

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 16-cr-00284-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONALD ILEY,

Defendant.

REPORTER'S PARTIAL TRANSCRIPT
(Sentencing Hearing - Proposed Findings)

Proceedings before the HONORABLE CHRISTINE M. ARGUELLO, Judge, United States District Court, for the District of Colorado, commencing at 2:00 p.m. on the 13th day of July, 2017, Alfred A. Arraj United States Courthouse, Denver, Colorado.

A P P E A R A N C E S

FOR THE PLAINTIFF:

J. CHRIS LARSON, U.S. Attorney's Office - Denver, 1801 California St., Suite 1600, Denver, CO 80202

FOR THE DEFENDANT:

GARY LOZOW, Foster Graham Milstein & Calisher, LLP, 360 South Garfield Street, 6th Floor, Denver, Colorado 80209

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JULY 13, 2017

(Requested proceedings.)

THE COURT: I normally tell you how I am intending to go. I will go through it, but I can honestly tell you, I am not really sure, and my computer has just frozen, so I have to wait. Okay. So I will do what I normally do, which is just to let you know, because this is probably your first time in a sentencing like this.

Normally judges don't tell people what they are thinking. I think it is important to tell them so they can target whatever argument they want to make to me before I actually impose a sentence, so that is how I am going to proceed, because that is how I've proceeded in every case in the last several years.

So, as part of my protocol for determining whether the advisory guideline range is a range that is sufficient, but not greater than necessary, sentence -- and that is the standard I have to impose; sufficient, but not greater than necessary, to achieve the objectives of sentencing. I have reviewed this presentence report. I have considered the sentencing guidelines. And I have considered the factors that are set forth in Section 18 United States Code Section 3553.

There were no requests for downward departure or requests for a variant sentence in this case. In his

1 sentencing statement, the defendant does argue for a
2 sentence at the bottom of the advisory guideline range.
3 And, as I stated earlier, the guideline range is 97 to 121
4 months.

5 He argues that he has no criminal record. He
6 argues his status and his age. And he indicates that a
7 lengthy incarceration, at the bottom of that guideline,
8 does assure that he will not have the opportunity nor the
9 state of mind to commit further crimes when he is
10 released.

11 The probation office recommends a guideline at the
12 higher end of the advisory guideline range due to the
13 nature and circumstances of this offense. Mr. Iley's
14 victims entrusted him to assist and guide them with their
15 numerous financial obligations, and he took advantage of
16 that trust that was placed in him to enrich himself to a
17 degree that is not normally seen, and to me was just total
18 -- it wasn't necessary, other than to lead a lavish
19 lifestyle that you didn't earn.

20 From the victim impact statements that are written,
21 and what was spoken here today, this isn't a fraud where
22 he just lied to people and took their money, he actually
23 stole the money from their accounts. They trusted him.
24 They gave him access to their bank accounts so he could
25 pay payroll and other tax obligations.

1 He went in, took the money, and instead of paying
2 the taxes, he put the money in his own pockets. And then
3 he filed false income tax records so that he wouldn't get
4 caught and his clients wouldn't realize that he hadn't
5 been paying the taxes for them.

6 Many of his clients had to close their businesses.
7 They became insolvent. Had to dig into their savings or
8 retirement accounts to pay the IRS taxes that they
9 believed had been paid, and the money had been taken from
10 their account, so they are paying twice.

11 They had to make substantial changes to their
12 living arrangements, including downsizing their homes,
13 being unable to retire when they had planned. Some of the
14 victims suffered health problems as a result of the
15 stress. Some remain paying towards those unpaid taxes
16 while attempting to keep the businesses running. And, as
17 indicated today, relationships suffered because that type
18 of financial stress just can destroy a family.

19 I am going to quote from a few of the victim impact
20 statements that really kind of hit home. "Don's choice to
21 steal from us took a tremendous toll on our relationship.
22 The money we had been paying the IRS was to be a portion
23 of our salary. As a result, we could not make payroll and
24 could not pay ourselves our salary. My brother ended up
25 having to sell his home. He quit the family business and

1 moved away. We have not spoken since. Now I am left
2 alone to care for my elderly parents, causing strain in my
3 marriage. Physically, I am a wreck. I cannot sleep. And
4 my health is deteriorating."

5 "It was difficult to focus on my business. I lost
6 sleep from all of the stress and worry. Many days I was
7 so distracted that I had to go home sick. I was
8 depressed, angry, and oftentimes numb from disbelief.

9 Further, I still have nightmares regularly and I
10 believe will not rest peacefully until this is resolved.
11 I have suffered chest pain, multiple panic attacks,
12 nausea, headaches, and severe depression. My quality of
13 life has been extremely compromised."

14 And this victim also indicates that she may have to
15 close her business as a result of the defendant's conduct.

16 Another victim wrote, "Even when everything was
17 coming to a close during the fourth quarter of 2015, J,
18 one of the victims, called to see what was going on. When
19 Don Iley knew that he had been caught with his hand in the
20 cookie jar, so to speak, Don answered the phone and did
21 our payroll one more time.

22 It feels like there was really a lack of conscience
23 or portrays one who maybe views themselves as beyond
24 reproach. We believe that what has been most frustrating,
25 hurtful, anger provoking, is the loss of the precious time

1 this has caused, having so much more to wade through and
2 figure out. Time away from our daughters, who albeit are
3 young adults, still enjoy time with their parents.

4 The bitter pill to swallow is the time it has
5 robbed from Eve, that is the wife's, aging parent. She is
6 the only child living close to them. Her mother is the
7 sole caretaker for her father, who suffers from dementia.
8 But the time demands of additional work to remedy this
9 situation, and taking on additional hours for financial
10 reasons, has not allowed her to spend the time with her
11 dad as he rapidly slips away or to offer her mom the break
12 she needs and deserves."

13 So, the cost of this offense, both financially and
14 emotionally to these victims, is great. And, as was
15 testified to here today, will impact their lives for an
16 indefinite amount of time going forward.

17 Although, now that he has been caught, Mr. Iley
18 expresses, at least in writing to me, remorse for his
19 actions. At the time he was stealing from his victims, it
20 was not because he needed to. He was living a lavish
21 lifestyle with moneys he stole from his hardworking
22 clients.

23 He was living in a multi-million dollar home,
24 traveling with his family, paying for his children's
25 college and private school tuition, attending football

1 games in box seats, enjoying shows, and spending the
2 victims' money with no apparent remorse at the time.

3 With respect to his history and characteristics, on
4 the surface he appears to be a family man, a churchgoing
5 and law-abiding citizen. But, as one of his victims put
6 it, "Don Iley was always so nice and also a client of my
7 tree care company. It is his intentional deception that
8 angers me so much. He put on a facade, and meanwhile he
9 was stealing from me the whole time."

10 This same victim stated, "I now owe the IRS \$1,066
11 per month for 3 years. This payment is huge for me and
12 will hinder the growth of my business. With this money I
13 could have bought new equipment and hired a few more
14 workers. Now I have this payment to repay taxes that I
15 have already paid but were knowingly stolen by Don Iley.

16 The Federal Government has never reached out to me
17 personally to ask how this crime has impacted me and my
18 business. The IRS is not willing to work with me at all
19 on the money I have to repay them. But the IRS is willing
20 to make a deal with a criminal such as Don Iley, who has
21 wrecked a lot of lives. This makes me extremely angry at
22 the system. I am being penalized for Don Iley's criminal
23 activity, and that is unfair and unjust."

24 From the victims' impact statements, both in
25 writing and what I have heard here today, it is clear to

1 me that you all didn't just accidentally cross paths with
2 Mr. Iley. He actually sought out his victims, and he
3 focused, apparently, on small businesses, whom he knew he
4 could snow over more. He recruited them. He became
5 friends with them. He even, apparently, had staff members
6 search for new clients for him.

7 His victims thought he was a friend, and he
8 betrayed them. Not only did he ruin them financially, he
9 ruined the health and relationships of many of these
10 people. He put them out of business. And, as was
11 testified to here today, it wasn't just them that he
12 impacted, it was the clients they served; whether they
13 were old or needed help with their healthcare or whether
14 they were children. It is kind of like the ripple effect.

15 And he didn't steal from them only once. His
16 fraudulent conduct included filing false reports to the
17 IRS showing no income so that he wouldn't get caught, and
18 now that is coming back to haunt them in their retirement,
19 their Social Security payments, and having to repay the
20 taxes that were never paid.

21 As evidenced by his prior sanctions from the
22 Accountancy Board, this conduct is not the first time he
23 has been engaged in fraudulent behavior. He was placed on
24 a probationary period for 5 years by the Accountancy Board
25 due to complaints from at least five individuals.

1 So his conduct in this case is not aberrant
2 behavior for him. Rather, this Court is concerned that it
3 is reflective of an ongoing pattern of behavior. As such,
4 this Court believes that there is an ongoing need to
5 protect the public from further crimes of this defendant;
6 to promote respect for the law, when he goes in and he
7 lies to them and tells them he has seen the light and the
8 error of his ways, while he is all of the time still
9 defrauding people; to afford adequate deterrence, not just
10 to him for his conduct, but for others who may be
11 considering to engage in this type of behavior.

12 And, frankly, the Court finds it really hard to
13 fathom how one person or one family could dispose of
14 almost \$10 million, no matter how lavish a lifestyle they
15 are living. Yet, the money seems to be nowhere to be
16 found.

17 This Court is disturbed by the fact that the
18 defendant has not been forthcoming and honest about his
19 financial situation. The probation office indicates that
20 it has asked the defendant numerous times throughout the
21 presentence investigation period to provide documentation
22 of financial condition.

23 And while Mr. Iley is apparently a very smooth
24 talker and verbalized that he is very willing to provide
25 the documents and the information requested, the probation

1 office indicates that he has been only minimally
2 responsive to those requests.

3 The probation officer provided the defendant with a
4 financial affidavit to complete for purposes of the
5 presentence report. The first copy of the affidavit was
6 returned not fully completed. He was instructed to fill
7 it out completely and accurately and return it. He
8 returned the affidavit, but it was not very much different
9 from what was originally submitted.

10 Apparently, in his bankruptcy proceedings, it was
11 determined that he made a \$900,000 payment on his mortgage
12 within 18-months of the bankruptcy proceeding. The
13 bankruptcy trustee believes that money was obtained
14 through this fraud.

15 And, finally, this Court believes that the
16 sentencing guidelines are quite lax when it comes to white
17 collar criminals like Mr. Iley. One of the victims today
18 mentioned, you know, if he had mugged him on the street.
19 Well, if I had a young, uneducated person who had mugged
20 you on the street, they would be facing, even if they got
21 very little, they would be facing years in prison. Yet,
22 with while collar criminals, who not impact just one
23 person, but hundreds of people, for millions of dollars,
24 it is often a slap on the wrist.

25 So, my view is that the sentencing guidelines are

1 very lax when it comes to white collar crime, basically
2 because those crimes are committed by educated people.
3 And, in this case, we are talking millions of dollars and
4 142 known victims.

5 So, based on my review of this case, and after
6 consideration of the 3553(a) factors, I am inclined to
7 upward vary beyond the recommended sentence of 97 to 121
8 months, and impose a sentence of 180 months as to Count
9 12, a term of 36 months as to Count 8, to run concurrently
10 to one another, supervised release for a term of 3 years
11 as to Count 12, and a term of 1 year as for Count 28, to
12 run concurrently. I am sorry, did I say Count 8? Count
13 28, to run concurrently to each other. And restitution in
14 the amount of \$9,718,327.68.

15 I would have liked to have put interest on that
16 amount, but we don't have enough information for me to be
17 able to make the determination that he is financially able
18 to pay the interest. So I will not impose a fine, and I
19 will not -- because I want him to pay restitution not a
20 fine. And I will not impose interest on the restitution.

21 So, that is my inclination, Mr. Lozow. You can
22 make any argument you wish to persuade me otherwise or for
23 the record on appeal. Then I will hear from Mr. Larson.
24 And, finally, Mr. Iley, if you wishes to make any
25 statement to me on your own behalf, I will hear from you.

1 MR. LOZOW: Judge, first, let me suggest that I
2 think the Court's upward variance, if that is what
3 happens, may be in contravention of the Criminal Rule 32;
4 notice to the defendant.

5 THE COURT: I think the Rule 32 applies to
6 departures. I don't believe it applies to variances.

7 MR. LOZOW: I understand. Let me just cite for the
8 Court --

9 THE COURT: And if that is going to be an
10 objection, I will continue this hearing. I will give you
11 the notice, and we will come back, because that is what I
12 think is just in this case.

13 MR. LOZOW: I understand. I would like to at least
14 confer with my client with regard to that before we finish
15 this hearing, Judge.

16 THE COURT: You may. Well, let's go ahead. And if
17 you are going to object, let's go ahead -- do you want to
18 take a break to talk to him?

19 MR. LOZOW: If the Court wants to give me a minute
20 or two, please, I would appreciate it.

21 THE COURT: We will go ahead and break for 5
22 minutes, and then I will be back then.

23 (A break is taken from 2:56 p.m. to 3:05 p.m.)

24 THE COURT: You may be seated.

25 All right. Mr. Lozow, I did, while I was out, look

1 at the case that I was relying on, Irizarry v. United
2 States, 553 U.S. 708, which essentially says that since
3 the guidelines have become advisory, Burns, and Rule
4 32(h), which was promulgated in response to Burns, no
5 longer apply, and that there is no requirement to give
6 notice for an upward variance.

7 MR. LOZOW: Your Honor, I am familiar with that
8 case. I would also cite to the Court U.S. v. Redmond,
9 which is found at -- the cross citation I have of 388
10 Fed --

11 THE COURT: 388?

12 MR. LOZOW: 388 Fed. Appx 849, 2010. It is a 2010
13 case, which came out after Irizarry.

14 THE COURT: By whom?

15 MR. LOZOW: The Tenth Circuit.

16 THE COURT: What does it say?

17 MR. LOZOW: I can read from the quote, Judge. And
18 consistent with the Court's offer to me, I talked to
19 Mr. Iley, and we would like a continuance to kind of
20 respond to the Court's decision.

21 THE COURT: Well, I was only going to grant a
22 continuance if there was any doubt as to whether I could
23 upward vary. So I am not interested in a continuance at
24 this time, and I think we can proceed.

25 MR. LOZOW: Well, let me cite, then -- do you want

1 me to cite the case?

2 THE COURT: Yes, please.

3 MR. LOZOW: It says in Redmond that, "Sound
4 practice dictates that judges in all cases should make
5 sure that the information provided to the parties in
6 advance of the hearing, and in the hearing itself, has
7 given them an adequate opportunity to confront and debate
8 the relevant issues. We recognize that there will be some
9 cases in which the factual basis for a particular sentence
10 will come as a surprise to a defendant or the Government.
11 The more appropriate response to such a problem is not to
12 extend the reach of Rule 32(h), but rather for a district
13 judge to consider granting a continuance when a party has
14 a legitimate basis for claiming that the surprise was
15 prejudicial."

16 THE COURT: And how is this prejudicial or
17 surprising?

18 MR. LOZOW: Well, I will tell you why it is, Judge.
19 Because, number one, the presentence report and the
20 probation department that recommended 110 months,
21 indicated that they saw no grounds for variance or
22 departure. And the Government took the same position,
23 stating that they saw no grounds for a variance or
24 departure.

25 Those were the presentence reports and documents

1 that we see, which took into account, obviously, the same
2 victim statements, and I think some of the same people who
3 had put those in the record or testified today, had
4 provided statements.

5 I will tell you that I don't think it does any good
6 for the Court to hear about experience or a lawyer's
7 experience, but this decision in the last analysis is 82
8 months higher than the Government's recommended sentence,
9 and 70 months higher than the probation department's
10 recommended sentence. I am surprised.

11 THE COURT: Well, it is only 5 years higher than
12 the top of the advisory guideline.

13 MR. LOZOW: Pardon me?

14 THE COURT: It is only 5 years higher than the top
15 of the advisory guideline sentence, and it is within the
16 sentencing range that is allowed by law.

17 MR. LOZOW: Well, I don't disagree, but it is
18 actually rather a substantial variance, in terms of what I
19 had notice of and what the Government and the probation
20 department had suggested in its paperwork.

21 Likewise -- I am not asking for a lengthy period of
22 time, but the Court made some findings with regard to its
23 thoughts about going forward, and I think it necessitates
24 me spending -- I didn't -- it wasn't my --

25 THE COURT: Well, most of the time, Mr. Lozow, you

1 wouldn't even get the benefits of my thoughts until after
2 I had sentenced him. That is how most of the judges do it
3 in this courthouse. So I do it as a courtesy so that you
4 can then respond. But you knew what his behavior was in
5 this case. You knew what his conduct was.

6 So I don't understand how could you have been
7 caught off guard. And you know me. I am hard on white
8 collar criminals.

9 MR. LOZOW: Judge, I don't think that I make it a
10 premise of mine to think that no matter what a Court's
11 philosophy is, that based upon recommendations both by the
12 Government and the probation department, that I don't
13 react to that in some way that kind of talks about my
14 preparation for this hearing.

15 I'm unprepared to answer some of the comments that
16 the Court made in its projected findings.

17 THE COURT: Such as?

18 MR. LOZOW: Well, things like there is \$10 million
19 that is missing. And things like he lied to the probation
20 department. And some of the issues about --

21 THE COURT: I didn't say he lied to the probation
22 department. I said he was not forthcoming to the
23 probation department. That is in the report. And there
24 is 9.7 million that is missing.

25 MR. LOZOW: Again, the parties have agreed to kind

1 of submit that to the Court. And there is no dispute
2 about that, and there never has been. As a matter of
3 fact, we spent months and months getting to that number.

4 But we are talking about an extra 5 years of a
5 man's life outside the advisory guideline with regard to
6 the case, seems to me that I should have the opportunity
7 to kind of respond, in whatever fashion the Court brought
8 it to our attention. I appreciate the Court signalling
9 it. Because, to be candid with the Court, I'm taken
10 aback. I think there are things I can bring to your
11 attention, but I need some time to do that.

12 THE COURT: Such as?

13 MR. LOZOW: There is a bankruptcy here. There was
14 an aggressive day in, day out issue with regard to a very,
15 very aggressive trustee. There is some issue with regard
16 to kind of what we tried to do with the IRS.

17 THE COURT: And what does that have to do with my
18 sentencing?

19 MR. LOZOW: Well, again, you are varying, with
20 regard to the comments you made, based upon your
21 prediction to us about what you are going to do.

22 THE COURT: I don't understand. I am varying as to
23 the comments that were made?

24 MR. LOZOW: No, no.

25 THE COURT: That was in this the report. The

1 report cited the bankruptcy. That is where I took that
2 from. You are well aware of that. So I just need to
3 know, if you want a continuance, you are going to have to
4 do more to justify it, because I am not going to continue
5 the hearing unless you can show there was somehow some
6 real prejudice to your client.

7 MR. LOZOW: It may be that my dependency upon both
8 the Government and the probation department's statements
9 that there is no grounds for departure or variance. Now,
10 the Court has had this information, for the most part, for
11 a lengthy period of time.

12 THE COURT: As have you.

13 MR. LOZOW: Well, I have had it since about July.

14 THE COURT: You've had it before I had it.

15 MR. LOZOW: Well, I am assuming the Court has read
16 it, like I read it, within the last week or two. As time
17 has gone on, we have seen corrections. In fact, one of
18 the supplemental reports by the probation department came
19 to us within probably the last week. Now, remember, I
20 asked for some time because of other issues that I had in
21 my practice.

22 THE COURT: And I granted that.

23 MR. LOZOW: But, I do think -- I do think, when you
24 are talking 5 years of a man's life --

25 THE COURT: Well, I will tell you this. If you

1 want a continuance, I am willing to grant a continuance,
2 but I am going to remand Mr. Iley.

3 MR. LOZOW: Well, I think that still may be a
4 necessity. Let me talk to Mr. Iley. I am not quite sure.

5 THE COURT: Well, if you want to continue, I am not
6 going to let him go free when there is 9.7 million that I
7 don't know where it is at, and the possibility that he
8 could abscond, knowing that this is what he is looking at
9 as a sentence.

10 So, if you want a continuance before I impose
11 sentence, I will do that, but I am going to remand him.

12 MR. LOZOW: I will ask him that question if that is
13 what he wants. The Court will also take note, I am
14 assuming, of both the recommendation of the probation
15 department and the Government concerning voluntary
16 surrender.

17 THE COURT: I saw that, and I disagree with it.
18 And I have been burned before by defendants who, knowing
19 they are going to have a lengthy period of time,
20 absconding when there are assets that we could not account
21 for, and they have been able to take off to foreign
22 countries and have to be extradited back. I am not going
23 to take that risk in this case.

24 MR. LOZOW: Judge, I would suggest to you that this
25 family has moved to Kansas, and has obviously notified

1 everyone of their move.

2 THE COURT: That was exactly what happened in the
3 other cases. They were to the tee. They were on a foot
4 monitor -- a leg monitor, cut it off, took off. First
5 time they violated. I am not taking a chance again.

6 MR. LOZOW: I understand what the Court is saying.
7 But let me just suggest to the Court that if the Court had
8 simply sentenced consistent with the top of the
9 guideline -- Mr. Iley knew he was coming to court today to
10 face about a 10-years sentence. He came with his wife and
11 children. We decided not to bring the children into the
12 courtroom. So to suggest that he would somehow abscond or
13 take a different position in this case --

14 THE COURT: I don't know if he will. I am not
15 taking the risk.

16 MR. LOZOW: I understand. You are the Judge. May
17 I ask the defendant?

18 THE COURT: You may.

19 MR. LOZOW: Can we get a hearing within a few
20 weeks?

21 THE COURT: Yes.

22 (Off-the-record discussion had.)

23 MR. LOZOW: Your Honor, with all due respect, we
24 think Mr. Iley should be still on bond, but I understand
25 the Court's position. I think it is important enough that

1 we do the work, that we would ask that the matter be
2 continued for a relatively short period of time.

3 THE COURT: All right. Ms. West -- so you want 2
4 weeks, 3 weeks? I do start a trial the week after next
5 that goes for 2 weeks, supposedly.

6 MR. LOZOW: I am sorry, you start a trial --

7 THE COURT: I start a trial the 24th?

8 COURTROOM DEPUTY: Yes, ma'am.

9 THE COURT: But we do have the afternoons, if it
10 will not take long. We have gone through the bulk of
11 this. It would be argument from you and then the
12 sentencing.

13 MR. LOZOW: Let me suggest, then, the afternoon of
14 the 21st, if you have that time or Mr. Larson has that
15 time.

16 THE COURT: Let me see. We have an investiture of
17 the new bankruptcy judge at that time in the afternoon.

18 MR. LOZOW: Well, I want to have enough time to do
19 the work we need to do, Judge.

20 THE COURT: We can do the afternoon. Let's see, I
21 am picking the jury on Monday, so that won't work. We can
22 do the afternoon of the 25th, at 3:00.

23 Is that correct, Ms. West? Did I look at the
24 calendar at my calendar correctly?

25 COURTROOM DEPUTY: Your Honor, I think that is

1 correct. Let me check something real quick.

2 THE COURT: The 25th at 3:00. July 25th at 3:00
3 p.m.

4 COURTROOM DEPUTY: Yes, ma'am, that would work.

5 MR. LOZOW: I am sorry?

6 THE COURT: July 25th, Tuesday, at 3:00 p.m.

7 MR. LOZOW: I know Mr. Iley will be here, and I
8 will be here, as well.

9 THE COURT: Mr. Larson, does that work for you?

10 MR. LARSON: Your Honor, Government counsel can do
11 that, the 25th at 3 o'clock. My case agent will not be
12 able to attend.

13 THE COURT: Ms. West, would you please call the
14 Marshals.

15 I don't think we will need the case agent, do you?

16 MR. LARSON: I suspect it will not be necessary.

17 THE COURT: All right. For purposes of the record,
18 then, the Court is going to -- Title 18 United States Code
19 Section 3143 states that the Court shall order that a
20 person who has been found guilty of an offense and who is
21 awaiting imposition or execution of sentence be detained
22 unless the Court finds by clear and convincing evidence
23 that the person is not likely to flee or pose a danger to
24 the safety of any other person or the community if
25 released.

1 Based on the conduct of the defendant in this case,
2 and the Court's concern that Mr. Larson may have hidden
3 sufficient assets to allow him to abscond to and live
4 comfortable in another country, the Court cannot find that
5 the defendant, by clear and convincing evidence, that he
6 is not likely to flee. Therefore, as such, the Court
7 remands Donald Iley to the custody of the United States
8 Marshal to be held until the sentencing hearing.

9 Mr. Larson?

10 MR. LARSON: Your Honor, I just may have misheard.
11 I think there may have been a misspeak in suggesting that
12 Government's counsel may have hidden some assets, which
13 didn't happen.

14 THE COURT: Government counsel may have what?

15 MR. LARSON: When I heard that read out, I heard
16 that "Mr. Larson," when you may have meant "Mr. Iley."

17 THE COURT: I am sorry. You're right. I didn't
18 mean to make you the defendant.

19 The Court is concerned that Mr. Iley may have
20 hidden sufficient assets to allow him to abscond and live
21 comfortably in another country.

22 I apologize, Mr. Larson. I was just talking to
23 you, and that is what I said. Thank you.

24 MR. LOZOW: Your Honor, if I can make just a short
25 record on that. I think there is no evidence, no credible

1 or competent evidence that there is either hidden assets
2 or some reason this client would flee or any indication
3 that the Government, who has access to all of the
4 evidence, all of the history, all of the cooperation, made
5 such a request.

6 So, for purposes of the record, I think the Court's
7 findings are not supported by the record.

8 THE COURT: Well, I have to find by clear and
9 convincing evidence that he is not likely to flee. What I
10 am saying is, he stole \$9.7 million, and it is nowhere
11 accounted for. And all I am saying is that without it
12 being accounted for, there may be hidden sufficient assets
13 to allow him to abscond and live comfortably.

14 And with a 15-year sentence facing him, I am afraid
15 that based on my past experience with defendants who have
16 committed similar crimes and whose assets have not yet
17 been found, have absconded.

18 So, for that reason, it is your burden to prove to
19 me by clear and convincing evidence that he will not flee.

20 MR. LOZOW: Your Honor, it is usually the
21 Government's position --

22 THE COURT: Not after sentencing or awaiting
23 sentencing, I don't believe.

24 MR. LOZOW: I understand. I just want to make the
25 record.

1 I think the Government has no evidence that it
2 could submit to you in a hearing that he has \$10 million
3 that he may have access to and may abscond the country. I
4 just think there is nothing to suggest that in any
5 finding, any bankruptcy finding. We'll supplement what is
6 going on, but I think that reflects on our concerns about
7 the Court's decision on variance.

8 THE COURT: All right. So, we are waiting for the
9 Marshals -- CSO are you here to take -- here they are.

10 MR. LARSON: Your Honor, if I may, I have a few
11 obligations in the plea agreement that I want to satisfy.

12 THE COURT: All right.

13 MR. LARSON: The first is that the Government
14 supports the recommendation of the probation office
15 regarding whether or not the defendant is allowed to
16 voluntarily surrender. I want to put that on the record.
17 That's our obligation.

18 Additionally, I wanted to put on the record that
19 the Government's recommendation is for a 97-month
20 sentence, assuming the guideline range is offense level
21 30. That is also the Government's obligation under the
22 plea agreement, and I wanted to put that on the record.

23 Finally, Your Honor, with respect to forfeiture, I
24 know that this Court entered on Monday a preliminary order
25 for forfeiture. At some point -- this may not be the

1 correct time to do it. But, at some point we would ask
2 the Court to modify that to reflect the amount of
3 restitution in this case, which is \$9,718,327.68, to be
4 subject to forfeiture as the amount that was stolen, or
5 reflects the amount that was stolen and is subject to
6 forfeiture.

7 THE COURT: All right. Submit that in writing as
8 amended.

9 MR. LARSON: We will, Your Honor. Thank you.

10 MR. LOZOW: All right. Your Honor, I am assuming
11 we will have at least some additional time to supplement
12 our position in advance of the hearing so at least the
13 Government has some notice of it, the Court does. I will
14 do the best I can to get something to you in a timely
15 fashion.

16 THE COURT: All right. Thank you, Mr. Lozow.

17 I hereby remand the defendant to the custody of the
18 United States Marshal.

19 (Proceedings conclude at 3:22 p.m.)

20 **R E P O R T E R ' S C E R T I F I C A T E**

21

22 I, Darlene M. Martinez, Official Certified
23 Shorthand Reporter for the United States District Court,
24 District of Colorado, do hereby certify that the foregoing
25 is a true and accurate transcript of the proceedings had

1 as taken stenographically by me at the time and place
2 aforementioned.

3 Dated this 14th day of July, 2017.

4

5

6 _____
s/Darlene M. Martinez

7 RMR, CRR

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25