelines range, and the government may object to any motion for downward departure that he might make. The defendant stated he understood that the location for service of any term of imprisonment is ultimately determined by the Bureau of Prisons, but to the extent it is consistent with the Bureau of Prisons' applicable rules and regulations, the government would not object to any request he might make to be confined at a community correctional facility.

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 agreed that restitution should be based on the entire scope of his criminal conduct, not just the charges to which he is pleading guilty. The defendant acknowledged he knew that he would be liable for restitution totaling \$49,340. The defendant stated he knew that although restitution was due upon entry of his judgment of conviction, it was agreed that he will make monthly payments during his incarceration and supervised release or probation.

The defendant acknowledged that he was waiving his right to have a jury determine beyond a reasonable doubt the facts alleged in the Superseding Indictment, including any facts related to sentencing. 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 testified that he understood that under the terms of the agreement he was waiving rights to appeal or to collaterally attack his conviction or sentence. The defendant stated he was aware that the government had retained its right to appeal any sentence imposed below the applicable Sentencing Guidelines range or below the government's recommended sentence. 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 acknowledged that he consented to the abandonment, official use and/or destruction of any contraband and personal property seized by any law enforcement agency from his possession or from his direct or indirect control. The defendant acknowledged that he agreed to forfeit personal property seized or restrained by the government, 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 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 records from any department or agency.

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 Counts One through Four of the Superseding Indictment and his admission to the allegations contained in Count Five.

## **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:

On the morning of June 9, 2007, Luke Aaron Thomas ("Thomas") entered Shenandoah National Bank, 2169 South Main, Harrisonburg, Virginia, pointed a gun at two bank employees, and demanded fifteen thousand dollars. Thomas then removed a device from the bag he was carrying and placed it on the floor of the bank, stating "this is not a paint bomb." Thomas also removed a second gun from his bag, and pointed both guns at the bank employees. Thomas jumped over the bank teller counter, and advised the bank employees that he would kill them if they put "ink" in the money. A bank employee gave Thomas \$10,252.00 from the drive-through teller drawer. Thomas jumped back over the teller counter, bent down toward the device on the floor, and told the bank employees to call the police. The bank employees called the police and left the scene unharmed. The device was later determined to be a well-constructed hoax bomb, with included a cellular telephone as one of the components.

On June 30, 2007, Thomas entered Virginia Savings Bank, 33230 Old Valley Pike, Strasburg, Virginia, wearing a black ski mask, holding a pistol in his right hand, and a backpack in his left. Thomas demanded that everyone "put your hands on top of your head". Thomas placed the back pack on the counter, unzipped the bag, pulled out a second weapon, and told a bank employee to "put money in the bag". While the teller put the money in the bag (\$3,485.00), Thomas had one weapon pointed at the people in the lobby area and the second pointed at the teller line. As Thomas left the bank he turned and stated "You can now call the police."

On July 19, 2007, Joel Darron Martin ("Martin") confessed to assisting Thomas with the above two robberies. Martin formerly worked with Thomas at Premiere Vinyl, Harrisonburg, Virginia, and Martin confessed to serving as the "look-out" during the robbery of Shenandoah National Bank, for which Thomas paid Martin \$4000.00. Prior to the robbery, Thomas had told Martin that he would give Martin some of the stolen money. Thomas showed Martin the hoax bomb that Thomas constructed and

planned to leave in Shenandoah National Bank during the robbery. Martin knew that Thomas had two pistols because Thomas told Martin that he stole them from the Farmer's Market near Harrisonburg, Virginia. Thomas showed the guns to Martin and told Martin that he had shot them. Thomas told Martin that, if necessary to escape, he would shoot cops.<sup>3</sup>

On July 19, 2007, Martin confessed to knowingly driving the "get-away" vehicle during the above robbery of Virginia Savings Bank, Strasburg, Virginia, for which Thomas paid Martin \$1300.00, some of which Martin provided to law enforcement as evidence.

The above Statement of Facts is a summary of the Government's case and is not intended to represent all the evidence the government has obtained in this investigation.

### **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 through Four of the Superseding Indictment and agreed to forfeiture as set forth in Count Five; 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 through Four of the Superseding Indictment, and his

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<sup>3</sup>The defendant reserved the right to present evidence and challenge this statement at sentencing.

agreement to forfeiture as set forth in Count Five. The undersigned DIRECTS that a presentence report be prepared. A sentencing hearing hereby is scheduled for March 17, 2008 at 9:30 a.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

