

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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: UNITED STATES OF AMERICA, :
: : 10-CR-459 (SJ)
: v. :
: : March 9, 2012
: ILIYA MUGERMAN, :
: : Brooklyn, New York
: Defendant. :
: :
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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE ROBERT M. LEVY
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: LORETTA LYNCH, ESQ.
UNITED STATES ATTORNEY
BY: DANIEL BROWNELL, ESQ.
ASSISTANT U.S. ATTORNEY
271 Cadman Plaza East
Brooklyn, New York 11201

For the Defendant: DAVID WIKSTROM, ESQ.

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service

1 THE CLERK: Criminal cause for pleading, United
2 States v. Iliya Mugerma, docket number 10-CR-459.

3 Please state your appearances for the record.

4 MR. BROWNELL: Daniel Brownell for the government.
5 Good morning.

6 THE COURT: Good morning.

7 MR. WIKSTROM: David Wikstrom for the defendant.
8 Good morning.

9 THE COURT: Good morning.

10 (Defendant is sworn.)

11 THE COURT: Good morning, Mr. Mugerma.

12 THE DEFENDANT: Good morning.

13 THE COURT: What is Mr. Mugerma going to do
14 today?

15 MR. WIKSTROM: Your Honor, Mr. Mugerma seeks
16 permission to withdraw his previously entered not guilty
17 plea and plead guilty to Count 2 of the indictment pursuant
18 to a plea agreement.

19 THE COURT: I see he's consented to have this plea
20 taken before a magistrate judge.

21 MR. WIKSTROM: Correct, yes, your Honor.

22 THE COURT: Are you satisfied that his consent is
23 knowing and voluntarily?

24 MR. WIKSTROM: I am.

25 THE COURT: Mr. Mugerma, you've signed this

1 consent form; is that correct?

2 THE DEFENDANT: Yes, I did, your Honor.

3 THE COURT: Before you did, did you discuss (ui)
4 with your lawyer.

5 THE DEFENDANT: Yes, I did.

6 THE COURT: Did you discuss what you were doing
7 with your lawyer and understand what you were doing?

8 THE DEFENDANT: Yes, I did, your Honor.

9 THE COURT: Are you making this decision
10 voluntarily?

11 THE DEFENDANT: Yes.

12 THE COURT: I'm just going to advise you that
13 you're under oath. I'm going to be asking you a lot of
14 questions. If there's anything that you don't understand,
15 feel free to consult with your lawyer at any time. You can
16 also ask me any questions that you like.

17 THE DEFENDANT: Okay.

18 THE COURT: You have to answer each question
19 honestly and completely. If you don't, you could be
20 prosecuted for perjury.

21 Do you understand that? You have to speak out
22 loud.

23 THE DEFENDANT: I do.

24 THE COURT: What is your full name?

25 THE DEFENDANT: Iliya Mugerman.

1 THE COURT: How old are you?

2 THE DEFENDANT: 48.

3 THE COURT: What is the last level of schooling
4 that you finished?

5 THE DEFENDANT: I completed two years of college.

6 THE COURT: I see you speak both Russian and
7 English; is that correct?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you now or have you recently been
10 under the care of a doctor or a psychiatrist?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you taken any medicine or pills
13 in the last 24 hours?

14 THE DEFENDANT: No.

15 THE COURT: Can you just briefly explain what kind
16 of care you're receiving at this time?

17 THE DEFENDANT: I'm getting treated for cancer,
18 level 4, of the lymph nodes.

19 THE COURT: I'm sorry to hear that.

20 In the past 24 hours, have you taken any narcotic
21 drugs?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Or drunk any alcoholic beverages?

24 THE DEFENDANT: Not as I recall.

25 THE COURT: Have you ever been hospitalized or

1 treated for drug addiction, alcoholism or emotional
2 problems?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Is your mind clear now?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand why you're here and
7 what's happening here today?

8 THE DEFENDANT: I do.

9 THE COURT: Counsel, have you discussed this case
10 fully with your client?

11 MR. WIKSTROM: Yes, I have.

12 THE COURT: Does he understand the rights that
13 he'd be waiving by pleading guilty?

14 MR. WIKSTROM: Yes, he does.

15 THE COURT: Is he capable of understanding the
16 nature of these proceedings?

17 MR. WIKSTROM: Yes.

18 THE COURT: Do you have any doubts as to his
19 competence to plead at this time?

20 MR. WIKSTROM: None.

21 THE COURT: Have you gone over the possible
22 penalties that he's facing if he does plead guilty?

23 MR. WIKSTROM: Yes.

24 THE COURT: Have you explained to him how
25 sentencing works?

1 MR. WIKSTROM: I have.

2 THE COURT: Did you explain to him that the
3 guidelines are non-binding and that there's no guarantee at
4 this time what his guideline range will be or what his
5 sentence will be?

6 MR. WIKSTROM: I have.

7 THE COURT: Did you understand all of your
8 discussions?

9 MR. WIKSTROM: Yes, I do.

10 THE COURT: Sir, did you hear what your lawyer
11 said?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you agree with everything that he
14 said?

15 THE DEFENDANT: Absolutely.

16 THE COURT: Have you discussed your case with him
17 fully?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you satisfied to have him
20 represent you?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you seen the indictment in this
23 case?

24 THE DEFENDANT: Yes.

25 THE COURT: There are a number of defendants in

1 the case.

2 Were you able to discuss with your lawyer the
3 charges that relate to you?

4 THE DEFENDANT: Yes, I did.

5 THE COURT: Do you understand them?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you need me to go over anything in
8 the indictment?

9 THE DEFENDANT: I don't think so.

10 THE COURT: So I'm going to ask the government
11 briefly to explain the charge to which this defendant is
12 going to plead guilty.

13 MR. BROWNELL: Yes, your Honor. Even though the
14 defendant is pleading guilty to the second count, which is
15 the money laundering count, the healthcare fraud scheme is
16 the SUA, the proceeds of which were then laundered.

17 The way that the proceeds were obtained was that
18 this defendant, under the two durable medical equipment
19 companies Unlimited and Infinity, filed claims, false claims
20 with insurance companies that were supported by inflated
21 invoices for equipment that allowed this defendant to
22 collect anywhere from five to fifteen times the amounts that
23 he was entitled to collect under the law for various pieces
24 of durable medical equipment.

25 What the defendant then did was, he would issue

1 checks from the accounts of these two retail companies to
2 the accounts of the wholesalers that had provided the bogus
3 invoices. The wholesalers would then cash these checks at
4 check cashers. They would deduct any amounts that they
5 actually had to spend for the cheap durable medical
6 equipment that they provided the defendant. They took their
7 fee out, and then they returned the rest of the cash back to
8 the defendant, so that the defendant could continue his
9 scheme and reap proceeds himself from the cash.

10 One of the things that the cash was used for was
11 to pay kickbacks to clinics, so that more prescriptions for
12 durable medical equipment could be obtained, which were
13 required to then file additional claims. And the scheme
14 thus continued on and on.

15 THE COURT: Any questions about this allegation?

16 MR. WIKSTROM: No, I don't have any questions,
17 your Honor.

18 THE COURT: Mr. Mugeran, any questions?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: I need to make sure you understand
21 what your rights are, so I can be sure that if you decide to
22 give them up, you are doing so in a knowing and voluntarily
23 way.

24 Do you understand that it's your right to plead
25 not guilty if you wish?

1 THE DEFENDANT: I understand.

2 THE COURT: And if you continue to plead not
3 guilty, you have a right under the Constitution and laws of
4 this country to a speedy and public trial by jury, with the
5 help of your lawyer, on the charges contained in the
6 indictment.

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: Do you understand that if you cannot
9 afford to retain an attorney throughout all phases of this
10 proceeding, the Court will appoint counsel to represent you
11 at every stage, all the way through trial and on appeal of
12 any conviction, if you're convicted, at no cost to you?

13 THE DEFENDANT: I understand.

14 THE COURT: If you decide to go to trial, do you
15 understand that you would be presumed innocent, that the
16 government would have to prove your guilt by competent
17 evidence admissible in court, and they would have to
18 persuade a jury beyond a reasonable doubt of your guilt
19 (ui). And even if you did everything that the government
20 accused you of, it's still possible that a jury could find
21 you not guilty, if the jury is not persuaded beyond a
22 reasonable doubt of your guilt. (Ui).

23 Do you understand?

24 THE DEFENDANT: I understand, your Honor.

25 THE COURT: Any questions so far?

1 THE DEFENDANT: No.

2 THE COURT: During your trial, the government
3 would have to bring its witnesses and its evidence to court.
4 You would be there to -- for every aspect of the trial.
5 Your counsel would have the right to cross-examine the
6 witnesses, object to the government's evidence, and to
7 present evidence on your behalf.

8 Do you understand?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Your attorney also would be able to
11 compel witnesses to testify for you at trial.

12 Do you understand?

13 THE DEFENDANT: I understand.

14 THE COURT: At trial, you would have the choice
15 whether or not to testify. No one could force you to
16 testify. You have a Fifth Amendment privilege which
17 guarantees your right to remain silent and not to
18 incriminate yourself. But if you wish to, you can. If you
19 went to trial but decided not to testify, the Court will
20 instruct the jury that they can't hold that against you and
21 assume that you're guilty because you didn't testify on your
22 own behalf.

23 Do you understand?

24 THE DEFENDANT: Yes, I do, your Honor.

25 THE COURT: So if today, you decide to plead

1 guilty and if the Court accepts your guilty plea, you'll be
2 giving up all the rights that I just discussed.

3 Do you understand?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: There will be no trial of any kind and
6 no right to appeal from the judgment of guilty (ui).

7 Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: The Court will enter a judgment that
10 you're guilty based on what you say here today.

11 Do you understand?

12 THE DEFENDANT: Yes, I do, your Honor.

13 THE COURT: If you do plead guilty, I'm going to
14 have to ask you some questions, because I have to be sure
15 that you really are guilty before I recommend that your plea
16 be accepted. You'll have to answer my questions and admit
17 your guilt. In doing that, you'll give up your right to
18 remain silent.

19 Do you understand?

20 THE DEFENDANT: I understand.

21 THE COURT: Any questions?

22 THE DEFENDANT: No.

23 THE COURT: So are you willing to give up your
24 right to a trial, the right to remain silent and the other
25 rights that I've just discussed?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: I have a copy here of Court Exhibit 1,
3 which is the plea agreement. Do you have a copy there to
4 follow along?

5 MR. WIKSTROM: Yes, we do, your Honor.

6 THE COURT: Mr. Brownell, is this the only
7 agreement between the government and the defense?

8 MR. BROWNELL: It is, your Honor.

9 THE COURT: Does the defendant agree? Are there
10 any other agreements with the government?

11 MR. WIKSTROM: Your Honor, there are -- there is
12 the following discussion, which is not in the agreement but
13 I want to put on the record. During the pendency of the
14 case, as the Court now knows, Mr. Mugerman was diagnosed
15 with lymphoma. At stage four, he has had a number of rounds
16 of chemotherapy, the last of which has placed his condition
17 -- we're not sure that it is full remission but his
18 condition is being monitored closely at Sloane Kettering.

19 In order to allow myself and the Probation
20 Department to have the most accurate information available
21 in terms of Mr. Mugerman's prognosis and adequacy of
22 healthcare within the Bureau of Prisons, Mr. Brownell has
23 agreed not to oppose my request for a period of time
24 necessary to allow this disease to take its course or go
25 into remission, for further chemo to be administered if

1 necessary, so that on the date sentence is imposed, Judge
2 Johnson has the fullest picture of Mr. Mugerma's prognosis,
3 his ability to survive a sentence and the ability of BOP to
4 handle his healthcare.

5 So the sentence date on the information form is
6 listed as June 29th. I will certainly be seeking an
7 adjournment of that, and Mr. Brownell has graciously agreed
8 not to oppose these requests to the extent that they are
9 reasonably designed to give Judge Johnson full information
10 prior to the imposition of sentence. That agreement is not
11 contained in the written document before you but I wanted
12 the record to be abundantly clear that that was what the
13 parties envision.

14 MR. BROWNELL: Judge, the only thing I want to add
15 is -- again, this is related to what Mr. Wikstrom just said
16 -- is one of the things that's come to light to the
17 government is that civil attorneys, not Mr. Wikstrom, who is
18 one of the most honorable attorneys I've ever dealt with,
19 but civil attorneys that represent this particular defendant
20 are still seeking to collect from insurance companies under
21 these two companies, Unlimited and Infinity.

22 This defendant essentially solely controlled those
23 companies, and the government finds it extremely troubling
24 that despite the fact that he's here today admitting the
25 fraud with regard to these companies, these civil attorneys

1 still attempt to collect under them. And we're talking
2 about millions and millions of dollars. I know your Honor
3 has presided over the pleas of many of these defendants.
4 These two companies were two of the most prolific billers of
5 these false claims.

6 So while I agree with what Mr. Wikstrom says, I
7 will certainly -- obviously, I'm not looking to be callous
8 or draconian, but in addition to considering the defendant's
9 medical considerations, which are great, it seems to me that
10 also in consideration -- and I'm just putting this on the
11 record. There's really nothing for your Honor to do about
12 this -- that if there are still attempts to collect under
13 these companies, that is going to weigh very largely in
14 terms of the government's approach to all this. And
15 hopefully, it will weigh largely with Judge Johnson, when he
16 considers an appropriate sentence.

17 MR. WIKSTROM: I don't know that there's anything
18 I need to respond to here, so I will not at this point.

19 THE COURT: I think you made things clear.

20 Mr. Mugerma, I assume you have nothing further to
21 say on this point.

22 THE DEFENDANT: I don't, your Honor.

23 THE COURT: So looking at the plea agreement,
24 according to paragraph one, as we've heard before, Mr.
25 Mugerma will plead guilty to Count 2 of the indictment.

1 When you do that, you're facing from zero to twenty years in
2 prison. If you are sentenced to prison, the maximum
3 supervised release term is three years, after you're
4 released from prison. If you violate any condition of your
5 release, you could be sentenced to up to two years of
6 imprisonment without credit for time you spent in prison on
7 this case or on supervised release.

8 Do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: There is a maximum fine of \$500,000 or
11 twice the pecuniary gain, whichever is greater. There is a
12 penalty of restitution, in an amount to be determined by the
13 Court. There is a \$100 special assessment. (Ui) criminal
14 forfeiture, which is stated in paragraph (ui).

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: In addition, if you are not a citizen
18 of the United States, there is (ui).

19 Paragraph two deals with the sentencing
20 guidelines. As we said earlier, the guidelines are (ui)
21 that limit -- they help Judge Johnson decide how to sentence
22 you. They are not binding, they are advisory. Judge
23 Johnson must calculate a guideline range and then decide
24 whether to sentence you within the guidelines or above or
25 below the guidelines. There's no guarantee at this time

1 what the guideline range will be or what your sentence will
2 be.

3 Do you understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I'm sure your attorney has gone over
6 this but under 18 U.S. Code 3553(a), the Court has to
7 consider not only the guidelines in sentencing you but also
8 such other things as the circumstances of the offense, your
9 background, respect for the law, just punishment,
10 deterrence, protecting the public from further crimes and
11 (ui).

12 THE DEFENDANT: I understand.

13 THE COURT: Any questions so far?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: So anything you've been told so far
16 about what the guideline range will be is just an estimate,
17 including what's listed in paragraph two of the plea
18 agreement.

19 Given that this is just an estimate, what's the
20 government's best estimate of the guideline range?

21 MR. BROWNELL: Judge, the government's estimate is
22 that it's between 46 and 57 months. I would indicate, your
23 Honor, we were hoping to do this a couple of weeks ago but I
24 was on trial. So what I would like to do, and we can
25 actually physically amend the plea agreement -- rather than

1 March 1st, we could put March 11th, in terms of -- it isn't
2 because of the defendant that we are doing this on March 9th,
3 it's because I was on trial. Thanks. Thank you, your
4 Honor.

5 THE COURT: In paragraph four, you have agreed not
6 to appeal or otherwise challenge in any way your conviction
7 or sentence, if you receive a term of imprisonment of 63
8 months or less.

9 Do you understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Is there anything else in the
12 agreement, including the criminal forfeiture provisions,
13 which ought to be placed on the record at this time?

14 MR. BROWNELL: Obviously, it's part of the plea
15 agreement, but the amount of forfeiture agreed to is
16 \$1,210,325.

17 MR. WIKSTROM: And I'm assuming, your Honor, that
18 the government will deem credited for forfeiture purposes
19 the funds seized for forfeiture from Mr. Mugerman's bank
20 accounts at the time of his arrest.

21 MR. BROWNELL: Yes.

22 MR. WIKSTROM: Thank you.

23 THE COURT: Anything else in the plea agreement
24 which should be placed on the record?

25 MR. WIKSTROM: No, your Honor.

1 MR. BROWNELL: I don't think so, your Honor.

2 THE COURT: Do you have any questions, Mr.

3 Mugerma?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: We don't have parole in federal court,
6 so if you're sentenced to prison, there's no early release
7 on parole.

8 Is there anything you'd like to ask me about the
9 case (ui)?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Are you ready to plead?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Wikstrom, is there any reason why
14 your client should not plead guilty?

15 MR. WIKSTROM: No, your Honor.

16 THE COURT: How do you plead to Count 2, guilty or
17 not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Are you pleading guilty voluntarily?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Has anyone forced you or threatened
22 you?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Has anyone promised you anything other
25 than what's in the plea agreement, to make you agree to

1 plead guilty?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Has anyone promised you what your
4 sentence will be?

5 THE DEFENDANT: No.

6 THE COURT: So Count 2 is a money laundering
7 conspiracy. As I'm sure your attorney has explained to you,
8 a conspiracy is an agreement between two or more people to
9 do something illegal. Here, the illegal act would be money
10 laundering.

11 Can you tell me what it is that you did between
12 January, 2004 and June, 2010?

13 THE DEFENDANT: Between 2007 and 2010, in
14 Brooklyn, I agreed to commit money laundering.
15 Specifically, I received cash from Vladimir Zavitsky (ph),
16 which I knew and believed to be proceeds of unlawful
17 activity and which were in fact the proceeds of healthcare
18 fraud with the intent to disguise ownership and control of
19 the money. I knew that my conduct has violated the law.

20 THE COURT: Were you in the Eastern District of
21 New York when you did this?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Which borough were you in?

24 THE DEFENDANT: Brooklyn, New York.

25 THE COURT: Mr. Brownell, anything to add?

1 MR. BROWNELL: Judge, the only thing I would add
2 is to ask the defendant whether this fraud was committed
3 through the companies Unlimited and Infinity, durable
4 medical equipment companies. It's not a hard question.

5 MR. WIKSTROM: I'm not saying it's a hard
6 question. I'm just saying it's not a necessary question, in
7 light of the defendant's allocution to all of the elements.
8 Let me speak to Mr. Mugerma for a moment.

9 MR. BROWNELL: Well, there had to be a company, a
10 vehicle through which he did this.

11 (Mr. Wikstrom is conferring with the defendant.)

12 THE DEFENDANT: Yes, your Honor.

13 MR. BROWNELL: Yes through those two companies?

14 THE DEFENDANT: Yes.

15 THE COURT: Anything else?

16 MR. BROWNELL: No.

17 THE COURT: Anything else from the defendant?

18 MR. WIKSTROM: No, your Honor.

19 THE COURT: Mr. Mugerma, I find that you're
20 acting voluntarily, you fully understand your rights, the
21 charges against you, the rights you're giving up by pleading
22 guilty, the consequences of a guilty plea, including the
23 possible sentence, fine, criminal forfeiture and other
24 penalties you're facing. I find that you understand there's
25 no guarantee what your sentence will be at this time and

1 that there is no -- and that there is a factual basis for
2 your plea. So I therefore recommend that the Court accept
3 your plea of guilty to Count 2.

4 THE CLERK: Sentencing is set for June 29th, 2012
5 at 9:30 a.m., before Judge Johnson.

6 MR. WIKSTROM: Thank you.

7 THE COURT: Good luck.

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18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.

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A handwritten signature in black ink, appearing to read 'E. Barron', with a long horizontal flourish extending to the right.

ELIZABETH BARRON

March 12, 2012