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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

14 CR 00243

5 CHARLIE SHREM,

6 Defendant.

7 -----x
8 New York, N.Y.
9 September 4, 2014
4:40 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 SERRIN A. TURNER

Assistant United States Attorney

18 BRAFMAN & ASSOCIATES, P.C.

19 Attorneys for Defendant

20 MARC AGNIFILO

JACOB KAPLAN

21
22 ALSO PRESENT: GARY ALFORD, Special Agent
23
24
25

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(Case called)

THE COURT: So I understand that Mr. Shrem wants to enter a plea to a superseding information. Is that right?

MR. AGNIFILO: That is correct, your Honor.

THE COURT: Is there a plea agreement here, as well?

MR. TURNER: Yes, your Honor.

THE COURT: The same deficiencies?

MR. TURNER: I'm afraid so, your Honor.

THE COURT: All right. Place the defendant under oath.

(Defendant sworn)

THE COURT: Mr. Shrem, let me first advise you that because you're under oath, anything you say that is knowingly false could subject you to punishment for perjury or obstruction of justice in the making of false statements.

Do you understand?

THE DEFENDANT: I do, your Honor.

THE COURT: Do you read, write, speak, and understand English?

THE DEFENDANT: I do, your Honor.

THE COURT: Where are you from originally?

THE DEFENDANT: Brooklyn, New York.

THE COURT: How old are you?

THE DEFENDANT: I'm 24, your Honor.

THE COURT: How far did you go in school?

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1 THE DEFENDANT: I have a bachelor of science from
2 Brooklyn College.

3 THE COURT: Have you ever been treated by a
4 psychiatrist or psychologist?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Have you ever been hospitalized for any
7 mental illness?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Have you ever been treated or hospitalized
10 for alcoholism?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Have you ever been treated or hospitalized
13 for narcotics addiction?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Are you currently under the care of a
16 physician for any reason?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: In the last 24 hours, have you taken any
19 pill or medicine of any kind?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: In the last 24 hours, have you taken any
22 alcohol or narcotic of any kind?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: What was that?

25 THE DEFENDANT: I had a beer last night.

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1 THE COURT: Just one beer?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you feeling any aftereffects in
4 any way, shape, or form of that beer?

5 THE DEFENDANT: Absolutely not, your Honor.

6 THE COURT: More generally, are you feeling all right
7 today?

8 THE DEFENDANT: Yes.

9 THE COURT: Is your mind clear?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand these proceedings?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: On the basis of the defendant's responses
14 to my questions and my observations of his demeanor, I find he
15 is fully competent to enter an informed plea at this time.

16 You have a right to be represented by counsel at every
17 stage of these proceedings. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: If at any time you can't afford counsel,
20 the Court will appoint one for you free of charge, do you
21 understand that, to represent you not only through all the
22 proceedings but through trial, everything?

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You're represented by Mr. Agnifilo. Are

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1 you satisfied with his representation?

2 THE DEFENDANT: Very, your Honor.

3 THE COURT: Have you had a full opportunity to discuss
4 this case with him?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you told him everything you know
7 about this case?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, you were charged, in indictment
10 14 Criminal 243, with two felony counts, and you can go to
11 trial and challenge the government's evidence on those counts.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: And in fact, since Mr. Agnifilo has
15 already shown himself in many previous occasions before this
16 Court to be an exceptional trial attorney, I was rather
17 heartbroken to hear you were going to deprive me of that
18 opportunity, but I take it, it is your desire to plead guilty;
19 is that it?

20 THE DEFENDANT: Yes, and I apologize, your Honor.

21 THE COURT: So before I can accept any plea of guilty,
22 I need to make certain that you understand the rights that you
23 will be giving up if you plead guilty, so I want to go over
24 with you now those rights.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: First, you have the right to a speedy and
3 a public trial by a jury on the charges against you.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Second, if there were a trial, you would
7 be presumed innocent and the government would be required to
8 prove your guilt beyond a reasonable doubt.

9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Third, at the trial, you would have the
12 right to be represented by counsel. Once again, if at any time
13 you could not afford counsel, the Court would appoint one to
14 represent you free of charge throughout the trial and at all
15 other proceedings.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Fourth, at the trial, you would have the
19 right to see and hear all the witnesses and other evidence
20 against you, and your attorney could cross-examine the
21 government's witnesses and object to the government's evidence,
22 and you could have subpoenas issued to compel the attendance of
23 witnesses and other evidence on your own behalf and could
24 present such other evidence as you desire to present.

25 Do you understand all that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Fifth, at the trial, you would have the
3 right to testify if you wanted to, but no one could force you
4 to testify if you did not want to, and no suggestion of guilt
5 could be drawn against you if you chose not to testify.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Sixth, even if you were convicted of one
9 or more of these counts, you would have the right to appeal
10 your conviction.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that if you plead
14 guilty, you will be giving up each and every one of the rights
15 we just discussed?

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Now, the government proposes that you
19 plead guilty to what is called a superseding information, which
20 charges you in one count with operating or aiding and abetting
21 the operation of an unlicensed money transmitting business.

22 Have you read that superseding indictment?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Superseding information. I'm sorry.

25 THE DEFENDANT: Yes, I have, your Honor.

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1 THE COURT: Now, you need to understand that under the
2 Constitution, this charge could normally only be brought
3 against you if it was first presented to a grand jury, a group
4 of 16 to 23 citizens who would meet in private and who would
5 hear evidence and who could only vote this charge if they found
6 there's probable cause to believe that you committed this
7 crime.

8 Do you understand that?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: Do I understand that you are agreeable to
11 give up that constitutional right and that the government filed
12 this superseding information against you?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: In that regard, has a written waiver been
15 executed?

16 MR. AGNIFILO: We have, Judge.

17 THE COURT: Could you hand it up, please.

18 I have been furnished with a written waiver allowing
19 the information to be filed, so I will give it to my courtroom
20 deputy to witness, and we will allow the filing of the
21 Superseding Information S1, 14 Criminal 243.

22 Even though it has been filed, again, you could go to
23 trial if you wanted to.

24 Do you understand that, Mr. Shrem?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: If you don't go to trial, once again, you
2 will be giving up each and every one of those rights we just
3 discussed.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: You have gone over the information. Have
7 you discussed it with your counsel?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand its terms?

10 THE DEFENDANT: Yes.

11 THE COURT: Mr. Agnifilo, do you want it read in open
12 court, or do you waive the public reading?

13 MR. AGNIFILO: I waive it, your Honor.

14 THE COURT: Mr. Shrem, this information, which charges
15 you with aiding and abetting the operation of an unlicensed
16 money transmitting business, carries a maximum sentence of five
17 years' imprisonment, to be followed by up to three years'
18 supervised release, plus a fine, whichever is greatest, either
19 \$250,000 or twice the amount of money derived from the crime or
20 twice the loss to victims of the crime, plus a mandatory \$100
21 special assessment, and there is also a forfeiture provision.

22 Do you understand all that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand, also, that if I were to
25 impose a term of supervised release and you were to violate any

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1 of the conditions of supervised release, that violation in and
2 of itself could subject you to still further imprisonment going
3 even beyond the terms of supervised release?

4 Do you understand that?

5 THE DEFENDANT: Of course, your Honor, yes.

6 THE COURT: In terms of the actual sentence, I have no
7 idea at this point what sentence I will impose in your case,
8 but one of the things I will look at are the sentencing
9 guidelines, which are certain laws that recommend a range in
10 which the Court is suggested to sentence you. These are not
11 binding, but the Court will consider them.

12 In that connection, I have been furnished with a
13 letter agreement, which we will now mark as Court Exhibit 1 to
14 today's proceeding, and it takes the form of a letter from the
15 government to defense counsel, and it appears, Mr. Shrem, that
16 you signed it earlier today. Is that right?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Before signing it, did you read it?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you discuss it with your counsel?

21 THE DEFENDANT: Yes.

22 THE COURT: Did you understand its terms?

23 THE DEFENDANT: I did, your Honor.

24 THE COURT: Did you sign it in order to indicate your
25 agreement to its terms?

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1 THE DEFENDANT: I did, yes.

2 THE COURT: This letter agreement is binding between
3 you and the government, but it is not binding on me, it is not
4 binding on the Court.

5 Do you understand that?

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: For example, with respect to the
8 sentencing guidelines, this letter agreement says that the
9 guideline range is 57 to 60 months. I may agree with that, or
10 I may disagree with that. Even if I agree with that, I may
11 sentence you within that range or I may sentence you outside
12 the range; and regardless of where I come out, if you plead
13 guilty, you will still be bound by my sentence.

14 Do you understand that?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: More generally, do you understand that if
17 anyone has made any kind of promise or prediction or estimate
18 or representation to you of what your sentence will be in this
19 case, that person could be wrong? Nevertheless, if you plead
20 guilty, you will still be bound by my sentence.

21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: On the other hand, under your letter
24 agreement with the government, you have agreed that if I do
25 sentence you to 60 months or less, you will not appeal or

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1 otherwise attack your sentence.

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Does the government represent that this
5 letter agreement that we have now marked as Court Exhibit 1 is
6 the entirety of any and all agreements between the government
7 and Mr. Shrem?

8 MR. TURNER: Yes, your Honor.

9 THE COURT: Does defense counsel confirm that as
10 correct?

11 MR. AGNIFILO: I do, your Honor.

12 THE COURT: Mr. Shrem, do you confirm that as correct?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Mr. Shrem, other than the government, has
15 anyone else made any kind of promise to you or offered you any
16 inducement to get you to plead guilty in this case?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Has anyone threatened or coerced you to
19 get you to plead guilty in this case?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Does the government represent that if this
22 case were to go to trial, it could, through competent evidence,
23 prove every essential element of this charge beyond a
24 reasonable doubt?

25 MR. TURNER: Yes, your Honor.

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1 THE COURT: Does defense counsel know of any valid
2 defense that would likely prevail at trial or any other reason
3 why his client should not plead guilty?

4 MR. AGNIFILO: No, your Honor.

5 THE COURT: Mr. Shrem, tell me in your own words what
6 it is that you did that makes you guilty of this crime.

7 THE DEFENDANT: I prepared a statement this morning.

8 THE COURT: Go ahead.

9 THE DEFENDANT: I admit that between January of 2012
10 and October of 2012, I helped a person known to me as BTCKing,
11 who had a money transmitting business by processing bitcoin
12 orders. Specifically, I knew that BTCKing was a money
13 transmitter and that his business affected interstate commerce
14 because he was involved in interstate commerce transactions. I
15 knew that BTCKing had failed to comply with the registration
16 requirements of the federal money transmitter business. I also
17 knew that BTCKing was involved in transmitting funds that were
18 converted into bitcoin and resold on a website called Silk
19 Road, and I knew that much of the business conducted on Silk
20 Road involved the unlawful buying and selling of narcotics.
21 Therefore, I knew that the funds that BTCKing was transmitting
22 to his customers were intended to promote and support criminal
23 activity.

24 Finally, I engaged in some of this conduct while in
25 Manhattan within the Southern District of New York. I knew

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1 that what I did here was wrong. I am pleading guilty because I
2 am guilty.

3 THE COURT: I'm not totally clear from that otherwise
4 very complete statement exactly what your role was.

5 THE DEFENDANT: I operated a company called BitInstant
6 for a three-year period. For about an eleven-month period
7 within those three years, BTCKing would use our company to add
8 funds, dollars, to his bitcoin exchange accounts. They're
9 bitcoin exchanges, and my company acted as a payment processor
10 for those exchanges. He then would use those funds on the
11 exchange to buy bitcoin. At that point, he would resell that
12 bitcoin to customers that he knew were using them on Silk Road.

13 THE COURT: So in effect, you through the means you
14 just mentioned, you were helping him achieve his ends? Yes?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And one of those ends you knew was the
17 transmission of funds used to promote the narcotics trade known
18 as the Silk Road?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Very good.

21 Let me ask the government first, anything else the
22 government wants me to inquire about or represent with respect
23 to the factual portion of the allocution?

24 MR. TURNER: No, your Honor. I think that covers it.

25 THE COURT: Anything else regarding any aspect of the

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1 allocution that either counsel wants the Court to further
2 inquire about before I ask the defendant to formally enter his
3 plea?

4 Anything else from the government?

5 MR. TURNER: No, your Honor.

6 THE COURT: Anything from the defense?

7 MR. AGNIFILO: No, thank you, your Honor.

8 THE COURT: So Mr. Shrem, in light of everything we
9 have now discussed, how do you now plead to the one-count
10 superseding information S1 14 Criminal 243; guilty or not
11 guilty?

12 THE DEFENDANT: Guilty, your Honor.

13 THE COURT: Are you pleading guilty voluntarily?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Because the defendant has acknowledged his
16 guilt as charged, because he has shown that he understands his
17 rights, because his plea is entered knowingly and voluntarily
18 and is supported by an independent basis of fact containing
19 each of the essential elements of the offense, I accept his
20 plea and adjudge him guilty of the one-count information
21 S1 14 Criminal 243.

22 Mr. Shrem, the next stage of this process is that the
23 probation office will prepare a presentence report to help
24 assist me in determining sentence; and as part of that, you and
25 your counsel will be furnished with a draft of the report.

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1 Before that, you will be interviewed by the probation officer.
2 You can have your counsel present to advise you of your rights,
3 but under my practices, if you want to qualify for the full
4 credit for acceptance of responsibility, you personally need to
5 answer any and all questions put to you by the probation
6 officer.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: After that report is in draft form but
10 before it is in final form, you and your counsel and also
11 government counsel have the chance to review it and offer
12 suggestions, corrections, and additions directly to the
13 probation officer, who will then prepare the report in final to
14 come to me.

15 Independent of that, counsel for both sides are hereby
16 given leave to submit directly to the Court in writing any and
17 all materials bearing on any aspect of sentence provided they
18 are submitted no later than one week before sentence.

19 We will put the sentence down for January 20th at
20 4:30 p.m.

21 I assume that works for both counsel.

22 MR. TURNER: Yes, your Honor.

23 MR. AGNIFILO: Yes. Thank you.

24 THE COURT: Very good. Anything else we need to take
25 up today?

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1 MR. TURNER: Not from the government, thank you.

2 MR. AGNIFILO: Not from the defense.

3 THE COURT: Very good. Thanks a lot.

4 (Adjourned)

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