

LBKKSMIP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 CR 833 (SHS)
Remote Conference

5 STUART SMITH,

6 Defendant.

7 -----x

New York, N.Y.
November 19, 2021
12:05 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS

15 United States Attorney for the
16 Southern District of New York

KIERSTEN FLETCHER

Assistant United States Attorney

17 D. GILBERT ATHAY

18 Attorney for Defendant

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1 (The Court and all parties appearing telephonically)

2 (Case called)

3 MR. ATHAY: Your Honor, Gilbert Athay on behalf of
4 Mr. Stuart Smith, who is present with me here today, your
5 Honor.

6 THE COURT: Can you swivel the camera so I can see
7 Mr. Smith? All right, I see him. Thank you.

8 For the government?

9 MS. FLETCHER: Good afternoon, your Honor. Kiersten
10 Fletcher for the government.

11 THE COURT: Good morning.

12 I am notifying the parties that anyone who is on a
13 listen-only link here, any broadcasting or rebroadcasting of
14 these proceedings is a violation of federal law and is subject
15 to appropriate sanctions.

16 Mr. Smith, let me see you, sir.

17 Can you see and hear me, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you aware that you've been charged
20 with violations of federal law?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Have you consulted with your attorney,
23 Mr. Athay, about those charges?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: I understand that you decided you wish to

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1 enter a plea of guilty to certain charges against you; is that
2 correct?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand, sir, that you have a
5 right to appear before me physically in my courtroom in 500
6 Pearl Street in Manhattan?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And do you understand that your attorney
9 also has a right to be with you when you appear before me
10 physically in the Southern District of New York?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Are you aware that the public health
13 emergency created by the COVID-19 pandemic has interfered with
14 travel and restricted access to the federal courthouse?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: Have you discussed all these issues with
17 Mr. Athay?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: If you wish, sir, I will not proceed this
20 morning with this proceeding, and I will adjourn it until you
21 have the ability to come to the 500 Pearl Street courthouse.

22 Do you want me to adjourn it, or do you want me to
23 proceed now?

24 THE DEFENDANT: I'd like to proceed.

25 THE COURT: Are you knowingly and willingly giving up

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1 any right you might have to be physically in my courtroom?

2 THE DEFENDANT: Yes.

3 THE COURT: I do make the finding that this matter
4 cannot be further delayed without harm to the interests of
5 justice.

6 I will note for the record that, as I have already,
7 that Mr. Smith is visibly next to Mr. Athay.

8 Mr. Smith, if at any time you wish to talk privately
9 with your attorney, or, for that matter, if your attorney
10 wishes to talk privately with you, just notify me, and then you
11 can cut the sound and we'll make sure that you're talking
12 privately with your attorney.

13 Do you understand that?

14 THE DEFENDANT: Yes. Thank you, your Honor.

15 THE COURT: Mr. Athay, do you have an application at
16 this time?

17 MR. ATHAY: Your Honor, at this time, we would move
18 the Court to permit us to withdraw our plea of not guilty,
19 heretofore entered to the charges, and to permit us to enter
20 new pleas of guilty to the amended information that has been
21 filed with the Court.

22 We have signed a waiver of indictment that I believe
23 Ms. Fletcher has provided to your clerk.

24 THE COURT: And I take it this is pursuant to a
25 written agreement?

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1 MR. ATHAY: It is, your Honor.

2 THE COURT: All right.

3 Ms. Blakely, if you would administer the oath to
4 Mr. Smith, I'd appreciate it.

5 (Defendant sworn)

6 THE DEPUTY CLERK: Please state your full name and
7 spell your name for the record.

8 THE DEFENDANT: Stuart Michael Smith, S-t-u-a-r-t
9 M-i-c-h-a-e-l S-m-i-t-h.

10 THE DEPUTY CLERK: Thank you.

11 THE COURT: You may put your hand down, sir.

12 I'm sorry, the sound was cut off when Ms. Blakely
13 swore you in. Did you state that you did indeed swear to tell
14 the truth in this proceeding?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: All right. Thank you.

17 Mr. Smith, do you understand that you're now under
18 oath, and that if you answer any of my questions falsely, your
19 false or untrue answers may later be used against you in
20 another prosecution for perjury or for making a false
21 statement?

22 THE DEFENDANT: I understand.

23 THE COURT: How old are you, sir?

24 THE DEFENDANT: Forty-three.

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

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1 THE DEFENDANT: Bachelor's degree in college.

2 THE COURT: What was that degree in, sir?

3 THE DEFENDANT: Sociology.

4 THE COURT: Are you able to read, write, speak, and
5 understand English?

6 THE DEFENDANT: Yes.

7 THE COURT: English is your native language, correct?

8 THE DEFENDANT: Correct.

9 THE COURT: Are you now, or have you recently been,
10 under the care of a doctor or a psychiatrist?

11 THE DEFENDANT: No.

12 THE COURT: Have you ever been treated or hospitalized
13 for any mental illness or any type of addiction, including drug
14 or alcohol addiction?

15 THE DEFENDANT: No.

16 THE COURT: In the past 24 hours, Mr. Smith, have you
17 taken any drugs, medicine, or pills, or consumed any alcohol?

18 THE DEFENDANT: I take pills to help me sleep at
19 night, that's it. And anxiety, but I haven't taken any of
20 those.

21 THE COURT: Did you take that sleeping aid last night?

22 THE DEFENDANT: I did.

23 THE COURT: Is your mind clear now?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you feel that you are under the effects

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1 of that sleeping aid in any way now?

2 THE DEFENDANT: No, I do not.

3 THE COURT: Are you feeling all right today, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you have an attorney present?

6 THE DEFENDANT: I do.

7 THE COURT: And who is that?

8 THE DEFENDANT: Gilbert Athay.

9 THE COURT: Mr. Athay, do you have any doubt as to
10 Mr. Smith's competence to plead at this time, sir?

11 MR. ATHAY: Your Honor, I do not. We have spoken
12 extensively this morning, we've spoken extensively throughout
13 this case. I believe he is mindful of everything he's doing
14 and is prepared to go forward, Judge.

15 THE COURT: Thank you.

16 Mr. Smith, you heard Mr. Athay make an application to
17 me in which he said that you wished to enter a plea of guilty
18 to a superseding information in this case.

19 Is that correct, sir?

20 THE DEFENDANT: Yes, it is correct.

21 THE COURT: Have you had a full opportunity to discuss
22 your case with Mr. Athay and to discuss the consequences of
23 entering a plea of guilty?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Are you satisfied with Mr. Athay and his

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1 representation of you?

2 THE DEFENDANT: Yes, I am.

3 THE COURT: On the basis of Mr. Smith's responses to
4 my questions and my observations of his demeanor, as I'm
5 viewing him on this MS Teams platform, I make the finding that
6 he is fully competent to enter an informed plea at this time.

7 But before I accept the plea from you, sir, I'm going
8 to asking you a series of questions. Those questions are
9 intended to satisfy me that you wish to plead guilty because
10 you are guilty and that you fully understand the consequences
11 of entering a plea of guilty.

12 I'm going to be describing to you, Mr. Smith, certain
13 rights you have under the Constitution and laws of the United
14 States. You're going to be giving up those rights if you enter
15 a plea of guilty. Please listen to me carefully, and if you do
16 not understand anything I'm saying or describing, stop me, and
17 either I or Mr. Athay will explain it to you more fully. My
18 concern is to make sure you understand everything I'm saying to
19 you and that you understand everything I'm asking you.

20 Do you understand that, sir?

21 THE DEFENDANT: I do. Thank you.

22 THE COURT: Under the Constitution and laws of the
23 United States, Mr. Smith, you have the right to a speedy and
24 public trial by a jury on the charges against you which are
25 contained in Superseding Information S6:19 CR 833.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: If there were a trial, you would be
4 presumed innocent, Mr. Smith, and the government would be
5 required to prove you guilty by competent evidence and beyond a
6 reasonable doubt. You would not have to prove you were
7 innocent at a trial.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If there were a trial, a jury composed of
11 12 people selected from the Southern District of New York would
12 have to agree unanimously that you were guilty.

13 Do you understand those rights, sir?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Mr. Smith, you have the right to be
16 represented by an attorney at trial and every other stage of
17 the proceedings, and if you could not afford an attorney, an
18 attorney would be assigned to represent you and provided to you
19 at no cost to you.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: If there were a trial, sir, you would have
23 a right to see and hear all of the witnesses against you, and
24 your attorney could cross-examine them, you would have the
25 right to have your attorney object to the government's evidence

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1 and offer evidence on your own behalf if you so desired, and
2 you would have the right to have subpoenas issued or other
3 compulsory process used to compel witnesses to testify in your
4 defense.

5 Do you understand those rights, sir?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: If there were a trial, you would have the
8 right to testify if you wanted to, but no one could force you
9 to testify if you did not want to. In addition, no inference
10 or suggestion of guilt could be drawn if you decided not to
11 testify at your trial.

12 Do you understand those rights?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you understand that if you enter a plea
15 of guilty today in this proceeding, you're going to be giving
16 up each and every one of the rights I've been describing,
17 you're waiving those rights, and there will be no trial in this
18 action against you? Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that you have the right
21 to change your mind right now and you can decline to enter a
22 plea of guilty? You don't have to enter a plea of guilty if
23 you do not want to do so, for any reason whatsoever, or even no
24 reason at all.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Have you received a copy of Superseding
3 Information S6:19 CR 833?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Did you read it?

6 THE DEFENDANT: Yes.

7 THE COURT: Did you discuss it with Mr. Athay?

8 THE DEFENDANT: I did.

9 THE COURT: You have the right to have me read this
10 superseding information right now on the record, or if you
11 don't want me to read it, I won't.

12 What's your pleasure?

13 THE DEFENDANT: I'll waive that.

14 THE COURT: All right. I accept that as a knowing and
15 voluntary waiver of the right to have the superseding
16 information read on this proceeding.

17 Do you understand that in this superseding
18 information, sir, you are charged in Count One with committing
19 wire fraud in connection with telemarketing, which victimized
20 ten and more persons over the age of 55 from 2008 until 2021,
21 in violation of 18 U.S.C. 1349 and 2326?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you understand that you're charged in
24 Count Two with conspiring to commit money laundering during
25 that same period of time, in violation of 18, United States

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1 Code, Section 1956(h)?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that in Count Three
4 you're charged with obstructing an official proceeding in June
5 of 2018, in violation of 18, United States Code, Section
6 1512(c)?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that the Constitution of
9 the United States, sir, gives you the right to be charged by an
10 indictment instead of by an information?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that an indictment is a
13 charge by a grand jury but an information is simply a charge by
14 the government?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, I have a document in front of me,
17 sir, and it states, "The above-named defendant" – you're the
18 above-named defendant – "is accused of violating 18 U.S.C.
19 1349, 1512, and 1956(h), being advised of the nature of the
20 charge and of his rights, hereby waives in open court
21 prosecution by indictment and consents that the proceeding may
22 be by information instead of by indictment."

23 Did you sign that form, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: All right.

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1 Well, I'm going to hold it up to you. Let's see if I
2 can hold it up.

3 The machine doesn't seem to want to take that. I
4 guess it doesn't really reflect the document.

5 It bears your signature.

6 Mr. Athay, did you observe your client signing that
7 waiver form?

8 MR. ATHAY: I did, your Honor. We signed it this
9 morning and emailed it back to Ms. Fletcher this morning. I
10 did observe him signing it, your Honor.

11 THE COURT: All right.

12 And that was this morning?

13 MR. ATHAY: Yes, your Honor.

14 THE COURT: All right.

15 I am going to date it because it says November blank
16 2021. I will insert 19, on the representation of Mr. Athay
17 that he and Mr. Smith signed it. This does bear your
18 signature.

19 In any event, sir, I take it you are consenting that
20 the proceeding may be by information of the government instead
21 of indictment by a grand jury, correct?

22 THE DEFENDANT: Correct.

23 THE COURT: And I take it you're waiving the right to
24 being charged by a grand jury voluntarily and knowingly; is
25 that correct?

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1 THE DEFENDANT: Correct.

2 THE COURT: Do you understand, if you did not plead
3 guilty, the government would have to prove each and every part,
4 or element, of each of those counts beyond a reasonable doubt
5 at a trial?

6 THE DEFENDANT: I do.

7 THE COURT: Ms. Fletcher, why don't you set forth the
8 elements that the government would have to prove beyond a
9 reasonable doubt before the jury could convict Mr. Smith of any
10 of these three counts.

11 MS. FLETCHER: Yes, your Honor.

12 Before I begin, may I just one make one point of
13 clarification: I think when your Honor was reviewing the
14 information, you referred to Count One as charging the
15 defendant with wire fraud. Count One charges a wire fraud
16 conspiracy.

17 THE COURT: Thank you. That's important.

18 Indeed, Count One charges you with conspiring to
19 commit wire fraud.

20 Go ahead, Ms. Fletcher.

21 MS. FLETCHER: Thank you, your Honor.

22 Count One has two elements:

23 First, that the defendant agreed with others to commit
24 wire fraud;

25 And, second, that he entered into that agreement

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1 knowingly.

2 The underlying wire fraud count has four elements:

3 First, that the defendant agreed to participate in a
4 wire fraud scheme;

5 Second, that there was a scheme or artifice to defraud
6 or to obtain money or property by materially false and
7 fraudulent pretenses, representations, or promises;

8 Third, that the defendant knowingly participated in
9 the scheme or artifice to defraud with knowledge of its
10 fraudulent nature and specific intent to defraud;

11 And, fourth, that in the execution of that scheme, the
12 defendant used, or caused to be used, interstate wires; that
13 is, wires between the states.

14 As charged, the wire fraud conspiracy includes certain
15 enhancements related to telemarketing and requires the
16 government to show that the conspiracy involved telemarketing
17 and that it victimized ten or more persons over the age of 55.

18 Count Two charges the defendant with participating in
19 a money laundering conspiracy. Count Two also has two
20 elements:

21 First, that the defendant agreed with others to commit
22 a money laundering offense;

23 And, second, that he did so knowingly.

24 Count Two, the money laundering conspiracy, has three
25 charged objects:

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1 First, a violation of Section 1956(a)(1)(B)(i), which
2 is colloquially known as concealment money laundering. It
3 requires that the defendant conduct, or attempt to conduct, a
4 financial transaction knowing that the property involved in
5 such a financial transaction represents the proceeds of some
6 form of unlawful activity, and which, in fact, involved the
7 proceeds of specified unlawful activity.

8 The fifth element of that object is that the defendant
9 acted with the knowledge that the transaction was designed, in
10 whole or in part, to disguise the nature, location, source,
11 ownership, or control of the proceeds of the specified unlawful
12 activity; and here, your Honor, the underlying specified
13 unlawful activity is the crime charged in Count One.

14 The second object of Count Two is a 1956(a)(1)(B)(ii),
15 which has the same elements as the first object, but instead of
16 the object of this conspiracy relating to the defendant's
17 efforts to conceal the nature, location, source or ownership of
18 the proceeds, the second object requires that the defendant
19 acted with the intent to avoid a transaction reporting
20 requirement under state or federal law.

21 The third object of Count Two charges a violation of
22 1957(a), and that has six elements:

23 First, that the defendant engaged or attempted to
24 engage in a monetary transaction;

25 Second, that the transaction was of a value greater

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1 than \$10,000;

2 Third, that it involved criminally derived property;

3 Fourth, that the property in fact was derived from a
4 specified unlawful activity;

5 Fifth, that the defendant knew the transaction
6 involved criminally derived property;

7 And, finally, that the transaction took place in the
8 United States.

9 Count Three charges the defendant with obstruction in
10 violation of Title 18, United States Code, Section 1512(c).

11 That charge has two elements:

12 First, that the defendant acted corruptly;

13 And, second, that in acting corruptly, he obstructed
14 and attempted to obstruct an official proceeding; here, that's
15 an investigation being conducted by the Federal Trade
16 Commission in 2018.

17 In addition to those substantive elements that the
18 government is required to prove beyond a reasonable doubt, the
19 government is also required to prove venue by a preponderance
20 of the evidence with respect to each count.

21 THE COURT: Mr. Smith, do you understand that those
22 are the elements that the government has to prove beyond a
23 reasonable doubt before a jury could convict you of any of the
24 three counts in this superseding information?

25 THE DEFENDANT: Yes, I do.

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1 THE COURT: Ms. Fletcher referred to the requirement
2 of venue, which is not technically an element. But venue
3 simply means at least one overt act has taken place in the
4 Southern District of New York on each of those counts. The
5 government also has the burden of proving venue for each of the
6 counts, but the burden on the government for that requirement
7 is simply that it prove venue by a preponderance of the
8 evidence, and not beyond a reasonable doubt.

9 Do you understand that as well, sir?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Now, each of these three counts that
12 you're entering a plea of guilty to, sir, has a maximum penalty
13 by statute. The maximum penalty of Count One is 30 years'
14 imprisonment, five years' supervised release, a maximum fine of
15 the greatest of \$250,000, or twice the gross pecuniary gain
16 derived from the offense, or twice the gross pecuniary loss to
17 individuals other than you resulting from the offense, plus a
18 mandatory \$100 special assessment.

19 And the maximum penalty of Count Two is 20 years'
20 imprisonment, plus a maximum term of three years' supervised
21 release, plus a maximum fine of the greatest of \$500,000 or
22 twice the value of the property involved in the transaction, or
23 twice the gross pecuniary gain derived from the offense, or
24 twice the gross pecuniary loss to individuals other than you,
25 Mr. Smith, resulting from the offense, plus a mandatory \$100

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1 special assessment.

2 And the maximum penalty of Count Three is 20 years'
3 imprisonment, three years' supervised release -- well, let me
4 stop right there.

5 Counsel, both Mr. Athay and Ms. Fletcher, if you look
6 on the bottom of the first page of the plea agreement, where
7 it's listed the maximum penalty, it lists both a maximum term
8 of three years' supervised release and a maximum term of five
9 years' supervised release. That seems to be an error.

10 Ms. Fletcher?

11 MS. FLETCHER: Yes, your Honor. I'm just pulling it
12 up.

13 THE COURT: Both of you should take a look at the
14 statute.

15 MS. FLETCHER: Your Honor, given that the statutory
16 maximum is 20 years for Count Three, that would make the
17 maximum term of supervised release five years.

18 THE COURT: Mr. Athay, do you agree with that?

19 MR. ATHAY: I would agree with that --

20 MS. FLETCHER: No, I actually think that's not
21 correct, your Honor. I think we should look at the statute.
22 May I have a moment?

23 THE COURT: Yes. Both of you should do that. The
24 Court will as well.

25 (Pause)

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1 MS. FLETCHER: Okay, your Honor.

2 THE COURT: Just a moment, please.

3 Are you looking at 3553?

4 MS. FLETCHER: I'm looking at 3583, your Honor.

5 THE COURT: All right. Let me turn to it.

6 Yes. (b)? 3553(b)?

7 MS. FLETCHER: So, yes, your Honor, under Section

8 3583(b)(2), because Count Three is a Class C felony --

9 THE COURT: And where do you see that? The maximum,
10 if it's a Class C felony, it's three years. Where do you see
11 Count Three being a Class C felony?

12 MS. FLETCHER: I have to find the statute, your Honor.
13 I believe that crimes where the applicable statutory maximum is
14 20 years, that is a Class B felony, 25 years is a Class B,
15 felony and 30 years is a Class C, but I'll need to look up the
16 statute that has that. May I have one moment?

17 THE COURT: Yes.

18 (Pause)

19 MS. FLETCHER: Yes, your Honor, that's 3559, Section
20 3559.

21 THE COURT: Just a moment.

22 (Pause)

23 THE COURT: So it's a Class C felony? Is that what
24 you're saying?

25 MS. FLETCHER: Yes, your Honor.

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1 THE COURT: Because it's less than 25 years but ten or
2 more years under 3559(a) -- 3559(a)(3) says that if the maximum
3 term of imprisonment authorized is less than 25 years but ten
4 or more years as a Class C felony, and because the maximum
5 sentence under Count Three is 20 years, it fits under that
6 category.

7 And, Ms. Fletcher, as a Class C felony -- I've lost the
8 cross-reference -- it would be three or five years?

9 MS. FLETCHER: It would be three years, your Honor.
10 And the cross-reference is Title 18, United States Code,
11 Section 3583(b)(2), which provides that for a Class C felony,
12 the maximum term of supervised release is not more than three
13 years.

14 THE COURT: All right.

15 Mr. Athay, do you agree with this analysis?

16 MR. ATHAY: I do so agree, Judge.

17 THE COURT: All right.

18 So what I'm going to do, with the permission of the
19 parties, is, I am going to cross off on the plea agreement the
20 bottom of the first page, I'm going to cross off the line that
21 says, "a maximum term of five years' supervised release," and I
22 will initial it on the side with "KAF" and "DGA" "by SHS"; in
23 other words, indicating that you both agree and that I have
24 affixed those letters, again, crossing off "a maximum term of
25 five years' supervised release."

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1 Is that acceptable to the defense?

2 MR. ATHAY: We would so stipulate, your Honor.

3 THE COURT: Government?

4 Ms. Fletcher, you're muted.

5 Ms. Fletcher, you're muted.

6 MS. FLETCHER: Yes, your Honor, I do agree.

7 And I was actually just starting to say, I think
8 perhaps someone believed that I'm a participant because the
9 audio is connected on my phone and so they keep muting me, and
10 so sometimes I have to manually unmute myself. So if whoever
11 is managing the participants could leave the phone number
12 beginning in 16 and ending in 72 unmuted, that's me.

13 THE COURT: All right. I've changed that.

14 So now let's go back to where we started here.

15 I was explaining to Mr. Smith the maximum penalty of
16 Count Three; I had already done it for Count One and Count Two.

17 So, Mr. Smith, I caught an inconsistency in the plea
18 agreement, and we've straightened that out, because the plea
19 agreement on its face had two maximum terms of supervised
20 release, which is not possible.

21 So I wish to inform you that Count Three has a maximum
22 penalty of 20 years in prison, a maximum term of three years'
23 supervised release, a maximum fine of the greatest of \$250,000,
24 or twice the gross pecuniary gain derived from the offense or
25 twice the gross pecuniary loss to individuals other than you

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1 resulting from the offense, plus a mandatory \$100 special
2 assessment.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, we've had this discussion about the
6 maximum term of supervised release for each of the three counts
7 that you're pleading guilty to, but I wish to tell you that
8 supervised release means you're going to be subject to
9 monitoring upon your release from prison, and the monitoring
10 will be under terms and conditions that could lead to your
11 reimprisonment without a jury trial for all or part of the term
12 of supervised release and without credit for time previously
13 served on postrelease supervision if you violate any term or
14 condition of supervised release.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that I have the
18 authority to order restitution to anyone injured as a result of
19 your criminal conduct? Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now you're pleading guilty to three
22 different counts in this superseding information.

23 Do you understand, Mr. Smith, that I'm going to
24 sentence you separately on each of the three counts?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: And I have the authority to order you to
2 serve each of those sentences either concurrently, meaning at
3 the same time, or consecutively, meaning one after the other.

4 Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: If I do decide to sentence you
7 consecutively to the maximum amount on each count, you're
8 subject to 70 years' imprisonment.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you also understand that if I accept
12 your guilty plea today and determine that you're guilty, that
13 determination will deprive you of such valuable civil rights
14 such as the right to vote, the right to hold public office, and
15 the right to serve on a jury, as well as the right to possess
16 any kind of firearm?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Mr. Athay, is your client a United States
19 citizen?

20 MR. ATHAY: He is, your Honor.

21 THE COURT: Mr. Smith, under current law, judges must
22 apply the factors in 18, United States Code, 3553(a) as part of
23 the process of determining what a reasonable and fair and
24 appropriate sentence is.

25 Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Have you talked to Mr. Athay about the
3 sentencing guidelines?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand I won't be able to
6 determine what the relevant guideline range is until after I've
7 received a presentence report that's going to be completed by
8 the probation office?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Now, they are going to interview you, sir.
11 Mr. Athay will be present, and I need you to give them accurate
12 and complete information, because I'm going to use that report
13 in determining what an appropriate sentence is.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: You and Mr. Athay and the government, for
17 that matter, will all have a chance to object to anything in
18 that report, and then, if there are objections, I'll adjudicate
19 those objections, but that report is quite thorough, it will
20 tell me about if you have any other criminal matters pending in
21 the past or currently, it will tell me about this crime - I
22 really know very little about this crime, essentially nothing,
23 I only know what the government allegations are as they pertain
24 to you - but that report will tell me a great deal about your
25 educational background, your finances, your upbringing, your

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1 employment, and, again, the elements of the crime. So I'm
2 going to use that.

3 Of course, as I said, your attorney will be able to
4 submit any materials that he wants, and you will be able to
5 submit materials you want on your own behalf, and the
6 government will as well, but it is important that you cooperate
7 with the probation office in providing them information.

8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Now, even after I determine what the
11 guideline range is here, I also have the authority to depart
12 from the guideline range. In other words, on a departure basis
13 I can sentence you to more time in prison than called for by
14 the guidelines, and, similarly, I can sentence you to less time
15 than called for by the guidelines on the basis of the
16 authorized departure.

17 Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And even after I determine that, I then
20 can apply, and have the obligation of applying, all of the
21 factors in 18, United States Code, Section 3553(a), to
22 determine what a fair and reasonable sentence is and one that's
23 sufficient, but not greater than necessary, to meet the ends of
24 the criminal justice system.

25 Do you understand that process?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that if you're sentenced
3 to prison, sir, the system of parole that used to exist no
4 longer exists in the federal criminal justice system, and you
5 won't be released earlier on parole? Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: So when I sentence you to prison, sir, you
8 will serve that term in prison, and you will not be released
9 any earlier on parole.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, Mr. Smith, if you think you have an
13 idea of what your sentence is going to be, or if Mr. Athay has
14 told you what he thinks it's going to be, or if anyone else has
15 told you what it could be or might be and will be or should be,
16 none of that matters because I'm the one who's going to be
17 sentencing you, and, as I already indicated this morning, I
18 don't know enough about you or your crime to know what your
19 sentence is going to be. So nobody can tell you what your
20 sentence is going to be with the slightest bit of authority.

21 Do you understand that?

22 THE DEFENDANT: I do.

23 THE COURT: And do you understand that if the sentence
24 that I impose on you differs from what anyone has told you it's
25 going to be, or if it's different from what you yourself

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1 expect, you still are going to be bound to the guilty plea and
2 you won't be allowed to withdraw it? Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Now, I have a document in front of me – we
5 have been referring to it before – dated November 2 -- I'm
6 sorry, first my phone was ringing and now it's my mobile. Let
7 me shut that off. I apologize.

8 It's a six-page document. It's addressed to
9 Mr. Athay, and it's signed by you and Mr. Athay, and it's dated
10 November 18th.

11 You recall signing that document, Mr. Smith?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: And, Mr. Athay, did Mr. Smith sign it in
14 your presence yesterday?

15 MR. ATHAY: He did, your Honor.

16 THE COURT: Now, Mr. Smith, had you read this
17 agreement before you signed it?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Did you discuss it with Mr. Athay before
20 you signed it?

21 THE DEFENDANT: Yes, I did.

22 THE COURT: Did he answer any questions you may have
23 had about it?

24 THE DEFENDANT: Yes, he did.

25 THE COURT: Did you understand this agreement before

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1 you signed it?

2 THE DEFENDANT: Yes.

3 THE COURT: Does this agreement, the November 2nd
4 letter agreement, constitute your complete and total
5 understanding of the entire agreement between the government,
6 Mr. Athay, and yourself?

7 THE DEFENDANT: Yes.

8 THE COURT: Is everything about your plea and sentence
9 contained in this agreement?

10 THE DEFENDANT: Yes.

11 THE COURT: Is there anything that's been left out?
12 In other words, are there any side agreements I should know
13 about?

14 THE DEFENDANT: No, there is not, your Honor.

15 THE COURT: Has anyone offered you any inducements, or
16 threatened you, or forced you to plead guilty, or to enter into
17 the plea agreement?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Do you understand that in this plea
20 agreement, you have agreed to file accurate amended tax returns
21 for the years 2017 through 2021, and to pay, or enter into an
22 agreement to pay, all past taxes due and owing?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that you've agreed to
25 make restitution to anyone injured as a result of your criminal

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1 conduct?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you've admitted the
4 forfeiture allegations with respect to Count One of the
5 information, and have agreed to forfeit any proceeds obtained
6 directly or indirectly as a result of the offense?

7 THE DEFENDANT: Yes.

8 THE COURT: And you've also admitted the forfeiture
9 allegation in respect to Count Two.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, Ms. Fletcher, I don't believe I have
13 a consent preliminary order of forfeiture. Has one been
14 forwarded to me?

15 MS. FLETCHER: It has not, your Honor. We would
16 request the opportunity to submit one at the time of
17 sentencing.

18 THE COURT: You want to do that at sentencing?

19 MS. FLETCHER: Yes, your Honor.

20 THE COURT: All right.

21 Do you understand, Mr. Smith, that the intent of the
22 agreement you entered into was to waive all defenses based on
23 statute of limitations?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Athay, are you aware of any valid

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1 defense that would prevail at trial or know of any reason why
2 Mr. Smith should not be permitted to plead guilty today?

3 MR. ATHAY: I do not, your Honor.

4 THE COURT: In your view, sir, is there an adequate
5 factual basis to support Mr. Smith's plea today?

6 MR. ATHAY: Yes, your Honor.

7 THE COURT: In the view of the government, is there an
8 adequate factual basis to support the defendant's plea?

9 MS. FLETCHER: Yes, your Honor.

10 THE COURT: All right, Mr. Smith, tell me now what you
11 did that makes you guilty of Count One, Count Two, and Count
12 Three.

13 MR. ATHAY: Your Honor, with the Court's permission:
14 Mr. Smith yesterday wrote out a colloquy. We would ask the
15 Court to permit him to read that colloquy, which I think sets
16 forth those factors.

17 THE COURT: Of course you may do so, Mr. Smith. I am
18 asking you to read slowly, though, because when people are
19 nervous or even when read, they tend to go fast, and this is,
20 of course, being recorded by a court reporter.

21 Also, I've been viewing Mr. Smith throughout this
22 proceeding, but in the course of it, the camera has shifted a
23 little. I'd appreciate it, Mr. Athay or -- Mr. Smith, now I
24 can see your face fully. Thank you.

25 Please tell me why you're guilty here.

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1 THE DEFENDANT: I knowingly and intentionally
2 discussed and engaged with other individuals to develop a plan
3 or operation to obtain money by false representations by
4 offering and inducing individuals, many of whom were 50 years
5 of age or older, to provide money to entities that I and others
6 were involved with.

7 I did so as follows:

8 In 2008, I became involved with a Utah company called
9 Thrive. That was my first exposure to telemarketing. From
10 2008 to 2021, I was involved in several telemarketing companies
11 – Guidance, Learning Systems, Red Steel, and Mastery Pro Group.
12 Thrive, Guidance, and Learning Systems were fulfillment
13 companies; Red Steel was a data brokering company; and Mastery
14 Pro Group was a marketing service business.

15 I did not participate in the creation of Thrive,
16 Guidance, nor Red Steel, but was involved in their daily
17 operations and became aware that these telemarketing companies
18 were misleading customers of those entities by selling
19 individuals, many of them who were older than 50 years of age,
20 information that purported to be services to enhance their
21 business opportunities.

22 The services sold were of no value and of no real
23 benefit to the consumer. These services were sold through
24 telephone, were received and processed through various call
25 centers, and ultimately paid to these entities.

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1 In 2017, I, along with others, organized and created a
2 corporate entity called Mastery Pro Group. This corporation
3 was organized in Wyoming. It was organized in Wyoming to hide
4 actual ownership of the corporation. I and others knew that
5 the actual identity of the ownership of the corporation would
6 be hidden by incorporating in the State of Wyoming, and we did
7 not want anyone to know we were involved.

8 Mastery Pro Group sold marketing via telephone to
9 individuals who were victims in this case. We sold marketing
10 that was of no value and provided no benefit for the customer.

11 After creation of this company, I, along with others,
12 operated this company. We received leads from different
13 sources and used those leads to find individuals willing to buy
14 the marketing we were selling. Monies were received from this
15 illegal activity and deposited into our bank account. Proceeds
16 from this bank were distributed to myself and others.
17 Oftentimes, these transactions were done as cash transactions
18 and were done that way to avoid knowledge as to whom the actual
19 recipient of the money was.

20 Cash transactions were done at the request of others
21 to avoid currency transaction reporting requirements as well as
22 hiding the identity of who was actually receiving the money.

23 On or about 2018, I was subpoenaed to appear and
24 testify at a hearing conducted by the Federal Trade Commission.
25 I responded and testified but did not do so truthfully. I did

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1 not truthfully describe my role, as well as the role of others,
2 in a corporate entity, Red Steel.

3 MR. ATHAY: That was the complete statement, Judge.

4 THE COURT: Thank you.

5 When you testified at that official proceeding, were
6 you under oath, sir?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: When you did all of these acts that you've
9 been telling me about, did you know that what you were doing
10 was wrong and illegal?

11 THE DEFENDANT: I did.

12 THE COURT: Ms. Fletcher, what evidence does the
13 government have against Mr. Smith?

14 MS. FLETCHER: Your Honor, may I ask the Court to
15 inquire on a few follow-up points?

16 THE COURT: Yes.

17 MS. FLETCHER: With respect to Count One, your Honor,
18 I believe I heard the defendant say that many of the victims
19 were over the age of 50.

20 If the Court could please ask the defendant to confirm
21 that there were at least ten victims over the age of 55, the
22 government would appreciate that.

23 THE COURT: Yes; I understand why you're asking that.

24 Mr. Smith, is that true? Were ten or more victims of
25 Count One over the age of 55?

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1 THE DEFENDANT: Yes.

2 THE COURT: All right.

3 Ms. Fletcher?

4 MS. FLETCHER: And then, your Honor, with respect to
5 Count One, the interstate wires element and also the venue
6 element, the government would proffer that Mastery Pro Group
7 was a telemarketing floor that operated out of offices located
8 in the Southern District of New York, and that sales
9 representatives working on that floor contacted victims outside
10 of New York State.

11 THE COURT: Mr. Smith, do you know that to be true?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right.

14 What else?

15 MS. FLETCHER: And then, finally, your Honor, with
16 respect to venue:

17 On Count Two, the government would proffer that
18 certain of the financial transactions involved in Count Two
19 transited the Southern District of New York;

20 And with respect to Count Three, would proffer the
21 official proceedings the defendant obstructed was a Federal
22 Trade Commission investigation being conducted out of the
23 Southern District of New York.

24 THE COURT: All right.

25 Mr. Smith, do you agree with all those statements?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right.

3 Anything else, Ms. Fletcher?

4 MS. FLETCHER: No, your Honor.

5 And so I'm happy to address the Court's question, if
6 the Court would like me to, with respect to the evidence the
7 government would introduce at trial.

8 THE COURT: Yes, ma'am.

9 MS. FLETCHER: Your Honor, if the defendant were to
10 proceed to trial, the government anticipates that it would
11 introduce the testimony of victims of the telemarketing sales
12 floor operated by the defendant and his partner; the testimony
13 of cooperating witnesses. The government would also introduce
14 documents collected from victims, documents collected through
15 search warrants executed at the home of the defendant and the
16 homes and offices of his coconspirators.

17 We would also introduce bank records and an analysis
18 of those bank records showing the money laundering activity.
19 We would introduce, very likely, the testimony of a forensic
20 accountant to explain the money laundering activity here. We
21 would introduce recordings, clandestine recordings, made of the
22 defendant and other individuals in this case. And we would
23 introduce transcripts of the defendant's deposition testimony
24 that he referenced in June of 2018, during which the defendant
25 made false statements.

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1 THE COURT: All right. Thank you.

2 Mr. Smith, how do you now plead to the charges in
3 Count One, Count Two, and Count Three of Superseding
4 Information S6:19 CR 833, guilty or not guilty?

5 THE DEFENDANT: Sorry.

6 Guilty, your Honor.

7 THE COURT: All right.

8 Are you pleading guilty because you are guilty?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Are you pleading guilty voluntarily and of
11 your own free will, sir?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Athay, do you wish me to ask any
14 additional questions?

15 MR. ATHAY: I do not, your Honor.

16 THE COURT: Ms. Fletcher?

17 MS. FLETCHER: No, your Honor. Thank you.

18 THE COURT: Mr. Smith, because you acknowledge you're
19 guilty as charged, because I find you know your rights and are
20 waiving them knowingly and voluntarily, because I find your
21 plea is entered knowingly and voluntarily and is supported by
22 an independent basis in fact, containing each of the essential
23 elements of the offense, I accept your guilty plea to Counts
24 One, Two and Three and adjudge you guilty of those offenses.

25 I set the date for sentencing now at March 3, 2022, at

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1 3:30 p.m. in my courtroom, 23A, at the United States courthouse
2 in 500 Pearl Street, New York, New York.

3 Mr. Smith, I'm going to continue your release on bail,
4 but it is going to be on the same conditions that you have
5 previously been released on.

6 Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So you must continue to follow all of the
9 conditions of your release.

10 Do you understand?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: All right.

13 I thank you, Mr. Smith. I will see you on March 3
14 here in the Southern District of New York or any adjourned date
15 I set.

16 THE DEFENDANT: Understood. Thank you.

17 MR. ATHAY: Thank you, Judge.

18 THE COURT: I thank the parties. The Court is leaving
19 the call.

20 * * *