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1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 -VS-) DOCKET NO. 1:20-CR-00296-JPB
7 CHARLES PETTY,)
8 DEFENDANT.)

9 TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS
10 BEFORE THE HONORABLE J.P. BOULEE
11 UNITED STATES DISTRICT JUDGE
12 NOVEMBER 2, 2021

13
14 **APPEARANCES:**

15 **ON BEHALF OF THE GOVERNMENT:**

16 NATHAN KITCHENS, ESQ.
17 ASSISTANT UNITED STATES ATTORNEYS

18 **ON BEHALF OF THE DEFENDANT:**

19 KENNETH W. SHEPPARD, ESQ.
20

21
22 **STENOGRAPHICALLY RECORDED BY:**

23 PENNY PRITTY COUDRIET, RMR, CRR
24 OFFICIAL COURT REPORTER
25 UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

1 (PROCEEDINGS HELD IN OPEN COURT AT 2:36 PM., ATLANTA, GEORGIA)

2 COURTROOM DEPUTY CLERK: This is case 20-CR-296,
3 USA v. Charles Petty.

4 MR. KITCHENS: Good afternoon, your Honor. AUSA
5 Nathan Kitchens on behalf of the government. And I'm here
6 with Special Agent Joe Stites and Stefan Bublitz.

7 THE COURT: Good to see all of you.

8 MR. SHEPPARD: Good afternoon, your Honor. Kenneth
9 Sheppard on behalf of Charles Petty.

10 THE COURT: Good to see you.

11 And good to see you as well, Mr. Petty.

12 Mr. Petty, if you could please stand so that
13 Ms. Walker could swear you in.

14 COURTROOM DEPUTY CLERK: Mr. Petty, can you raise
15 your right hand for me.

16 (The Defendant was duly sworn)

17 COURTROOM DEPUTY CLERK: Please be seated and state
18 your name for the record.

19 THE DEFENDANT: Charles Petty.

20 COURTROOM DEPUTY CLERK: Thank you so much.

21 THE COURT: Thank you, Ms. Walker.

22 Mr. Kitchens, if you could please verify the
23 signatures on the plea agreement.

24 MR. KITCHENS: Yes, your Honor.

25 Mr. Petty, I'm showing you a document that's titled

1 "Guilty Plea and Plea Agreement." Have you had an opportunity
2 to review that document?

3 THE DEFENDANT: I have.

4 MR. KITCHENS: And is this your signature at the top
5 right on page 17?

6 THE DEFENDANT: It is.

7 MR. KITCHENS: Is this also your signature on page 18
8 of the document?

9 THE DEFENDANT: It is.

10 MR. KITCHENS: And, Mr. Sheppard, is this your
11 signature at the top left of page 17?

12 THE DEFENDANT: Yes, it is.

13 MR. KITCHENS: And is this your signature on page 19?

14 MR. SHEPPARD: Yes, it is.

15 MR. KITCHENS: On page 17 there are also the
16 signatures of the government.

17 And I tender the "Guilty Plea and Plea Agreement" to
18 the Court.

19 THE COURT: Thank you.

20 Mr. Petty, before I can accept your plea of guilty, I
21 need to go over several matters with you. As we go through
22 this process, if anything I state is unclear, let me know and
23 I will repeat or rephrase it for you. It's important that you
24 understand not only my statements to you but also my
25 questions. You need to understand my questions so that you

1 can answer them truthfully. A failure to truthfully answer
2 any question could result in additional charges being brought
3 against you.

4 Also, as I ask questions, please answer the questions
5 out loud. This will allow the court reporter to take down
6 your responses so that we can have an accurate record of these
7 proceedings.

8 Do you understand, sir?

9 THE DEFENDANT: I do.

10 THE COURT: How old are you, sir?

11 THE DEFENDANT: Forty-nine.

12 THE COURT: And how far did you go in school?

13 THE DEFENDANT: Second -- graduate education.

14 THE COURT: In the last 24 hours have you taken any
15 drugs, medicine, pills or had any alcoholic beverages to
16 drink?

17 THE DEFENDANT: I have not.

18 THE COURT: Have you been treated recently for any
19 mental illness or addiction to alcohol or drugs?

20 THE DEFENDANT: I have not.

21 THE COURT: And, Mr. Sheppard, are you aware of any
22 issues regarding your client's competence to enter a plea this
23 afternoon?

24 MR. SHEPPARD: I am not, your Honor.

25 THE COURT: I will now review with you the rights

1 that you're guaranteed under the Constitution and laws of the
2 United States. I want to be sure that you understand your
3 rights and that by entering this plea of guilty, you're giving
4 up many of these rights.

5 Do you understand that under the Constitution and
6 laws of the United States you have the right to plead not
7 guilty and have a trial by jury?

8 THE DEFENDANT: I do.

9 THE COURT: Do you understand that you're entitled to
10 a speedy and public trial on the charges against you?

11 THE DEFENDANT: I do.

12 THE COURT: Do you understand that you have the right
13 to be represented by an attorney throughout all proceedings
14 and that if you cannot afford an attorney, one will be
15 appointed to represent you at no cost to you?

16 THE DEFENDANT: I understand.

17 THE COURT: Do you understand that if you pled not
18 guilty and went to trial, at the trial you would be presumed
19 to be innocent and the government would have to overcome that
20 presumption and prove you guilty beyond a reasonable doubt?

21 THE DEFENDANT: I understand.

22 THE COURT: Do you understand that at a trial you
23 would not have to prove that you're innocent because the
24 burden would be on the government to prove you're guilty
25 beyond a reasonable doubt?

1 THE DEFENDANT: I do.

2 THE COURT: Do you understand that at a trial you
3 would have the right to subpoena witnesses which would be an
4 order from the Court compelling their appearance at trial to
5 testify on your behalf?

6 THE DEFENDANT: I do.

7 THE COURT: Do you understand that during a trial
8 witnesses for the government must come to court and testify in
9 your presence?

10 THE DEFENDANT: I do.

11 THE COURT: Do you understand that your attorney
12 would have the opportunity to cross-examine the witnesses for
13 the government --

14 THE DEFENDANT: I understand.

15 THE COURT: -- object to evidence offered by the
16 government and offer evidence on your behalf?

17 THE DEFENDANT: I do.

18 THE COURT: Do you understand that at a trial, while
19 you would have the right to testify if you chose to do so, you
20 also would have the right not to testify?

21 THE DEFENDANT: I understand.

22 THE COURT: Do you understand that if you chose not
23 to testify or put on any evidence, those facts could not be
24 used against you?

25 THE DEFENDANT: I do.

1 THE COURT: Do you understand that in order to
2 convict you at a trial the jury would have to reach a
3 unanimous verdict that you were guilty of the crime with which
4 you're charged?

5 THE DEFENDANT: I do.

6 THE COURT: If I accept your plea of guilty, you will
7 not have a trial and the jury will not decide your guilt, but
8 I will find that you're guilty of the charge based on your
9 admission that you're guilty. Do you understand?

10 THE DEFENDANT: I understand.

11 THE COURT: Are you willing to give up your right to
12 a trial and proceed with a plea of guilty at this time?

13 THE DEFENDANT: Yes, I am.

14 THE COURT: You earlier verified your signature on
15 the plea agreement that you entered into with the government.
16 In a moment I will ask the Assistant US Attorney to review the
17 terms of the plea agreement other than the factual basis for
18 the plea and the potential penalties which we will discuss a
19 bit later in this proceeding.

20 After that I will be asking you whether the agreement
21 as presented accurately reflects your understanding of the
22 agreement that you reached with the government.

23 Mr. Kitchens.

24 MR. KITCHENS: Thank you, your Honor.

25 The plea agreement provides that Mr. Petty will plead

1 guilty to Count 9 of the second superseding indictment. The
2 government is agreeing in turn to dismiss the remaining counts
3 in that indictment against Mr. Petty and agrees not to bring
4 further charges related to the charges to which he's pleading
5 guilty.

6 The parties also agree to a series of guideline
7 stipulations.

8 First, the parties agree that the base offense level
9 is in Section 2B1.1.

10 Second, the parties agree that a 14-level adjustment
11 should apply for loss under Section 2B1.1(b)(1)(H). And
12 that's for an amount of loss exceeding \$550,000 but less than
13 \$1.5 million.

14 The parties also agree that a three-level adjustment
15 should apply under Section 3B1.1 for the defendant serving as
16 a manager or supervisor and for the criminal activity
17 involving five or more participants.

18 And, lastly, the parties are agreeing that a
19 two-level adjustment under Section 3C1.1 should not apply for
20 an offense involving obstruction of justice.

21 The government recommends an adjustment for the
22 acceptance of responsibility to the maximum extent authorized
23 by the guidelines with the caveats that are listed in
24 paragraph 17 of the plea agreement.

25 The parties further recognize that each party

1 reserves the right to make recommendations for sentencing and
2 that there are no agreements on the sentencing guidelines
3 other than those expressly mentioned in the plea agreement.

4 The government is also reserving the right to modify
5 its sentencing recommendation with any additional information
6 it gains before sentencing.

7 There are also agreements covering the defendant's
8 cooperation in this matter that specifically provides that the
9 defendant agrees to cooperate truthfully and completely with
10 the government, including producing all records requested,
11 making himself available for interviews, responding truthfully
12 to all government inquiries, and at the government's request
13 to testify at trial or any other proceeding.

14 The defendant is also consenting to direct contact
15 with the government outside presence of his counsel for
16 purposes of cooperation.

17 The government in turn is agreeing to abide by
18 Section 1B1.8 of the sentencing guidelines in which it will
19 agree not to use information previously unknown to it for
20 purposes of making any arguments under the sentencing
21 guidelines.

22 Now, the caveat that's provided in the plea agreement
23 for the defendant's cooperation is that if he is not truthful
24 and candid in his cooperation, that he may be prosecuted for
25 perjury, false statements, obstruction of justice. And all

1 information that Mr. Petty provided may be used against him in
2 a future proceeding.

3 There is a conditional Section 5K and Rule 35 motion
4 in which the government is agreeing to inform the Court about
5 the full extent of the defendant's cooperation.

6 If the government determines that that cooperation
7 qualifies as substantial assistance, it will file a motion for
8 downward departure under Section 5K if that occurs before
9 sentencing, or under Rule 35 it will file a motion for
10 reduction of sentence if that cooperation occurs after
11 sentencing.

12 The defendant understands that the government alone
13 determines if the information that the defendant has provided
14 constitutes substantial assistance.

15 The defendant also understands that the government
16 may recommend a specific sentence if it files a motion or
17 requests for downward departure, but the ultimate decision on
18 the sentence rests at all times, of course, with the Court.

19 The government in the agreement is agreeing to make
20 a low-end sentencing recommendation, subject again to the
21 caveats that are listed in paragraph 17 of the agreement.

22 The government further agrees to make no specific
23 recommendation as to the amount of any fine to be imposed.

24 The defendant is agreeing to pay \$830,417 in
25 restitution to the victims of the offense. And specifically

1 that's as listed in the plea agreement \$805,504.49 to Cross
2 River Bank, and \$24,912.51 to the Small Business
3 Administration.

4 The defendant waives his interest in property and
5 agrees to the forfeiture procedure that is outlined in
6 paragraphs 27 through 28 of the agreement.

7 And the defendant also agrees to pay a special
8 assessment of \$100 as well as any fine imposed by the Court.

9 The defendant fully agrees to cooperate fully in the
10 collection of any restitution or fine. And the terms for that
11 financial cooperation are laid out in paragraphs 31 through 34
12 of the plea agreement.

13 The defendant understands that the recommendations in
14 the agreement are not binding on the Court.

15 The defendant is also agreeing to the maximum extent
16 permitted by federal law to waive his right to appeal his
17 conviction and sentence and the right to collaterally attack
18 his conviction and sentence in any post-conviction proceeding
19 with three limited exceptions.

20 First, if there's any upward departure or variance
21 above the guidelines range as calculated by the Court, the
22 defendant may appeal in that instance.

23 Second, if there's any claim that his counsel
24 rendered ineffective assistance, the defendant also may make
25 that claim on appeal.

1 And, lastly, there's no limit to the government's
2 right to appeal. And if the United States does a direct
3 appeal of the sentence imposed in this case, the defendant may
4 in that instance do a cross-appeal of his sentence.

5 The parties are agreeing to the standard FOIA and
6 Privacy Act waiver.

7 And the parties recognize that there are no other
8 agreements between the parties other than that specified in
9 the plea agreement.

10 THE COURT: Thank you, Mr. Kitchens.

11 Mr. Petty, does that accurately reflect the agreement
12 that you believe that you've reached with the government?

13 MR. SHEPPARD: If I may, your Honor, there's only one
14 additional. I believe the restitution is actually joint and
15 several with the other co-defendants. And that the entities
16 who suffered the loss cannot double, triple or quadruple
17 recover from each individual, that if some of the money was
18 recovered or one of the other co-defendants pays back the
19 money they receive, then that would be a credit for all people
20 who are joint and several, like a civil lawsuit.

21 MR. KITCHENS: I do agree, your Honor -- and I think
22 this is not specified in the plea agreement itself. I do
23 agree, of course, that for the restitution that would be
24 imposed, of course, if there are other defendants that are
25 liable for the specific loss caused here, which we believe

1 there are, that that restitution would be jointly and
2 severally, you know, liable for those co-defendants.

3 THE COURT: All right. I think my question, though,
4 remains the same because I'm asking him about the agreement he
5 believes he's reached with the government. And the agreement
6 as reached with the government is the document I have in front
7 of me. So I'm going to ask him that question.

8 Mr. Petty?

9 THE DEFENDANT: Yes, subject to my attorney's
10 statement.

11 THE COURT: Okay. Well, I don't want to be a
12 stickler on this point but --

13 MR. SHEPPARD: We are --

14 THE COURT: -- your attorney may have a caveat to it
15 but I think -- and what he's explained is the way the law I
16 believe would work, and the AUSA has agreed with that
17 statement of the law, but all I'm asking about right now is
18 the document that we have in front of us --

19 THE DEFENDANT: Understood, your Honor.

20 THE COURT: -- the agreement.

21 THE DEFENDANT: Understood. Sorry. I agree.
22 Understood.

23 THE COURT: All right. Let me just ask you again so
24 the record is clear.

25 Mr. Petty, does that accurately reflect the agreement

1 that you believe you've reached with the government?

2 THE DEFENDANT: It does.

3 THE COURT: And you've also heard your attorney make
4 an argument about joint and several liability as to that
5 restitution amount, correct?

6 THE DEFENDANT: Correct.

7 THE COURT: And it's your understanding that that's
8 how the law will be applied here?

9 THE DEFENDANT: Correct. Understood.

10 THE COURT: You heard the prosecutor agree with that
11 understanding of the law, correct?

12 THE DEFENDANT: Correct.

13 THE COURT: Do you understand that any provisions in
14 the agreement regarding recommendations to be made by the
15 government are not binding on the Court. In other words, if I
16 choose not to follow some recommendation that the government
17 makes, do you understand that you will still be bound by your
18 plea of guilty and would not be entitled to withdraw the plea
19 based on the Court not following the recommendation?

20 THE DEFENDANT: Understood.

21 THE COURT: Is this the only agreement that you've
22 entered into with the government?

23 THE DEFENDANT: Yes.

24 THE COURT: Other than the terms of this agreement
25 has any promise of any kind been made to you to cause you to

1 plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Per the terms of the agreement the United
4 States Attorney for the Northern District of Georgia has
5 agreed not to bring any additional charges related to the
6 offense to which you're pleading guilty.

7 Other than those terms, has anyone threatened or
8 forced you to plead guilty or told you if you do not plead
9 guilty further charges will be brought against you or other
10 adverse action taken against you?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Mr. Sheppard, are you aware of any plea
13 agreement or promise being made to your client other than
14 what's been discussed here in court?

15 MR. SHEPPARD: I am not, your Honor.

16 THE COURT: Thank you.

17 In a moment I will ask the AUSA to state the elements
18 of the offense to which you are pleading guilty. The elements
19 of the offense are those matters that the government must
20 prove beyond a reasonable doubt in order to convict you of the
21 charge.

22 Mr. Kitchens.

23 MR. KITCHENS: Thank you, your Honor.

24 Mr. Petty is pleading guilty to Count 9 of the second
25 superseding indictment, which charges conspiracy to commit

1 bank and wire fraud in violation of Title 18, United States
2 Code, Section 1349.

3 The elements of conspiracy to commit bank and wire
4 fraud are as follows:

5 First, that two or more persons in some way or manner
6 agreed to try to accomplish a common and unlawful plan to
7 commit bank and wire fraud as charged in the indictment.

8 And, second, that the defendant knew the unlawful
9 purpose of the plan and willfully joined in it.

10 For those underlying objects, the first one is bank
11 fraud, and the elements of the bank fraud are as follows:

12 First, that the defendant knowingly carried out or
13 attempted to carry out a scheme to defraud a financial
14 institution or to get money, assets or other property from a
15 financial institution by using false or fraudulent pretenses,
16 representations or promises about a material fact.

17 Second, that the false or fraudulent pretenses,
18 representations or promises were material.

19 Third, that the defendant intended to defraud the
20 financial institution.

21 And, lastly, that the financial institution was
22 federally insured.

23 For that second object of the conspiracy, wire fraud,
24 the elements of that offense are as follows:

25 First, that the defendant knowingly devised or

1 participated in a scheme to defraud someone by using false or
2 fraudulent pretenses, representations or promises.

3 Second, that those false pretenses, representations
4 or promises were about a material fact.

5 Third, that the defendant acted with the intent to
6 defraud.

7 And, lastly, that the defendant transmitted or caused
8 to be transmitted by wire some communication in interstate or
9 foreign commerce to help carry out the scheme to fraud.

10 THE COURT: Thank you.

11 Mr. Petty, do you understand that those are the
12 elements that the government would have to prove beyond a
13 reasonable doubt in order to convict you of the charge?

14 THE DEFENDANT: I do.

15 THE COURT: In a moment I will ask the Assistant US
16 Attorney to summarize the evidence that the government would
17 expect to present at trial to prove each of these elements.
18 In other words, these are what the government contend are the
19 facts of the case.

20 It's necessary for the government to state these
21 facts because I must determine whether there's a factual basis
22 for you to enter this plea of guilty.

23 After this statement I will ask you whether you
24 disagree with any of the facts as stated by the prosecutor.
25 If you do, tell me and we will discuss those facts at that

1 time.

2 Mr. Kitchens.

3 MR. KITCHENS: Thank you, your Honor.

4 Had this case proceeded to trial, the government
5 would have proven beyond a reasonable doubt that the Paycheck
6 Protection Program, also known as the PPP, was authorized as
7 part of the Coronavirus Aid, Relief and Economic Security Act
8 to provide forgivable loans to eligible small businesses.

9 Under the PPP, small businesses could apply for loans
10 that would be used and -- would have to be used for payroll
11 expenses, interest on mortgage, rent or utilities.

12 The amount of a PPP loan that a business could
13 receive is generally 2.5 times the business's average monthly
14 payroll cost.

15 While the Small Business Administration oversaw the
16 PPP, individual loans were issued by private approved lenders,
17 including Cross River Bank, which is a federally-insured
18 financial institution.

19 The PPP application form asks the applicant to
20 provide information related to their loan application,
21 including the amount of the business's average monthly
22 payroll, the number of the business's employees and the
23 purpose of the loan with options that the applicant could
24 select for payroll, lease or mortgage interest, utilities or
25 other. The lender then uses this information to calculate the

1 amount of the loan that the business was eligible to receive
2 under the PPP.

3 The application form also included certain
4 representations and certifications, including certifications
5 as to the accuracy of the information included in the
6 application itself and in any supporting documents as well as
7 a certification that the funds would be used to retain workers
8 and maintain payroll or to make mortgage interest payments,
9 lease payments and utility payments.

10 Defendant Charles Petty conspired with Darrell
11 Thomas, Denesseria Slaton, Bern Benoit and others to obtain --
12 to submit a fraudulent PPP loan application for Transportation
13 Management Services, which Mr. Benoit owns.

14 On or about May 20th, 2020, Transportation Management
15 electronically submitted a PPP loan application to Bluevine
16 Capital, LLC, a company that processes PPP loan applications
17 on behalf of lenders that's based in California.

18 In its PPP loan application Transportation Management
19 represented that it had 66 employees and an average monthly
20 payroll of \$332,000 and that it would use the funds obtained
21 from the loan for payroll, lease payments, mortgage interest
22 and utilities. In reality, Transportation Management had no
23 employees and no average monthly payroll.

24 To support its payroll figures, Transportation
25 Management submitted with its PPP loan application false IRS

1 Form 941s, which are an employer's quarterly federal tax
2 return for each quarter of 2019. And IRS records would prove
3 at trial that Transportation Management, in fact, did not file
4 any IRS Form 941s for any quarter of 2019.

5 Transportation Management also included with its PPP
6 loan application a fraudulent bank statement from JPMorgan
7 Chase. It purported to show a beginning balance of \$674,000
8 and an ending balance of nearly \$800,000 in February of 2020.

9 In fact, however, JPMorgan Chase records would show
10 that Transportation Management did not open its bank account
11 until April 2020, so there was no bank statement that existed
12 for February 2020.

13 Mr. Petty -- the evidence would show that Mr. Petty
14 facilitated Transportation Management's fraudulent PPP loan by
15 directing Mr. Benoit, both directly and indirectly, regarding
16 Transportation Management's loan application and the money
17 laundering of the proceeds.

18 The evidence would show based on communications and
19 text messages that Mr. Petty directed Mr. Benoit to provide
20 information and documentation necessary for the submission of
21 the loan and provided that information and documentation to
22 other individuals acting on Darrell Thomas's behalf knowing
23 that Transportation Management did not have any employees and
24 that Darrell Thomas would use that information and
25 documentation to submit a fraudulent PPP loan application on

1 behalf of Transportation Management.

2 Based on the untrue statements in Transportation
3 Management's PPP application, Bluevine processed
4 Transportation Management's loan and submitted it to Cross
5 River Bank for funding.

6 On or about May 21st, 2020, the PPP loan of \$830,417
7 was deposited into Transportation Management's JPMorgan Chase
8 bank account.

9 After receiving those PPP loan proceeds, Mr. Petty
10 provided instructions to Mr. Benoit through another individual
11 as to how the PPP loan proceeds would be disbursed in a manner
12 designed to further conceal the fraud.

13 THE COURT: Thank you.

14 Mr. Petty, do you disagree with any of the facts as
15 stated by the Assistant US Attorney?

16 THE DEFENDANT: I do not.

17 THE COURT: I'm now going to go over those elements
18 with you one by one and ask you whether or not you admit them.

19 First off, do you admit that two or more persons in
20 some way or manner agreed to try to accomplish a common and
21 unlawful plan to commit bank fraud and wire fraud as charged
22 in the indictment?

23 THE DEFENDANT: I do.

24 THE COURT: And do you admit that you knew the
25 unlawful purpose of the plan and willfully joined in it?

1 THE DEFENDANT: I do.

2 THE COURT: Do you admit that you knowingly carried
3 out or attempted to carry out a scheme to defraud a financial
4 institution or to get money, assets or other property from a
5 financial institution by using false or fraudulent pretenses,
6 representations or promises about a material fact?

7 THE DEFENDANT: I do.

8 THE COURT: Do you admit that the false or fraudulent
9 pretenses, representations or promises were material?

10 THE DEFENDANT: I do.

11 THE COURT: Do you admit that you intended to defraud
12 the financial institution?

13 THE DEFENDANT: I do.

14 THE COURT: Do you admit that the financial
15 institution was federally insured?

16 THE DEFENDANT: I do.

17 THE COURT: Do you admit that you knowingly devised
18 or participated in a scheme to defraud someone by using false
19 or fraudulent pretenses, representations or promises?

20 THE DEFENDANT: I do.

21 THE COURT: Do you admit that the false pretenses,
22 representations or promises were about a material fact?

23 THE DEFENDANT: I do.

24 THE COURT: Do you admit you acted with the intent to
25 defraud?

1 THE DEFENDANT: I do.

2 THE COURT: And do you admit that you transmitted or
3 caused to be transmitted by wire some communication in
4 interstate commerce to help carry out the scheme to defraud?

5 THE DEFENDANT: I do.

6 THE COURT: Mr. Kitchens, if you could please state
7 the potential penalties that the defendant faces for the
8 charge, including the maximum penalties and any mandatory
9 minimums.

10 MR. KITCHENS: Yes, your Honor.

11 For Count 9 of the second superseding indictment the
12 maximum term of imprisonment is 30 years.

13 There is no mandatory minimum for this offense.

14 The term of supervised release is zero to five years.

15 The maximum fine that may be imposed is \$1 million or
16 twice the amount of gain or twice the loss, whichever is
17 greatest, which is due and payable immediately.

18 And also full restitution is owed, as well as a
19 mandatory special assessment of \$100 due and payable
20 immediately and any forfeiture of proceeds from the commission
21 of the offense.

22 THE COURT: Thank you.

23 Mr. Petty, do you understand that those are the
24 possible penalties that you could receive in this case?

25 THE DEFENDANT: I do.

1 THE COURT: Do you understand it's not possible for
2 me to state to you today what your sentence will be?

3 THE DEFENDANT: I do.

4 THE COURT: Do you understand that in deciding your
5 sentence I will consider sentencing guidelines and that the
6 guidelines are advisory, which means that I have the
7 discretion to impose a sentence that is either within the
8 guidelines, greater than the guidelines or less than the
9 guidelines?

10 THE DEFENDANT: I understand.

11 THE COURT: In the plea agreement that was reviewed
12 with you a few moments ago you waived certain appeal rights.
13 I want to be sure that you understand the meaning of that
14 waiver.

15 Let me first state to you the rights you would have
16 had if you did not waive or give up those rights.

17 The defendant in every criminal case has the right to
18 file a direct appeal immediately after his conviction and
19 sentence. In that appeal you may raise any issues concerning
20 the handling of your case in this court that you wish to
21 raise. Those issues would be reviewed by the Court of
22 Appeals. If errors were found, the Court of Appeals could
23 order that action be taken to correct those errors.

24 Besides the right to a direct appeal, you would have
25 an additional opportunity to have your case reviewed by filing

1 a writ of habeas corpus, pursuant to 28 USC, Section 2255.
2 That's another opportunity for you to challenge the legality
3 of your conviction and/or your sentence. These are the rights
4 that every defendant has unless he waives or gives them up.

5 In your plea agreement you have, for the most part,
6 given up these rights. Your right of review will be limited
7 to three specific circumstances.

8 First, if after calculating the sentencing guidelines
9 that apply in your case, I then impose a sentence that is
10 greater than the guidelines, you would have a right to file a
11 direct appeal challenging that sentence.

12 Second, if the government files an appeal for any
13 reason, you have a right to file a cross-appeal raising any
14 issues that you wish to raise.

15 Finally, you always reserve the right to challenge
16 constitutionally ineffective assistance of counsel.

17 But aside from these three very narrow circumstances,
18 you will have no right of appeal and will be essentially bound
19 by my decision. Do you understand that, sir?

20 THE DEFENDANT: I do.

21 THE COURT: Mr. Sheppard, have you reviewed the
22 rights with your client such that you're comfortable he
23 understands both his rights and the waiver of those rights?

24 MR. SHEPPARD: I have, your Honor.

25 THE COURT: Thank you.

1 Mr. Petty, do you understand that parole has been
2 abolished in the federal system and if you are sentenced to
3 prison you will not be released early on parole?

4 THE DEFENDANT: I understand.

5 THE COURT: Do you understand that you may be
6 sentenced to a term supervised release that will follow any
7 term of imprisonment and will include rules governing your
8 conduct that if you violate could result in more time in
9 prison?

10 THE DEFENDANT: Understood.

11 THE COURT: Do you understand that you may be ordered
12 to pay restitution to any victim of the offense?

13 THE DEFENDANT: I understand.

14 THE COURT: Are you a citizen of the United States
15 Government, sir?

16 THE DEFENDANT: I am.

17 THE COURT: Do you understand that as part of your
18 sentence certain property that's been identified by the
19 government may be forfeited by you to the government?

20 THE DEFENDANT: I understand.

21 THE COURT: Is there anything we've talked about
22 today that you do not feel you fully understand?

23 THE DEFENDANT: There is not.

24 THE COURT: Have you had a sufficient opportunity to
25 talk about your case with your attorney and have your attorney

1 answer any questions that you have before entering your plea?

2 THE DEFENDANT: I have.

3 THE COURT: Are you satisfied with the representation
4 that your attorney has provided to you?

5 THE DEFENDANT: I am.

6 THE COURT: How do you plead to Count 9 of the
7 indictment?

8 THE DEFENDANT: Guilty.

9 THE COURT: Mr. Sheppard, do you feel that you've had
10 a sufficient opportunity to investigate your client's case and
11 advise him concerning the entry of this plea?

12 MR. SHEPPARD: I do, your Honor.

13 THE COURT: Are you aware of any reason I should not
14 accept the plea?

15 MR. SHEPPARD: I do not.

16 THE COURT: Is there anything else you want me to
17 address with your client on the record at this time?

18 MR. SHEPPARD: Not at this time.

19 THE COURT: Mr. Kitchens, is there anything further
20 that the government wishes the Court to address at this time?

21 MR. KITCHENS: No, your Honor.

22 THE COURT: I find that the defendant understands the
23 charge and the consequences of the plea. I've observed the
24 defendant during this proceeding and he does not appear to be
25 under the influence of any substance that might affect his

1 judgment or actions in any manner.

2 The Court finds the plea has a factual basis and is
3 free of any coercive influence of any kind.

4 I find that there have been no promises made to the
5 defendant except those set out in the plea agreement.

6 I find that the defendant is competent to understand
7 these proceedings and enter a knowingly plea of guilty.

8 I find that the plea is freely and voluntarily
9 entered.

10 It's, therefore, ordered that the plea of guilty of
11 the defendant to Count 9 of the indictment is accepted and
12 entered.

13 Mr. Petty, you are hereby adjudged guilty of the
14 charge contained in Count 9 of the indictment.

15 I will now be referring your case to a probation
16 officer who will prepare a presentence report. Before I
17 receive the report, sir, you and your attorney will receive a
18 copy of the report and will have an opportunity to object to
19 any findings in the report.

20 At your sentencing hearing I will hear from the
21 government and any witnesses it wishes to present and from
22 you, your attorney and any witnesses you wish to present. At
23 that time I will decide the proper sentence in your case.

24 Do you understand?

25 THE DEFENDANT: I do.

1 THE COURT: Counsel, anything else?

2 MR. KITCHENS: Nothing further, your Honor.

3 MR. SHEPPARD: Nothing further, your Honor.

4 THE COURT: All right.

5 The defendant will be remanded to the US Marshal
6 Service.

7 Ms. Walker, Ms. Coudriet, thank you.

8 Officer, thank you.

9 Deputy marshal, thank you as well.

10 We are hereby adjourned.

11 (PROCEEDINGS REPORTED WERE CONCLUDED AT 3:05 PM.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true
and correct transcript of the proceedings taken down by me in
the case aforesaid.

This the 1st Day of February, 2024.



PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER