

Count Three of the Indictment. At this hearing, the defendant was placed under oath and testified his full legal name is Daniel Paul Freeman; he was born on February 14, 1983; and he received formal education up to the ninth grade. The defendant stated that he can read, write, and understand the English language. The defendant also 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 or drugs. 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 she had no reservations as to her client's competency to enter a plea of guilty to the offenses.

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 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 Count One, as amended, and Count Three are felonies, and 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 of conviction.

The defendant was informed that the maximum possible penalty for amended Count One is a \$2,000,000 fine and/or forty years imprisonment, plus a period of supervised release. He was informed that amended Count One has a mandatory minimum sentence of five years imprisonment. The defendant was informed that the maximum possible penalty for Count Three is a \$250,000 fine and/or ten years imprisonment, plus a period of supervised release. The defendant was further informed that parole has been abolished, and 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 informed that his assets might 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 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 acknowledged he was aware that in exchange for his plea of guilty to Count One, as amended, and Count Three, the government would move for the dismissal of Count Two of the Indictment. 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, and the probation office recommends a two-level (2) reduction under USSG § 3E1.1(a), the government will concur with the recommendation. Further, the defendant acknowledged he knew that if the probation office recommends a reduction under USSG § 3E1.1(a) and he fulfills certain conditions set forth in the plea agreement, the government would recommend

an additional one-level reduction pursuant to § 3E1.1(b), if applicable.² The defendant was informed that for purposes of USSG §§ 2D1.1 and 1B1.3 he should be held responsible for no more than twenty grams of cocaine base. He stated he knew, however, that the matter of drug weight is a factual matter to be determined by the court. The defendant stated he knew that if he fulfills his obligations under the plea agreement and accepts responsibility for his conduct, the government will recommend he receive a sentence between the middle and low end of the applicable Sentencing Guidelines range. Moreover, the defendant stated he knew that the government would object to any motion he made for downward departure. The defendant stated that he understood that any information given by him during a proffer or cooperation will not be used against him to enhance his sentence under USSG § 1B1.8.

The defendant acknowledged that he was waiving his right to have a jury determine beyond a reasonable doubt the facts alleged in the 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 his right

²The plea agreement required the defendant to deliver an executed copy of the plea agreement to the U.S. Attorney's office on or before May 19, 2007 at 5:00 p.m. The defendant was not indicted until January 16, 2008, and the undersigned presumes that the year, 2007, is a clerical error. In any event, both sides stipulated that the condition has been satisfied.

to appeal or 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 to the extent he still has these rights, 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 seized by any law enforcement agency from his possession or from his direct or indirect control. 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 was informed 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), as set forth in the plea agreement.

The defendant stated that he was fully satisfied with the advice and representation given to him in this case by his counsel, and he believed his counsel's representation had been effective. The defendant stated that he was not pleased with the fact that he had only met with his counsel one time. He informed the court that his house arrest in Virginia Beach, Virginia had impacted his ability to come to Charlottesville to meet with his counsel. When the defendant was asked whether he felt that even though there had only been one meeting with his counsel he still felt that he had been provided with effective representation and had been given sufficient time to talk with his counsel about the case, the defendant responded in the affirmative. After answering all the court's questions, the defendant still wanted the court to accept his plea of guilty to Count One, as amended, and Count Three 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 was filed in open court. The evidence presented therein is as follows:

On June 17, 2007, investigators interviewed four confidential sources of information (SOI's) who advised that a black male known to them as "RICO" has been selling various quantities of crack cocaine to them. "Rico" was determined to be the the defendant, Daniel Freeman. Some of the SOI's had been purchasing from Freeman for approximately two to three months, while the others had been customers for periods of six months or longer. Each of the SOI's described similar scenarios for purchasing crack cocaine from Freeman. The SOI's described contacting Freeman by telephone to order up quantities of crack cocaine. Freeman would advise the SOI's to meet him at the Hilltop Carwash in Harrisonburg, Virginia. At the arranged time, Freeman would then arrive at the carwash and exchange crack cocaine for cash with the SOI's. All of the SOI's advised that Freeman lives at a house on Country Club Road in Harrsionburg, Virginia. Each of the SOI's further related that they had recently purchased a quantity of crack cocaine form Freeman on June 14, 2007.

During surveillance activity conducted by law enforcement officers it was learned that Freeman drives a silver, Lincoln Navigator that routinely parked on Country Club Road in Harrisonburg, Virginia.

On July, 2007, investigators initiated a confidential source operation utilizing one of the aforementioned SOI's. During the operation, the SOI called Freeman for the purpose of purchasing approximately 4 grams of crack cocaine. At the arranged time and location, the SOI identified Freeman driving a silver Lincoln Navigator into the pre-arranged meeting location. Investigators initiated a traffic stop of the vehicle. The vehicle was being operated by Daniel Freeman. A search of the vehicle located a loaded Glock, Model 26, 9mm pistol in the unlocked glove box, a safe, computer, and two cell

phones. Freeman was then transported to the Rockingham Regional Jail where he was strip searched. During this search, a small clear plastic bag containing five smaller bags with a white substance were discovered under his scrotum. A laboratory analysis confirmed it to be 1.3 grams of cocaine base, 91.9 %purity.

Shortly thereafter, a Search Warrant was executed at Freeman's residence on Country Club Road, Harrisonburg, Virginia. Upon execution, investigators found minimal furniture and evidence that only one bedroom was being occupied. In this bedroom, investigators located 8.4 grams of crack cocaine (89.6% purity), digital scales, \$60.00 in U.S. Currency, prescription drug bottles bearing the name Daniel Freeman, and three photographs appearing to be of Freeman and two other males posing with firearms.

On October 16, 2007, an ATF Interstate Nexus Expert determined that the Glock, Model 26 pistol was manufactured outside of the Commonwealth of Virginia and would have traveled in interstate or foreign commerce in order to be located in the Commonwealth of Virginia.

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, as amended, and Count Three of the 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 Count One, as amended, and Count Three of the Indictment. The undersigned DIRECTS that a presentence report be prepared. A sentencing hearing hereby is scheduled for August 18, 2008 at 11:30 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

