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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. CR16-5073RBL
)	
vs.)	
)	
DANIEL SETH FRANNEY,)	
)	
Defendant.)	

PLEA HEARING

BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT COURT JUDGE

July 12, 2016

APPEARANCES:

Todd Greenberg
Assistant United States Attorney
Representing the Plaintiff

Mohammad Hamoudi
Linda Sullivan
Federal Public Defender's Office
Representing the Defendant

10:38:43AM 1 THE CLERK: This is in the matter of the United
10:38:45AM 2 States of America versus Daniel Franey,
10:38:50AM 3 Cause No. CR16-5073RBL. Counsel, please make their
10:38:52AM 4 appearances.

10:38:52AM 5 MR. GREENBERG: Your Honor, Todd Greenberg for the
10:38:55AM 6 United States.

10:38:55AM 7 THE COURT: Good morning, Mr. Greenberg.

10:38:58AM 8 MR. HAMOUDI: Good morning, your Honor. Mohammad
10:39:01AM 9 Hamoudi from the Federal Defender's Office, and Linda
10:39:02AM 10 Sullivan from the same office, on behalf of Mr. Franey
10:39:06AM 11 today.

10:39:06AM 12 THE COURT: Good morning, Mr. Hamoudi,
10:39:07AM 13 Ms. Sullivan. Mr. Franey, good morning.

14 THE DEFENDANT: Good morning, sir.

10:39:10AM 15 THE COURT: This matter is before the court for a
10:39:13AM 16 change of plea. Mr. Hamoudi, have you had an opportunity
10:39:17AM 17 to review the decision with your client?

10:39:21AM 18 MR. HAMOUDI: Yes, we have, your Honor. We are
10:39:22AM 19 ready to proceed.

10:39:23AM 20 THE COURT: Mr. Franey, are you prepared?

10:39:26AM 21 THE DEFENDANT: Yes, your Honor.

10:39:32AM 22 THE COURT: Under these circumstances the court
10:39:34AM 23 has you sworn to give truthful and correct answers under
10:39:38AM 24 oath. Under certain circumstances, if you do not give
10:39:41AM 25 truthful and correct answers to the court's questions, the

10:39:44AM 1 United States can file perjury charges against you, which
10:39:47AM 2 are separate and apart from the charges you are now
10:39:50AM 3 facing. Do you have any objection to being sworn?

10:39:53AM 4 THE DEFENDANT: No.

10:39:54AM 5 THE COURT: Please stand and raise your right
10:39:57AM 6 hand. Ms. Boring will administer the oath.

10:40:12AM 7 (At this time the defendant was sworn.)

10:40:12AM 8 THE COURT: Mr. Greenberg, if you would, tell
10:40:15AM 9 Mr. Franey exactly what he is being charged with, what the
10:40:19AM 10 statutory maximum penalties are, including any mandatory
10:40:22AM 11 minimums, periods of supervised release, fines, and
10:40:25AM 12 special assessments.

10:40:26AM 13 MR. GREENBERG: Yes, your Honor. The defendant is
10:40:27AM 14 expected to plead guilty to one count, that is, Count 5 of
10:40:31AM 15 the indictment, which charges the offense of unlawful
10:40:34AM 16 possession of machine guns, in violation of Title 18,
10:40:37AM 17 United States Code, Section 922(o).

10:40:41AM 18 The maximum penalties for that offense are up to ten
10:40:47AM 19 years in prison, a fine of up to \$250,000, a period of
10:40:52AM 20 supervised release for up to three years, and a \$100
10:40:55AM 21 special assessment.

10:40:57AM 22 THE COURT: Thank you, Mr. Greenberg.

10:41:00AM 23 Mr. Franey, I want to inform you that if this case
10:41:03AM 24 were to go to trial, the government would have to prove
10:41:06AM 25 the following elements beyond a reasonable doubt before

10:41:08AM 1 you could be convicted of the offense in Count 5: First,
10:41:15AM 2 the defendant knowingly possessed a firearm; and, second,
10:41:18AM 3 the firearm was a machine gun, as defined in Title 18,
10:41:23AM 4 United States Code, Section 921(a)(23), and Title 26,
10:41:29AM 5 United States Code, Section 5854(b), that is, a weapon
10:41:34AM 6 which shoots and is designed to shoot automatically more
10:41:38AM 7 than one shot, without manually reloading, by a single
10:41:41AM 8 function of the trigger. Do you understand those
10:41:46AM 9 elements?

10:41:48AM 10 THE DEFENDANT: Your Honor, would it make a
10:41:50AM 11 difference if I didn't understand that possession of a
10:41:52AM 12 weapon was classified as having access to it or handling
10:41:55AM 13 it? If possession, in my mind, as I understood it, was
10:41:59AM 14 actually having the gun as yours, would it make a
10:42:03AM 15 difference to you?

10:42:03AM 16 THE COURT: No. There is a kerfuffle now about
10:42:09AM 17 intent on everything after Mrs. Clinton's escapade. If
10:42:19AM 18 you had the power to control it, that's possession.

10:42:26AM 19 THE DEFENDANT: I didn't know that. I wouldn't
10:42:32AM 20 have never hung out with them, past them being in my yard,
10:42:36AM 21 if I had known that. I thought the game was to get me to
10:42:40AM 22 buy the guns.

10:42:41AM 23 MR. HAMOUDI: Your Honor, I think what he is
10:42:43AM 24 saying is ignorance of the law, which is essentially -- it
10:42:45AM 25 is a maxim of the law, it is not a defense to the charge.

10:42:51AM 1 That's what he is trying to explain.

10:42:51AM 2 THE COURT: I understand. I would direct your
10:42:57AM 3 attention to Paragraph 5 of the plea agreement, the
10:43:03AM 4 reference to the United States Sentencing Guidelines. I
10:43:06AM 5 want to tell you what the process will be from here until
10:43:10AM 6 the day appointed for sentencing.

10:43:16AM 7 You will be interviewed by a member of the Probation
10:43:19AM 8 Office. They will ask you questions about your personal
10:43:22AM 9 background, your personal history, your criminal history,
10:43:25AM 10 if any. At the end of the day, they will make a
10:43:32AM 11 recommendation for a sentence that is fair, in their
10:43:39AM 12 minds. It is not binding on this court. It is only
10:43:42AM 13 advisory.

10:43:43AM 14 I will review anything that you submit through your
10:43:47AM 15 counsel, and I will review anything the government submits
10:43:53AM 16 on the matter of sentence, what is an appropriate sentence
10:43:58AM 17 under all of the circumstances.

10:44:03AM 18 At the end of the process, I am guided by the nine
10:44:08AM 19 enumerated factors in Paragraph 5. They are codified in
10:44:12AM 20 Title 18, United States Code, Section 3553(a). For our
10:44:19AM 21 purposes, you need to know that the court may impose any
10:44:21AM 22 sentence authorized by law, up to the maximum term
10:44:25AM 23 authorized by law. Do you understand that, sir?

10:44:28AM 24 THE DEFENDANT: Yes.

10:44:29AM 25 THE COURT: It is important for us to register

10:44:39AM 1 your answers to the following questions: Has anyone
10:44:42AM 2 threatened or coerced your family or you to change your
10:44:46AM 3 plea here today?

10:44:48AM 4 THE DEFENDANT: No.

10:44:53AM 5 THE COURT: Has anyone told you that they have
10:44:56AM 6 talked to me or any other judge about what sentence you
10:45:00AM 7 will receive in return for your plea of guilty here today?

10:45:03AM 8 THE DEFENDANT: Definitely not.

10:45:06AM 9 THE COURT: How old are you, sir?

10:45:07AM 10 THE DEFENDANT: I am 34 now, sir.

10:45:09AM 11 THE COURT: How far have you gone in school?

10:45:12AM 12 THE DEFENDANT: Oh, I got through high school. I
10:45:14AM 13 intended to go farther, but, you know, life happens.

10:45:18AM 14 THE COURT: Right. A common occurrence. Do you
10:45:23AM 15 think you have sufficient knowledge of our criminal
10:45:27AM 16 justice system to understand the charges against you, with
10:45:34AM 17 the help of your lawyers?

10:45:35AM 18 THE DEFENDANT: I am getting more educated every
10:45:38AM 19 day. It is a pretty vast system. I went over just
10:45:42AM 20 possession laws on the computer there. It is pretty
10:45:48AM 21 crazy. In '96 they changed it to, you know, just being
10:45:51AM 22 around it or access to it. It seems like it is a little
10:45:56AM 23 bit biased or slanted towards being, you know, more useful
10:46:02AM 24 for the government to prosecute, and for a person to be
10:46:07AM 25 considered a criminal. You know what I mean?

10:46:11AM 1 THE COURT: Right.

10:46:12AM 2 THE DEFENDANT: I get that it takes a lot of years
10:46:14AM 3 of schooling, based on what I looked up. Do you know what
10:46:18AM 4 I mean?

10:46:18AM 5 THE COURT: Welcome to our world. It is
10:46:21AM 6 difficult, yeah.

10:46:21AM 7 THE DEFENDANT: It is frustrating. I think it is
10:46:24AM 8 unfair for people just like me, but a lot of people.
10:46:28AM 9 Whatever. I mean, it is what we've got to deal with now.

10:46:31AM 10 THE COURT: Right. Do you think you have the
10:46:37AM 11 wherewithal to make the best decision for you under the
10:46:40AM 12 circumstances?

10:46:43AM 13 THE DEFENDANT: I think when you say someone's
10:46:45AM 14 name versus the United States, that is a lopsided fight.
10:46:48AM 15 I think if I could subpoena the people I know exist, and
10:46:51AM 16 have them come and talk, things would be different, as far
10:46:54AM 17 as the direction it would take. But I understand probably
10:46:56AM 18 we are not going to be able to get those people, and so
10:46:59AM 19 this is the best route.

10:47:00AM 20 THE COURT: All right. Have you ever had a head
10:47:04AM 21 injury or other reason to see a psychiatrist or
10:47:06AM 22 psychologist?

10:47:07AM 23 THE DEFENDANT: I played a lot of football for
10:47:11AM 24 like nine years. I was a linebacker and a fullback.
10:47:14AM 25 There was a lot of head-butting going on. I am also

10:47:19AM 1 probably bipolar. I did a little bit of boxing. I don't
10:47:29AM 2 know. I might have some kind of factors to my -- But I
10:47:34AM 3 feel fine, I guess.

10:47:36AM 4 THE COURT: Are you oriented as to time and place?
10:47:38AM 5 Do you know you are in a courtroom and why you are here?

10:47:42AM 6 THE DEFENDANT: I am. But I was actually locked
10:47:44AM 7 up in a mental hospital, I think, in 2009. I knew where I
10:47:47AM 8 was. I knew what time it was. I knew who my kids were,
10:47:51AM 9 the days they were born. I answered all the questions
10:47:54AM 10 they had for me. But they said, you know, "You're crazy."
10:47:57AM 11 I just wanted to go outside, go back to my family, and go
10:48:00AM 12 back to the garden, but they said I wasn't fit. They said
10:48:03AM 13 I wasn't a danger to myself or anyone else, but I just
10:48:06AM 14 couldn't take care of myself, or whatever. It is
10:48:08AM 15 different. I mean, I think I am okay. But someone else
10:48:12AM 16 might think I am a little off.

10:48:14AM 17 THE COURT: For our purposes, do you believe you
10:48:18AM 18 understand --

10:48:18AM 19 THE DEFENDANT: I believe this is the best option,
10:48:20AM 20 I guess, given the circumstances.

10:48:22AM 21 THE COURT: Okay. I am going to advise you of
10:48:30AM 22 your rights to a jury trial and all that entails. The
10:48:36AM 23 charges against you entitle you to a jury trial. At the
10:48:39AM 24 jury trial the government has the burden to prove you
10:48:42AM 25 guilty beyond a reasonable doubt. At that jury trial you

10:48:46AM 1 have the presumption of innocence. The presumption of
10:48:49AM 2 innocence quite literally means that you do not have to do
10:48:53AM 3 anything at trial. You have no burden of proof or
10:48:55AM 4 disproof.

10:48:57AM 5 You have a right to confront and cross-examine the
10:49:00AM 6 witnesses against you. If you wish to, you may subpoena
10:49:03AM 7 witnesses to testify on your behalf through the clerk's
10:49:07AM 8 office at no expense to you. No one can make you take the
10:49:10AM 9 witness stand and testify against yourself, because the
10:49:13AM 10 provisions of the Fifth Amendment to the Constitution of
10:49:16AM 11 the United States affords you that right.

10:49:19AM 12 You do not have to incriminate yourself. However, if
10:49:22AM 13 you wish to testify, you may do so, and you will be
10:49:25AM 14 treated as any other witness in the case.

10:49:28AM 15 If you proceed to a jury trial, and the jury finds you
10:49:31AM 16 guilty, you have a right to appeal the judgment and
10:49:35AM 17 sentence of the court, and you have a right to a lawyer to
10:49:40AM 18 perfect that appeal, and the right to the transcript of
10:49:42AM 19 that jury trial. Both will be provided to you at
10:49:45AM 20 government expense.

10:49:47AM 21 If you plead guilty, the right to that jury trial is
10:49:50AM 22 gone forever, but you still have a right to appeal any
10:49:54AM 23 sentence imposed by the court.

10:49:57AM 24 Do you still wish to proceed with a guilty plea today
10:50:01AM 25 to Count 5?

10:50:04AM 1 THE DEFENDANT: These things that I am waiving,
10:50:05AM 2 these rights I am waiving, I don't waive them very
10:50:08AM 3 lightly. I don't really like waiving them, to be honest
10:50:11AM 4 with you.

10:50:13AM 5 But the people I know that I could go find, they do
10:50:15AM 6 work for this government. I don't think we are going to
10:50:20AM 7 be able to get them to come testify. I know how they are
10:50:26AM 8 going to try and spin it, the proof of these other people
10:50:29AM 9 that are involved. It is my word against theirs.

10:50:32AM 10 I mean, if I could go out right now and get subpoenas
10:50:36AM 11 and track these people down and say, "Here, sorry, guys,
10:50:39AM 12 you have to come talk about what your involvement was for
10:50:42AM 13 the last five years, and you've got to come tell what
10:50:44AM 14 we" -- "our conversations, what I told you, how I
10:50:46AM 15 responded to you, the requests, and whatnot," you know,
10:50:51AM 16 then I would feel more comfortable going to trial.

10:50:53AM 17 But just -- I am saying all of this just thrown up,
10:50:58AM 18 this is what it is, this is what we think he is, and
10:51:01AM 19 without any proof other than my word, with twelve people I
10:51:05AM 20 don't know, probably different backgrounds, we haven't
10:51:09AM 21 done nearly the same things as these people, sitting on
10:51:11AM 22 the jury, I don't see how they are my peers, I think I am
10:51:15AM 23 probably better off waiving these rights that I don't
10:51:17AM 24 really want to.

10:51:30AM 25 THE COURT: Thank you. Mr. Greenberg, tell

10:51:33AM 1 Mr. Franey what the government would be prepared to prove
10:51:36AM 2 if this matter went to a jury trial.

10:51:40AM 3 MR. GREENBERG: Yes, your Honor. There is
10:51:42AM 4 obviously a lengthy statement of facts. If it pleases the
10:51:44AM 5 court, I would just summarize that --

10:51:46AM 6 THE COURT: That's fine.

10:51:47AM 7 MR. GREENBERG: -- focusing on the firearms
10:51:49AM 8 possession incidents.

10:51:50AM 9 THE COURT: That's fine.

10:51:50AM 10 MR. GREENBERG: The statement of facts sets forth
10:51:52AM 11 that between July 2nd, 2015, and January 30th, 2016, the
10:51:57AM 12 defendant had numerous contacts and meetings with an
10:52:01AM 13 undercover officer, referred to as UC1. UC1 informed the
10:52:06AM 14 defendant that he was a black market seller of firearms,
10:52:11AM 15 and the defendant joined UC1 on five trips in which the
10:52:16AM 16 undercover was posing to deliver firearms to customers.

10:52:22AM 17 The first trip took place between August 3rd and 4th
10:52:26AM 18 of 2015, where they traveled, the defendant along with the
10:52:31AM 19 undercover, to Spokane, Washington. The defendant told
10:52:35AM 20 the undercover that he fantasized the undercover was a
10:52:38AM 21 small arms dealer because we needed some small arms. They
10:52:42AM 22 drove to Tukwila, where they received a bag of firearms,
10:52:46AM 23 and then drove to Spokane where the undercover
10:52:52AM 24 delivered -- was supposed to deliver the bag to his
10:52:54AM 25 customers, with the defendant serving as a lookout during

10:52:58AM 1 the trip.

10:53:00AM 2 The second trip took place on September 1st and 2nd,
10:53:03AM 3 2015. This was, again, a trip to Spokane for that same
10:53:08AM 4 purpose of delivering a bag of firearms to supposed
10:53:11AM 5 customers. The defendant again served as a lookout on
10:53:14AM 6 that trip.

10:53:16AM 7 The next trip was September 28th of 2015. It was a
10:53:20AM 8 12-hour trip to and from Ellensburg, Washington, again,
10:53:24AM 9 for the purpose of the defendant assisting the undercover
10:53:27AM 10 in delivering firearms to customers. They received the
10:53:31AM 11 firearms outside of a store in Tukwila in a duffel bag
10:53:36AM 12 from another undercover officer. The defendant asked if
10:53:40AM 13 there were a dozen handguns, and the undercover officer
10:53:44AM 14 removed a Glock model .22 pistol, handed it to the
10:53:47AM 15 defendant, who took possession of it, handled it for a few
10:53:50AM 16 minutes, at which time the defendant then took possession
10:53:55AM 17 of a Glock model .23 caliber pistol, handled it, again
10:54:00AM 18 inspected it, and ultimately returned it to the undercover
10:54:03AM 19 officer. The defendant also stated it would be nice to
10:54:07AM 20 have a handgun. They then traveled to Ellensburg, where
10:54:10AM 21 the undercover delivered the firearms with the assistance
10:54:14AM 22 of the defendant.

10:54:16AM 23 The fourth trip was a multi-day trip on October 26th
10:54:20AM 24 through 29th, 2015. This was to and from Santa Monica,
10:54:25AM 25 California. The trip started in Olympia, where the

10:54:30AM 1 undercover already had a bag of firearms in his vehicle.
10:54:37AM 2 This bag included a fully automatic AK-47. The undercover
10:54:44AM 3 told the defendant that he would like one of the guns in
10:54:48AM 4 the bags, and the defendant turned around and removed the
10:54:51AM 5 AK-47 from the bag. He held the gun, manipulated the
10:54:57AM 6 collapsible stock, and made various comments about the
10:54:59AM 7 gun. Ultimately, the defendant put the gun back in the
10:55:01AM 8 bag and zipped it closed. They talked about the selector
10:55:05AM 9 switch on the gun, and the defendant said that would be a
10:55:08AM 10 nice option to have.

10:55:10AM 11 Ultimately, they delivered the bag of firearms to
10:55:13AM 12 other undercover officers in Santa Monica, California, and
10:55:17AM 13 the defendant told one of the undercover officers that he
10:55:20AM 14 can't have them, referring to the fact that he was not
10:55:23AM 15 legally allowed to possess firearms.

10:55:27AM 16 On November 12th through 13th the defendant also went
10:55:31AM 17 with the undercover officer on an overnight trip to Yakima
10:55:37AM 18 County. It started in Lacey, Washington, where the
10:55:39AM 19 undercover had a duffel bag of firearms in his vehicle
10:55:45AM 20 again, including a fully automatic AR-15 and a fully
10:55:48AM 21 automatic AK-47 assault rifle.

10:55:52AM 22 While they were driving down I-5 they discussed the
10:55:57AM 23 firearms. The defendant took out of the bag the fully
10:56:01AM 24 automatic AK-47. He handled it and discussed the fact
10:56:05AM 25 that it was capable of firing both fully automatic and

10:56:08AM 1 semiautomatic. The defendant manipulated the selector
10:56:12AM 2 switch through the various options available, then
10:56:16AM 3 returned the firearm to the bag.

10:56:19AM 4 Later that afternoon the undercover and the defendant
10:56:23AM 5 arrived at a campground in Naches, Washington, at which
10:56:29AM 6 time, as they had planned, they were test firing some of
10:56:33AM 7 the firearms. The defendant personally handled and fired
10:56:38AM 8 the fully automatic AR-15, as well as the fully automatic
10:56:47AM 9 AK-47, which was fired in fully automatic mode. The
10:56:51AM 10 defendant then asked to fire it in semiautomatic mode and
10:56:54AM 11 did that as well. Ultimately, the undercover took
10:56:57AM 12 possession of the firearms and posed to sell them to the
10:57:02AM 13 other undercover officers who were posing as customers.

10:57:06AM 14 After that, the defendant continued to have contact
10:57:10AM 15 with the undercover officer, requesting and offering to
10:57:14AM 16 buy firearms from the undercover officer. They had
10:57:18AM 17 reached a deal on January 29th for the defendant to buy a
10:57:22AM 18 Street Sweeper shotgun and an AR-15 assault rifle, along
10:57:28AM 19 with ammunition and magazines, for the price of \$1,900.
10:57:32AM 20 But, ultimately, the defendant cancelled that order,
10:57:34AM 21 saying he didn't have the, quote, budget at that time to
10:57:37AM 22 make the purchase, but he invited the undercover to swing
10:57:41AM 23 by and donate the firearms to him for free.

10:57:45AM 24 With respect to the jurisdictional elements of this
10:57:50AM 25 offense, the AK-47 and the AR-15 assault rifles are

10:57:55AM 1 machine guns, as noted, they were fired in a fully
10:57:59AM 2 automatic mode, and they have been inspected by ATF and
10:58:03AM 3 documented as machine guns.

10:58:05AM 4 The defendant is not allowed to possess firearms based
10:58:08AM 5 on a protection order that is entered into the record in a
10:58:12AM 6 case from Lake County, Illinois, that is specified in
10:58:16AM 7 subparagraph J. That makes the defendant a prohibited
10:58:19AM 8 person.

10:58:21AM 9 The parties have agreed that both sides can present
10:58:24AM 10 additional facts to the court at the time of sentencing.

10:58:29AM 11 THE COURT: Now, Mr. Franey, have you read the
10:58:34AM 12 statement of facts word by word?

10:58:36AM 13 THE DEFENDANT: Yes.

10:58:37AM 14 THE COURT: And you have heard the paraphrasing of
10:58:42AM 15 the recitation of facts from Mr. Greenberg. Do you agree
10:58:48AM 16 that it is a true statement of what happened?

10:58:51AM 17 THE DEFENDANT: It is one side of the story,
10:59:01AM 18 summarized in whatever light they want to do that. To use
10:59:07AM 19 his verbiage, to please the court, I would say it is not
10:59:10AM 20 accurate. Not just because of my opinion. We are going
10:59:15AM 21 to do this at sentencing, I understand that.

10:59:19AM 22 For instance, the first page, that he disclosed to me
10:59:21AM 23 he was a small arms dealer, he came to my house and he
10:59:26AM 24 said, "Would you like to go on a trip to California? You
10:59:29AM 25 can make some money," things like this. I said, "There is

10:59:32AM 1 a creek down there we grew up fishing. If you take me
10:59:35AM 2 there, yeah, I would like to go." And then I questioned
10:59:40AM 3 him more, "Is what we are doing illegal?" He said, "I
10:59:43AM 4 don't think it is illegal."

10:59:46AM 5 I thought the game, again, was to buy the guns. So
10:59:50AM 6 when he came to the house, I said, "I'm not going to go."
10:59:54AM 7 He said, "We are not going to California, it is just a
10:59:57AM 8 trip to Spokane and back today." So I said, "All right, I
11:00:01AM 9 guess I will go."

11:00:02AM 10 When we went, when the other agent jumped in with the
11:00:07AM 11 guns, I knew what the game was. I thought -- I was
11:00:10AM 12 like -- This is what I expected, you know. So when we
11:00:13AM 13 went to Spokane, you know, I am already in the car, I
11:00:17AM 14 figure they are not going -- the game was, I thought, to
11:00:21AM 15 buy the guns eventually, right, because they have done
16 this before.

11:00:25AM 17 We went to Spokane, we come back, he throws me \$500.
11:00:29AM 18 That's when I felt a little bit queasy about it. I said,
11:00:32AM 19 "What's this for?" He said, "For helping out." I said,
11:00:34AM 20 "Well, I didn't do anything," and I gave it back to him.
11:00:38AM 21 He pressed me to take it. I said, "No, I don't feel
11:00:40AM 22 right." He said, "What about your wife," and all that.
11:00:43AM 23 At the time, we didn't have money even for gas, literally,
11:00:46AM 24 just to tell you where we were at. They knew this. They
11:00:50AM 25 also knew I just had a kid. I am bipolar. All of these

11:00:53AM 1 things factor into making poor decisions.

11:00:56AM 2 I should have said -- If I would have known the
11:00:58AM 3 possession laws, I wouldn't have gone. But once I saw
11:01:01AM 4 what was going on, I should have just said, "No, I'm
11:01:04AM 5 good."

11:01:04AM 6 Anyway -- He finally pressed me. I said, "I will
11:01:06AM 7 take \$200," because we need diapers, gas, and a phone
11:01:09AM 8 card. I said, "Just for that." I admit I used him to pay
11:01:12AM 9 some bills once in a while, but that was it.

11:01:14AM 10 The trips -- Before the first trip, he said, "I just
11:01:18AM 11 want to hear about Islam." He knows -- everyone knows I
11:01:21AM 12 like to tell people about Islam. He said, "You just sit
11:01:24AM 13 in the car on the trip and tell me about Islam, and you'll
11:01:27AM 14 see what I do." He told me again, like I said, in my
11:01:29AM 15 front yard, that he didn't believe it was illegal. And I
11:01:33AM 16 believed him to be an agent at the time.

11:01:35AM 17 For him to say it is not illegal, to me, that is not
11:01:38AM 18 what they are trying to get me to do. They are trying to
11:01:41AM 19 get me to do -- you know, buy the guns. Right? So after
11:01:44AM 20 the first trip and the second trip I decided not really to
11:01:49AM 21 go anymore.

11:01:50AM 22 I went -- I know we can get into detail later at
11:01:56AM 23 sentencing. I know I am pissing Mo off.

11:02:01AM 24 But basically we went to Olympia -- I went to Olympia
11:02:02AM 25 because we were dead broke. I went to Labor Ready --

11:02:06AM 1 I've never done that in my life, you know. I've never
11:02:07AM 2 done anything like that. I worked a shift and came back
11:02:12AM 3 to work the second shift, and I've got a whole procession
11:02:17AM 4 of cop cars and detective cars following me all over
11:02:21AM 5 Olympia.

11:02:22AM 6 I worked my second shift, I get off. I am giving this
11:02:25AM 7 older gentleman a ride back to his house. I said, "Oh,
11:02:29AM 8 look at this, man, the cops are following us." He looks.
11:02:31AM 9 He's like, "Oh, no, it is just a town car," whatever. And
11:02:36AM 10 then a deputy with his lights come, and another one. And
11:02:40AM 11 I kind of told him, "This is for me," you know.

11:02:44AM 12 He actually -- He's an older gentleman. I stopped.
11:02:48AM 13 I kind of told him what was going on. At the next
11:02:50AM 14 stoplight he jumped out of the car. I am like, "No, I
11:02:53AM 15 will take you wherever you are going."

11:02:56AM 16 I called my wife, and said, "Hey, I don't know, they
11:02:58AM 17 might arrest me or shoot me today," whatever. I went back
11:03:00AM 18 to Labor Ready, turned in my paperwork. The cops sat in
11:03:03AM 19 the parking lot over here, and there was another one over
11:03:05AM 20 here.

11:03:06AM 21 I went up to the window and knocked on it. He was
11:03:08AM 22 like -- he cracked it. I said, "Hey, man, look, I am
11:03:10AM 23 tired, I have to pray now. Are you guys going to let me
11:03:13AM 24 go pray?" And he was just kind of like, "Sure." I'm
11:03:16AM 25 like, "Whatever." And so they followed me. I went and

11:03:17AM 1 got diapers, I went and prayed, and I went home.

11:03:21AM 2 This is before the fishing trip, or the trip which is
11:03:23AM 3 the bag of handguns. He comes to the house. He was
11:03:25AM 4 always real coy, and I was coy with him, just kind of a
11:03:28AM 5 game. Obviously, it is serious.

11:03:30AM 6 He comes and I tell him, "Look, man, maybe we
11:03:33AM 7 shouldn't hang out anymore. I've got people following me
11:03:37AM 8 all over Olympia. I'm sure you don't need that kind of
11:03:40AM 9 heat," or whatever. He was like, "Well, I don't feel no
11:03:43AM 10 heat." I'm like, "Well, I know the FBI has been sitting
11:03:46AM 11 up the road for the last couple of months." He was like,
11:03:48AM 12 "Are they here now?" I just looked right at him. It was
11:03:51AM 13 on my lips, like --

11:03:53AM 14 Anyway, so I just -- I was like, "All right." To me,
11:03:57AM 15 he still wants to play the game, they are going to pay my
11:04:00AM 16 bills, and it is way less stress than trying to go to
11:04:03AM 17 Olympia and get followed around by cops, to me. I
11:04:06AM 18 thought, as long as I didn't buy the guns --

11:04:08AM 19 So we didn't start out, "Hey, I am a black market arms
11:04:12AM 20 dealer. Do you want to come with me?" It was -- It's
11:04:13AM 21 not -- It was, "I don't think it is illegal. I just want
11:04:16AM 22 to hear you tell me about Islam."

11:04:18AM 23 And then when he jumps in with the guns -- If I had
11:04:21AM 24 known right then that they could charge me for being next
11:04:23AM 25 to those guns, possession, I would have said, "I'm good,

11:04:27AM 1 man. No."

11:04:27AM 2 Because there was two other dudes that tried to come
11:04:29AM 3 at me before to come get guns, and I said, "No, thank
11:04:33AM 4 you."

11:04:35AM 5 Anyway, it goes like that -- the whole story goes like
11:04:38AM 6 that. They have their story, I have mine. The reality
11:04:41AM 7 is, after the last trip, it was just mosque trips. He
11:04:45AM 8 even said, "These people are so nice, they are so
11:04:47AM 9 peaceful." I said, "I know. That's why it bothers me
10 that you guys are bothering them." I always referred to
11 him as "you guys," the agents.

11:04:53AM 12 Anyway, long story short, I didn't go on any more
11:04:56AM 13 trips because I had money at that time. Once I was
11:04:59AM 14 working again, I just -- I told them that like dozens of
11:05:04AM 15 times.

11:05:05AM 16 MR. HAMOUDI: Your Honor, I think what Mr. Franey
11:05:07AM 17 is trying to summarize to the court is that he would like
11:05:10AM 18 to have an opportunity at sentencing to provide additional
11:05:13AM 19 context to these incidences that are just summarized in
11:05:17AM 20 the plea agreement. I think the court covered that in
11:05:19AM 21 Paragraph K. If the court could assure him that he will
11:05:22AM 22 be able to tell his side of the story at sentencing, he
11:05:25AM 23 will be assured.

11:05:26AM 24 THE COURT: Absolutely. I need to hear more from
11:05:31AM 25 counsel. Do you believe this is a volitional, voluntary

11:05:38AM 1 statement of the facts that you can rely on as a basis for
11:05:43AM 2 a plea?

11:05:47AM 3 MR. HAMOUDI: I think that the statement of facts
11:05:48AM 4 here, your Honor, are a summary, and are correct and
11:05:52AM 5 accurate. So they are a basis. They provide a factual
11:05:55AM 6 basis. The gun charge solely requires the court to
11:06:01AM 7 find -- and I think the indictment -- as the indictment --
11:06:04AM 8 just the fact that he agreed that he possessed a machine
11:06:07AM 9 gun and that that machine gun traveled in interstate -- it
11:06:11AM 10 was a machine gun, and traveled in interstate commerce. I
11:06:15AM 11 don't know if the court needs to make sure that each
11:06:17AM 12 paragraph is accurate -- If the court is getting my
11:06:22AM 13 gist --

11:06:22AM 14 THE COURT: Right.

11:06:24AM 15 MR. HAMOUDI: He agrees that he possessed that
11:06:26AM 16 machine gun. I think he has made that statement to the
11:06:28AM 17 court.

11:06:29AM 18 THE COURT: We are not going to engage in
11:06:31AM 19 wordsmithing with the statement of facts. But I want to
11:06:34AM 20 get your assurance and Mr. Franey's assurance that this
11:06:40AM 21 is, in essence, a true story. It is not a complete story,
11:06:47AM 22 but it is, as it goes, a true story.

11:06:53AM 23 THE DEFENDANT: Yes. I know that -- I mean, where
11:06:58AM 24 it says here that he told me he was -- that he eventually,
11:07:04AM 25 you know, exposed himself as a small arms dealer,

11:07:07AM 1 whatever, you know, I think it would be more honest if
11:07:10AM 2 they said he came to the house and said -- I questioned
11:07:13AM 3 him about what he did. He said, "I don't think it is
11:07:15AM 4 illegal. I just want you to come tell me about Islam on
11:07:19AM 5 this road trip, and I will take you fishing." I think it
11:07:23AM 6 would be more honest if they said that, rather than, "Oh,
11:07:25AM 7 he told me he was a small arms dealer," and the guy jumped
11:07:28AM 8 in the truck with him. I went because we were, you know,
11:07:31AM 9 in dire need and he said he could make money. You know
10 what I mean?

11:07:33AM 11 After the trip I didn't even want to take the money,
11:07:35AM 12 except we had literally nothing for diapers. You know
11:07:38AM 13 what I mean?

11:07:39AM 14 Like I said, when I started going to Labor Ready, and
11:07:41AM 15 they've got these cops following me around, it seemed way
11:07:43AM 16 less stressful just to keep hanging around with these
11:07:46AM 17 guys, because I thought the game was to buy the guns.

11:07:49AM 18 I mean, yeah, this stuff happened. I can't deny that.
11:07:51AM 19 There is no way. How it happened, or my motives, their
11:07:56AM 20 motives, it is not portrayed, I don't think, by the
11:08:00AM 21 statement. But this stuff happened. Yeah, sure, it
11:08:02AM 22 happened. Absolutely.

11:08:07AM 23 THE COURT: All right. Then --

11:08:10AM 24 THE DEFENDANT: Sorry. The last part about when
11:08:12AM 25 we made the arrangement for the deal, I showed them -- I

11:08:19AM 1 pulled out an envelope with \$7,000 to prove that it wasn't
11:08:22AM 2 a budget issue, that it was -- "Look, I know what you
11:08:25AM 3 guys are doing. Leave me alone."

11:08:27AM 4 We took them to the mosque. We took them to eat. He
11:08:30AM 5 said, "These people are so amazing, they are so nice."
11:08:31AM 6 The first trip to the mosque he was like -- felt guilty,
11:08:35AM 7 "I can't believe we are bothering these people." One of
11:08:37AM 8 the brothers gave money so we could take him out to eat.
11:08:41AM 9 He was like, "Why did that guy give that money?" He is
11:08:43AM 10 like, "He's looking for the word from God," you know.

11:08:46AM 11 Anyway, the idea that it wasn't in the budget, I
11:08:50AM 12 texted him later that it wasn't in the budget, because --
11:08:53AM 13 We played back and forth with texts. He would question me
11:08:56AM 14 like, "Are you still going to go" --

11:09:18AM 15 MR. HAMOUDI: Your Honor, the facts are
11:09:20AM 16 volitional. I can make that representation to the court.
11:09:22AM 17 These are accurate. We have covered that. I think what
11:09:27AM 18 we will do is provide additional context at sentencing.
11:09:30AM 19 Okay, your Honor?

11:09:31AM 20 MR. GREENBERG: Your Honor, we have agreed to
11:09:33AM 21 that, as well. As the last sentence states, "Both parties
11:09:38AM 22 have the opportunity to provide fuller context."

11:09:41AM 23 THE COURT: I understand all that. I have an
11:09:43AM 24 obligation to make sure that Mr. Franey is stating freely
11:09:46AM 25 that he did these things of his own free will, and that

11:09:56AM 1 justifies -- I am not in the habit of convicting an
11:10:02AM 2 innocent man.

11:10:07AM 3 THE DEFENDANT: What I would suggest -- They are
11:10:09AM 4 agents. Sometimes they would get upset about it. There
11:10:11AM 5 is no doubt. And so I would let it go. I wish they would
11:10:15AM 6 have just come talk to me before they put him on me --
11:10:18AM 7 about a week before they put him on me.

11:10:19AM 8 Me and my wife were coming home, it was like midnight,
11:10:23AM 9 from Olympia. It was during Ramadan. She wanted to get
11:10:27AM 10 some fries -- some sea salt fresh-cut fries from Wendy's
11:10:30AM 11 for the kids and her to snack on on the way home. And we
11:10:33AM 12 had someone following us from the mosque. I said, "Look
11:10:36AM 13 at this, man, they've got guys following us."

11:10:37AM 14 I actually pulled into the thing. I said, "Oh, man,"
11:10:38AM 15 and I put it in park, I got out, and I went back there to
11:10:42AM 16 talk to them. I'm like, "Hey, I want to talk to you."
11:10:43AM 17 And they are like, "Oh" -- like this, and they got me out
11:10:43AM 18 of there. I said, "I want to talk to you." Every time we
11:10:46AM 19 would go to the mosque, I would always talk to them and
11:10:47AM 20 tell them to leave people alone, you know. And they
11:10:50AM 21 couldn't come talk to me. You know what I mean?

11:10:52AM 22 I went and tried to talk to this guy following us,
11:10:55AM 23 "Hey, come talk to me," you know.

11:11:00AM 24 All right. All right. Sorry. Anyway, the idea that
11:11:02AM 25 I said it wasn't in the budget was in the text message.

11:11:05AM 1 Standing in front of him, I pulled out the envelope and
11:11:09AM 2 said, "I've the money right here." He was saying, "Let me
11:11:11AM 3 just put them in your trunk, put them under a pillow." I
11:11:14AM 4 said, "No, I don't want them."

11:11:15AM 5 I mean, I told him, "Come back later with a different
11:11:17AM 6 car," or whatever, "and I will get paid," whatever. I
11:11:18AM 7 figured he got the point. He's not an idiot. I am not
11:11:18AM 8 going to take them, whatever. He wasn't that, you know,
11:11:23AM 9 dumb.

11:11:24AM 10 Long story short, on the 3rd of February is when they
11:11:27AM 11 talked to a brother, and the brother told him, "He knows
11:11:30AM 12 you guys are feds." That's when they came and kicked in
11:11:33AM 13 my door. It was out of vindictiveness and maliciousness,
11:11:36AM 14 and not because they thought it was anything else. They
11:11:38AM 15 were upset for spending time and money on me that I did
11:11:41AM 16 not ask them to spend on me.

11:11:43AM 17 I just want to go back to my family. I am just a
11:11:45AM 18 little bit irritated. I'm sorry.

11:11:52AM 19 THE COURT: I am going to ask you what your plea
11:11:54AM 20 is. What is your plea to Count 5, guilty or not guilty?

11:12:03AM 21 THE DEFENDANT: Based on the possession laws of
11:12:07AM 22 firearms, I possessed firearms. I am guilty.

11:12:16AM 23 THE COURT: Mr. Franey, I find that you have
11:12:19AM 24 knowingly and intelligently waived your right to a jury
11:12:22AM 25 trial, and that you know your rights to appeal, and you

11:12:27AM 1 know the maximum possible punishments.

11:12:30AM 2 I am not as certain that I find that there is a
11:12:33AM 3 factual basis for the plea. It is a close question. I
11:12:41AM 4 will accept that there is a factual basis for your plea.

11:12:46AM 5 But I am going to -- I am also not an idiot. You
11:12:54AM 6 confound me in several respects. And I am just going to
11:13:01AM 7 put it out on the record. But I will accept the plea --

11:13:08AM 8 THE DEFENDANT: Do you mind if I ask what you
11:13:10AM 9 mean?

11:13:15AM 10 THE COURT: You explained all of your actions in
11:13:28AM 11 terms of a game, using someone to help you get money to
11:13:39AM 12 help pay for the diapers and all of that. This matter has
11:13:45AM 13 been front and center in your life for many months. I am
11:13:52AM 14 sympathetic. I remember very distinctly when you were
11:13:58AM 15 here the first time, and you were so concerned about your
11:14:02AM 16 family.

11:14:02AM 17 THE DEFENDANT: I am concerned about my family.

11:14:04AM 18 THE COURT: I know. I know. But you don't speak
11:14:14AM 19 plain English sometimes. And that's not a criticism. I
11:14:21AM 20 would be rambling, too, because I would be -- because of
11:14:27AM 21 the gravity of the situation and your future and all of
11:14:30AM 22 that is at stake. It puts me in a place where I've got to
11:14:37AM 23 make some tough decisions. And that's okay. I wanted the
11:14:43AM 24 job. It comes with the territory.

11:14:45AM 25 I am just explaining so that the Court of Appeals can

11:14:50AM 1 look at -- I am saying what is on my mind and what is in
11:14:58AM 2 my heart. If they think I am overstepping my bounds by
11:15:06AM 3 saying that I accept the plea, and you have shown a
11:15:12AM 4 factual basis for it, so be it. Okay? That's what I
11:15:19AM 5 wanted to say. This is not a typical plea agreement
11:15:24AM 6 colloquy. Okay?

11:15:27AM 7 THE DEFENDANT: Yes.

11:15:27AM 8 THE COURT: Everybody is unique. And that's okay.
11:15:32AM 9 You can be unique.

11:15:36AM 10 THE DEFENDANT: Language is interesting and
11:15:39AM 11 perspectives are interesting. I feel confounded by what
11:15:42AM 12 you're saying at this point.

11:15:43AM 13 THE COURT: All right. We are going to have a
11:15:52AM 14 reprise at your sentencing, and we will do it all over
11:15:55AM 15 again.

11:15:59AM 16 I had to say the words, "I accept your plea," and I
11:16:03AM 17 will defer on the plea agreement until receipt of the
11:16:06AM 18 presentence report.

11:16:09AM 19 I have an order here for sentencing for October 7th,
11:16:16AM 20 2016, at 10:00 a.m. Is that convenient for counsel?

11:16:21AM 21 MS. SULLIVAN: That's fine, your Honor.

11:16:23AM 22 MR. GREENBERG: Yes, your Honor.

11:16:24AM 23 MR. HAMOUDI: Your Honor, thank you.

11:16:42AM 24 THE COURT: Finally, Mr. Franey, there is a plea
11:16:44AM 25 agreement that purports to bear your signature and today's

11:16:50AM 1 date. Did you sign this in open court, or at least in the
11:16:54AM 2 courthouse, today?

11:16:55AM 3 THE DEFENDANT: Yes.

11:16:56AM 4 THE COURT: Regarding the charges in the
11:16:59AM 5 indictment, the fifth count, is this the only plea
11:17:03AM 6 agreement that you have signed with regard to that charge?

11:17:06AM 7 THE DEFENDANT: Yes.

11:17:08AM 8 THE COURT: Very well. Mr. Franey, you will be
11:17:16AM 9 interviewed by the Probation Office. I hope you will give
11:17:23AM 10 your full cooperation to them so that they can get a
11:17:30AM 11 better understanding of who you are, and we will see you
11:17:37AM 12 on October 7th. We will continue the discussion. That's
11:17:45AM 13 the date that you will be sentenced.

11:17:47AM 14 THE DEFENDANT: That will be the only day between
11:17:49AM 15 now and then?

11:17:51AM 16 THE COURT: Unless there is some motion or
11:17:53AM 17 something --

11:17:53AM 18 THE DEFENDANT: Are we allowed the whole day?

11:17:58AM 19 THE COURT: Not customarily. I won't make any
11:18:07AM 20 predictions about how long it will take. My powers of
11:18:17AM 21 prognostication teaches me that that will be a little
11:18:22AM 22 longer than normal.

11:18:25AM 23 THE DEFENDANT: I tend to be long-winded. I think
11:18:27AM 24 that goes with bipolar.

11:18:30AM 25 THE COURT: Maybe I am bipolar, too.

11:18:33AM 1

THE DEFENDANT: You seem all right.

11:18:34AM 2

THE COURT: Court is at recess.

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(Proceedings adjourned.)

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C E R T I F I C A T E

I, Barry Fanning, Official Court Reporter for the United States District Court, Western District of Washington, certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter.

/s/ Barry Fanning
Barry Fanning, Court Reporter