

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CASE NO. 2:10-CR-39-FTM-36SPC

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THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

Fort Myers, Florida

March 23, 2010

2:15 P.M.

MICHAEL OLAF SCHUTT,

Defendant.

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TRANSCRIPT OF INITIAL APPEARANCE  
AND CHANGE OF PLEA WITH WAIVER OF INDICTMENT

BEFORE THE HONORABLE DAVID M. COHEN  
UNITED STATES MAGISTRATE JUDGE

FOR THE GOVERNMENT: Office of the United States Attorney  
U.S. Courthouse  
2110 First Street, Room 3-137  
Fort Myers, Florida 33901  
239/461-2200  
BY: ROBERT BARCLIFT, A.U.S.A.

FOR THE DEFENDANT: Kynes Markman & Felman, P.A.  
100 S. Ashley Drive, Suite 1300  
Tampa, Florida 33601  
813/229-1118  
BY: JAMES E. FELMAN, ESQ.

REPORTED BY: R. JOY STANCEL, RMR-CRR  
Federal Official Court Reporter  
U.S. Courthouse  
2110 First Street  
Fort Myers, Florida 33901  
239/461-2064

1 (Call to Order of the Court)

2 DEPUTY CLERK: Calling Case 2:10-CR-39-FTM-36SPC,  
3 United States of America versus Michael Olaf Schutt.

4 MR. BARCLIFT: Good afternoon, Your Honor, Robert  
5 Barclift on behalf of the United States.

6 MR. FELMAN: Good afternoon, James Felman on  
7 behalf of the defendant, Michael Schutt.

8 THE COURT: Thank you. The Court is assisted in  
9 this matter this afternoon by a German language interpreter.  
10 I will ask the clerk at this time to administer the  
11 interpreter's oath.

12 DEPUTY CLERK: Ma'am, would you please stand up  
13 and raise your right hand?

14 (The Interpreter is Sworn)

15 THE COURT: All right. Mr. Schutt, I understand  
16 that your English is actually quite good, but I want to be  
17 clear with you that to the extent that you don't understand  
18 anything that I am saying, you should be relying on the  
19 interpretation. All right? The translation that the  
20 interpreter makes; you understand?

21 THE DEFENDANT: Yeah, I understand.

22 THE COURT: All right. Why don't you pull that  
23 microphone in front of you because you'll be responding to a  
24 number of inquiries I make here. Let me begin by explaining  
25 to you, Mr. Schutt, that I see that I have in front of me a

1 Waiver of Indictment. And there's also in the file an  
2 Information, and so what's happened here is you have  
3 purportedly waived your right to prosecution by Indictment  
4 and consented that this proceeding may go forward by  
5 Information rather than by Indictment. Do you understand  
6 what that all means?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: And is that, in fact, your intention?

9 THE DEFENDANT: Yes, it is.

10 THE COURT: All right. The clerk will provide  
11 your counsel with the original Waiver of Indictment so that  
12 I may ask you a question about it.

13 (Document provided to counsel)

14 THE COURT: Mr. Schutt, is that, in fact, your  
15 signature which appears on the signature line above the --  
16 above your name and the word "defendant" on that waiver?

17 THE DEFENDANT: Yes, that is my signature.

18 THE COURT: And before you signed that waiver, did  
19 you confer with your attorney regarding it?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: All right. Did your attorney answer  
22 any questions you had of him regarding the meaning or  
23 significance of that waiver?

24 THE DEFENDANT: Yes, he did.

25 THE COURT: All right. And counsel, is that your

1 signature that appears on the waiver, as well?

2 MR. FELMAN: It's not, Your Honor, but I  
3 understand that my co-counsel was with Mr. Schutt, did  
4 explain the form to him, and did execute it.

5 THE COURT: Thank you. May I have that back,  
6 please?

7 (Document provided to the Court)

8 THE COURT: Mr. Schutt, did you then execute this  
9 Waiver of Indictment knowingly and voluntarily?

10 (Discussion off record with Counsel)

11 THE DEFENDANT: Yes.

12 THE COURT: All right. The Waiver of Indictment,  
13 then, is accepted as I find that the defendant -- as I find  
14 that the defendant's waiver is knowing and voluntary and  
15 that he did understand the significance of it and his right  
16 otherwise to proceed by way of Indictment in the absence of  
17 this waiver.

18 Now, I also understand, but I ask counsel to  
19 confirm, that this case initially was a magistrate's case,  
20 that is, was initiated by Complaint; is that correct?

21 MR. BARCLIFT: That's correct, Your Honor.

22 THE COURT: And is the charge that's reflected in  
23 the Information the same charge that appeared in the  
24 Criminal Complaint?

25 MR. BARCLIFT: It is.

1 THE COURT: And the defendant had an initial  
2 appearance on the Criminal Complaint; is that correct?

3 MR. BARCLIFT: He did.

4 THE COURT: All right, then, I'm going to ask the  
5 Government to indicate, then, at this time, exactly what it  
6 is that the defendant is charged with and what the penalty  
7 exposure is.

8 MR. BARCLIFT: The defendant is charged with  
9 having conducted, controlled, managed, supervised, directed,  
10 and owned all or part of an unlicensed money transmitting  
11 business between April of 2009 and February 18 of 2010, in  
12 Collier County, here in the Fort Myers Division of the  
13 Middle District of Florida, in violation of 18 U.S.C. 1960,  
14 as well as 18 U.S.C. 2. That count carries a maximum  
15 punishment of five years in prison, a fine of up to  
16 \$250,000, and a period of not more than three years  
17 supervised release and a \$100 special assessment.

18 THE COURT: Thank you. Let me now ask defense  
19 counsel if I correctly understand that the defendant is in  
20 court today to enter a plea of guilty to the Information  
21 charge?

22 MR. FELMAN: That is correct, Your Honor.

23 THE COURT: Mr. Schutt, is that what you wish to  
24 do?

25 THE DEFENDANT: Yes.

1           THE COURT: Mr. Schutt, you have the right to  
2 plead guilty, but before I can recommend that your plea be  
3 accepted, it's necessary that I find that your plea is made  
4 freely and voluntarily and that there is a factual basis for  
5 it. For that reason, it will be necessary for me to ask you  
6 a number of questions. I'm going to have you placed under  
7 oath and I will ask you questions about the offense that  
8 you're charged with.

9           I want you to know that if you don't understand  
10 anything that I say at any time or anything that any other  
11 speaker here in the courtroom says, let me know that right  
12 away so that I can back up, go over that information again,  
13 and make sure that you do fully understand. If at any point  
14 in the process you want to confer privately with your  
15 attorney, just tell me that and I'll give you all the time  
16 you want to confer with your attorney alone. Do you  
17 understand all of that?

18           THE DEFENDANT: Yes, I do.

19           THE COURT: All right. Madam Clerk, would you  
20 please place the defendant under oath?

21           DEPUTY CLERK: Sir, would you raise your right  
22 hand.

23           (The Defendant is Sworn)

24           DEPUTY CLERK: You can have a seat.

25           THE COURT: Mr. Schutt, you have just taken an

1 oath to tell the truth. If you should knowingly and  
2 intentionally make any false statements or omissions, your  
3 testimony would be subject to prosecution for perjury.  
4 Perjury is a felony offense. It is separate from that  
5 offense with which you have been charged and it carries a  
6 penalty exposure separate and distinct from that which you  
7 are facing in connection with the pending Information  
8 charge. Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: All right. You don't have to stand  
11 when you answer my questions, just speak into the  
12 microphone, if you will.

13 THE DEFENDANT: Thank you.

14 THE COURT: Also, your testimony here this  
15 afternoon in the form of your answers to my questions and  
16 any other statements you might make may also be used against  
17 you in any proceedings if you challenge the taking of your  
18 plea or the resulting judgment, conviction, or sentence. Do  
19 you understand all of that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Please state your full name.

22 THE DEFENDANT: Michael Olaf Schutt.

23 THE COURT: Have you been known by any other  
24 names?

25 (Discussion off record with Counsel)

1 THE DEFENDANT: My client and me, we used the  
2 name, which is Olaf Brand.

3 THE COURT: Spelled how?

4 THE DEFENDANT: O-L-A-F, B-R-A-N-D.

5 THE COURT: All right, as appears in these  
6 pleadings; is that correct?

7 THE DEFENDANT: Yes, that is correct.

8 THE COURT: All right. And those pleadings also  
9 reflect two different spellings of your last name. Is that  
10 accurate, that you've used two different versions of your  
11 last name?

12 THE DEFENDANT: No, my German last name is with a  
13 U and two dots, and but in the -- in the English language,  
14 it doesn't have the U with two dots, so that's why I write  
15 my name as U-E-T-T, which is the same word.

16 THE COURT: Okay. Have you been known by any  
17 other names?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. How old are you?

20 THE DEFENDANT: 28.

21 THE COURT: And what is your date of birth?

22 THE DEFENDANT: August 20, '89 -- '81.

23 THE COURT: How far did you go in school,  
24 Mr. Schutt?

25 THE DEFENDANT: I went to school 13 years. I

1 guess it's here would be high school. And then after this,  
2 I went to a military, ten months, by law. And after that, I  
3 made apprenticeship for three years in a hotel.

4 THE COURT: Can you read, write, and understand  
5 the English language?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you been treated recently for any  
8 mental illness or addiction to narcotic drugs of any kind?

9 (Discussion off record with Counsel)

10 THE DEFENDANT: No, sir.

11 THE COURT: Are you currently under the influence  
12 of any drug, medication, or alcoholic beverage of any kind?

13 THE DEFENDANT: No.

14 THE COURT: Have you used any of those kinds of  
15 things in the last 48 hours?

16 THE DEFENDANT: No.

17 THE COURT: Are you currently under the care of a  
18 physician or a mental health provider.

19 (Discussion off record with Counsel)

20 THE DEFENDANT: No.

21 THE COURT: Do you clearly -- to your knowledge,  
22 do you suffer from any mental or emotional disability?

23 (Discussion off record with Interpreter)

24 THE DEFENDANT: No.

25 THE COURT: Do you clearly understand where you

1 are, what you are doing, and the importance of this  
2 proceeding?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: So that the record is clear, on one  
5 occasion during the colloquy to this point, the defendant  
6 has turned to the interpreter for a translation of what it  
7 is that I said in English, and I will understand and the  
8 record will reflect, Mr. Schutt, that on any occasion going  
9 forward here when you have any question about the meaning of  
10 the English words I'm using, you will seek a German  
11 translation from the interpreter sitting next to you;  
12 understood?

13 THE DEFENDANT: Yes.

14 THE COURT: And that you will not answer any of my  
15 questions at all unless you are sure of the meaning of the  
16 question, as well as your intended answer?

17 THE DEFENDANT: Understood.

18 THE COURT: All right. Have you received a copy  
19 of the Information?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you read it?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you understand what you read in  
24 that Information?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand the charge against  
2 you as reflected in that document?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Have you reviewed the Information with  
5 your attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: Have you had enough time to discuss  
8 the charge as reflected in the Information with your  
9 attorney?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you satisfied with your attorney's  
12 services and advice given to you in this case?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you have any complaints either  
15 about what your attorney has done or has not done?

16 (Discussion off record with Interpreter)

17 THE DEFENDANT: No.

18 THE COURT: Are you pleading guilty to the  
19 Information charge because you are, in fact, guilty of that  
20 charge?

21 THE DEFENDANT: Yes.

22 THE COURT: Has anyone threatened you or promised  
23 you anything in order to get you to enter a guilty plea?

24 THE DEFENDANT: No.

25 THE COURT: Counsel, do you have any question as

1 to the defendant's competency to plead guilty at this time?

2 MR. BARCLIFT: No, Your Honor.

3 MR. FELMAN: No, Your Honor.

4 THE COURT: I find the defendant competent to  
5 enter a plea of guilty to the charge against him if he so  
6 desires. Now, there's no plea agreement in this case;  
7 correct?

8 MR. BARCLIFT: That's correct.

9 THE COURT: Is substantial assistance an issue in  
10 this case?

11 MR. BARCLIFT: It is, Your Honor.

12 THE COURT: Mr. Schutt, have you discussed the  
13 issue of substantial assistance with your attorney?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that the Court  
16 cannot consider the issue of substantial assistance unless  
17 the Government files a motion that gives the Court  
18 jurisdiction to do so?

19 (Discussion off record with Interpreter)

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that the Court  
22 cannot compel the Government to file such a motion?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: That you have to satisfy the  
25 Government by doing what you have agreed to do in the way of

1 cooperation?

2 (Discussion off record with Interpreter)

3 THE DEFENDANT: Yes.

4 THE COURT: You have agreed to enter a plea of  
5 guilty to the Information which charges you in a single  
6 count with knowingly conducting, controlling, managing,  
7 supervising, directing, and owning all or part of an  
8 unlicensed money transmitting business in violation of Title  
9 18 of the United States Code, Sections 1960 and 2. Do you  
10 understand all of that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: The maximum penalty provided for by  
13 law in connection with this offense is a prison term of five  
14 years, a fine of \$250,000, a term of supervised release of  
15 up to three years to follow upon your release from any  
16 imposed term of incarceration, and a special assessment of  
17 \$100. Do you understand all of that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Do you understand, then, that these  
20 are the possible consequences of your entering a guilty  
21 plea?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: In determining your sentence, the  
24 Court is obligated to calculate the applicable sentencing  
25 guidelines range and to consider that range, possible

1 departures under the sentencing guidelines, and other  
2 sentencing factors under Title 18 of the United States Code,  
3 Section 3553(a). Have you and your attorney discussed how  
4 the sentencing guidelines may apply to your case?

5 (Discussion off record)

6 THE DEFENDANT: Yes, we did.

7 THE COURT: Has he explained to you the various  
8 considerations which go into determining which guidelines  
9 range will be applied?

10 (Discussion off record with Interpreter)

11 THE DEFENDANT: Yes.

12 THE COURT: Are you aware that the sentencing  
13 guidelines are advisory to the Court?

14 (Discussion off record with Interpreter)

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that your criminal  
17 history is an important factor in applying the sentencing  
18 guidelines?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: The Court will not be able to  
21 determine the guidelines range for your case until after the  
22 presentence report has been completed and you and the  
23 Government have had an opportunity to challenge the facts  
24 reported by the probation officer. Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: It may be necessary for the Court to  
2 resolve disputed facts or matters contained in that report.  
3 How the Court resolves those issues may affect the  
4 applicable guidelines range in your case. Do you understand  
5 that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that at this point,  
8 it is unlikely that your attorney can be specific as to the  
9 guideline range which will apply in your case because your  
10 attorney does not have all of the necessary information and  
11 has not seen the presentence report?

12 (Discussion off record with Interpreter)

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that you will not be  
15 able to withdraw your plea of guilty on the ground that your  
16 lawyer's prediction as to the guideline range proved to be  
17 inaccurate?

18 THE DEFENDANT: Yes.

19 THE COURT: One of the things that this means is  
20 that as you stand here today, you may think you know the  
21 range that may apply to you, but you may be wrong about  
22 that. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Do you understand that although the  
25 statute under which you are charged sets forth the maximum

1 sentence which can be imposed, the sentencing guidelines  
2 will be used to determine the actual sentence which will be  
3 imposed upon you?

4 (Discussion off record with Interpreter)

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that after it has  
7 been determined what guideline applies to a case, the Court  
8 has the authority in some circumstances to impose a sentence  
9 that is either more or less severe than the sentence called  
10 for by the guidelines?

11 (Discussion off record with Interpreter)

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Under some circumstances, you or the  
14 Government may have the right to appeal the sentence the  
15 Court imposes upon you. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that parole has been  
18 abolished and if you are sentenced to prison, you will not  
19 be released on parole and you will serve all or almost all  
20 of the sentence the Court imposes?

21 THE DEFENDANT: Yes, I understand.

22 THE COURT: The Court must also impose a sentence  
23 of supervised release to be served by you after your release  
24 from confinement. While on supervised release, you will be  
25 under the supervision of the federal court after you get out

1 of prison. Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Supervised release is in addition to a  
4 prison term. The judge will set the length of supervised  
5 release at the time of sentencing. Do you understand all of  
6 that?

7 THE DEFENDANT: Yes.

8 THE COURT: If you violate the terms and  
9 conditions of your supervised release, you could be sent  
10 back to prison to serve the period of your supervised  
11 release in prison in addition to your original sentence of  
12 incarceration. Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: You may be denied certain federal  
15 benefits, assuming you are otherwise entitled to them,  
16 including social security. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: You are not a United States citizen;  
19 is that correct?

20 THE DEFENDANT: Yes, that's correct.

21 THE COURT: You may therefore also be subjecting  
22 yourself to deportation. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: And counsel, have you explained that  
25 to your client? Does he understand that he may not be able

1 to receive certain programs while in prison due to his  
2 immigration status?

3 MR. FELMAN: Yes, Your Honor.

4 THE COURT: Do you understand that the Court may  
5 assess and require that you pay the cost of your  
6 imprisonment, the cost of your supervised release, and the  
7 cost of your probation, if any?

8 (Discussion off record with Interpreter)

9 THE DEFENDANT: Yes.

10 THE COURT: Counsel, have I neglected to explain  
11 any possible penalty applicable to this defendant?

12 MR. BARCLIFT: Judge, if you could, explain the  
13 forfeiture. I don't remember it.

14 THE COURT: No, go ahead. Why don't you do that?

15 MR. BARCLIFT: All right. Well, the Government  
16 does seek forfeiture of a number of items that are  
17 specifically set forth in the Information as well as the  
18 Notice of Penalties, Elements, and Facts, and it's my  
19 understanding that the defendant does not intend to contest  
20 forfeiture of those properties. They are properties that  
21 were involved in the activities which are the subject of the  
22 Information, therefore subject to forfeiture.

23 THE COURT: All right. Mr. Schutt, do you  
24 understand the Government's position? They are seeking  
25 forfeiture of your assets or certain of your assets. Do you

1 understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: And that by pleading guilty, you will  
4 be subjecting yourself to the consequences that follow from  
5 that, namely a forfeiture of your -- of your assets. Do you  
6 understand that?

7 (Discussion off record with Interpreter)

8 (Discussion off record with Counsel)

9 THE DEFENDANT: Yes.

10 THE COURT: So what I'm really saying is by  
11 pleading guilty, your assets would be subject to forfeiture  
12 due to the nature of this offense and the fact that there is  
13 a forfeiture claim contained in the charging instrument. Do  
14 you understand that?

15 MR. FELMAN: Judge, I think it might just help to  
16 clarify that he understands that the assets that are listed  
17 in the Information would be subject to forfeiture  
18 proceedings.

19 THE COURT: Correct. You understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Counsel, let me ask you again if I've  
22 now explained all of the possible penalties applicable to  
23 this defendant?

24 MR. BARCLIFT: Yes, Your Honor, I think so.

25 MR. FELMAN: Yes, Your Honor.

1 THE COURT: Have I left anything out?

2 MR. BARCLIFT: I don't think so.

3 MR. FELMAN: No, Your Honor.

4 THE COURT: All right. Mr. Schutt, do you  
5 understand, then, the possible penalties which apply if you  
6 enter a plea of guilty to the pending charge?

7 THE DEFENDANT: Yes.

8 THE COURT: I'm now going to advise you of some  
9 important rights which you have. You have the right to  
10 enter a plea of not guilty and to persist in that not guilty  
11 plea. You do not have to enter a plea of guilty to this  
12 charge. Do you understand that?

13 (Discussion off record with Interpreter)

14 THE DEFENDANT: Yes, I understand.

15 THE COURT: You have the right to effective  
16 assistance of counsel at every stage of these proceedings.

17 (Discussion off record with Interpreter)

18 THE COURT: And the counsel who are representing  
19 you have been retained by you for that purpose; is that  
20 correct?

21 (Discussion off record with Interpreter)

22 THE DEFENDANT: Yes, it is.

23 THE COURT: You have the right to a speedy trial  
24 and a public trial by a jury of 12 persons, or by a judge if  
25 you waive your right to a jury trial, on the charge

1 contained in the Information. Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: At such a trial, you would be presumed  
4 to be innocent and the Government would be required to prove  
5 your guilt by competent evidence, beyond a reasonable doubt  
6 before you could be found guilty, and you would not have to  
7 prove that you are innocent. Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: In the course of the trial, you would  
10 have the right to confront and cross examine the witnesses  
11 who testify against you. The witnesses for the Government  
12 would have to come to court and testify in your presence.  
13 Your counsel would be able to cross examine those witnesses.  
14 You would be able to object to and seek to exclude from  
15 consideration all or portions of the testimony of those  
16 witnesses, and of other kinds of evidence offered by the  
17 Government. Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: You have the right to compulsory  
20 process or subpoenas so that you could obtain witnesses and  
21 evidence to be presented at the trial in your favor. This  
22 includes having those persons arrested and physically  
23 brought into court so that they may appear as a witness in  
24 your case. Do you understand that?

25 (Discussion off record with Interpreter)

1 THE DEFENDANT: I understand that.

2 THE COURT: At a trial, while you would have the  
3 right to testify if you chose to do so, you would also have  
4 the right not to testify and no inference or suggestion of  
5 guilt could be drawn from the fact that you did not testify.  
6 In other words, you have the privilege against  
7 self-incrimination and the right to remain silent. Do you  
8 understand all of that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: If you are tried by a jury, all 12 of  
11 the jurors must unanimously agree on your guilt before you  
12 can be convicted. Do you understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: If you plead guilty, and the Court  
15 recommends that your plea be accepted, do you understand  
16 that you will thereby waive your right to a trial, as well  
17 as the other rights that I've just discussed and there will,  
18 in fact, be no trial?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: The Court will enter a judgment of  
21 guilty and sentence you on the basis of your guilty plea  
22 after considering the presentence report.

23 (Discussion off record with Interpreter)

24 THE DEFENDANT: Yes.

25 THE COURT: You understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: If you plead guilty, do you also  
3 understand that you will have waived your right not to  
4 incriminate yourself, since I will ask you questions about  
5 what you did in order to satisfy myself that you are guilty  
6 as charged and you will have to explain what you did here in  
7 open court?

8 (Discussion off record with Interpreter)

9 THE DEFENDANT: Yes.

10 THE COURT: If you enter a plea of guilty and  
11 waive a trial, you will give up your right of appeal from  
12 the adjudication of guilt. Do you understand that?

13 (Discussion off record with Interpreter)

14 THE DEFENDANT: Yes.

15 THE COURT: You have been charged with a felony,  
16 and if you enter a plea of guilty, you will lose your civil  
17 rights, whatever civil rights you enjoy in this country as  
18 given your immigration status, including but not limited to  
19 the right to vote, to keep and bear firearms, to hold public  
20 office, and to serve on a jury. Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: So I don't mean to suggest to you that  
23 you have any or all of those rights even now, but to the  
24 extent that you do, you will lose them once you enter a plea  
25 of guilty and it's accepted. You understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Other rights may also be lost, such as  
3 your ability to engage in certain employments and/or federal  
4 programs, including for a period of time the right to any  
5 social security benefits. Do you understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: You may have defenses to the pending  
8 charge, but if you plead guilty, you waive and give up those  
9 defenses. Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: You have the right to challenge the  
12 legality of any statement or confession or any other  
13 evidence obtained or seized from you, but by pleading  
14 guilty, you waive and give up your right to challenge the  
15 way the Government obtained any evidence, statements, or  
16 confessions. Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: In addition, by pleading guilty, you  
19 may lose the right to challenge on appeal any ruling that  
20 the Court has already made. Do you understand that?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: In order for you to be found guilty of  
23 the offense alleged in the Information, the Government would  
24 have to prove each and every one of the following elements  
25 beyond a reasonable doubt. First, that you conducted,

1 controlled, managed, supervised, directed, or owned all or  
2 part of a money transmitting business. Do you understand  
3 the meaning of all of those words?

4 THE DEFENDANT: Yes.

5 THE COURT: Second, that the money transmitting  
6 business conducted, controlled, managed, supervised,  
7 directed, or owned by you was not licensed as required by  
8 state or federal law. Do you understand all of the words in  
9 that element?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: And third and finally, that you did so  
12 knowingly. Do you understand the meaning of those words?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: All right. So do you then understand  
15 all of those elements of proof that the Government would be  
16 required to make beyond a reasonable doubt if you chose to  
17 go to trial before you could be found guilty of the offense  
18 charged?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, I have before me a Notice of  
21 Maximum Penalties, Elements, and Factual Basis which  
22 contains a recitation of the factual basis underlying the  
23 charge. That appears beginning on Page 4 of this document  
24 and continues to and including --

25 (Discussion off record with Interpreter)

1 THE COURT: -- Page 25. Mr. Schutt, have you read  
2 or had translated for you that recitation of facts on those  
3 pages?

4 MR. FELMAN: Are they the same as what was in the  
5 Complaint?

6 (Discussion off record)

7 THE COURT: Do you have that document, counsel?

8 MR. FELMAN: I don't think we have it here.

9 THE COURT: So the record is clear, counsel,  
10 you've now been handed a copy of that document and you're  
11 reviewing it with the defendant; correct?

12 MR. FELMAN: That's correct, Your Honor.

13 THE COURT: Do you need time to permit the  
14 defendant to review those factual allegations?

15 MR. FELMAN: Well, I think he's read Pages 24 and  
16 25.

17 THE COURT: I want to know that he is familiar  
18 with -- is familiar with all of these factual allegations  
19 beginning on Page 4.

20 MR. BARCLIFT: Judge, the facts are very similar  
21 to those facts contained in the original affidavit, but I  
22 would suggest that we take whatever time is necessary for  
23 him to read through to ensure themselves that they are.

24 MR. FELMAN: I agree with Mr. Barclift, Your  
25 Honor. I'm sure it's substantially similar.

1           THE COURT: We'll take a brief recess. I want to  
2 be clear, it's important that you, Mr. Schutt, read and  
3 understand, and to the extent that you don't understand the  
4 English, have the interpreter translate that language for  
5 you into German. It's important that you understand all of  
6 these factual allegations, recitations contained on Pages 4  
7 through 25. And let me -- just let me know when you've  
8 reviewed all of that, read all of that, because I'll be  
9 asking you to tell me whether you believe those facts are  
10 correct and whether you object to any of them. All right?  
11 We'll take a brief recess.

12           COURT SECURITY OFFICER: All rise.

13           (Recess from 3:05 p.m. to 3:18 p.m.)

14           THE COURT: Counsel?

15           MR. FELMAN: Your Honor, Mr. Schutt has completed  
16 reviewing the document and is prepared to answer the Court's  
17 questions regarding it. However, in the course of reviewing  
18 it, we did have one minor correction that we need to put on  
19 the record, and that is that with respect to the forfeiture,  
20 he is on notice of the items the Government is seeking to  
21 forfeit. There are a few items on there that we just have  
22 not had an opportunity to review and discuss with him and we  
23 have not had an opportunity to review the Government's  
24 factual basis in support of those items. So what we've  
25 agreed is within the next ten days, we'll get with the

1 Government in time for them to file their preliminary order  
2 of forfeiture and work those issues out.

3 THE COURT: That all relates to the forfeiture  
4 only?

5 MR. FELMAN: It does.

6 THE COURT: Not the underlying charge?

7 MR. FELMAN: That's correct.

8 THE COURT: All right. So now, let me ask you,  
9 Mr. Barclift, if I should then and the defendant should  
10 understand that this recitation constitutes the proffer of  
11 facts indicating what it is the Government would expect to  
12 prove if the matter proceeded to trial?

13 MR. BARCLIFT: It does, Your Honor, among others,  
14 possibly.

15 THE COURT: And is there anything else you want to  
16 add to the recitation as contained in that document?

17 MR. BARCLIFT: There is not, Your Honor.

18 THE COURT: All right. Mr. Schutt, have you -- do  
19 you acknowledge that you have now read that entire  
20 recitation?

21 THE DEFENDANT: Yes.

22 THE COURT: Pages 4 through 25 --

23 THE DEFENDANT: Yes.

24 THE COURT: -- of the document titled Notice of  
25 Maximum Penalties, Elements, and Factual Basis; is that

1 right?

2 THE DEFENDANT: Yes, that's right.

3 THE COURT: And to the extent that you had any  
4 question about the meaning of any words or combination of  
5 words or phrases, you had the German language interpreter  
6 translate those words for your benefit?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. Let me ask you now if you  
9 agree that that recitation of facts is correct?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you object to any of the facts as  
12 contained in that recitation?

13 THE DEFENDANT: No.

14 THE COURT: I want you now, in your own words, to  
15 tell me what it is that you did that leads you to believe  
16 that you are guilty of the offense charged.

17 THE DEFENDANT: I opened bank accounts in United  
18 States and I received money from overseas to make pay-outs  
19 to a poker player, and I didn't have a license for money  
20 transmitting business and -- well, that's what I did.

21 THE COURT: Mr. Barclift?

22 MR. BARCLIFT: Yes, Your Honor.

23 THE COURT: Are you satisfied with that  
24 recitation?

25 MR. BARCLIFT: I think we could develop it a

1 little bit more.

2 THE COURT: Do you have specific questions you'd  
3 like the defendant to address?

4 MR. BARCLIFT: Did the money come from overseas?

5 THE DEFENDANT: Yes, the money came from overseas.

6 MR. BARCLIFT: By wire transfers?

7 THE DEFENDANT: By wire transfers.

8 MR. BARCLIFT: And they were received into bank  
9 accounts that were in the names of corporations that you  
10 controlled?

11 THE DEFENDANT: Yes.

12 MR. BARCLIFT: And from those accounts, those  
13 moneys were disbursed to persons throughout the United  
14 States?

15 THE DEFENDANT: Throughout the United States.

16 MR. BARCLIFT: Either by mail or Federal Express.

17 THE DEFENDANT: Mail or Federal Express, yes.

18 MR. BARCLIFT: Nothing further -- oh, but you said  
19 before, none of those businesses you operated were licensed  
20 with the state of Florida or FinCEN's, which is a federal  
21 agency?

22 THE DEFENDANT: No, none of the businesses had a  
23 license for money transmitting.

24 THE COURT: All right. Is there anything else,  
25 Mr. Schutt, that you want to tell me about what it is that

1 you did in this case?

2 THE DEFENDANT: No, sir.

3 THE COURT: Having heard what I had to tell you  
4 during this colloquy, the questions I've asked you, the  
5 information I've provided to you, and the factual recitation  
6 in the document that we've been discussing most recently,  
7 having heard all of that and having all of that in mind, and  
8 having heard an explanation of the consequences of your  
9 entering a guilty plea and its effects on your rights, do  
10 you still desire to enter a plea of guilty as to Count 1 of  
11 the Information?

12 (Discussion off record with Interpreter)

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Is there anything you want to tell me  
15 or ask your attorney that bears on your decision to plead  
16 guilty that we've not already discussed?

17 (Discussion off record with Counsel)

18 THE DEFENDANT: No, sir.

19 THE COURT: I ask you, then, as to Count 1 of the  
20 Information, how do you now plead, guilty or not guilty?

21 THE DEFENDANT: Guilty.

22 THE COURT: Are you freely and voluntarily  
23 entering a plea of guilty to Count 1 of the Information?

24 THE DEFENDANT: Yes.

25 THE COURT: I determine that the defendant's plea

1 of guilty is knowingly, voluntarily, and intelligently made  
2 and not the result of any threats or promises. I recommend  
3 that the plea of guilty, therefore, be accepted.

4 Mr. Schutt, in the near future, an officer from  
5 the Probation Department will contact you to set up an  
6 interview to prepare the presentence report that we talked  
7 about. You have the right to have your attorney present  
8 during those discussions. After the report has been  
9 prepared, you and your attorney will have the opportunity to  
10 review it and make any objections to the facts or matters  
11 contained in the report.

12 Prior to the District Court pronouncing the  
13 sentence in your case, you and your attorney will have the  
14 opportunity to address the sentencing judge on your behalf.  
15 Do you understand all of these rights?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Counsel, the defendant is presently  
18 detained pursuant to a detention order. There is pending a  
19 motion to review that order of detention. Let me ask the  
20 Government what its position is with respect to the  
21 defendant's detention status.

22 MR. BARCLIFT: Your Honor, at this point, the  
23 Government does not oppose the defendant's motion filed on  
24 March 19th, and are in agreement to the defendant's release  
25 upon his signing a 100,000-dollar signature bond co-signed

1 by his spouse. Initially, the Court -- the Court detained  
2 the defendant because the Government was concerned and the  
3 Court was concerned that the defendant posed a risk of  
4 flight. That was based on the fact that he was a German  
5 citizen who held a pilot's license and appeared to have  
6 access to a lot of money.

7 In the last 30 or so days, the Government has  
8 become more familiar with Mr. Schutt and his particular  
9 situation. The pilot's license is a German pilot's license,  
10 one that would not be valid here, I don't think. We have  
11 his passport -- at least I think the Clerk's Office would  
12 have his passport. He is married, has a wife here, has  
13 plans to stay here. He's highly motivated to stay here.  
14 We're comfortable that -- that we have in our grasp the bulk  
15 of the moneys that he had access to, so we're not as  
16 concerned now as we were 30 days ago that he poses a risk of  
17 flight, and therefore, we are not opposing the defendant's  
18 motion under these circumstances.

19 THE COURT: I would expect that any release order  
20 that the Court considered would include provisions or  
21 special conditions requiring, in addition to the bond  
22 condition that's been mentioned, requiring the defendant to  
23 report to Pretrial Services as directed, to -- that he  
24 obtain no passport, that his travel be restricted to the  
25 Middle District of Florida, and that he maintain or actively

1 seek verifiable employment if legally allowed to do so.

2 Defense counsel, do you wish to speak to any of  
3 that?

4 MR. FELMAN: Only the requirement that his travel  
5 be restricted within the Middle District. We could go into  
6 that in greater detail at sidebar if necessary, but matters  
7 that we discussed earlier will likely require his travel  
8 outside the District.

9 THE COURT: What is the Government's position on a  
10 travel restriction?

11 MR. BARCLIFT: May I speak with counsel?

12 THE COURT: You may.

13 (Discussion off record)

14 MR. BARCLIFT: Judge, our preference would be that  
15 travel be restricted to the Middle District of Florida  
16 except as approved with three days advance notice to  
17 Pretrial Services.

18 THE COURT: Counsel, defense counsel?

19 MR. FELMAN: That's fine, Your Honor. In other  
20 words, we would not need to burden the Court with a motion  
21 for travel every time. We would work it out with the  
22 approval of his Pretrial Services officer.

23 THE COURT: Is that acceptable to Pretrial  
24 Services?

25 MR. PARKS: It is, Your Honor.

1           THE COURT: So do you have that condition, then?  
2 That's restricted to the Middle District of Florida except  
3 as on three days notice, a request for travel outside the  
4 district is approved in advance by the supervising Pretrial  
5 Services officer.

6           The clerk tells me that there's no indication that  
7 the defendant's passport is on file in the Clerk's Office.

8           MR. BARCLIFT: If that's the case, it would be in  
9 the custody of Secret Service, and we'll get that to the  
10 Clerk's Office.

11          THE COURT: You're satisfied, Mr. Barclift, that  
12 it is not in the defendant's possession?

13          MR. BARCLIFT: I am, Your Honor.

14          THE COURT: All right. So how available is that?

15          AGENT MENSTER: We can have it whenever you like,  
16 sir.

17          MR. BARCLIFT: I would think he could have it here  
18 tomorrow, Your Honor.

19          THE COURT: All right. I don't know where you're  
20 headquartered so --

21          AGENT MENSTER: Oh, it's here in Fort Myers, sir.

22          THE COURT: It's in Fort Myers, all right. So the  
23 understanding will be -- so there will be -- the passport  
24 will be turned over. It's obviously in the custody at this  
25 point of a federal agency and you'll take responsibility for

1 seeing to it that that's turned over to the Clerk's Office;  
2 correct?

3 AGENT MENSTER: Yes, sir.

4 THE COURT: All right. We'll wait just a moment  
5 until the order is prepared and then you'll have a chance to  
6 review it.

7 MR. BARCLIFT: For the record, this is Special  
8 Agent Nick Menster with the U.S. Secret Service.

9 (Pause in place)

10 THE COURT: Defense counsel, let me inquire of you  
11 whether or not the defendant has a Visa. Does he hold a  
12 Visa?

13 MR. FELMAN: He does, Your Honor.

14 THE COURT: And what kind of a Visa is it? Does  
15 it permit him to work?

16 MR. FELMAN: It does not, although he's put in an  
17 application for that, as I understand it. So the -- maybe I  
18 think he would prefer to explain it because the employment  
19 condition might be an issue. I think the defendant would  
20 like to explain it to you directly.

21 THE COURT: Go ahead.

22 THE DEFENDANT: I have two Visas. One Visa is  
23 called the B Visa. I can stay here up to a certain time.  
24 It depends with the immigration officer. And I got in  
25 January my new Visa. It's a five years Visa. Means I can

1 stay in the country five years, but I just got, I guess last  
2 month in January, the confirmation from the government that  
3 they received my paperwork so that my Visa, I'm not sure  
4 they're going to be --

5 (Discussion off record with Counsel)

6 MR. FELMAN: He's applied for a green card. So  
7 that may supersede some of that, but I don't know at this  
8 point whether he's allowed to work in the United States or  
9 not until the green card issue is processed.

10 (Discussion off record)

11 MR. FELMAN: So he has other counsel that  
12 represent him on the immigration matters, Your Honor.

13 THE COURT: I'm just not going to include an  
14 employment condition in the -- in the order. So that the  
15 record is clear, I will then be entering a release order,  
16 which by agreement of the parties, which will supersede, of  
17 course, the detention order that has been in place to this  
18 point.

19 MR. FELMAN: And Your Honor, in terms of the  
20 signature bond, if the wife is here to execute, is that  
21 something also that the Clerk's Office would be preparing  
22 for us at this time?

23 THE COURT: Yes. The bond, you mean? Yes.

24 MR. FELMAN: Yes.

25 THE COURT: We'll be in recess for a few minutes

1 and when the paperwork is ready, it will be provided to  
2 counsel for review and if you have any questions, you'll let  
3 me know. If it's acceptable, you'll let us know that as  
4 well, and I'll come back and we'll execute it.

5 COURT SECURITY OFFICER: All rise.

6 (Recess at 3:35 p.m.)

7 (Proceedings concluded at 3:55 p.m. without  
8 returning to the record)

9  
10  
11 CERTIFICATE

12 I CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE AND  
13 ACCURATE TRANSCRIPT FROM THE ORIGINAL STENOGRAPHIC RECORD IN  
14 THE ABOVE-ENTITLED MATTER.

15  
16 Dated this 1st day of April, 2010.

17  
18 /s/ R. Joy Stancel

19 \_\_\_\_\_  
20 R. JOY STANCEL, RMR-CRR  
21 FEDERAL OFFICIAL COURT REPORTER  
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