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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-01-20127-JF  
)  
Plaintiff, )  
) San Jose, CA  
vs. ) October 2, 2001  
)  
ROGER VER, )  
)  
Defendant. )  
-----)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JEREMY FOGEL  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:  
For the United States of America: United States Attorney's Office  
By: SCOTT H. FREWING, AUSA  
150 Almaden Avenue  
Suite 900  
San Jose, CA 95113  
  
For the Defendant: Law Offices of Stuart D. Kirchick  
By: STUART D. KIRCHICK  
1143 Story Road  
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Court Reporter: PETER TORREANO, CSR  
License Number C-7623

1 San Jose, California October 2, 2001

2 P R O C E E D I N G S

3 THE COURT: United States versus Roger Ver.

4 MR. NEDROW: Jeff Nedrow for the United States,  
5 Your Honor.

6 Your Honor, this is Mr. Kirchick's and  
7 Mr. Frewing's case and my understanding is there's some  
8 modifications to the plea agreement being made and  
9 Mr. Kirchick is in another court and will be here  
10 shortly.

11 THE COURT: So we'll pass this one, too.

12 MR. NEDROW: Thank you.

13 (After reporting unrelated matters, not herein  
14 transcribed, the following proceedings were held:)

15 THE COURT: All right. I think Mr. Kirchick is  
16 with us. We go to the Roger Ver matter.

17 United States versus Roger Ver.

18 MR. FREWING: Good morning again, Your Honor.

19 Scott Frewing for the United States.

20 MR. KIRCHICK: Good morning, Your Honor.

21 Stuart Kirchick for Mr. Ver. May I have one  
22 moment in reviewing the plea agreement with the  
23 Government?

24 THE COURT: Okay.

25 //

1           (After reporting unrelated matters, not herein  
2 transcribed, the following proceedings were held:)

3           THE COURT: Yes. So back on the record.

4           Is it "Ver" or "Ver"?

5           MR. KIRCHICK: Your choice, Your Honor.

6           THE COURT: Okay. Thank you.

7           MR. FREWING: Thank you, Your Honor, for  
8 accommodating us.

9           THE COURT: Can I get appearances again, please.

10          MR. FREWING: Scott Frewing for the United  
11 States, Your Honor.

12          MR. KIRCHICK: Stuart Kirchick for Roger Ver.  
13 He is present.

14          THE COURT: And do you have a disposition?

15          MR. FREWING: We do, Your Honor. And if Mr. Ver  
16 would like to sign it in court here, we will pass  
17 forward a plea agreement.

18          Your Honor, I'm going to pass forward a signed  
19 plea agreement.

20          As the Court is reviewing that, the Court may  
21 note on page 4 of paragraph 7 an annotation to fix an  
22 incorrectly inverted less than symbol to a greater than  
23 symbol, and all the parties have initialed that change.

24          THE COURT: Okay. Okay. Let's have the  
25 Defendant sworn.

1 THE CLERK: Raise your right hand, please.

2 Do you solemnly swear that any statements you  
3 shall give to the Court concerning your plea of guilty  
4 shall be the truth, the whole truth, and nothing but the  
5 truth, so help you God?

6 THE DEFENDANT: I do.

7 THE COURT: All right. Mr. Ver, I'm going to be  
8 asking you some questions. If there is anything you  
9 need me to repeat or explain, please tell me. If you  
10 need to speak to Mr. Kirchick before you answer a  
11 question, please do that. And please remember that you  
12 have to tell the truth and give me complete and truthful  
13 answers to all of my questions and that if you fail to  
14 do that you can be prosecuted for making false  
15 statements.

16 Do you understand that, sir?

17 THE DEFENDANT: I do.

18 THE COURT: What is your true name?

19 THE DEFENDANT: Roger Keith Ver.

20 THE COURT: And how old are you?

21 THE DEFENDANT: 22, Your Honor.

22 THE COURT: Where were you born?

23 THE DEFENDANT: San Jose, California.

24 THE COURT: Okay. You are a United States  
25 citizen?

1 THE DEFENDANT: I am.

2 THE COURT: Your native language is English; is  
3 that right?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you read and understand English;  
6 is that right?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And you read and understood the plea  
9 agreement; is that correct?

10 THE DEFENDANT: To the best of my ability, Your  
11 Honor.

12 THE COURT: To the extent that you have any  
13 questions about the plea agreement, was Mr. Kirchick  
14 able to answer them?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Have you had enough time to speak  
17 with Mr. Kirchick about the plea agreement?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you have any complaint or any  
20 dissatisfaction with the legal services you've received?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Other than the promises contained in  
23 this written plea agreement, has anyone made any  
24 promises to you in exchange for your guilty plea?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: And has anyone threatened you in any  
2 way in order to cause you to plead guilty in this case?

3 THE DEFENDANT: It depends on how you define  
4 "threaten," but I would say no, Your Honor.

5 THE COURT: Let me be clear since I saw you  
6 hesitate there. I have no doubt -- I don't want to know  
7 what you and Mr. Kirchick talked about, but I have no  
8 doubt Mr. Kirchick discussed with you what could happen  
9 if you went to trial and the advantages of entering a  
10 guilty plea as opposed to going to trial. That's not  
11 what I mean.

12 THE DEFENDANT: Okay.

13 THE COURT: By "threat" what I mean is someone  
14 said if you don't plead guilty, you're going to be  
15 harmed or some member of your family will be harmed or  
16 something bad will happen to you apart from the legal  
17 process.

18 THE DEFENDANT: Nothing apart from the legal  
19 process, Your Honor.

20 THE COURT: So the threat that you were  
21 referring to is the threat you would receive more time  
22 in prison if you were to go to trial and be convicted?

23 THE DEFENDANT: That and additional charges,  
24 Your Honor.

25 THE COURT: And additional charges. Okay.

1 So your decision to plead guilty has, in fact, been  
2 influenced by the possibility that you could receive  
3 additional charges and additional prison time; is that  
4 right?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: But there are no other threats of  
7 any kind or nature other than that?

8 THE DEFENDANT: None other than that, Your  
9 Honor.

10 THE COURT: Are you presently under the  
11 influence of any drug or medication?

12 THE DEFENDANT: I've been taking cold medicine.

13 THE COURT: All right. Does the cold medicine  
14 affect your ability to understand what you're doing  
15 right now?

16 THE DEFENDANT: It might impair my ability to  
17 determine that. I feel pretty miserable. I have the  
18 flu currently.

19 THE COURT: Would it be better to do this a  
20 different day?

21 THE DEFENDANT: I'm prepared to do this today.

22 THE COURT: Again, I don't want to have a  
23 problem later because on reflection you don't believe  
24 you understood what you were doing. Does the medicine  
25 you take affect your judgment to the extent that you

1 don't understand the questions I'm asking you?

2 THE DEFENDANT: I don't think so, Your Honor.

3 THE COURT: All right. Does it affect your  
4 understanding of the importance of this particular  
5 proceeding?

6 THE DEFENDANT: I hope not, Your Honor. I'm  
7 sure my mental capacity isn't, you know, up to par  
8 compared to how it would be normally.

9 THE COURT: Well, I want to be clear here that  
10 if you have any doubt about your ability to comprehend  
11 and understand what's taking place we should -- we  
12 should do it another time.

13 This is truly a case of haste makes waste. If  
14 you plead guilty today and decide two weeks from now  
15 that I really didn't mean to do that and if it hadn't  
16 been for that medicine I wouldn't have, it's going to be  
17 a very messy thing for everybody concerned especially  
18 you.

19 So if you have any question in your mind about  
20 your ability to think clearly this morning, I will  
21 continue this to another day.

22 THE DEFENDANT: In all honesty I think that that  
23 might upset, you know, two of the attorneys present and  
24 I'm willing to sign today.

25 THE COURT: But, you see, I appreciate your



1 concern for them, but if sometime in the future you have  
2 buyer's remorse about this plea agreement, to be very  
3 blunt about it, and you say, "I didn't understand what  
4 was happening and I didn't knowingly and intelligently  
5 give up my rights and I didn't understand the  
6 consequence of my plea," then that would have to be  
7 litigated.

8 I don't want to create a situation where that's  
9 going to occur. So I have to ask you again if you have  
10 any doubt about your ability mentally to proceed this  
11 morning, then we should proceed at a different time.

12 THE DEFENDANT: I'm prepared to sign today. I  
13 feel I can do so knowingly and intelligently.

14 THE COURT: Okay. Let me then discuss with you  
15 the elements of each of these offenses. You are  
16 actually offering to plead guilty to three offenses.  
17 One of them is dealing in explosives without a license.  
18 That's a violation of 18 United States Code Section  
19 842(a)(1) and in order for you to be found guilty of  
20 that offense the Government would have to prove beyond a  
21 reasonable doubt that you engaged in the business of  
22 dealing explosives and that you did not obtain a license  
23 to do so.

24 Do you understand the elements of that offense?

25 THE DEFENDANT: I understand.

1           THE COURT: And do you understand that if the  
2 Government failed to prove either of one of those  
3 elements beyond a reasonable doubt, you could not be  
4 convicted of that offense?

5           THE DEFENDANT: I understand.

6           THE COURT: The second charge is storing  
7 explosives in a manner not in conformity with  
8 regulations, which is a violation of 18 United States  
9 Code section 842(j). And the elements of that offense  
10 are that you stored explosive materials and that the  
11 storage of the explosives did not comply with  
12 regulations issued by the Secretary of the Treasury, and  
13 again the Government would have to prove each of these  
14 elements beyond a reasonable doubt.

15           Do you understand the elements?

16           THE DEFENDANT: I do, Your Honor.

17           THE COURT: And do you understand that if the  
18 Government failed to prove either one of those elements  
19 beyond a reasonable doubt, you could not be convicted?

20           THE DEFENDANT: I understand, Your Honor.

21           THE COURT: Okay. The third element is  
22 mailing -- excuse me, the third offense, rather, is  
23 mailing injurious articles in violation of 18 United  
24 States Code section 1716. There are three elements.  
25 One is that you knowingly mailed or caused to be mailed,

1 the second element, items which were declared  
2 non-mailable in Title 18 United States Code section  
3 1716, and, third, that it was not in accordance with the  
4 rules and regulations authorized by the Postal Service.

5 Do you understand those elements?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: Do you understand the Government  
8 again would have to prove each element beyond a  
9 reasonable doubt in order for you to be convicted?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: And if it failed to prove any one of  
12 those three elements, you could not be convicted.

13 Do you understand that?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: Okay. The maximum penalties for  
16 these offenses are as follows: For the dealing in  
17 explosives without a license, that is, count 1, ten  
18 years in prison, a maximum fine of \$250,000, a maximum  
19 term of supervised release of three years, and a  
20 mandatory special assessment of \$100.

21 For count 2, one year in prison, a maximum fine  
22 of \$100,000, one year of supervised release and a \$25  
23 mandatory special assessment.

24 And for count 3, one year in prison, a \$100,000  
25 fine, a one-year term of supervised release, and a \$25

1 mandatory special assessment.

2 Do you understand the maximum penalties?

3 THE DEFENDANT: I do, Your Honor.

4 THE COURT: Under this plea agreement there is  
5 an agreement that will impose some limits on the  
6 sentence that you can receive, although the actual  
7 sentence is up to the Court.

8 The plea agreement provides that you would  
9 receive a sentence at sentencing guideline level 1 --  
10 or, excuse me, sentencing guideline level 10 and that  
11 you would pay a \$150 mandatory special assessment.  
12 The specific number of months of imprisonment, the  
13 number of years of supervised release or the amount of  
14 fine would be left to the Court's discretion. The  
15 amount of months that you could receive for a sentence  
16 at guideline level 10 depends entirely on your criminal  
17 history.

18 Counsel, do we have an agreement or an estimate  
19 as to what Mr. Ver's criminal history is?

20 MR. FREWING: We do, Your Honor. And actually  
21 Mr. Kirchick -- we've been -- I'm going to apologize up  
22 front, Your Honor. We've been revising this plea  
23 agreement on the fly and Mr. Kirchick points out that it  
24 actually should be an adjusted offense level of 10,  
25 which we actually had earlier this morning and we

1 changed it and it should be an 11.

2 THE COURT: All right. So can you -- it's going  
3 to be an 11.

4 MR. FREWING: Just to make it very clear. If  
5 you get to the base offense level of 12 as stated in  
6 paragraph 7, it's a plus 1 for this specific --

7 THE COURT: The math is wrong. If you could  
8 correct then on the face of the plea agreement paragraph  
9 7G and paragraph 8, line 23 to read an 11 and have  
10 everyone initial it.

11 MR. FREWING: Thank you, Your Honor.

12 THE COURT: And while that's happening is there  
13 any information about Mr. Ver's criminal history?

14 MR. FREWING: Your Honor, the Government,  
15 although not willing to commit until there's a PSR,  
16 believes that Mr. Ver's criminal history is criminal  
17 history category 1.

18 MR. KIRCHICK: So does Mr. Ver.

19 THE COURT: I will advise him as to the entire  
20 range of level 11, but I just wanted to get some idea of  
21 the history.

22 MR. FREWING: For the record, Your Honor, we  
23 have made those two changes so that the adjusted offense  
24 level is 11. The parties initialed in both places for a  
25 total of three areas that we've initialed on this plea

1 agreement.

2 THE COURT: All right. Mr. Ver, a couple of  
3 things about this.

4 Just for your information, the sentencing  
5 guideline level 11, a person with no prior criminal  
6 history at all, which is what we were talking about with  
7 a level 1, could receive between eight and fourteen  
8 months in prison. If someone had a very serious  
9 criminal history, which is called a level 6, someone  
10 could receive up to 33 months in prison.

11 The range that the Court will operate within  
12 will be determined by your criminal history which is  
13 something that will be determined by the Court after  
14 receiving the probation report.

15 Do you understand that?

16 THE DEFENDANT: I do. Thank you, Your Honor.

17 THE COURT: And as far as the fine is concerned,  
18 conditions of supervised release, that's entirely up to  
19 the Court as well.

20 Do you understand that?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: Now, with regard to the agreement  
23 between you and the Government that the offense level  
24 will be an 11, that is an agreement that the Court can  
25 either accept or reject. The Court can say fine, I

1 agree with that, I accept that, and then the Court is  
2 bound to sentence you within that range. Or the Court  
3 can say for whatever reason at the sentencing the  
4 guideline level 11 is too high or too low and the Court  
5 does not agree with it, in which case you and the  
6 Government would both have the opportunity to withdraw  
7 from the plea agreement.

8 Do you understand that?

9 THE DEFENDANT: When is that supposed to happen,  
10 Your Honor?

11 THE COURT: When the probation report is  
12 received by the Court.

13 THE DEFENDANT: Approximately 30 days?

14 THE COURT: It's going to be more like 90 days.

15 THE DEFENDANT: Okay.

16 THE COURT: But the point is that in this type  
17 of plea agreement the Court only has two choices. It's  
18 yes or no. There are other kinds of plea agreements  
19 where the Court has much broader discretion, but in this  
20 one once it comes back it will be guideline level 11  
21 with the criminal history category. And if I think you  
22 should be sentenced outside that range, either higher or  
23 lower, I cannot impose that sentence without giving you  
24 the right to withdraw your plea.

25 Do you understand that?

1 THE DEFENDANT: I understand, Your Honor. Thank  
2 you.

3 THE COURT: Let's move on and talk about the  
4 Constitutional rights that you have in this matter.  
5 You have the right to be represented by a lawyer at  
6 every stage of the case. If you want to go to trial,  
7 you have the right to be represented by a lawyer at  
8 trial. And if you at any point in time cannot afford a  
9 lawyer, you have the right to have the Government pay  
10 for your lawyer at no cost to you.

11 Do you understand that?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: You have the right to a speedy  
14 public jury trial on all charges in this case.

15 Do you understand that right?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: Do you give up that right?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You have the right to see, hear and  
20 question any witnesses who testify against you.

21 Do you understand that right?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you give up that right?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You have the right to call witnesses



1 on your own behalf and, if the witnesses you want to  
2 call will not come to court voluntarily, you have the  
3 right to court orders to require those witnesses to  
4 come.

5 Do you understand that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you give up that right?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You have the right to testify for  
10 yourself and give your own version of what occurred  
11 here.

12 Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you give up right?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You have the right to remain silent,  
17 which means that no one can force you to take the stand  
18 and be a witness against yourself and no one can comment  
19 on the fact that you have remained silent as somehow  
20 showing that you're guilty.

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you give up right?

24 THE DEFENDANT: Do I have to to sign this?

25 THE COURT: Well, you can't plead guilty unless

1 you give up your Constitutional rights. If you don't  
2 want to give them up, you don't have to. Nobody can  
3 force you to do that.

4 And I mean this -- you know, we go through  
5 this -- I probably take hundreds of pleas in a year. So  
6 it becomes find of a routine for me, but this is the  
7 only case you have and once you enter the plea it's very  
8 hard to change your mind.

9 So you better be sure that this is what you want  
10 to do and if you're not sure, then I don't want to take  
11 your plea.

12 THE DEFENDANT: Can I have a one-week extension,  
13 Your Honor? I'd feel more comfortable discussing things  
14 a little bit further. I didn't realize this morning  
15 that we were going to sign the plea agreement.

16 MR. FREWING: Your Honor, we do have a Speedy  
17 Trial Act issue. We're going to need to go forward in  
18 this case. We've put this matter off a couple times.  
19 The information the Government has filed was filed on  
20 October 9, I believe, or at least that was the date of  
21 the arraignment. But we do have sufficient time if we  
22 do need to put it over.

23 THE COURT: I have a suggestion. Is everyone  
24 available Friday?

25 MR. FREWING: Yes, Your Honor. I'm certain the

1 Government is.

2 MR. KIRCHICK: I am available Friday, Your  
3 Honor.

4 THE COURT: 9:30. Friday morning.

5 MR. FREWING: That's fine, Your Honor.

6 THE COURT: And seriously, sir, this is it. I  
7 mean this is -- this is the -- once this plea is  
8 accepted -- and it's why I spend so much time taking  
9 them. I don't want to have to go back and deal with  
10 them when people change their minds. So you really have  
11 to be sure that this is what you want to do and once  
12 that plea is accepted then we proceed on the basis that  
13 you've been convicted of these crimes and we prepare the  
14 presentence report and we go ahead as agreed upon.

15 This is a very very serious matter and I would  
16 encourage you to discuss it thoroughly with Mr. Kirchick  
17 between now and Friday. I think because of the time  
18 constraints that Mr. Frewing has alluded to I'm  
19 reluctant to put it over any longer than that.

20 So Friday morning at 9:30 we will continue with  
21 this.

22 MR. KIRCHICK: Thank you.

23 THE DEFENDANT: Thank you, Your Honor.

24 THE COURT: Do you want to just hang on to this?

25 MR. FREWING: We'll take that plea agreement

1 back and we'll revise it when we come back Friday.

2 Thank you, Your Honor.

3 THE COURT: Very good.

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I, Peter Torreano, Official Court Reporter of the United States District Court for the Northern District of California, 280 South First Street, San Jose, California, do hereby certify:

That the foregoing transcript is a full, true and correct transcript of the proceedings had in United States v. Ver, Case No. CR-01-20127-JF, dated October 2, 2001; that I reported the same in stenotype to the best of my ability, and thereafter had the same transcribed by computer-aided transcription as herein appears.

-----  
PETER TORREANO, CSR  
License Number C-7623