

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

- - -

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

UNITED STATES OF AMERICA,)	CERTIFIED TRANSCRIPT
)	
Plaintiff,)	
vs.)	
)	SACR-14-00167-JVS
JOSEPH ROH,)	
)	
Defendant.)	
-----)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

June 4, 2019

SHARON A. SEFFENS, RPR
United States Courthouse
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SHARON A. SEFFENS, U.S. DISTRICT COURT REPORTER

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1 SANTA ANA, CALIFORNIA; TUESDAY, JUNE 4, 2019; 2:02 P.M.

02:02 2 THE CLERK: Item No. 2, SACR-14-00167-JVS, United
02:02 3 States of America versus Joseph Roh.

02:02 4 Counsel, please state your appearances for the
02:02 5 record.

02:02 6 MR. LICHTMAN: Good afternoon, Your Honor. Shawn
02:02 7 Nelson and Benjamin Lichtman for the United States.

02:03 8 MR. NICOLAYSEN: Good afternoon, Your Honor. Greg
02:03 9 Nicolaysen with Mr. Roh who is present on bond.

02:03 10 THE COURT: Good afternoon.

02:03 11 I note that a plea agreement was filed on behalf
02:03 12 of Mr. Roh on May 6, 2019. I will direct it be made part of
02:03 13 these proceedings.

02:03 14 Good afternoon, Mr. Roh.

02:03 15 THE DEFENDANT: Good afternoon.

02:03 16 THE COURT: Sir, before you I accept your plea of
02:03 17 guilty, I need to make sure that you understand the nature
02:03 18 of the charge against you and the consequences of any guilty
02:03 19 plea. I also need to make sure that you understand the
02:03 20 constitutional and statutory rights that you will be giving
02:03 21 up by pleading guilty.

02:03 22 For those reasons, I am going to ask you a number
02:03 23 of questions. If any of my questions are unclear, please
02:03 24 let me know, and I would be happy to rephrase the questions.

02:03 25 THE DEFENDANT: Yes, Your Honor.

02:03 1 THE COURT: You have the right to consult with
02:03 2 Mr. Nicolaysen at any point, so if you would like to do
02:04 3 that, please let me know. Okay?

02:04 4 THE DEFENDANT: Yes, Your Honor.

02:04 5 THE CLERK: At this time the clerk is going to put
02:04 6 you under oath.

02:04 7 (Defendant sworn)

02:04 8 THE COURT: Sir, do you understand that you are
02:04 9 now under oath and that if you answer any of my questions
02:04 10 falsely you could be prosecuted later for perjury or the
02:04 11 making of a false statement?

02:04 12 THE DEFENDANT: I do.

02:04 13 THE COURT: State your true and correct name.

02:04 14 THE DEFENDANT: Joseph Roh.

02:04 15 THE COURT: How old are you?

02:04 16 THE DEFENDANT: I am 51 years old.

02:04 17 THE COURT: Tell me about your education.

02:04 18 THE DEFENDANT: I finished three years of college
02:04 19 and elected to get married in that fourth year.

02:04 20 THE COURT: Have you recently been treated for any
02:04 21 mental illness?

02:04 22 THE DEFENDANT: No.

02:04 23 THE COURT: Have you recently been treated for any
02:04 24 addition to narcotics?

02:04 25 THE DEFENDANT: No.

02:04 1 THE COURT: Have you taken any medications, drugs,
02:04 2 or alcohol within the past 72 hours?

02:04 3 THE DEFENDANT: I take my normal medications that
02:04 4 I take for my diabetes and my neuropathy, but other than
02:04 5 that, no.

02:04 6 THE COURT: How long have you been on that
02:05 7 regimen?

02:05 8 THE DEFENDANT: For 15 years.

02:05 9 THE COURT: Are you able to carry out your
02:05 10 everyday activities while taking those medicines?

02:05 11 THE DEFENDANT: Yes.

02:05 12 THE COURT: How do you feel today?

02:05 13 THE DEFENDANT: I feel fine.

02:05 14 THE COURT: Do you feel alert?

02:05 15 THE DEFENDANT: Yes.

02:05 16 THE CLERK: Do you feel that your thinking powers
02:05 17 are working well?

02:05 18 THE DEFENDANT: Yes.

02:05 19 THE COURT: Do you think you have a frame of mind
02:05 20 today such that you are able to make an important decision?

02:05 21 THE DEFENDANT: Yes.

02:05 22 THE COURT: Do you suffer from any mental
02:05 23 condition that would prevent you from understanding fully
02:05 24 the nature of the charge against you and the consequences of
02:05 25 any guilty plea?

02:05 1 THE DEFENDANT: No, Your Honor.

02:05 2 THE COURT: Is there any reason at all why we

02:05 3 cannot go forward with your plea?

02:05 4 THE DEFENDANT: No.

02:05 5 THE COURT: Mr. Nicolaysen, have you had a chance

02:05 6 to speak to your client immediately prior to this

02:05 7 proceeding?

02:05 8 MR. NICOLAYSEN: I have.

02:05 9 THE COURT: Do you have any reason to believe that

02:05 10 the defendant is not competent to enter his plea at this

02:05 11 time?

02:05 12 MR. NICOLAYSEN: No.

02:05 13 THE CLERK: Do you know of any reason why we

02:05 14 should not go forward?

02:05 15 MR. NICOLAYSEN: No.

02:05 16 THE CLERK: Is it your opinion that your client is

02:05 17 in the full possession of his faculties?

02:05 18 MR. NICOLAYSEN: It is.

02:05 19 THE COURT: The Court having observed the

02:06 20 defendant and having considered his responses and the

02:06 21 responses of counsel, the Court finds that the defendant is

02:06 22 in the full possession of his faculties.

02:06 23 Sir, you have a number of constitutional rights

02:06 24 that you will be giving up by pleading guilty. I am going

02:06 25 to tell you about those at this time.

02:06 1 You have the right to a speedy and public trial.
02:06 2 You have the right to be tried by a jury. Alternatively,
02:06 3 you have the right to waive a jury trial and to be tried by
02:06 4 the Court. In either case, you have the right to persist in
02:06 5 your plea of not guilty, and you have the right to make the
02:06 6 government prove that you are in fact guilty beyond a
02:06 7 reasonable doubt.

02:06 8 You have the right to be represented by an
02:06 9 attorney throughout these proceedings, and if you cannot
02:06 10 afford one, one will be appointed for you free of charge.

02:06 11 You have the right to confront and cross-examine
02:06 12 all witnesses called to testify against you. You have the
02:06 13 right to present witnesses on your own behalf, and you have
02:06 14 the right to have them subpoenaed, that is, compelled by
02:06 15 Court order to come here to testify.

02:07 16 You also have a privilege against
02:07 17 self-incrimination. That is the right to remain silent.
02:07 18 However, by entering a plea of guilty, you are giving up
02:07 19 that right because you are incriminating yourself. You have
02:07 20 the right to testify on your own behalf, but you cannot be
02:07 21 compelled to do so or to incriminate yourself in any way.
02:07 22 If you do not testify at trial, that fact cannot be used
02:07 23 against you.

02:07 24 In the event of a conviction after trial, you have
02:07 25 the right to appeal the conviction and the sentence.

02:07 1 Have you discussed these rights with
02:07 2 Mr. Nicolaysen?

02:07 3 THE DEFENDANT: Yes.

02:07 4 THE COURT: Would you like any additional time now
02:07 5 to discuss these rights with him?

02:07 6 MR. NICOLAYSEN: No.

02:07 7 THE CLERK: Do you understand that you have these
02:07 8 rights and that if you enter a plea of guilty and the plea
02:07 9 is accepted by the Court you will be giving up the right to
02:07 10 a jury trial and all the other rights I have just described
02:07 11 to you?

02:07 12 THE DEFENDANT: Yes.

02:07 13 THE CLERK: Do you give up these rights?

02:07 14 THE DEFENDANT: Yes.

02:07 15 THE COURT: Mr. Nicolaysen, are you satisfied that
02:07 16 each of these waivers is made knowingly and voluntarily?

02:08 17 MR. NICOLAYSEN: I am.

02:08 18 THE COURT: Do you join in and concur in each of
02:08 19 the waivers?

02:08 20 MR. NICOLAYSEN: So join and concur.

02:08 21 THE CLERK: Sir, in Count One of the Indictment,
02:08 22 you are charged with violating Title 18, United States Code,
02:08 23 Section 922(a)(1)(A), engaging in the business of
02:08 24 manufacturing firearms without a license, which is a felony.

02:08 25 Would the government recite the elements of the

02:08 1 charge, please.

02:08 2 MR. NELSON: Yes. In order for the defendant to
02:08 3 be guilty of the violation of Title 18, United States Code,
02:08 4 Section 922(a)(1)(A), the following must be true: (1) the
02:08 5 defendant was willfully engaged in the business of
02:08 6 manufacturing firearms within the dates specified in the
02:08 7 Indictment; and

02:08 8 (2) the defendant did not then have a license as a
02:08 9 firearms manufacturer.

02:08 10 THE COURT: Sir, do you understand the nature of
02:08 11 the charge against you?

02:08 12 THE DEFENDANT: Yes.

02:08 13 THE COURT: Have you discussed the charge and each
02:09 14 of the elements of the crime with Mr. Nicolaysen?

02:09 15 THE DEFENDANT: Yes.

02:09 16 THE COURT: Do you have any questions about the
02:09 17 charge against you?

02:09 18 THE DEFENDANT: No, Your Honor.

02:09 19 THE COURT: Have you been advised of the maximum
02:09 20 penalties that can be imposed for the charge to which you
02:09 21 are offering to plead guilty?

02:09 22 THE DEFENDANT: Yes.

02:09 23 THE CLERK: Mr. Nelson, would you recite those,
02:09 24 please.

02:09 25 MR. NELSON: The statutory maximum sentence that

02:09 1 the Court can impose for the violation of Title 18, United
02:09 2 States Code, Section 922(a)(1)(A), is: five years'
02:09 3 imprisonment; a three-year period of supervised release; a
02:09 4 fine of \$1 million, or twice the gross gain or gross loss
02:09 5 resulting from -- I'm sorry -- \$250,000, or twice the gross
02:09 6 gain or gross loss resulting from the offense -- I believe
02:09 7 that's an error in the plea agreement -- whichever is
02:09 8 greatest; and a mandatory special assessment of \$100.

02:09 9 MR. NICOLAYSEN: Your Honor, if the Court, please,
02:09 10 I'm prepared to orally stipulate to revise the dollar amount
02:10 11 on line 5 of page 4 without the need to refile the
02:10 12 agreement.

02:10 13 THE COURT: Okay. Line 5 of the plea agreement
02:10 14 will be amended by interlineation to state a total fine of
02:10 15 \$250,000.

02:10 16 Sir, do you have any questions about the
02:10 17 penalties that can be imposed?

02:10 18 THE DEFENDANT: No.

02:10 19 THE COURT: Do you understand that there is no
02:10 20 parole and that if you are sentenced to prison you will not
02:10 21 be released on parole?

02:10 22 THE DEFENDANT: Yes.

02:10 23 THE COURT: You may be subject to supervised
02:10 24 release for a number of years after your release from
02:10 25 prison. Do you understand that if you violate any of the

02:10 1 terms and conditions of your supervised release you could be
02:10 2 given more time in prison?

02:10 3 THE DEFENDANT: Yes.

02:10 4 MR. NICOLAYSEN: Your Honor, would the Court allow
02:10 5 me just to interject?

02:10 6 THE COURT: Sure.

02:10 7 MR. NICOLAYSEN: As there is a Diversion Agreement
02:10 8 attached, I have advised Mr. Roh that he is subject to all
02:10 9 of these penalties if he breaches that agreement and the
02:11 10 agreement is revoked. I would ask the Court to allow us to
02:11 11 acknowledge that. So if he satisfies all of the diversion
02:11 12 conditions of these particular provisions, the traditional
02:11 13 plea agreement conditions would not apply. So when Your
02:11 14 Honor says do you understand that supervised release is a
02:11 15 period following incarceration, all of this is predicated on
02:11 16 a breach of the Diversion Agreement and that agreement being
02:11 17 revoked.

02:11 18 THE COURT: Well, it's also premised on the
02:11 19 assumption that he in fact will be accepted into the
02:11 20 program.

02:11 21 MR. NICOLAYSEN: Well, I don't think that is going
02:11 22 to be an issue.

02:11 23 THE COURT: Well, I'm not saying that it is,
02:11 24 but --

02:11 25 MR. NICOLAYSEN: I believe that that has already

02:11 1 been established, and I appreciate the Court bringing that
02:11 2 up because the letter states the U.S. Attorney's Office has
02:11 3 already reached the determination that a diversion applies.

02:11 4 MR. NELSON: We consulted with Pretrial, and
02:11 5 Pretrial is in agreement that he will be accepted into the
02:11 6 Diversion Program.

02:11 7 THE COURT: It hasn't come to the presiding judge
02:12 8 for that determination. I believe I have to sign off.

02:12 9 MR. NICOLAYSEN: I'm not aware that that's a
02:12 10 requirement. Is that an issue that perhaps we should
02:12 11 address at this time before we complete the Rule 11
02:12 12 colloquy?

02:12 13 MR. NELSON: Unlike a CASA diversion or a CASA
02:12 14 proceeding that would require such approval, I believe this
02:12 15 sort of diversion -- it's often colloquially referred to as
02:12 16 the Brooklyn Program where it originated -- is an agreement
02:12 17 between the defendant, the government, and Pretrial so long
02:12 18 as Your Honor accepts the plea agreement.

02:13 19 THE COURT: Does taking his plea signify that I
02:13 20 accept the fact that the government and the defendant have
02:13 21 agreed to this Diversion Program?

02:13 22 MR. NELSON: Yes.

02:13 23 THE COURT: Well, I don't think I have any choice
02:13 24 in accepting a plea.

02:13 25 MR. NELSON: You have your usual discretion to

02:13 1 ensure that it's knowing, voluntary --

02:13 2 THE COURT: Well, right. Assuming all those
02:13 3 facts, I don't believe I have the discretion to make any
02:13 4 judgment other than the charging judgment of the U.S.
02:13 5 Attorney's Office.

02:13 6 MR. NELSON: Yes, I believe that's true.

02:13 7 THE COURT: That's my understanding of a typical
02:13 8 plea. I have just no discretion to do that.

02:13 9 Well, let me acknowledge on the record the
02:14 10 understanding that you have been accepted for this program,
02:14 11 and the consequences that I am outlining may depend on your
02:14 12 failing to complete the program.

02:14 13 With that in mind, sir, do you understand that you
02:14 14 may be subject to supervised release for a number of years
02:14 15 after your release from prison?

02:14 16 THE COURT: I didn't understand.

02:14 17 THE COURT: Sir, for today's purposes, I am not
02:14 18 making any assumption about whether you can and do
02:14 19 successfully complete the program. Accordingly, I am
02:14 20 telling you of the consequences if you don't complete the
02:14 21 program. And whether those consequences come to bear, I
02:14 22 don't know, but you ought to know what the downside is if
02:14 23 for any reason you don't successfully complete the program.

02:14 24 THE DEFENDANT: Yes, Your Honor.

02:14 25 THE COURT: Okay. Do you understand that you may

02:14 1 be subject to supervised release for a number of years after
02:14 2 your release from prison?

02:14 3 THE DEFENDANT: Yes.

02:14 4 THE CLERK: Do you understand that if you are
02:14 5 currently on probation, parole, or supervised release for
02:15 6 another offense that your plea in this case may result in a
02:15 7 violation of that probation, parole, or supervised release?

02:15 8 THE DEFENDANT: Yes.

02:15 9 THE COURT: Have you discussed the possible
02:15 10 punishments, the facts, and the defenses with
02:15 11 Mr. Nicolaysen?

02:15 12 THE DEFENDANT: Yes.

02:15 13 THE COURT: Among the factors that the Court will
02:15 14 consider in sentencing you are the Sentencing Reform Act of
02:15 15 1984 and the United States Sentencing Commission Guidelines.

02:15 16 Has Mr. Nicolaysen explained to you the various
02:15 17 elements and factors that the Court will take into account
02:15 18 in analyzing your case under the guidelines?

02:15 19 THE DEFENDANT: Yes.

02:15 20 THE COURT: Do you understand that any sentence
02:15 21 ultimately imposed may differ from any estimate
02:15 22 Mr. Nicolaysen may have given you?

02:15 23 THE DEFENDANT: I didn't understand.

02:15 24 THE COURT: Sure. In the event that he has given
02:15 25 you an estimate of what your sentence might be in the event

02:15 1 that you don't complete the program, I just want you to be
02:16 2 aware that if I am in that situation and I do need to
02:16 3 sentence you that the sentence may be different than any
02:16 4 recommendation or assessment he may have had made for you?

02:16 5 THE DEFENDANT: Yes.

02:16 6 THE COURT: The presentence report will contain a
02:16 7 recommended guidelines range. There will be a high and a
02:16 8 low to the range. That range is entirely advisory, which
02:16 9 means that in theory I could sentence you anywhere from no
02:16 10 time in prison to the statutory maximum of five years.

02:16 11 Do you understand that the Court will
02:16 12 independently consider both the presentence report and any
02:16 13 objections of the parties and will analyze your case under
02:16 14 the guidelines taking into account the nature of the
02:16 15 offense; what your prior record is, if any; whether you have
02:16 16 obstructed justice; and whether you have accepted
02:16 17 responsibility?

02:16 18 THE DEFENDANT: Yes.

02:16 19 THE COURT: Do you understand that the Court has
02:16 20 the authority to depart upward or downward from the advisory
02:16 21 guideline range and will take into account other statutory
02:17 22 factors under the Sentencing Reform Act that could result in
02:17 23 a sentence that is either greater or lesser than called for
02:17 24 by the advisory guidelines?

02:17 25 THE DEFENDANT: Yes.

02:17 1 THE COURT: Do you understand that for all these
02:17 2 reasons neither Mr. Nicolaysen, nor I, nor anyone can tell
02:17 3 you today with certainty which guidelines apply or what your
02:17 4 sentence will be?

02:17 5 THE DEFENDANT: Yes.

02:17 6 THE COURT: Do you understand that if the sentence
02:17 7 which I ultimately impose is more severe than you
02:17 8 anticipated you will not be allowed to withdraw your plea?

02:17 9 THE DEFENDANT: Yes.

02:17 10 THE COURT: As I indicated, a plea agreement has
02:17 11 been filed in this case. Have you read the plea agreement?

02:17 12 THE DEFENDANT: Yes.

02:17 13 THE COURT: Have you discussed the plea agreement
02:17 14 and all of its terms with Mr. Nicolaysen?

02:17 15 THE DEFENDANT: Yes.

02:17 16 THE COURT: Did you sign the plea agreement?

02:17 17 THE DEFENDANT: Yes.

02:17 18 THE COURT: Do you understand the plea agreement
02:17 19 and all of its terms?

02:17 20 THE DEFENDANT: Yes.

02:17 21 THE COURT: Would you like any additional time now
02:17 22 to discuss the plea agreement with Mr. Nicolaysen?

02:18 23 THE DEFENDANT: No, Your Honor.

02:18 24 THE COURT: Do you understand that the Court is
02:18 25 not a party to the plea agreement and is not bound by any of

02:18 1 its terms?

02:18 2 THE DEFENDANT: Yes.

02:18 3 THE COURT: As part of the plea agreement, the
02:18 4 government agrees to make certain recommendations at the
02:18 5 time of sentencing. Do you understand that the Court is not
02:18 6 obligated to follow the government's recommendations?

02:18 7 THE DEFENDANT: Yes.

02:18 8 THE COURT: The plea agreement contains an agreed
02:18 9 offense level calculation. Do you understand that the Court
02:18 10 will sentence you on the basis of facts known to the Court
02:18 11 at the time of sentencing, which may be in addition to or
02:18 12 even different from the facts understood by the parties when
02:18 13 they entered into the plea agreement?

02:18 14 THE DEFENDANT: Yes.

02:18 15 THE COURT: Do you understand that the Court is
02:19 16 not bound by the parties' offense level calculation and will
02:19 17 make its own calculation?

02:19 18 THE DEFENDANT: Yes.

02:19 19 THE COURT: The plea agreement also contains a
02:19 20 limited waiver of your right to appeal.

02:19 21 Mr. Nelson, would you recite those provisions,
02:19 22 please.

02:19 23 MR. NELSON: Yes, Your Honor.

02:19 24 As to the waiver of appeal of conviction, with the
02:19 25 exception of an appeal based on a claim that defendant's

02:19 1 guilty plea was involuntary, by pleading guilty, defendant
02:19 2 is waiving and giving up any right to appeal defendant's
02:19 3 conviction on the offense to which defendant is pleading
02:19 4 guilty. Defendant understands that this waiver includes,
02:19 5 but is not limited to, arguments that the statute to which
02:19 6 defendant is pleading guilty is unconstitutional, and any
02:19 7 and all claims that the statement of facts provided herein
02:19 8 is insufficient to support defendant's plea of guilty.

02:19 9 As to the waiver of appeal of the sentence,
02:19 10 provided that the Court imposes a total term of imprisonment
02:19 11 on all counts of conviction of no more than 12 months,
02:19 12 defendant gives up the right to appeal all of the following:
02:20 13 (a) the procedures and calculations used to determine and
02:20 14 impose any portion of the sentence; (b) the term of
02:20 15 imprisonment imposed by the Court; (c) the fine imposed by
02:20 16 the Court, provided it is within the statutory maximum; (d)
02:20 17 to the extent permitted by law, the constitutionality or
02:20 18 legality of defendant's sentence, provided it is within the
02:20 19 statutory maximum; (e) the term of probation or supervised
02:20 20 release imposed by the Court, provided it is within the
02:20 21 statutory maximum; and (f) any of the following conditions
02:20 22 of probation or supervised release imposed by the Court:
02:20 23 the conditions set forth in General Order 18-10 of this
02:20 24 Court; the drug testing conditions mandated by 18 USC
02:20 25 Sections 3563(a)(5) and 3583(d); and the alcohol and drug

02:20 1 use conditions authorized by 18 USC Section 3563(b) (7) .

02:21 2 As to the government, the USAO agrees that,
02:21 3 provided (a) all portions of the sentence are at or below
02:21 4 the statutory maximum specified above, the USAO gives up its
02:21 5 right to appeal any portion of the sentence.

02:21 6 THE COURT: Sir, when you read the plea agreement,
02:21 7 did you read the passage Mr. Nelson has just read?

02:21 8 THE DEFENDANT: Yes.

02:21 9 THE COURT: Did you understand it at the time?

02:21 10 THE DEFENDANT: Yes.

02:21 11 THE COURT: Did you understand it as he read it
02:21 12 again today?

02:21 13 THE DEFENDANT: Yes.

02:21 14 THE CLERK: Did you discuss waiving your right to
02:21 15 appeal with Mr. Nicolaysen?

02:21 16 THE DEFENDANT: Yes.

02:21 17 THE COURT: Based on that conversation and having
02:21 18 considered the matter, do you give up your right to appeal
02:21 19 on the terms and conditions in the plea agreement?

02:21 20 THE DEFENDANT: Yes.

02:21 21 THE COURT: Are you a citizen of the United
02:21 22 States?

02:21 23 THE DEFENDANT: Yes.

02:21 24 THE COURT: By birth?

02:21 25 THE DEFENDANT: No.

02:22 1 THE COURT: Naturalized?

02:22 2 THE DEFENDANT: Naturalized.

02:22 3 THE COURT: When?

02:22 4 THE DEFENDANT: 1980 something. It was right
02:22 5 before college. It was in the '80s.

02:22 6 THE COURT: Do you understand that a plea of
02:22 7 guilty may deprive you of valuable civil rights, such as the
02:22 8 right to vote, the right to serve on a jury, the right to
02:22 9 hold public office, and the right to possess any kind of a
02:22 10 firearm?

02:22 11 THE DEFENDANT: Yes.

02:22 12 THE COURT: Have any promises been made to you in
02:22 13 exchange for your plea of guilty other than those in the
02:22 14 plea agreement?

02:22 15 THE DEFENDANT: No.

02:22 16 THE COURT: Has anyone made any threats or used
02:22 17 any force against you or your family or anyone near and dear
02:22 18 to you to get you to plead guilty?

02:22 19 THE DEFENDANT: No.

02:22 20 THE COURT: Are you pleading guilty voluntarily
02:22 21 and of your own free will?

02:22 22 THE DEFENDANT: Yes.

02:22 23 THE COURT: Have you told Mr. Nicolaysen all the
02:22 24 facts and circumstances surrounding any statements,
02:23 25 confessions, or other evidence that was obtained from you by

02:23 1 anyone?

02:23 2 THE DEFENDANT: Yes.

02:23 3 THE COURT: Have you told him everything you know
02:23 4 about this case?

02:23 5 THE DEFENDANT: Yes.

02:23 6 THE COURT: Mr. Nelson, what facts would the
02:23 7 government prove if the government proceeded to trial?

02:23 8 MR. NELSON: The government would prove the
02:23 9 following facts:

02:23 10 From on or about January 12, 2013, through on or
02:23 11 about February 6, 2014, defendant engaged in the business of
02:23 12 manufacturing firearms without a license by making AR-15
02:23 13 type rifles and pistols that would expel a projectile by
02:23 14 action of an explosive. Defendant did this through a
02:23 15 process that included machining the lower assembly of an
02:23 16 AR-15 type firearm and then installing the remaining parts
02:23 17 onto that assembly. Defendant engaged in this conduct
02:23 18 willfully, that is, knowing that his conduct was unlawful.
02:23 19 Defendant carried on this business at a warehouse located on
02:24 20 Beach Boulevard in the city of La Habra, in Orange County,
02:24 21 within the Central District of California. Defendant
02:24 22 charged his customers about \$1,000 per firearm depending on
02:24 23 the precise parts and accessories chosen by the customer.
02:24 24 Defendant did not have a license to manufacture firearms.

02:24 25 THE COURT: Sir, do you understand what the

02:24 1 Assistant United States Attorney has said?

02:24 2 THE DEFENDANT: Yes.

02:24 3 THE COURT: Is everything the Assistant United
02:24 4 States Attorney said about you and your conduct and intent
02:24 5 true and correct?

02:24 6 THE DEFENDANT: Yes.

02:24 7 THE COURT: Sir, are you pleading guilty because
02:24 8 you in fact did the acts charged in Count One of the
02:24 9 Indictment?

02:24 10 THE DEFENDANT: Yes.

02:24 11 THE COURT: Tell me in your own words what you
02:24 12 did.

02:24 13 THE DEFENDANT: I manufactured AR-15 style
02:24 14 firearms without a proper license.

02:24 15 THE COURT: Did you know that you were
02:24 16 manufacturing what would qualify as a firearm under the
02:25 17 statutes?

02:25 18 MR. NICOLAYSEN: Your Honor, we agree with the
02:25 19 factual basis. He would simply reiterate what is in the
02:25 20 factual basis.

02:25 21 THE COURT: I want to hear it from his own words,
02:25 22 please.

02:25 23 Did you understand that what you were doing was
02:25 24 the manufacture of a statutorily defined firearm?

02:25 25 THE DEFENDANT: Excuse me one second, Your Honor.

02:25 1 THE COURT: Sure.

02:25 2 (Counsel and defendant conferring)

02:25 3 MR. NICOLAYSEN: Your Honor, I don't know that we
02:25 4 can admit that we knew it was statutorily defined. But we
02:25 5 agree exactly as it says in the factual basis that he acted
02:25 6 willfully. He knew his acts were unlawful, that he was
02:25 7 manufacturing AR-15 style rifles without a license which was
02:25 8 required.

02:25 9 THE COURT: Sir, did you understand that your
02:25 10 conduct was unlawful unless you had a license?

02:25 11 THE DEFENDANT: Yes, Your Honor.

02:25 12 THE COURT: And when you manufactured these
02:26 13 weapons, did you know you didn't have a license?

02:26 14 THE DEFENDANT: Yes.

02:26 15 THE COURT: Sir, are you pleading guilty because
02:26 16 you are in fact guilty?

02:26 17 THE DEFENDANT: Yes.

02:26 18 THE COURT: Mr. Nicolaysen, have you reviewed the
02:26 19 facts of the case?

02:26 20 MR. NICOLAYSEN: I have.

02:26 21 THE COURT: And all the discovery that may have
02:26 22 been provided to you by the government?

02:26 23 MR. NICOLAYSEN: Yes.

02:26 24 THE COURT: And have you reviewed the facts of the
02:26 25 case and the discovery with your client?

02:26 1 MR. NICOLAYSEN: I have.

02:26 2 THE COURT: Have you advised the defendant
02:26 3 concerning the legality or admissibility of any statements
02:26 4 or confessions or other evidence the government may have
02:26 5 against him?

02:26 6 MR. NICOLAYSEN: I have.

02:26 7 THE COURT: Is the defendant pleading guilty
02:26 8 because of any illegally obtained evidence in the possession
02:26 9 of the government that you are aware of?

02:26 10 MR. NICOLAYSEN: Not that I am aware of.

02:26 11 THE CLERK: Did you explore with your client any
02:26 12 possible defense he may have to the charge?

02:26 13 MR. NICOLAYSEN: We did.

02:26 14 THE COURT: Do you believe there is a factual
02:26 15 basis for the plea which the defendant is offering to enter?

02:26 16 MR. NICOLAYSEN: Yes.

02:26 17 THE COURT: Have you conferred with and advised
02:26 18 your client regarding this guilty plea?

02:26 19 MR. NICOLAYSEN: I have.

02:26 20 THE COURT: Do you believe that the plea is being
02:27 21 made freely and voluntarily with a full understanding of the
02:27 22 charges and the consequences of the plea?

02:27 23 MR. NICOLAYSEN: Yes.

02:27 24 THE COURT: The written plea agreement indicates
02:27 25 that you and Mr. Roh signed it on May 3, 2019. Did he sign

02:27 1 it in your presence?

02:27 2 THE DEFENDANT: He did not. We coordinated by
02:27 3 e-mail.

02:27 4 THE COURT: Did he send you back a signature?

02:27 5 MR. NICOLAYSEN: He did.

02:27 6 THE COURT: Prior to his sending you back a
02:27 7 signature, did you have a substantive discussion with him
02:27 8 about the content of the plea agreement?

02:27 9 MR. NICOLAYSEN: We did.

02:27 10 THE COURT: Does the plea agreement represent the
02:27 11 entire disposition of this case insofar as you, your client,
02:27 12 and the U.S. Attorney's Office is concerned?

02:27 13 MR. NICOLAYSEN: The plea agreement and the
02:27 14 Diversion Agreement attached thereto, yes, Your Honor.

02:27 15 THE COURT: Okay. Is the plea agreement part of a
02:27 16 joint agreement with any other defendant or potential
02:27 17 defendant?

02:28 18 MR. NICOLAYSEN: No, Your Honor, not that I am
02:28 19 aware of.

02:28 20 THE COURT: Have there been any promises,
02:28 21 representations, or guarantees made either to you or your
02:28 22 client other than what's contained in the written plea
02:28 23 agreement?

02:28 24 MR. NICOLAYSEN: No.

02:28 25 THE COURT: In your judgment, is it in your

02:28 1 client's best interests and the interests of justice for me
02:28 2 to accept this plea?

02:28 3 MR. NICOLAYSEN: It is and, again, saying that in
02:28 4 conjunction with the Diversion Agreement.

02:28 5 THE COURT: Do you know of any reason why the
02:28 6 Court should not accept the plea?

02:28 7 MR. NICOLAYSEN: No.

02:28 8 THE COURT: Do you join in the waiver of jury
02:28 9 trial and concur in the plea?

02:28 10 MR. NICOLAYSEN: I do.

02:28 11 THE COURT: Mr. Nelson, other than what is
02:28 12 expressly contained in the written agreement, has the
02:28 13 government made any other representations, promises, or
02:28 14 guarantees either to the defendant or his counsel?

02:28 15 MR. NELSON: No.

02:28 16 THE COURT: Is the intended plea agreement part of
02:28 17 a joint agreement with any other defendant or potential
02:28 18 defendant?

02:28 19 MR. NELSON: No.

02:28 20 THE COURT: Mr. Roh, are you satisfied with the
02:28 21 representation that Mr. Nicolaysen has provided to you?

02:29 22 THE DEFENDANT: Yes.

02:29 23 THE COURT: Do you feel that he has fully
02:29 24 considered any defense you may have to the charge?

02:29 25 THE DEFENDANT: Yes.

02:29 1 THE COURT: Do you believe that he has fully
02:29 2 advised you concerning this matter?

02:29 3 THE DEFENDANT: Yes.

02:29 4 THE COURT: Do you feel that you have had enough
02:29 5 time to discuss the case with him?

02:29 6 THE DEFENDANT: Yes.

02:29 7 THE COURT: Would you like any additional time
02:29 8 now?

02:29 9 THE DEFENDANT: No.

02:29 10 THE COURT: Did Mr. Nicolaysen or anyone tell you
02:29 11 how to answer any of the questions I have asked you today?

02:29 12 THE DEFENDANT: No.

02:29 13 THE CLERK: Do you feel that you understand
02:29 14 everything going on here today and the consequences to you
02:29 15 and that you are competent to make the decision to plead
02:29 16 guilty?

02:29 17 THE DEFENDANT: Yes.

02:29 18 THE COURT: Do you know of any reason why the
02:29 19 Court should not accept your plea?

02:29 20 THE DEFENDANT: No.

02:29 21 THE COURT: Do you understand then that all that
02:29 22 is left in this case in the event that I accept your plea of
02:29 23 guilty is the imposition of sentence which may include
02:29 24 imprisonment under the federal guidelines?

02:29 25 THE DEFENDANT: Yes.

02:29 1 THE COURT: Having in mind all we have discussed
02:29 2 regarding your plea of guilty, the rights you will be giving
02:29 3 up, and the maximum sentence you might receive, is it still
02:29 4 your desire to plead guilty?

02:29 5 THE DEFENDANT: Yes.

02:30 6 THE COURT: We have come to the ultimate question
02:30 7 as to how you would plead. I have a concern about this
02:30 8 Diversion Agreement. I'm going to delay actually taking the
02:30 9 plea for seven days to allow the parties to put in a
02:30 10 memorandum of no more than seven pages advising me on what
02:30 11 discretion, if any, the Court has to accept the Diversion
02:30 12 Agreement. The Diversion Agreement as I read the documents
02:30 13 is a separate side agreement apart from the plea agreement.

02:30 14 MR. NELSON: It is incorporated into the plea
02:30 15 agreement, and the two work hand in hand. So long as the
02:30 16 defendant complies with the terms of the two agreements,
02:30 17 that works hand in hand, at the end of the period of
02:30 18 diversion, the parties will jointly move to allow the
02:30 19 defendant to withdraw his plea and dismiss --

02:31 20 MR. NICOLAYSEN: For that reason, I would ask the
02:31 21 Court not to set a sentencing date because --

02:31 22 THE COURT: I'm not, and I'm not going to take his
02:31 23 plea either today.

02:31 24 MR. NICOLAYSEN: And I was going to ask the Court
02:31 25 not to accept the plea if there are any concerns about the

02:31 1 Diversion Agreement itself because I join the government
02:31 2 that the two are incorporated into one document.

02:31 3 THE COURT: I haven't answered in my own mind
02:31 4 assuming the Court must sign off on the Diversion Agreement
02:31 5 whether I would do that. I have deep concern about the
02:31 6 conduct here, particularly the type of weapon that was
02:31 7 manufactured. In virtually all the mass shootings in the
02:31 8 past couple years around the United States, an AR-15 or
02:31 9 something very similar to it has been involved.

02:31 10 The conduct here is not technical. It has serious
02:31 11 ramifications. For that reason, I have not come to a
02:32 12 conclusion, assuming I have the discretion to sign off on
02:32 13 this type of Diversion Agreement as opposed to a CASA
02:32 14 Agreement.

02:32 15 If you want more than seven days, that's fine.

02:32 16 MR. NICOLAYSEN: Your Honor, CASA is an entirely
02:32 17 different --

02:32 18 THE COURT: That's what Mr. Nelson is telling me,
02:32 19 but I would like to see what the parameters of my discretion
02:32 20 are.

02:32 21 MR. NICOLAYSEN: Would it be helpful to have a
02:32 22 representative of Pretrial who is actively involved in the
02:32 23 Diversion Program?

02:32 24 THE COURT: I don't think so. What my discretion
02:32 25 is is a question of law.

02:32 1 MR. NICOLAYSEN: I can't cite a statute off the
02:32 2 top of my head that addresses it. I think it's a matter of
02:32 3 policy within this district. I believe that's correct.
02:32 4 That's why I'm thinking Pretrial might actually be the best
02:32 5 resource for you.

02:32 6 THE COURT: Well, draw on whatever resources you
02:32 7 want and if you want to invite Pretrial to come back. But I
02:32 8 will take a look at the question myself, and I would like
02:32 9 you to independently look at it. I'm not saying that I have
02:32 10 made my mind up one way or another assuming that I have
02:33 11 discretion whether I would or would not sign off on a
02:33 12 Brooklyn type agreement.

02:33 13 MR. NICOLAYSEN: So as we stand now, shall we
02:33 14 recess today's proceeding without concluding it, and the
02:33 15 plea is not entered?

02:33 16 THE COURT: Yes, correct, right up to asking that
02:33 17 question. I have concluded that I will not ask that
02:33 18 question today.

02:33 19 So is it convenient to you -- I am going to be in
02:33 20 trial next week, so --

02:33 21 MR. NICOLAYSEN: Because of my schedule, I will
02:33 22 need two weeks. Is that acceptable to the Court?

02:33 23 THE COURT: That's fine.

02:33 24 MR. NICOLAYSEN: Does the Court want a joint
02:33 25 memorandum filed by both parties?

02:33 1 THE COURT: I will let you discuss that if you
02:33 2 want put in a joint or individually, however you want to do
02:33 3 it.

02:33 4 MR. NICOLAYSEN: Would you like an answer to that
02:33 5 now or should we just confer?

02:33 6 THE COURT: Well, whatever you want to do.

02:33 7 MR. NICOLAYSEN: Could we have a deadline of the
02:33 8 17th?

02:33 9 MR. NELSON: The 17th is fine, and I think a joint
02:34 10 position is appropriate.

02:34 11 Would Your Honor like that filed perhaps by the
02:34 12 10th or another date before we show up on the 17th?

02:34 13 THE COURT: I would need the 17th for the filing.

02:34 14 MR. NICOLAYSEN: Does the Court wish to have the
02:34 15 parties back in person for a follow-up hearing?

02:34 16 THE COURT: Yes, indeed. There is only one person
02:34 17 who can plead.

02:34 18 MR. NICOLAYSEN: Can the Court have us the same
02:34 19 week of the 17th? Would that work? I'm going to be out of
02:34 20 town the following week starting on the 22nd.

02:34 21 THE COURT: Any day that week is fine.

02:34 22 MR. NICOLAYSEN: If we file it on Monday, the
02:34 23 17th, would the Court entertain the parties the following
02:34 24 day, the 18th?

02:34 25 THE COURT: Well, more than one day.

02:34 1 MR. NICOLAYSEN: Thursday, the 20th?

02:35 2 THE COURT: What time?

02:35 3 MR. NELSON: The afternoon, Your Honor.

02:35 4 THE COURT: Is that good for you, Mr. Nicolaysen?

02:35 5 MR. NICOLAYSEN: Thursday, the 20th, at 2:00?

02:35 6 THE COURT: Yes.

02:35 7 MR. NICOLAYSEN: That's fine. Thank you.

02:35 8 THE COURT: The matter will go over to that date

02:35 9 then. Thank you.

02:35 10 (Whereupon, the proceedings were concluded.)

02:35 11 * * *

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: June 6, 2019

/s/ Sharon A. Seffens 6/6/19

SHARON A. SEFFENS, U.S. COURT REPORTER