

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

_____)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No.: 2:22-cr-39-SPC-NPM
)
DANIEL JOSEPH TISONE,)
)
Defendant.)
_____)

**PLEA HEARING PROCEEDINGS
BEFORE THE HONORABLE NICHOLAS P. MIZELL**

**August 26, 2022
1:42 p.m.**

APPEARANCES:

FOR THE PLAINTIFF: TRENTON REICHLING, ESQUIRE
United States Department of Justice
Office of the United States Attorney
2110 First Street, Suite 3-137
Fort Myers, Florida 33901

FOR THE DEFENDANT: MARK R. EIGLARSH, ESQUIRE
Law Offices of Mark Eiglarsh
3107 Stirling Road, Suite 207
Fort Lauderdale, Florida 33312

COURT REPORTER: Stacey E. Raikes, RMR, CRR
2110 First Street, Suite 2-194
Fort Myers, Florida 33901

ALSO PRESENT: DANIEL JOSEPH TISONE, DEFENDANT

Proceedings previously recorded and subsequently transcribed by
computer-aided stenography.

P R O C E E D I N G S

(Court called to order.)

THE DEPUTY CLERK: Calling case 2:22-cr-39: United States of America versus Daniel Joseph Tisone.

MR. REICHLING: Good afternoon, Your Honor.

THE COURT: Good afternoon. Go ahead.

MR. REICHLING: Sorry about that, Judge.

I'm good at making typos and also interrupting you when you ask for me to introduce myself.

Trent Reichling on behalf of the United States. With me at counsel's table is Roger DeSatis. He's a special agent with the Department of Treasury.

THE COURT: All right, welcome.

MR. EIGLARSH: Good afternoon, Your Honor. Mark Eiglarsh on behalf of Daniel Tisone, who is seated to my right.

THE COURT: All right, welcome. Good afternoon.

And let me make sure I'm saying it again.

Eiglarsh?

MR. EIGLARSH: Eiglarsh.

THE COURT: Eiglarsh. Okay, thank you.

MR. EIGLARSH: Gesundheit.

THE COURT: Okay. All right, thank you. If I mess it up, don't hesitate to let me know. And in fact, it's a bit of a complicated indictment and plea agreement. So if I happen to miss anything going through the colloquy, don't hesitate to

1 stop us and let me note that as well.

2 All right. So, Mr. Tisone, as I'm sure you're aware
3 and have been advised this is what's called a change of plea
4 proceeding.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And what we'll do is I have the consent
7 from you to proceed before me instead of the District Judge. I
8 also have waivers from both you and the government to the
9 objection period that would follow the report I will issue
10 today. So with all of that, we can go ahead and get underway.

11 I want to make sure I have an amended plea agreement
12 that's here with me. Everybody has a copy of it with them at
13 the table?

14 MR. EIGLARSH: Yes, Your Honor.

15 THE COURT: Okay. All right, good.

16 To confirm we're all looking at the same thing, it
17 says amended plea agreement on the first page. It's 28 pages
18 signed by everyone at the back.

19 And, Mr. Tisone, it looks like you initialed each
20 page; yes?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, the first one says DST and all the
23 other pages say DT. That's all you; right?

24 THE DEFENDANT: Yes, it's Daniel Joseph Tisone, and I
25 thought, to speed the process up, I would just do Daniel

1 Tisone.

2 THE COURT: All right, very good.

3 Well, again, we are here to make sure you are fully
4 competent and capable of entering an informed plea, that you're
5 aware of the nature of the charges and the consequences of any
6 plea, and that any plea of guilty is knowing and voluntary and
7 supported by facts that satisfy the elements of the charged
8 offenses. So I'm sure it's already been explained to you, I'm
9 going to have to ask you a lot of questions under oath to
10 confirm all that. So I'll ask the courtroom deputy to please
11 place you under oath.

12 THE DEPUTY CLERK: Please stand and raise your right
13 hand.

14 Do you solemnly swear or affirm the testimony you
15 give will be the truth, the whole truth, and nothing but the
16 truth?

17 THE DEFENDANT: Yes.

18 THE DEPUTY CLERK: Thank you. You may be seated.

19 THE COURT: All right. Mr. Tisone, you understand
20 you're now under oath, and if you answer any of my questions
21 falsely, your answers could be used against you in another
22 prosecution for perjury or false statement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. What's your full name?

25 THE DEFENDANT: Daniel Joseph Tisone.

1 THE COURT: All right. And where were you born?

2 THE DEFENDANT: Fairfax, Virginia.

3 THE COURT: How old are you?

4 THE DEFENDANT: I am 35 years old.

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

6 THE DEFENDANT: Excuse me?

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: I graduated college from Catholic
9 University of America with my bachelor's degree.

10 THE COURT: All right. Have you been treated
11 recently for any mental illness or an addiction to a narcotic
12 drug?

13 THE DEFENDANT: Yes. I just had sinus surgery.

14 THE COURT: Okay. Well, no mental illness.

15 THE DEFENDANT: No.

16 THE COURT: And you're not currently being treated
17 for some kind of drug addiction problem?

18 THE DEFENDANT: No. No, Your Honor.

19 THE COURT: Okay, all right. Are you under the
20 influence of any drug or medicine that impairs your ability to
21 understand what we're doing today?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: You're all clearheaded and understand
24 everything?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay, all right, very good.

2 And you do -- you have received a copy of the
3 indictment that is all the charges against you and discussed
4 the charges and the case in general with your lawyer?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. And you're fully satisfied with
7 the counsel and advice given to you in this matter by your
8 lawyer?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Now, this plea agreement
11 we've talked about. You had an opportunity to read and discuss
12 the plea agreement with your lawyer before you signed it?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And the plea agreement represents, in its
15 entirety, any understanding you have with the government?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You understand the terms of the plea
18 agreement?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And has anyone made any promises or
21 assurances of any kind to get to you sign on to the plea
22 agreement that are not in the plea agreement?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Okay. Has anyone forced you or
25 threatened you in any way to sign on to the plea agreement?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Or to plead guilty today?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Okay. All right. So any plea of guilty
5 from you will be of your own free will because you are, in
6 fact, guilty?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. You understand the offenses
9 to which you're pleading guilty are felony offenses, and if
10 your plea is accepted, the adjudication of guilt may deprive
11 you of some valuable civil rights like the right to vote, serve
12 on a jury, possess firearms, that kind of thing?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. I'm trying to remember, did I ask
15 you if you were born -- you're a citizen of the United States;
16 right?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. I don't need to advise you
19 about some other things then, okay. Talk about immigration
20 consequences, that kind of thing.

21 All right. Well, let's talk about the maximum
22 possible penalties for the offenses. These are set out in the
23 plea agreement so I'm going to be referring to that.

24 The plea agreement contemplates a plea of guilty to
25 four of the 18 counts. We've got 2, 8, 14, and 18.

1 Sometimes this microphone tends to cut out so if
2 anyone can't hear me, again, just let me know.

3 All right. So Count 2 as to wire fraud; Count 8, the
4 bank fraud; Count 14, the illegal monetary transaction; and
5 Count 18, the possession of ammunition by a convicted felon.

6 Maximum possible penalties were discussed on page 2.
7 Counts 2 and 8 each carry a maximum sentence of 30 years, a
8 fine of up to a million dollars.

9 Now, Mr. Reichling, the additional language here
10 about or twice the gross gain or twice the gross loss, I take
11 it that only relates to -- well, that's both 2 and 8; right?

12 MR. REICHLING: That's correct, Judge.

13 THE COURT: All right, very good. I think the reason
14 I got confused I was used to saying 18. I was like there's no
15 way it's a gross gain type penalty if it's possession of
16 ammunition.

17 MR. REICHLING: No, Judge, no.

18 THE COURT: All right.

19 MR. REICHLING: It's just as to Counts 2 and 8.

20 THE COURT: That's right. So that's why we fixed
21 that. We fixed that. All right, very good.

22 So, again, Counts 2 and 8, maximum sentence is 30
23 years, a fine of up to a million dollars or twice the gross
24 gain caused by the offense or twice the gross loss caused by
25 the offense, whichever is greater. A term of supervised

1 release of not more than five years.

2 Count 14 carries a maximum sentence of ten years, a
3 fine of up to \$250,000, or alternate fine of twice the amount
4 of criminally deprived property.

5 And, let's see, Count 18 carries a maximum sentence
6 of ten years of imprisonment, a fine of up to \$250,000, and a
7 term of supervised release of not more than three years.

8 And each count carries a special assessment of \$100.
9 That is discussed in the plea agreement.

10 The Court has to order you to pay restitution to the
11 extent there's victims. There's also quite a bit in here about
12 the forfeiture of assets. That's all discussed on pages 7 and
13 8, and I guess refers to quite a bit of ammunition talked about
14 on page 13.

15 And if you violate the terms of any supervised
16 release that would follow any term of incarceration, you could
17 be given additional time in prison.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: So I think that covers all the potential
20 penalties. All right.

21 So you understand all these penalties I've just
22 talked about?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. All right. Let's talk for a
25 moment about your right to proceed to trial in this matter.

1 You do have a right to maintain your not guilty plea
2 and to proceed to trial. You'd have a trial by jury. You'd be
3 presumed innocent and the government would have to prove your
4 guilt beyond a reasonable doubt. You would continue to have
5 the assistance of your counsel. You'd have the opportunity to
6 cross-examine the government's witnesses and object to any
7 evidence they might offer and you'd also have the ability to
8 compel the attendance of witnesses in your defense.

9 You understand all these rights that are associated
10 with a trial I just talked about?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And do you also understand that if you
13 were to go to trial and decide not to testify, that your
14 silence could not be used against you?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And you also understand that by entering
17 a plea of guilty, there will be no trial. You will have waived
18 or given up your right to a trial as well as all the trial
19 rights we just talked about?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Let's talk for a moment about
22 sentencing. Ultimately, your sentence will be determined by a
23 combination of advisory sentencing guidelines and some possible
24 departures from those guidelines. They are set out in statute,
25 and the probation office will prepare a report that the

1 District Judge will use to arrive at your sentence.

2 Have you and your attorney talked about how the
3 sentencing guidelines might apply in your case?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And do you understand the sentence
6 ultimately imposed may be different from any estimate your
7 attorney might have given you?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You also understand the Court has the
10 authority to impose a sentence that could be greater or lesser
11 than a guideline sentence?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And on that score, I want to make sure
14 you understand your plea agreement has a waiver of your right
15 to appeal the sentence. So other than these four exceptions
16 that I talked about on page 17, you understand you're waiving
17 your right to appeal the sentence?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. I should also mention, given the
20 nature of the plea agreement, for whatever reason, the District
21 Judge rejects your plea agreement, you will be given the
22 opportunity to withdraw your plea.

23 All right. Let's go ahead and turn to the factual
24 basis. At the end of the plea agreement -- and that's set out
25 on several pages here -- okay.

1 So your plea agreement, I'm sorry, includes a
2 recitation of the facts set out, basically, you know, a factual
3 basis to meet all the elements of the charged offenses, and
4 these are discussed from pages 19 through 28. In your plea
5 agreement, you certify all these facts are true and the
6 government could prove them beyond a reasonable doubt at trial.

7 So now I'd just confirm with you, since you're here
8 under oath, that you agree all these facts could be proven by
9 the government at trial, they're all true?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Now, let's particularize this
12 just a bit. I'll try to do this count by count.

13 So Count 2, the elements for the charged offense here
14 are set out on page 3 of your agreement. That's the wire fraud
15 offense. The elements are that you knowingly devised or
16 participated in a scheme to defraud or to obtain money or
17 property by using false pretenses, representations, or
18 promises, that the false pretenses, representations, or
19 promises were about a material fact, that you acted with the
20 intent to defraud, and that you transmitted or caused to be
21 transmitted by wire some communication in interstate commerce
22 to help carry out the scheme to defraud.

23 Now, these facts for the wire fraud offense, I see
24 they're discussed from 22 to 24 in your plea agreement, and
25 essentially, you've already admitted to all these facts. So I

1 just want to ask you, do you know you're admitting that you
2 knowingly devised the scheme to defraud?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. And that you acted with the intent
5 to defraud?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Now, for Count 8, the bank fraud,
8 the elements there, again, on page 3 of the plea agreement,
9 that you knowingly carried out or attempted to carry out a
10 scheme to defraud a financial institution or to get money,
11 assets, or other property from a financial institution by using
12 false or fraudulent pretenses, representations, or promises
13 about a material fact, the false or fraudulent pretenses or
14 representations or promises were material, that you intended to
15 defraud the financial institution or someone, and the financial
16 institution was federally insured or chartered.

17 And, again, these facts for this offense, the bank
18 fraud, that's on pages 24 through 26, and you've already
19 admitted to these facts here, but I just want to confirm you're
20 admitting that you carried out or attempted to carry out this
21 scheme knowingly.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And that you intended to defraud the
24 financial institution that's talked about here?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Okay. The Count 14, illegal monetary
2 transaction, the offenses are quite a few, they carry over from
3 3 to 4. The elements are that you knowingly engaged in a
4 monetary transaction. The monetary transaction was of a value
5 greater than \$10,000. The monetary transaction involved
6 criminally derived property, and the criminally deprived
7 property was deprived from specified unlawful activity.
8 Namely, in this matter, wire fraud. The defendant knew that
9 the monetary transaction involved criminally deprived property
10 and the monetary transaction took place within the United
11 States.

12 So the facts for this offense are set out, again, 26
13 to 27 of the agreement that you've already admitted to, and
14 again, I just want to confirm now that you're under oath that
15 you knowingly engaged in these monetary transactions.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You knew these monetary transactions
18 involved criminally derived property?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. And then Count 18, possession
21 of ammunition by a convicted felon, the elements are that you
22 knowingly possessed the ammunition and that was in interstate
23 commerce, that before you possessed the ammunition, you had
24 been convicted of a felony, and that, at the time you possessed
25 the ammunition, you knew you had been convicted of a felony.

1 And the facts for that are all set out pages 27 to 28.

2 Again, you acknowledged that you're admitting that
3 you knowingly possessed this ammunition?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: At the time you possessed it, you knew
6 you were a convicted felon?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right.

9 Mr. Reichling, do you see any need for me to question
10 any further about factual basis for the plea?

11 MR. REICHLING: No, Your Honor.

12 THE COURT: Okay.

13 All right. So, Mr. Tisone, how do you plead to Count
14 2 of the indictment, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: To Count 8 of the indictment, guilty or
17 not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Count 14 of the indictment?

20 THE DEFENDANT: Guilty.

21 THE COURT: And Count 18 of the indictment?

22 THE DEFENDANT: Guilty.

23 THE COURT: All right. I will recommend the District
24 Judge accept your plea and, as I mentioned before, a report
25 will be put together by the probation office for the District

1 Judge to arrive at a sentence. You'll be asked to supply
2 information for that report, and you can have your counsel with
3 you during that process, if you like.

4 I should probably also reiterate, I did notice there
5 was some language in your plea agreement about continued
6 cooperation with the government and that, if some things are
7 not satisfied in your plea agreement, you could be exposed to a
8 sentence enhancement. So I just wanted to make sure you
9 understand that's in your plea agreement as well.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay.

12 Now, about the sentencing, you'll have an opportunity
13 to review that report that the probation office put together.
14 You'll be able to file any objections you might have and you'll
15 have an opportunity -- you and your counsel will have an
16 opportunity to speak on your behalf at your sentencing hearing
17 and that will all be set by a separate notice very soon.

18 THE DEFENDANT: Okay.

19 THE COURT: All right. Anything else I need to cover
20 from the government?

21 MR. REICHLING: Judge, nothing from the government,
22 although, before Your Honor took the bench, defense counsel and
23 I had begun talking about potentially asking for an additional
24 30 days on top of whatever many days sentencing is set out to.
25 I don't know if that's something Your Honor can recommend or

1 not. I, obviously, would leave it up to Your Honor. I don't
2 know how that would work as far as making a recommendation of
3 the District Court judge, but --

4 THE COURT: Oh. As far as just scheduling it?

5 MR. REICHLING: Scheduling it, yes.

6 THE COURT: Okay.

7 MR. EIGLARSH: It was my request, Your Honor. He's
8 in the process of selling properties and we'd like to come in
9 to sentencing and be able to say accurately that all the
10 properties have been sold and the government has gotten back
11 every penny that he took. And we expect that to happen, but
12 people were away during the summer months. So those who would
13 purchase the properties will be back in the next month or two
14 and we expect that's when we'll gain interest.

15 THE COURT: Okay. So we're contemplating maybe 60
16 days from now for the sentencing?

17 MR. REICHLING: Well, usually, I think the sentencing
18 for a case like this, Judge, usually will be in about 60 to 90
19 days out.

20 THE COURT: Okay.

21 MR. REICHLING: So I don't know if that --

22 THE COURT: So 90 to 120 is what we're looking for?

23 MR. REICHLING: I mean, this is up to Your Honor and
24 this is defense counsel's request. The government -- I mean,
25 we don't oppose the request, of course, so I don't know if Your

1 Honor can at least indicate that both parties agree to an
2 additional 30 days.

3 THE COURT: Okay.

4 MR. REICHLING: And that should be sufficient.

5 If for any reason it gets set within a certain period
6 of time that we need to continue -- both sides need to request
7 a continuance, we can do that.

8 THE COURT: Okay.

9 MR. REICHLING: So...

10 THE COURT: Fair enough. I can pass that.

11 MR. EIGLARSH: And I like actually specifying 90 to
12 120 because I don't know what -- you know, how soon the Court
13 would consider setting it.

14 THE COURT: Sure, sure. We'll put that range in
15 there and pass it on, that it's requested from the defense and
16 not opposed by the government.

17 MR. EIGLARSH: Thank you, Your Honor.

18 THE COURT: And let's see.

19 On that score, Mr. Tisone, I notice you are under an
20 order of release with conditions that was previously entered by
21 Judge Frazier.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: I would just, I guess, admonish you once
24 more to make sure you continue to abide by all those
25 conditions. Were you to violate them, you can expose yourself

1 to additional penalties --

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: -- on top of the penalties for the
4 indictment. And now that you've -- once your plea is accepted,
5 and that will probably happen by Monday, the burden will have
6 shifted about establishing whether or not you being on release
7 would be appropriate. So you'd very likely be detained pending
8 your sentencing if you violate your order of release.

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay.

11 THE DEFENDANT: I understand.

12 THE COURT: All right.

13 Anything else?

14 MR. REICHLING: That's it, Judge. Thank you. I
15 appreciate it.

16 MR. EIGLARSH: Nothing further, Your Honor. Thank
17 you so much.

18 THE COURT: All right. Very good. We'll be in
19 recess. Thanks.

20 (Proceedings were concluded at 2:00 p.m.)

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1 CERTIFICATE OF REPORTER

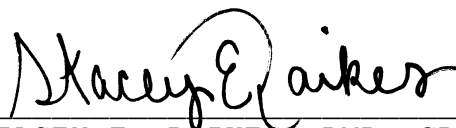
2
3 UNITED STATES DISTRICT COURT)

4 MIDDLE DISTRICT OF FLORIDA)

5
6 I, Stacey E. Raikes, RMR, CRR, Official Court
7 Reporter for the United States District Court, Middle District
8 of Florida, do hereby certify, pursuant to Section 753, Title
9 28, United States Code, that I was authorized to and did
10 stenographically report the foregoing proceedings; and that the
11 foregoing pages constitute a true and complete computer-aided
12 transcription of my original stenographic notes taken by the
13 undersigned in the above-entitled matter to the best of my
14 knowledge, skill, and ability.

15 I further certify that I am not a relative, employee,
16 attorney, or counsel of any of the parties, nor am I a relative
17 or employee of any of the parties' attorneys or counsel
18 connected with the action, nor am I financially interested in
19 the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand at Fort
21 Myers, Lee County, Florida, this 18th day of April 2023.

22
23 

24 STACEY E. RAIKES, RMR, CRR
25 Official Court Reporter