

OCT 14 2004

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Clerk, Idaho

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7  
8 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 DALE ROBERT SALYERS,

13 Defendant.  
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CR 04-0201-S-EJL

Case No. CR

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(B) of the Federal Rules of  
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government<sup>1</sup> agree that  
4 the defendant will plead guilty to Count One of the Information and agrees to forfeiture as alleged ✓  
5 in Count Two of the Information. The defendant acknowledges that the plea is voluntary and did  
6 not result from force, threats, or promises, other than any promise made in this Plea Agreement.  
7 More specifically, the parties agree as follows:

8 Count One charges the defendant with Possession of a Firearm by a Prohibited Person, in  
9 violation of 18 U.S.C. § 922(g)(4).

10 Count Two alleges forfeiture of certain property, as provided in 18 U.S.C. § 924(d), 21  
11 U.S.C. § 853 and 28 U.S.C. § 2461(c).

12 **B. Acceptance.** Upon acceptance of the defendant's guilty plea, and the defendant's  
13 full compliance with the other terms of this Agreement, the Government, under Rule 11(c)(1)(B)  
14 of the Federal Rules of Criminal Procedure, agrees to recommend a sentence within the range set  
15 forth by the United States Sentencing Guidelines, as determined by the Court at the time of  
16 sentencing, without taking a position where within that range the defendant should be sentenced.  
17 Defendant acknowledges, agrees and waives objection to the fact that the Court may consider  
18 "relevant conduct" in arriving at an appropriate sentence pursuant to Section 1B1.3 of the  
19 Sentencing Guidelines.

20 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

21 Defendant understands that he will be placed under oath at the plea hearing and that the  
22 government, in a prosecution for perjury or false statement, has the right to use against the  
23 defendant any statement that the defendant gives under oath. Moreover, the defendant understands  
24 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged  
25 against the defendant and to persist in that plea; 2) the right to a trial by jury; and 3) the rights, at  
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27 <sup>1</sup> The word "Government" in this Agreement refers to the United States Attorney for the  
28 District of Idaho.

1 trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-  
2 incrimination, to testify, to present evidence and to compel the attendance of witnesses. The  
3 defendant understands that by pleading guilty he waives (gives up) all of the rights set forth above.  
4 The defendant fully understands that by entering a plea of guilty, if that plea is accepted by the  
5 District Court, there will be no trial and defendant will have waived (given up) these trial rights.

6 **III. NATURE OF THE CHARGES**

7 **A. Elements of the Crime.** The elements of the crime of Unlawful Possession of a  
8 Firearm by a Prohibited person, as charged in Count One, are as follows:

- 9 1. The defendant knowingly possessed a firearm;
- 10 2. At the time the defendant possessed the firearm, the defendant had been  
11 committed to a mental institution;
- 12 3. The firearm had been shipped or transported from one state to another.

13 **B. Factual Basis.** If this matter were to proceed to trial, the Government and the  
14 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts  
15 accurately represent the defendant's readily provable offense conduct. This factual summary is not  
16 intended to detail all relevant conduct, or cover all specific offense characteristics, which will be  
17 determined by the Court after its consideration of the Presentence Report.

18 An affidavit signed by two physicians dated April 21, 2004 and filed in Canyon County  
19 Case No. CV04-3648 states that Dale R. Salyers was currently under their care and was  
20 hospitalized at Intermountain Hospital. The affidavit states that Salyers was diagnosed with  
21 psychosis NOS (not otherwise specified). The physicians wrote that this is an emergent situation  
22 in which the patient has become "agitated, refusing medications, is delusional, demanding to  
23 leave, is gravely disabled, and unable to give informed consent." After a hearing on April 23,  
24 2004 at which Mr. Salyers was represented by attorney Rob Tilly and the State was represented by  
25 a Deputy Canyon County Prosecuting Attorney, Canyon County Magistrate Judge Bradley S. Ford  
26 signed an Order of Commitment in which the defendant was committed to the Idaho State  
27 Department of Health and Welfare, pursuant to Idaho Code Section 66-329(k), for care and  
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1 treatment for an indeterminate period of time not to exceed one year. The Order of Commitment  
2 recites that the Court found by clear and convincing testimony that Mr. Salyers "is (1) mentally ill  
3 and (2) is, because of such condition, likely to inflict self-injury or injury to others, or is gravely  
4 disabled due to mental illness." The Court found that Mr. Salyers lacked the capacity to make  
5 informed decisions about treatment, and that he could not be properly cared for privately, and  
6 committed him. The parties agree that this constitutes an involuntary "formal commitment . . . to a  
7 mental institution by a court," as defined in 27 C.F.R. § 478.11.

8 In a hand-written note to Canyon County Prosecuting Attorney Dave Young dated May 3,  
9 2004, Mr. Salyers sought the Prosecutor's help in gaining his release from the State hospital. In  
10 that note, Salyers wrote that a victims advocate and a Sheriff's Officer of Canyon County had told  
11 him to turn over his weapons to an uninvolved third party, which he claimed to have done. The  
12 defendant was released from the Idaho State Hospital North and his commitment was terminated  
13 on July 7, 2004.

14 On July 15, 2004, a police officer in the City of Wilder, Idaho stopped a car for speeding  
15 After the officer activated his emergency overhead light, he noticed that the driver, later identified  
16 as the defendant, Dale R. Salyers, was leaning down to the left and right of his seat, which  
17 prompted the officer to call another unit for backup. As the officer approached the car and began  
18 to tell Mr. Salyers why he had stopped him, he noticed a handgun partially concealed between the  
19 driver's seat and the center console. The firearm was seized for officer safety. The officer told  
20 Salyers that because of his actions and his movement in his vehicle, that he was going to keep the  
21 gun until he was done. The officer then contacted Canyon County dispatch and found that Salyers'  
22 concealed weapons permit had been surrendered pending the outcome of criminal charges, and that  
23 Salyers had a no contact order in effect. The officer told Salyers that he was going to take his gun,  
24 which was a loaded Taurus .357 Magnum revolver, serial number ML880047, and that he was  
25 going to submit a report to the Canyon County Prosecutor for concealed weapons charges. It was  
26 subsequently learned that Mr. Salyers had been subject to the involuntary commitment proceedings  
27  
28

1 described above, and the matter was turned over to the Bureau of Alcohol, Tobacco and Firearms  
2 for further investigation.

3 A firearms trace by the National Tracing Center, United States Department of Treasury,  
4 Bureau of Alcohol, Tobacco and Firearms, dated August 12, 2004 revealed that the Taurus  
5 revolver serial number ML880047 was manufactured in Brazil and imported by Taurus,  
6 International of Miami, FL. The trace further revealed that the defendant, Dale Robert Salyers,  
7 purchased the firearm from the American Gun Exchange in Reno, NV on July 18, 1995.

#### 8 **IV. SENTENCING FACTORS**

9 **A. Maximum Penalties.** A violation of Title 18 United States Code § 922(g)(4), as  
10 charged in Count One, is punishable by a term of imprisonment of not more than 10 years, a fine  
11 of not more than \$250,000 and a term of supervised release of up to three years, and a special  
12 assessment of \$100.

13 **B. Supervised Release.** Defendant will be sentenced to a term of supervised release,  
14 to be served after incarceration, of not more than three years.

15 The defendant's term of supervised release will be a specific (i.e., a determinate) term  
16 chosen by the Court at sentencing. The combination of prison time and supervised release is  
17 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that  
18 defendant is pleading guilty to violating. Violation of any condition of supervised release may  
19 result in defendant being imprisoned for the entire term of supervised release or being prosecuted  
20 for contempt of court under Title 18, United States Code, Section 401(3).

21 **C. Fines and Costs.** Unless the Court determines that the defendant will not  
22 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's  
23 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The  
24 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised  
25 release.

26 **D. Special Assessment.** Defendant will pay a special assessment of \$100.00, in  
27 addition to any fine imposed. This assessment will be paid by defendant before sentence is  
28

1 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the United  
2 States District Court, Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort  
3 Street, Fourth Floor, Boise, ID 83724.

4 **F. Forfeiture.** The defendant agrees to immediately and voluntarily forfeit to the  
5 United States the property set out in Count Two of the Information, including the following  
6 property alleged in the Information: a Taurus .357 Magnum pistol, serial number ML880047.

7 In addition, as a condition of and in consideration for benefits derived from this Plea  
8 Agreement, the defendant also agrees to voluntarily forfeit to the United States the following  
9 property:

10 Savage-Foremost, Model 6670 Series A, 12 gauge shotgun, serial number A673522,  
11 Revelation model 350K, .410 gauge shotgun, serial number A722333,  
12 M 1944, 7.62 x 54R, CAI Georgia, VT, Hungary, serial number CA7119,  
13 Browning model A5, 12 gauge shotgun, serial number 41743,  
14 KSI model MAK-90, 7.62 x 39 caliber, semi-automatic rifle, serial number 39441,  
15 Ruger model 10-22, .22 caliber carbine rifle, serial number 12790938, and  
16 Winchester, Remington, American Eagle, and other miscellaneous ammunition.

17 In order to effectuate the Agreement, the defendant also agrees to any civil or  
18 administrative forfeiture brought against these properties pursuant to applicable forfeiture statutes,  
19 including 18 U.S.C. § 981 and/or 21 U.S.C. § 881, should such proceedings be necessary, whether  
20 already pending or yet to be filed. The defendant further agrees not to contest any civil or  
21 administrative forfeiture proceedings already brought against properties not named herein which  
22 relate to the criminal activity which is the subject of the investigation leading to the charges herein.

23 The defendant agrees that forfeiture of substitute assets may occur as authorized herein and  
24 by law, and that any such forfeiture—if it occurs—shall not be deemed an alteration of the  
25 defendant's sentence. Forfeiture of any of the defendant's assets shall not be treated as  
26 satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may  
27 impose upon the defendant in addition to forfeiture.  
28

1 The defendant represents and warrants to the Government that he is the sole and exclusive  
2 owner of the properties and property interests listed above, and that no other person or entity has  
3 any interest in such properties and property interests except as specifically set out herein. The  
4 defendant understands and acknowledges that the Government is relying upon the defendant's  
5 representations in entering into this Agreement. If the defendant's representations are false or  
6 inaccurate, the Government may pursue any and all forfeiture remedies available at law or equity  
7 on the basis of the violations covered by this Agreement.

8 The defendant also agrees to waive any double jeopardy, ex post facto, excessive fines  
9 clause, statute of limitations, statutory notice, or other claims as to any additional criminal or civil  
10 proceedings that may become necessary in order to accomplish the forfeitures as stated above.

11 The defendant agrees to waive any claims, defenses or challenges arising under the requirements  
12 of Rules 32.2 and 43(a), Fed.R.Crim.P., with respect to the imposition of any forfeiture sanction  
13 carried out in accordance with this Agreement, and further agrees to not contest or challenge in any  
14 manner (including direct appeal, habeas corpus, or any other means) such forfeitures on any  
15 grounds, including that the forfeiture constitutes an excessive fine or punishment.

16 The defendant agrees to the forfeiture of all assets described as forfeitable herein, whether  
17 in this criminal proceeding or in separate civil or administrative proceedings, and if the Agreement  
18 is withdrawn for any reason, defendant agrees to waive any right to contest civil or administrative  
19 forfeitures which are already completed by final judgment or declaration, and agrees not to contest  
20 civil or administrative proceedings already underway as to such assets.

21 The defendant agrees to forfeiture of the properties as stated above, or to substitute  
22 properties of equal value, at the Government's option. The District Court for the District of Idaho  
23 shall retain jurisdiction to settle any disputes arising from application of the foregoing forfeiture  
24 provisions.

25 **V. UNITED STATES SENTENCING GUIDELINES**

26 **A. Application of Sentencing Guidelines.** Defendant understands that defendant will  
27 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been  
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1 determined by the District Judge; (2) any estimate of the likely sentence received from any source  
2 is a prediction and not a promise; and (3) the District Judge has the final authority to decide what  
3 the sentence will be.

4 The defendant also understands that the Court will determine the applicable sentencing  
5 factors at sentencing and that the Court's determination will affect the sentence range under the  
6 Sentencing Guidelines. While the Court may take the defendant's cooperation, if any, and the  
7 recommendations of the parties into account in determining the sentence to be imposed, the Court  
8 has complete discretion to impose a sentence other than the sentence recommended, including the  
9 maximum sentence possible for the crimes to which defendant has pled.

10 **B. Sentencing Guidelines Recommendations and Requests.**

11 1. **Acceptance of Responsibility.** Unless the Government learns of new ✓  
12 information to the contrary, defendant will be entitled to a reduction of two levels in the combined  
13 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant  
14 clearly accepts responsibility for the offense. The Government will move for an additional one-  
15 level reduction in the combined offense level under Section 3E1.1(b) if the following conditions  
16 are met: the defendant qualifies for a decrease under Section 3E1.1(a); the offense is level 16 or  
17 greater; and the defendant has assisted authorities in the investigation or prosecution of  
18 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea  
19 of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court  
20 to allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant  
21 fails to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner  
22 inconsistent with acceptance of responsibility, the Government will not make such a  
23 recommendation and/or motion or, if one has already been made, it will withdraw the  
24 recommendation and/or motion.

25 2. **Downward Departure Request by Defendant.** The defendant will not ✓  
26 seek a downward departure unless grounds are filed with the Court, in writing, no later than the  
27 date established by the Court for filing objections to the presentence report.  
28

1 **VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS** ✓

2 The defendant is aware that Title 18, United States Code, Section 3742 affords defendant  
3 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the  
4 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all  
5 appeal rights defendant may have regarding both defendant's conviction and sentence, including  
6 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,  
7 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect  
8 application of the sentencing guidelines to which the defendant filed a proper and timely  
9 objection.

10 The defendant is also aware that under certain circumstances a defendant has the right to  
11 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to  
12 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms  
13 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to  
14 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any  
15 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal  
16 claiming ineffective assistance of counsel based upon facts discovered after the entry of  
17 defendant's guilty pleas.

18 The defendant further understands that nothing in this Plea Agreement shall affect the  
19 Government's right and/or duty to appeal as set forth in Title 18, United States Code,  
20 Section 3742(b).

21 **VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT** ✓

22 The defendant agrees to provide all material financial and other information as may be  
23 requested by a representative of the United States Probation Office for use in preparing a  
24 Presentence Report. Failure to execute releases and/or provide such material information as may  
25 be required is a violation of the terms of this Agreement, and will relieve the Government of its  
26 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under  
27 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the  
28

1 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for  
2 withdrawing the plea of guilty.

3 **VIII. NO RIGHT TO WITHDRAW PLEA**

4 The defendant understands that the Court is not bound to follow any recommendations or  
5 requests made by the parties at the time of sentencing. If the Court decides not to follow any of the  
6 parties recommendations or requests, the defendant cannot withdraw from this Plea Agreement or  
7 the guilty plea.

8 **IX. CONSEQUENCES OF VIOLATING AGREEMENT**

9 **A. Government's Options.** If defendant fails to keep any promise in this Agreement  
10 [including any promise to cooperate] or commits a new crime, the Government is relieved of any  
11 obligation not to prosecute defendant on other charges, including any charges dismissed as part of  
12 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the  
13 Government determines after sentence is imposed under this Agreement that defendant's breach of  
14 the Agreement warrants further prosecution, the Government will have the choice between letting  
15 the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such  
16 charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it  
17 may withdraw from the Plea Agreement in its entirety.

18 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep  
19 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in  
20 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed  
21 under this Agreement; (2) any right under the Constitution and laws of the United States to be  
22 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's  
23 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of  
24 limitations period for any charge that is brought as a result of defendant's failure to keep this  
25 Agreement, and on which the statute of limitations expired after defendant entered into this  
26 Agreement.

1           Furthermore, the defendant further understands and agrees that if defendant does not enter  
2 a valid and acceptable plea, the Government will move to continue the trial now set. The  
3 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be  
4 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or  
5 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare  
6 for trial.

7 **X. MISCELLANEOUS**

8           **A. No Other Terms.** This Agreement incorporates the complete understanding  
9 between the parties, and no other promises have been made by the Government to the defendant or  
10 to the attorney for the defendant. This Agreement does not prevent any governmental agency from  
11 pursuing civil or administrative actions against defendant or any property. Unless an exception to  
12 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or  
13 obligate governmental entities other than the United States Attorney's Office for the District of  
14 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring  
15 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

16           **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned  
17 on acceptance of this plea Agreement no later than 5:00 p.m. on **October 15, 2004**. It is  
18 defendant's sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance  
19 of this Agreement by the date specified above in order for this offer to be effectively accepted.

20 **XI. UNITED STATES' APPROVAL**

21           I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States  
22 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

23 THOMAS E. MOSS  
24 UNITED STATES ATTORNEY

25 By:

26 

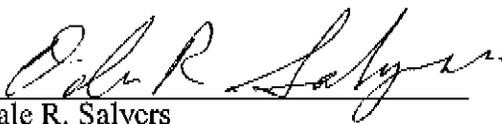
27 James M. Peters  
28 Assistant United States Attorney

DATE

10-14-04

1 **XII. ACCEPTANCE BY DEFENDANT AND COUNSEL**

2 I have read and carefully reviewed every part of this Plea Agreement with my attorney. I  
3 understand the Agreement and its effect upon the potential sentence. Furthermore, I have  
4 discussed all of my rights with my attorney and I understand those rights. No other promises or  
5 inducements have been made to me, directly or indirectly, by any agent of the Government,  
6 including any Assistant United States Attorney, concerning any plea to be entered in this case. In  
7 addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from  
8 doing, anything in connection with any aspect of this case, including entering a plea of guilty. I am  
9 satisfied with my attorney's advice and representation in this case.

10  
11   
12 Dale R. Salycrs  
Defendant

DATE 10-13-04

13 I have read this Plea Agreement and have discussed the contents of the Agreement with my  
14 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I  
15 concur in my client's decision to plead guilty as set forth above.

16  
17   
18 Randall S. Barnum  
Attorney for the Defendant

DATE 10/13/04