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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION
CASE NO. 13-10001-CR-MARTINEZ/SNOW

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DENNIS ZECCA,
Defendant.

Key West, Florida
July 2, 2014
Pages 1-30

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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1 P-R-O-C-E-E-D-I-N-G-S

2 COURTROOM DEPUTY: Case number
3 13-10001-criminal-Martinez, United States of America versus
4 Dennis Zecca.

5 Counsel, please state your appearances.

6 MR. COATS: Good afternoon, Your Honor. Benjamin Coats
7 for the United States. With me at counsel table is Special
8 Agent Patricia Thompson of the FBI.

9 THE COURT: Good afternoon.

10 MR. AARON: Good afternoon, Your Honor. William Aaron
11 on behalf of Dennis Zecca, who is sitting beside me.

12 THE COURT: Good afternoon, Mr. Aaron. All right.
13 We're here on the sentencing.

14 Can I get an appearance from probation?

15 THE PROBATION OFFICER: Good afternoon, Your Honor.
16 Cherie Audette on behalf of Probation.

17 THE COURT: Ms. Audette. Okay.

18 We're here on the sentencing on Mr. Zecca. I've
19 reviewed the written plea agreement, the presentence
20 investigation.

21 Note that there has been -- that the defendant requests
22 that he serve his sentence at the FCI in Miami. I don't give
23 specific recommendations like that because I don't need to get
24 into a life-long conversation with the Bureau of Prisons about
25 why they have to send him to this place or that, but I will

1 recommend that he be as close to Miami as possible.

2 Note that there has been an adjustment for acceptance
3 of responsibility, and note that no objections have been
4 reported by the government.

5 I have reviewed the defendant's objections, the
6 defendant's sentencing memorandum and motion for downward
7 variance, the government's sentencing memorandum and motion for
8 upward variance. The defendant's reply to the government's
9 sentencing memorandum.

10 I was going to say, 14 letters faxed on behalf of the
11 victim, but I've actually seen more than that. I think I've
12 seen all sorts of letters.

13 Preliminary order of forfeiture entered on June the
14 6th, and I'm ready to proceed at this time.

15 I would point out that -- not that it's going to be
16 repeated, but that I usually like to get stuff before the time
17 of the sentencing because I have in fact reviewed the file
18 before, and it's more helpful if I can get some time before so I
19 can read it before I come.

20 Anyway, I'm ready to proceed at this time. I'll be
21 happy to hear, Mr. Aaron, if there are issues that you have not
22 -- that have not been satisfactorily resolved involved in your
23 objections, please raise them now so I can rule on them.
24 Otherwise, I will consider them to have been waived.

25 MR. AARON: No. There's no issues with regard to the

1 objections.

2 THE COURT: All right. Then let me hear from the
3 government first, I think that makes sense, as to your motion
4 for upward variance and your sentencing memorandum as to what
5 you think is a fair sentence in this case.

6 MR. COATS: Yes, Your Honor. The victim in the case
7 would like to be heard. Would the court like to do that
8 beforehand?

9 THE COURT: Fine with me.

10 MR. COATS: Yes, Your Honor. Then in that case, the
11 government would ask Mr. Bruce Schmitt to step to the podium.
12 He has a prepared statement to read to the court.

13 THE COURT: It's a lectern. You stand on a podium, you
14 stand behind a lectern. I read that in the New York Times, so
15 it must be true.

16 Okay. Yes, sir. Please tell us your name.

17 THE WITNESS: Thank you, Your Honor. My name is Bruce
18 Schmitt.

19 THE COURT: Yes, sir. What would you like to tell me?

20 THE WITNESS: I am the victim in this case, Your Honor,
21 and the only reason I am here today is because a team of DEA
22 agents, while doing their jobs involving illegal drug smuggling
23 activities in Marathon, Florida learned about a plan, by Dennis
24 Zecca, and his associates, to murder me.

25 An individual working undercover with the DEA was

1 apparently recruited by Zecca to smuggle cocaine and then was
2 also asked to kill me before Christmas 2012. The cooperating
3 individual, who apparently has a criminal record is trying to
4 turn his life around, and in the process of doing so, has saved
5 my life.

6 I want to first take this opportunity to publicly thank
7 the DEA and this person for giving me back my life. It is not
8 quite the same life that I had, but is my life nevertheless.

9 I want to thank the Key West Bureau of the FBI for
10 their role in this case. The FBI ensured my safety and then
11 through their quick response and plan of action, they not only
12 protected and saved my life, but arrested Dennis Zecca, someone
13 I do not know and who does not know me. Special Agent Patricia
14 Thompson was my contact person throughout this process and is
15 someone who has my highest respect and gratitude for ongoing and
16 tireless work in this case. She's very smart, hard-working and
17 supportive, and she is someone I have been able to count on
18 through this entire mess. She's a true hero in a world that
19 certainly need more heroes. Thank you, Patty.

20 I want to take a few minutes to help you understand
21 what I've gone through because of Dennis Zecca and his
22 associates. On December 19, 2012, my life changed dramatically
23 when I received a telephone call from Special Agent Patty
24 Thompson of the FBI. You need to know that I was already
25 acquainted with Special Agent Thompson because of a previous

1 case involving an attempted extortion by a Marathon businessman
2 using a disbarred Key West attorney and a local Monroe County
3 politician in an attempt to extort \$150,000 from myself and my
4 brother relating to getting a City of Marathon approval to sell
5 beer and wine in our tenant's Walgreen's drugstore. I was
6 looking forward to meeting with the FBI hoping that there was a
7 break in that case. What happened next was a shock and a total,
8 complete, utter surprise that I was not expecting.

9 Special Agent Thompson came to my office with three DEA
10 agents. I was asked very directly who do I know that would want
11 me dead. I was flabbergasted. I had no idea where this was
12 coming from. As the question sank in, I was only able to give
13 one name, prefacing my statement that it could only be this one
14 person. When they pressed me for more names, I could only give
15 them one other name. But as I gave it to them, I qualified it
16 to someone I found very hard to believe could do such a thing.
17 The name Dennis Zecca never came up in that conversation. I
18 never knew of his involvement until later, after his arrest.

19 The rest of the conversation between us that day was
20 about my safety, my family's safety, and the recommendation that
21 I not only leave town, but leave the country. I resisted
22 because quite honestly, I was in denial, and because I planned
23 to spend Christmas and New Year's in Marathon with my
24 86-year-old mother.

25 That evening after the DEA and FBI meeting, I went to

1 my mother's to celebrate my son's birthday. I purposely did not
2 take my cell phone because I did not want to deal with this.

3 Upon returning home, there were four messages from the
4 FBI and before I could check my messages, the phone rang again
5 with Special Agent Patty Thompson telling me that the FBI would
6 not guarantee -- could not guarantee my safety after the next
7 day because the plan to murder me was ordered for the next day
8 or two at the most. This was the first indication to me that
9 someone was working undercover, because it was explained to me
10 that if the FBI undercover person did not get the job done soon,
11 Zecca's associates were going to bring in someone else to murder
12 me.

13 That night, my wife and I made plans to drive to Miami
14 and leave the country as soon as possible. We could not tell
15 our family nor friends where we were going or why. It was the
16 worst Christmas and New Year's I have ever spent.

17 Before we left that morning, the FBI asked Ginger, my
18 wife, to take a photograph of me lying on the ground in my
19 backyard with my eyes closed in order to stage my murder. We
20 were told that the murder was to take place in the backyard of
21 our home. Your Honor, think for a moment about what it would be
22 like to stage and pose for your own death.

23 It is now 18 months later, and all I have at this point
24 is an admission of guilt by Dennis Zecca that yes, he did plan
25 my murder in my backyard, at my home, after supposedly returning

1 from a Christmas party. That is all he has confirmed. That is
2 not very reassuring to me. He has not explained anything else.
3 He has not identified his co-conspirators. He has asked for
4 mercy. He admits that he is guilty of my attempted murder on
5 someone that he does not even know. And that's pretty much it.

6 People tell me that they cannot imagine what I'm going
7 through and then question why I'm so angry. Why can't I deal
8 with this. They are right. People can't imagine what I am
9 going through and that is why they do not understand my anger.
10 I am the victim here, I did nothing wrong, yet I continue to be
11 the victim and somehow I'm supposed to accept this. I am not
12 the crazy person here. I truly live in a world that is crazy,
13 wrong and totally upside down, but I am not the crazy person
14 here.

15 what I am, I make no apologies for. Yes, I am angry.
16 Very angry. I am getting professional help and I have great
17 support from my family and friends. I will do everything I
18 possibly can legally to help solve this case. I look forward to
19 a full and complete resolution of why we have murder in our
20 small community of Marathon in the Florida Keys.

21 Your Honor, I have some frustrations that I originally
22 was going to bring you today as questions. These are not fair
23 questions to ask. This is not the right time to ask these
24 questions, so I re-constituted these questions just to express
25 to you my frustrations and I just want this to be on the record,

1 if possible, so that you understand.

2 I am frustrated and I do not understand why the penalty
3 for attempted murder is only ten years, when conspiracy to
4 smuggle drugs is 20 years. I do not understand.

5 I do not understand why the United States Coast Guard
6 would promote someone like Dennis Zecca to a position commanding
7 a Coast Guard base and not conduct any sort of investigation
8 into his activities while he was in charge, even after he has
9 admitted and bragged that he has smuggled illegal drugs in the
10 past. I am frustrated that there was no trial on all these
11 charges so that the facts could come out and the community I
12 live in, Marathon, would at least understand who may have been
13 behind my murder attempt and why.

14 I do not understand why Dennis Zecca was arrested so
15 quickly after getting into his truck to get the money for the
16 murder instead of allowing him to lead law enforcement to his
17 co-conspirators.

18 I do not understand why a deal negotiated -- was
19 negotiated dropping the conspiracy to smuggle illegal drugs and
20 providing a handgun to a known felon in exchange for Zecca only
21 having to admit for murder for hire at a lesser sentence. And
22 what galls me the most, it was without requiring Dennis Zecca to
23 disclose who his co-conspirators are.

24 I do not understand why criminals, felons, and the
25 guilty have more rights in this country than victims. Why do

1 victims have no say in how their cases are handled, negotiated
2 or settled. This seems to me to be a grave form of
3 discrimination. I do not understand many of the discrepancies
4 surrounding this case, and Your Honor, I am very frustrated.

5 I would like to make a statement to Mr. Zecca.
6 Mr. Zecca, you and I only met once when you provided me with the
7 name of a landscaping architect who I wanted to recommend to the
8 City of Marathon for their beautification program. Other than
9 that, we do not know each other. I do not understand why you
10 would plan and then carry out killing someone you do not know.
11 Only you can explain your motivation. Who you were doing this
12 for, you've decided not to explain. You have decided not to
13 talk, not saying anything other than to plead for mercy. I
14 wonder how you would have reacted if I had pleaded for mercy
15 based on what you had planned for me.

16 Today, Mr. Zecca, you will be sentenced for at least
17 one of your crimes. You have decided not to cooperate and
18 identify your co-conspirators. What happens to you today is
19 only a small part of what you really deserve.

20 In conclusion, Your Honor, and I'm coming to the end of
21 my statement, I understand that I am limited by what I can ask
22 you to do here. What I would like you to do and what the law
23 allows, I understand, may be two different things. I do not
24 expect to, nor will I expect you to go above the law. What I
25 would like most for you to do is to vacate the plea agreement

1 and order a trial for all the charges in this case. If it was
2 my choice, I would want the trial to take place so that all the
3 evidence could be presented in a court of law and it could be --
4 and the decision of guilt or innocence could be decided in the
5 public. It seems to me that justice is not served behind closed
6 doors when two lawyers are negotiating pleas. I prefer this
7 option above all others.

8 If this is not possible, and it's been explained to me
9 that it is not, I would like you to consider not sentencing
10 Dennis Zecca here today and delay his sentencing until he does
11 cooperate with law enforcement officials. If he refuses to
12 cooperate, you should refuse to sentence him. If Dennis Zecca
13 never cooperates, then he should never be released from jail. I
14 think this would be fair and reasonable and I have no problem
15 with this solution. But again, I don't think you have that
16 option.

17 So since that may not be possible, I'm left with only
18 one thing to ask; I ask you to sentence him to the maximum
19 penalty allowed by the law for the longest period of time to the
20 very worst prison in the prison system. This is probably the
21 best I can expect, but you need to understand, Your Honor, this
22 is not enough for me. Anyway you cut it, Dennis Zecca needs to
23 be in prison, it is his destiny, it is his future.

24 Thank you, Your Honor. I appreciate any consideration
25 you can give me here today. I appreciate the opportunity to

1 speak. Thank you.

2 THE COURT: Thank you, sir. Counsel?

3 MR. COATS: Your Honor, since the court has read the
4 pleadings, I will not belabor my points. I will point out
5 something that is not explicitly mentioned in the pleadings
6 which is that when we're talking about comparing this crime,
7 this offense, to the typical offense under this particular
8 guidelines range, it is important to understand that this
9 guidelines range does not include murder for hire conspiracies
10 that are consummated, even partially consummated, if -- under
11 the murder for hire statute, there are three tiers of
12 punishment. One for one statutory maximum, if there is no
13 physical injury of any kind; one statutory maximum for if there
14 is a physical injury; and one statutory maximum for if death
15 occurs. If this had been a completed murder for hire or even
16 physical injury had resulted, we would be under a different
17 guideline.

18 So when we're comparing this offense to other offenses,
19 we're operating in the universe of murder for hires that were
20 not consummated. And when we are talking about those offenses,
21 as I pointed out in greater detail in the sentencing memorandum,
22 this is on the higher end. This is -- this offense, when you
23 look at it, is worse for a couple of reasons. First, because
24 the motive is not clear and it appears to be the kind of offense
25 that is committed for no reason, or at least for no reason that

1 has been made clear.

2 And also the way that the defendant participated in
3 this offense, his role in this offense.

4 THE COURT: Can you either come to the lectern or sit
5 down? Because the microphone isn't very close to you there.
6 You're kind of tall. That's better.

7 MR. COATS: Yes, Your Honor.

8 THE COURT: Thank you.

9 MR. COATS: The role in the offense, Your Honor. And
10 as I pointed out in greater detail in the sentencing memorandum,
11 Mr. Zecca was functioning not as a novice, who was coming to a
12 professional hit man and just saying "I need a person killed,
13 can you get this done" which is something that we tend to think
14 of when we think of murder for hire plots. He treated this --
15 you can see from the transcripts that he treated the source in
16 this case more like a protégé. He was involved intimately in
17 the planning of the where and the when and the how this should
18 be done.

19 He was also participating, and he went so far as to use
20 his law enforcement experience to try to anticipate how the
21 police would try to solve this crime and frustrate those
22 efforts. He tried to advise the source on how to destroy the
23 evidence; to break the gun in three parts; whether he should or
24 should not leave the gun at the scene; how they might get
25 caught. That's much, much more involvement and it's a different

1 kind of involvement than we would imagine the typical murder for
2 hire to include. That's without even considering the broader
3 spectrum of criminal activity that Dennis Zecca was
4 contemplating and was planning to participate in with this
5 source.

6 So we would submit that the offense, and the nature of
7 the offense and the circumstances of the offense are one reason
8 that the court should vary upward.

9 In addition, we would submit that the offender and the
10 history and characteristics of the offender are a reason that
11 the court should vary upward. We recognize that Mr. Zecca has
12 pointed to his military service. And it is not the intention of
13 the US Attorney's Office to belittle 27 years of service to the
14 Coast Guard. But those of us who have served know that when we
15 leave the service, we bear an additional responsibility not to
16 bring shame on that service; not to embarrass that service; not
17 to create headlines that say former Coast Guard officer pleads
18 guilty in murder for hire case.

19 THE COURT: Former Coast Guard Commander.

20 MR. COATS: I'm sorry, Your Honor. Former Coast Guard
21 Commander.

22 THE COURT: It's worse.

23 MR. COATS: Yes, Your Honor.

24 THE COURT: I suspect that if you and I got into
25 trouble, we would catch it.

1 MR. COATS: Yes. For sure, Your Honor. I think on two
2 fronts, both on the military front and on the --

3 THE COURT: I'm not even talking about my wife.

4 MR. COATS: And Your Honor, I would like to -- I don't
5 think the court needs additional attention drawn to the victim
6 in this case, but you were able to hear directly from him. His
7 anger and his frustration, which he certainly has every right
8 to, given what he has gone through and is still going through,
9 18 months after this happened.

10 And thinking about the victim brings us back to the
11 offender. Because what it shows is us is that Dennis Zecca
12 still, to this day, has not exhibited any real sympathy for that
13 victim, has not exhibited any real remorse, and has made no
14 attempt atonement for his crimes.

15 Character is as character does, Your Honor. And what
16 Mr. Zecca was able to cobble together and present in his
17 sentencing memorandum, is not as character revealing as what he
18 did and said when he thought no one was listening, when he
19 thought no one was watching. That's why I wrote a lengthy
20 sentencing memorandum and included portions of the transcript so
21 the court would have the opportunity to see the unvarnished
22 Dennis Zecca as he was in December of 2012 when he was
23 committing these offenses.

24 He failed the test of character. That is, what do you
25 do when no one is watching, or when you think no one is

1 watching. And the question we have, as we often do when someone
2 is being sentenced is, does he get it. Does he understand. And
3 all of the evidence suggests that he does not. If he's going to
4 blame alcohol abuse for concocting and following through on a
5 murder for hire plot and a drug trafficking plan, if he's going
6 to call it an aberration, if he's going to call it a mistake, he
7 doesn't get it. He still doesn't get it.

8 His crime and his relevant conduct are heinous. The
9 character that he has revealed is not worthy of a downward
10 variance. In fact, is worthy of an upward variance and that's
11 why Dennis Zecca deserves the maximum punishment.

12 Thank you, Your Honor.

13 THE COURT: Thank you, sir.

14 Mr. Aaron, I'll be happy to hear from you and or the
15 defendant.

16 MR. AARON: Thank you, Your Honor.

17 THE COURT: Again, if you'll use the lectern, it would
18 be better probably so we can all hear you.

19 MR. AARON: I intend to.

20 Judge, there are a number of people here today that
21 will not be speaking on behalf of Mr. Zecca. They've written
22 letters to Your Honor.

23 THE COURT: You gave me the letters, I read them.

24 MR. AARON: They've come from locally, they've come
25 from out of town, from out of state. His wife Mary Zecca is

1 here. His older son, Michael; his younger son, Santino Zecca;
2 his mother, his mother Katherine Zecca is here; his sister,
3 Karen Bolton Zecca is here, and his brother Michael Zecca is
4 here as well as Mary Zecca's mother, Esther Guererro and her
5 father Daniel Guererro.

6 First of all, I don't think -- I know I didn't say it,
7 and I'm certain Mr. Zecca didn't say it, that this was a
8 mistake. This was not a mistake. It was an aberration. Those
9 four days in December were different than his entire life. And
10 I think -- I'm not suggesting that what he did doesn't deserve
11 to be punished because it most certainly does. But what we have
12 to do is look at what the sentencing guidelines say and find
13 out, vis-a-vis his history and characteristics, what 3553 says
14 about that.

15 I don't think you can throw away what happened the
16 first 34 years of his adult life and all of his nonadult life
17 before that, which is a spectacular career. He saved lives,
18 I've pointed that out in the memo. He's had presidential
19 proclamations, he's had commandant's proclamations, all of which
20 are presented with a document that sets forth exactly what the
21 purpose of the award, the ribbon, the medal was for. It's not
22 like "to John Smith for doing a good job, thank you".

23 There are certain things that he did during that period
24 of time of the 34 years as an adult and the 27 year career that
25 merit attention. And the fact that for the four days in

1 December he did something that was not only illegal, but morally
2 wrong, wrong in every way possible, it doesn't mean that the
3 sentencing guidelines --

4 THE COURT: Mr. Aaron, it's so wrong that it almost
5 does wipe away everything else. I'm not saying it does, because
6 clearly it has to be looked at and considered. But you know,
7 it's like -- I don't know how you get from A to B. I don't know
8 how a person, who is truly as gifted and accomplished as your
9 client, can -- I don't think you do that in four days. I don't
10 think you flick a switch and become a murderer or a prospective
11 murderer like that.

12 I have to say that I would think of an awful lot of
13 things before I thought of hiring somebody to kill somebody,
14 even if I got really mad. And I get really mad all the time.
15 You know, it just -- you think of next time I see them, I'm not
16 going to talk to him or the next time, you know, I see him at a
17 party, I'm going to snub him or he's not going to get invited
18 somewhere. Or if I'm at a business deal with him, he better
19 watch out. You don't say I'm going to go find somebody to kill
20 him. I mean, that's not a progression that happens, if you are
21 A to get to B. There's -- either you weren't A in the first
22 place and you faked it for 30 years, or this is something really
23 important, which I think only your client can clear up and he
24 hasn't. It just -- you know, why would he do that? What is the
25 reason to do that? To plot to kill someone? Doesn't make any

1 sense, Mr. Aaron.

2 You know, I'm not asking you for your communications
3 with your client, but can you tell me what -- why somebody would
4 do something like that? Why there's -- there's no connect.
5 It's a total disconnect. There's a black box there and I don't
6 know what's in there. And until I find out what's in there, I
7 think your client's going to jail for the maximum sentence,
8 period. Because that's just not right.

9 I don't care how good he was there. What he did is so
10 bad that I don't -- you know, I sat in his chair and I sat in
11 your chair. I would -- you know, I think you did a masterful
12 job. You did a wonderful job. You are a competent lawyer that
13 did his very best. But don't waste an awful lot of time telling
14 me to give a downward variance because he's not only not getting
15 a downward variance, unless you can come up -- and you know,
16 I'll give you as much time as you need, within reason -- I'm not
17 likely to give him less than the maximum sentence and wonder why
18 he hasn't made some effort to get down off of that, unless
19 there's something that we don't understand. And nobody
20 understands it, and the only person that can explain it is
21 sitting there and chooses not to, and which is his right.

22 But I'm not buying it, Mr. Aaron. I'm sorry.

23 MR. AARON: Judge, I wasn't suggesting that what he was
24 for the 34 years ended December 19th and on December 19th when
25 the four days began, that's what happened.

1 THE COURT: It's just an awfully long road between here
2 and here. And I don't know what there is in there, and I
3 haven't been told what there is and neither apparently has
4 anyone else.

5 MR. AARON: Well, there were some issues that,
6 unfortunately, Mr. Zecca was going through since the early part
7 of 2012 that affected his judgment and --

8 THE COURT: I don't know what those are. Yeah. I
9 don't know.

10 MR. AARON: -- that's all I can say about that.

11 THE COURT: Look, you know, I've written those
12 commendations and I've received those commendations. I know
13 what they say. It's great. You know, I'm glad. He did his job
14 and he did it very well. I'm glad that there are people that do
15 their job that well. That's wonderful. Again, that puts him up
16 here. I don't know how he gets from there to here. And I would
17 like to, before I really understood why any consideration should
18 be given to your client.

19 You know, you've gotten a substantial consideration by
20 being permitted to plead to something that has a 10 year maximum
21 sentence, statutory maximum. I wish I could give him a higher
22 sentence than that. I would. He's ruined this man's life for a
23 while. I suspect he will get over it. I don't know. I mean,
24 it's not one of those things where you say "buck up, buddy",
25 that doesn't happen. That's not right. But at some point, I

1 hope that he can, and that's great. But meanwhile, he's done an
2 awful lot of harm. An awful lot of harm.

3 As you know, we get death threats regularly. I've had
4 death threats before. I haven't actually had somebody hire
5 somebody yet though, and I suspect that might make me a little
6 bit more nervous than just this Jamaican gang wants you dead,
7 you know? There's a difference. Does have a tendency to put
8 you on edge.

9 So don't come around my house late at night, even
10 though we're friends, Mr. Aaron.

11 MR. AARON: I agree with all of that, and on behalf of
12 my client, I want to apologize to Mr. Schmitt for what this has
13 put him through also. And that apology was extended in the
14 letter to Your Honor.

15 THE COURT: I understand. I read it.

16 MR. AARON: And I know that you don't equate how many
17 lives were saved by how many might have been lost. But in his
18 career, he saved, according to those awards, between 40 and 90
19 lives. And I'm just trying to point out that there are --

20 THE COURT: I accept that. You know, I have read about
21 him in the papers. I know who he is. I mean, I don't think
22 I've ever met him before, you know, the plea and today, but --
23 before this case I'm pretty sure I'd never met him, but I know
24 who he is. I've read what he's done. I accept all of that. He
25 stepped off a cliff.

1 MR. AARON: I can understand Your Honor's position
2 about a downward variance. But in terms of the sentencing
3 guidelines and where he fits in that scheme, based on his
4 history and characteristics, that has to play a very big role.
5 So I'm asking now --

6 THE COURT: It does. And I have to think that that had
7 a great deal to do with why they accepted the plea to a count
8 that has a statutory maximum of 120 months. I think it has to
9 have something to do with it.

10 Yeah, of course he led an exemplary life before then,
11 as far as we know, and I believe it. I'm not trying to mess you
12 up, Mr. Aaron. You go ahead with your presentation. I
13 apologize for interrupting you.

14 MR. AARON: Well, I'm glad I know exactly where you're
15 coming from.

16 THE COURT: You usually do, don't you? I don't usually
17 hide it, do I?

18 MR. AARON: No.

19 THE COURT: Okay.

20 MR. AARON: But I would still say that based on the
21 sentencing guidelines scheme and the United States Sentencing
22 Commission's study that was attached to my report, the
23 likelihood of recidivism for Mr. Zecca is almost nil. They
24 separated that study into seven different categories and he
25 scored the lowest on five of the seven. It was Exhibit O on my

1 submission. The only two that he scored second to the lowest
2 for recidivism was gender, because females recidivate less than
3 males; and education, he still scored second on that even though
4 there were four categories within education. So under the
5 Sentencing Commission's very own study, he's a last likelihood
6 of a recidivist in terms of being concerned under the guidelines
7 and 3553 whether it's likely that he would commit another crime.
8 And I think that has to be looked at in conjunction with his
9 history and characteristics. Not for a downward variance, I
10 understand where you're coming from, I'm not going to waste my
11 time on that, but for a sentence within the guideline range of
12 87 to 108, I think is warranted here.

13 And when I said typical defendant, I know the
14 government made an issue out of that, I was talking about
15 typical defendant in the sense of how many people with his
16 background and history come before you. It's rare, I have to
17 believe. I'm not sitting in your chair, but I have to believe
18 that what he did for those 27 years and up until the beginning
19 of December, not December, the beginning of 2012, that it's rare
20 that you see a person with that kind of background and history.
21 And if the range means anything, then that should be taken into
22 account also. Not whether someone should be compelled to give
23 up their 5th Amendment to get a score within the guideline
24 range.

25 THE COURT: But the fact that he hasn't told who -- I

1 don't know what he could tell. I don't know. The fact that he
2 hasn't said anything continues the punishment of the victim.
3 Continues the difficulty that the victim is undergoing. That's
4 the problem.

5 MR. AARON: You know, what I've read in the paper is
6 that law enforcement has a pretty good idea of who that person
7 or persons are. And they're probably trying to do everything
8 they can to make sure nobody hurts --

9 THE COURT: Yeah, but you know and I know --

10 MR. AARON: Because he's --

11 THE COURT: The FBI doesn't guard people. They got
12 things to do. Places to go. That's not their job. I mean, I
13 would be -- the Marshals, as you know, give us security. I
14 don't expect them to be at my house. When I get a death threat,
15 the Coral Gables Police come and sit in my driveway while
16 they're writing the reports. That's going to be really helpful
17 unless the guy comes other than through my driveway. I mean,
18 come on.

19 MR. AARON: I wasn't suggesting that they guard him. I
20 was suggesting that maybe something could be done by them to
21 bring those people to justice. You know --

22 THE COURT: You know, arresting them isn't the answer.
23 Convicting them might be. But they got to get evidence, and
24 they don't have it or they would have done something I'm sure.
25 I mean, unless you know something I don't.

1 I'm sorry Mr. Aaron. I don't mean to throw you off
2 stride. I apologize.

3 MR. AARON: That's pretty easy to do.

4 THE COURT: Yeah. Well, you're a very good lawyer and
5 you've worked very hard on this case and we appreciate your
6 service to the court. I want you to know. I want to make sure
7 you understand that.

8 MR. AARON: I do. I do, Judge. And I just ask that
9 Your Honor reconsider giving him a sentence within the guideline
10 range that would give life to 3553 and also punish Mr. Zecca for
11 what he did.

12 And I also made some other requests in addition to the
13 designation. Let me get to those, Your Honor. The PSI at
14 paragraph 71 says that based on his present financial situation,
15 it does not appear he has the ability to pay a fine. His
16 present financial situation has only gotten worse since the PSI
17 was prepared. As a result, we would ask --

18 THE COURT: Now he really can't pay a fine? I mean,
19 what does that -- you know, if he can't pay a fine, what's
20 worse?

21 MR. AARON: Well, I'm doing my job, Judge.

22 THE COURT: Okay.

23 MR. AARON: You can impose a fine or not. So I'm
24 giving you some guidance as to what the PSI said and the fact
25 that he can't pay a fine.

1 THE COURT: Okay. Thank you. Go ahead.

2 MR. AARON: And lastly, in 2012 Mr. Zecca went from
3 being a social drinker to drinking on a daily basis and hiding
4 it from his family. We would ask Your Honor to recommend that
5 he be permitted to participate in whatever substance abuse
6 program the Bureau of Prisons has available during his
7 incarceration. This is also consistent with 3553(a)(2)(d) which
8 states, in pertinent, part that the sentence imposed, quote,
9 provide the defendant with needed medical care or other
10 correctional treatment, end quote. And he also enrolled in the
11 substance abuse course that they had where he's currently --
12 when he was at FDC Miami.

13 So I would just ask Your Honor to please consider, in
14 light of 3553, whether there should be a sentence within the
15 guideline range as opposed to not because he didn't cooperate
16 with authorities. That's never been a valid reason for punishing
17 someone. It's a valid reason when they do cooperate for
18 reducing their sentence.

19 THE COURT: I hope I didn't give that impression. What
20 I'm saying is that his refusal to name any other persons has
21 caused a substantial exacerbation of the effect of his act.
22 That's what I meant to say if I didn't say it. I thought I did,
23 but that's what I mean. I'm not saying he has to talk or else.
24 I'm saying the fact that he hasn't talked makes his crime even
25 more serious. I mean, maybe I'm not being clear, but that's

1 what I'm saying.

2 MR. AARON: No, I understand what you're saying. I
3 just think it's six of one and half a dozen of the other, that's
4 all, in terms of the 5th Amendment.

5 Your Honor, I also want to, on behalf of Mr. Zecca,
6 thank the court for reading everything and giving us the time
7 you have and again, reiterate to Mr. Schmitt that he's sorry for
8 what happened. He's sorry for what he's going through now.

9 Thank you very much.

10 THE COURT: All right. Does Mr. Zecca wish to make a
11 statement to me?

12 MR. AARON: Your Honor, he'll stand on his letter to
13 you that's enclosed in the PSI.

14 THE COURT: All right. Is there anything further from
15 either party?

16 MR. COATS: Nothing from the government.

17 Thank you, Your Honor.

18 MR. AARON: Nothing Your Honor.

19 THE COURT: Ms. Audette, can you come up here please?
20 (Discussion off the record)

21 THE COURT: The court has considered the statements of
22 all the parties, the presentence report which contains the
23 advisory guidelines and the statutory factors as set forth in 18
24 USC section 3553(a).

25 It is the finding of the court the defendant is not

1 able to pay a fine.

2 It is the judgment of the court that the defendant,
3 Dennis Zecca, is committed to the Bureau of Prisons to be
4 imprisoned for 120 months as to Count 3.

5 Upon release from imprisonment, the defendant shall be
6 placed on supervised release for a term of three years as to
7 Count 3. Within 72 hours of release, the defendant shall report
8 in person to the probation office in the district where
9 released. While on supervised release, the defendant shall not
10 commit any crimes, shall be prohibited from possessing a firearm
11 or other dangerous device, shall not possess a controlled
12 substance, shall cooperate in the collection of DNA and shall
13 comply with the standard conditions of supervised release
14 including the following special conditions:

15 Substance abuse treatment and self-employment
16 restriction as noted in part G of the presentence report.

17 The defendant shall immediately pay to the United
18 States a special assessment of \$100.

19 The total sentence: 120 months imprisonment, three
20 years supervised release, and a \$100 special assessment.

21 The defendant's right, title and interest to the
22 property identified in the preliminary order of forfeiture which
23 has been entered by the court and is incorporated by reference
24 herein is hereby forfeited.

25 Now that sentence has been imposed, does the defendant

1 or his counsel object to the court's finding of fact or the
2 manner in which sentence was pronounced?

3 MR. AARON: The only thing I object to, Your Honor, is
4 a sentence in excess of the guideline range.

5 THE COURT: All right. Are there additional counts to
6 be dismissed?

7 MR. COATS: Yes, Your Honor. The government moves to
8 dismiss Counts 1, 2 and 4 of the indictment.

9 THE COURT: Upon motion of the government, Counts 1, 2
10 and 4 are dismissed as to this defendant.

11 You have the right to appeal the sentence imposed. Any
12 notice of appeal must be filed within 14 days after the entry of
13 the judgment. If you're unable to pay for the cost of an
14 appeal, you may apply for leave to appeal in forma pauperis.

15 In my formal order of incarceration, I will recommend
16 the defendant be incarcerated as close to the Southern District
17 of Florida as is possible, commensurate with his background and
18 the offense of which he stands convicted, and that he be
19 screened for substance abuse problems and given appropriate
20 treatment. We'll be in recess on this matter.

21 MR. COATS: Thank you, Your Honor.

22 MR. AARON: Thank you, Your Honor.

23 THE COURT: Thank you for your service, Mr. Aaron.

24 MR. AARON: Thank you, Your Honor.

25 (PROCEEDINGS CONCLUDED)
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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date

/s/ Dawn M. Savino
DAWN M. SAVINO, RPR