

Exhibit C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)
)
Plaintiff,) No. CR 04-1712-TUC-JMR
) CR 04-1747-TUC-JMR
)
vs.) Tucson, Arizona
) May 24, 2007
JAY BERNARD GILLILAND,)
)
Defendant.)
)

BEFORE: THE HONORABLE HECTOR C. ESTRADA, MAGISTRATE JUDGE

TRANSCRIPT OF PROCEEDINGS

CHANGE OF PLEA

APPEARANCES:

For the Plaintiff:

U.S. Attorney's Office Tucson
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Tucson, Arizona 85701

For the Defendant:

Kendall Law Firm
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Proceedings Recorded by Electronic Sound Recording
Transcript Produced by Transcriptionist

1 THE CLERK: Case number CR 04-1712 and CR 04-1747,
2 USA versus Jay Bernard Gilliland, on for felony change of plea.
3 Counsel, please state your appearance.

4 MR. MARKOVICH: Good morning again, Judge,
5 Eric Markovich for the United States.

6 THE COURT: Good morning.

7 MR. KENDALL: Good morning, Your Honor, Charles
8 Kendall for Mr. Gilliland, who is present and in custody.

9 THE COURT: Good morning.

10 Mr. Gilliland, these proceedings are going to be
11 conducted after you've been placed under oath. Once you've
12 been placed under oath, if you were to answer falsely to any
13 question that was asked of you, you could be charged with a
14 separate offense of perjury or making false statements. And if
15 you were convicted of that offense you could be punished for it
16 apart from whatever might happen under the terms of this Plea
17 Agreement that I have before me.

18 Do you understand, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Would you pull that microphone just a
21 little closer to you? Thank you.

22 Now, during this proceeding if you didn't understand
23 me or hear me, you'd like me to explain something or repeat it,
24 or you'd like to take some time out to speak to Mr. Kendall,
25 just say so, we can deal with it at that time. All right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Very well. Will you please stand, sir,
3 and raise your right hand to be sworn in?

4 (The defendant is sworn)

5 THE CLERK: Be seated, please.

6 THE COURT: Is your true and correct name Jay Bernard
7 Gilliland?

8 THE DEFENDANT: Yes, that's correct.

9 THE COURT: Mr. Gilliland, I have here two one-page
10 consent forms that relate to two different cases. One is
11 CR 04-1712 and the other is CR 04-1747. And it appears that
12 your signature is on both of these consent forms.

13 Did you, in fact, sign these consent forms, sir?

14 THE DEFENDANT: Yes, sir, I did.

15 THE COURT: Prior to signing them were they explained
16 to you, read to you by your attorney, Mr. Kendall?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: When he did that did you have any problems
19 understanding him?

20 THE DEFENDANT: No, sir.

21 THE COURT: Let me explain to you what the effect is
22 of your signing both of these consent forms pertaining to both
23 of these cases.

24 Your matter -- matters, rather, are assigned to
25 Judge Roll. And under our rules you have the right to have

1 every hearing, including this one here, before Judge Roll. But
2 by your signing these consent forms you're agreeing to appear
3 before me here today for purposes of entering pleas of guilty
4 in both these cases and nothing else. Once we're done here
5 today I'll refer both matters back to Judge Roll for purposes
6 of a sentencing.

7 Is that how you understand it, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is that what you wish done?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Very well then.

12 How old are you, sir?

13 THE DEFENDANT: Thirty-nine. Sorry.

14 THE COURT: And how many years of schooling -- I'm
15 sorry?

16 THE DEFENDANT: Thirty-eight.

17 THE COURT: And how many years of schooling have you
18 had?

19 THE DEFENDANT: Twelve years of -- through high school
20 and then -- and I have a bachelor of science in administration
21 of justice, associate of applied science in administration of
22 justice, and a certificate -- law enforcement certificate from
23 a community college. All together maybe 16 years.

24 THE COURT: All right. And what kind of work do you
25 do?

1 THE DEFENDANT: I was employed by -- prior to my
2 arrest I was employed by the Bureau of Customs and Border
3 Protection as a canine enforcement officer at the Nogales port
4 of entry.

5 THE COURT: Mr. Gilliland, I have here before me an
6 11-page Plea Agreement. It appears your signature is on page
7 10. Did you, in fact, sign this Plea Agreement?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Prior to signing it was it explained to
10 you and read to you by your attorney?

11 THE DEFENDANT: Yes.

12 THE COURT: Did you yourself have an opportunity to
13 review the Plea Agreement, sir?

14 THE DEFENDANT: Yes, I did.

15 THE COURT: Any questions as to what's contained in
16 this Plea Agreement, sir?

17 THE DEFENDANT: No, sir.

18 THE COURT: Let's go over the terms of your agreement.
19 This Plea Agreement says that you agree to plead guilty to
20 Count 1 of the Indictment in CR 04-1712, which accuses you of
21 conspiracy. That's an agreement between you and at least one
22 other to possess with the intent to distribute cocaine. And
23 also to Count 12 of the Indictment in CR 04-1747, which accuses
24 you of possession of child pornography.

25 Is that what you understand you're pleading guilty to,

1 sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, there's two considerations regarding
4 punishment. One is what does the statute say the judge has the
5 discretion to do, the other is what's been negotiated on your
6 behalf by your attorney.

7 As far as the cocaine charge, the conspiracy to
8 possess with intent to distribute cocaine is concerned, a judge
9 has the discretion to impose a sentence all the way up to
10 \$2 million, a term of incarceration of anywhere between five to
11 40 years. Whatever period of incarceration was served it would
12 be followed by not more than five years of supervised release.

13 Insofar as the possession of pornography case is
14 concerned, a fine, maximum of \$250,000, up to ten years of
15 incarceration, and a lifetime term of supervised release.

16 Is that what you understand to be the maximum
17 punishments that are possible, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: There's also a \$100 special assessment
20 that must be imposed for each count that a person is found
21 guilty of. So in your case, two counts, \$200.

22 Do you understand, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, your attorney, Mr. Kendall, has
25 negotiated a Plea Agreement on your behalf that calls for

1 ranges of punishment depending in which any one of three
2 criminal history categories you might find yourself in. What
3 determines in which category a person finds themselves in
4 depends on points that that person might have for sentences in
5 their past.

6 I don't know what category -- excuse me -- what
7 category you're going to find yourself in because I don't have
8 the reports, and I'm also not the person that imposes sentence.

9 If you were in the most lenient category of one, this
10 Plea Agreement contemplates 108 to 135 months of incarceration.
11 Category II, 121 to 151 months of incarceration. In Category
12 III, 135 to 168 months of incarceration.

13 Is that what you understand to be the ranges that
14 apply depending in which Criminal History Category you would
15 find yourself in, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you understand, counsel, that
18 whatever he gets in either one of these two counts, given that
19 there's two CRs, it will be concurrent?

20 MR. MARKOVICH: Yes, sir.

21 MR. KENDALL: Judge, the guideline calculations are
22 based on the grouping rules, and the guidelines say that the
23 ranges will encompass both cases.

24 THE COURT: All right then. Thank you.

25 Now, whatever remaining counts there are, sir, will be

1 dismissed at the time of sentencing. Is that what you
2 understand to be the case, sir?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The Government also will not pursue
5 charges relating to possession of firearms and chemicals found
6 apparently at your home and in a storage locker.

7 Again, is that what you understand to be the case?

8 THE DEFENDANT: Yes.

9 MR. KENDALL: Your Honor, there is one additional
10 term --

11 THE COURT: Sure.

12 MR. KENDALL: -- that we were going to put on the
13 record. That the Government knows of no other charge --
14 pending charges or cases in other districts against my client.

15 THE COURT: All right.

16 MR. MARKOVICH: That is the case, Your Honor. I don't
17 know of any other cases. Mr. Gilliland has a state case in
18 Santa Cruz County. But other than that -- and that's for all
19 intents and purposes done. But I don't know of any other
20 pending investigations or charges.

21 THE COURT: Thank you.

22 In addition, you shall seek sex offender counseling as
23 directed by the probation officer, register as a sex offender
24 pursuant to A.R.S. 13-3821 within ten days of beginning any
25 term of supervised release or probation.

1 Do you understand, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If you move from the state of Arizona
4 you're also required to register as a sex offender pursuant to
5 the state laws of any new residence that you might take up in
6 another state.

7 Do you understand, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You also agreed to forfeit all right,
10 title and interest in property that's listed on page 4, numbers
11 1 and 2. Specifically an ABS desktop computer and accompanying
12 hard disk drives, and 30 compact disk recordables and ZIP drive
13 diskettes and or floppy diskettes of various brands.

14 Do you understand, sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You agree to submit to a psychosexual
17 assessment prior to the sentencing in your case.

18 THE DEFENDANT: Yes.

19 THE COURT: And described in -- on page 4, paragraph
20 11, is what that particular psychosexual assessment may
21 include. You said you've had an opportunity to review the Plea
22 Agreement have you not, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: And you understand what I'm referring to;
25 is that correct, sir?

1 THE DEFENDANT: I believe so.

2 THE COURT: All right. Well --

3 MR. KENDALL: For the record, Your Honor, he's also
4 undergoing one from Santa Cruz County Tuesday of next week.

5 THE COURT: All right. The assessment is to include
6 but shall not be limited to physiological testing as directed
7 by the probation department. And will be performed by
8 Psychological and Consulting Services or by such other provider
9 as may be approved of in writing and in advance by the
10 probation department.

11 All reports and information from that assessment shall
12 be released to the probation department.

13 You also agree to contribute to the cost of that
14 assessment in an amount to be determined by the probation
15 department, after they've reviewed any financial and other
16 information in connection with the presentence investigation in
17 your case.

18 Do you understand, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That may require that the sentencing date
21 of this case, which I'm going to be giving you in a few
22 minutes, have to be continued in order to be able to accomplish
23 all of this. Do you understand, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, there's going to be specific

1 conditions of supervised release.

2 You're to submit to search of person, property,
3 vehicles, business, residence, conducted in a reasonable manner
4 and at a reasonable time by or at the direction of the
5 probation officer.

6 Do you understand, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: But again, register as a sex offender at
9 the Sheriff's Office in the county of residence and provide
10 verification to the probation officer. Do you understand, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Participate in sex offender treatment as
13 directed by the probation officer. Submit to risk assessment,
14 including physiological testing. Contribute to the cost of
15 that treatment in an amount to be determined by the probation
16 officer.

17 And sex offender assessment and treatment is to be
18 conducted by a therapist approved by the probation office who
19 will release all reports to the probation officer.

20 Do you understand, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You're to participate in a mental health
23 program as directed by the probation officer, follow the rules
24 of that program, contribute to the cost of treatment in an
25 amount to be determined by the probation officer.

1 Do you understand, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If you volunteer for any services you
4 shall advise the organization of your conviction. Do you
5 understand, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: You shall not possess any sexually
8 stimulating or sexually oriented material as deemed
9 inappropriate by the probation officer and/or treatment staff
10 or patronize any place where such material or entertainment is
11 available. Do you understand, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: And you should also understand, sir, based
14 on my experience in here, that could also include such things
15 as having those insert fliers that come in newspapers or
16 magazines regarding sales at Sears, Penney's or any other
17 department store. So you should be aware that that's the kind
18 of thing that the probation department will be looking for.

19 Do you understand, sir?

20 THE DEFENDANT: Could you repeat that for me?

21 THE COURT: Sure. In newspapers and in magazines they
22 have insertions indicating that there are sales. Invariably in
23 those insertions of sales there are children who are in those
24 things, and the probation department may consider those types
25 of insertions or possession of those types of materials as

1 potential material that you're not supposed to have.

2 Do you understand, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: In their assessment, in their evaluation.
5 Do you understand, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You shall not have any contact with any
8 child under the age of 18 without prior written permission of
9 the probation officer. And shall report immediately but not
10 later than eight hours to the probation officer any
11 unauthorized contact with any child. Do you understand, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You shall maintain an appropriate
14 appearance at all times, which includes the wearing of
15 undergarments and appropriate outer clothing in the home or
16 places where others might be present. Do you understand, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Not enter the premises or loiter anywhere
19 near where victims reside, except under the circumstances
20 approved in advance in writing by the probation officer. Do
21 you understand, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: The victims and/or the parents or
24 guardians may have access to information related to your
25 custody, release, residence, whereabouts and treatment

1 throughout your period of supervision.

2 The defendant shall not obtain the services of a
3 prostitute.

4 You shall reside in a residence approved of in advance
5 by the probation officer.

6 Do you understand thus far, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: You shall not contact the victims or the
9 victim's family. And the probation officer will verify
10 compliance.

11 You are restricted from engaging in any occupation,
12 business or profession where you have access to children
13 without prior approval of the probation officer in writing.

14 You shall not loiter within 100 feet of school yards,
15 parks, playgrounds, arcades or other places primarily used by
16 children under the age of 18.

17 Do you understand thus far, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Now loitering means loitering. It does
20 not mean that if you're in a vehicle and you're driving past a
21 school or park that you're in violation. It means loitering
22 near any one of those places. Do you understand, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: You shall not date or socialize with
25 anybody that has children under the age of 18 without prior

1 permission of the probation officer.

2 Shall not reside with any child under the age of 18
3 without prior written approval of the probation officer.

4 And depending on the outcome of the psychosexual
5 evaluation, you may be allowed supervised visits with any of
6 your own children.

7 Do you understand thus far, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: You shall not possess or use computers
10 with access to any on-line computer service at any location,
11 including places of employment, without the prior written
12 approval of the probation officer, and this includes any
13 internet service provider, bulletin board system or any other
14 public or private network or e-mail system.

15 Do you understand thus far, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Upon your release you shall reside and
18 actively participate in a Community Correction Center for up to
19 one year or until discharged by the probation officer. This
20 placement is to facilitate your transition into the community
21 and to facilitate treatment for sexual deviance.

22 And you should understand that if you violate any of
23 the conditions of your supervise release, the supervised
24 release may be revoked.

25 Do you understand, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And upon revocation, notwithstanding any
3 provision of this agreement, you may be required to serve a
4 term of imprisonment or your sentence may otherwise be altered.

5 Do you understand, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you agree to be bound by these various
8 terms, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You should, however, still understand that
11 Judge Roll in this case is not bound by these terms. If he
12 finds a particular term inappropriate, he would give either you
13 or the U.S. Attorney an opportunity to withdraw from the Plea
14 Agreement.

15 So to illustrate what I'm talking about, depending on
16 which criminal history you might find yourself in, if he
17 thought that you deserved or merited more than what that
18 particular Criminal History Category calls for under the terms
19 of your agreement, he'd allow to you withdraw from the Plea
20 Agreement.

21 Do you understand?

22 THE DEFENDANT: Yes.

23 THE COURT: If he thought you deserved or merited less
24 than what that range called for in that Criminal History
25 Category, he'd allow the U.S. Attorney an opportunity to

1 withdraw from the Plea Agreement. Do you understand, sir?

2 THE DEFENDANT: Yes.

3 THE COURT: But if he accepts the terms of this
4 agreement and imposes a sentence in accordance with the terms
5 of your agreement, he would have bound himself to the same
6 terms that you and the U.S. Attorney have bound yourselves to
7 and you could not appeal that.

8 So if you were anticipating the bottom end of the
9 range that applies to you but he instead gave you the maximum
10 of that range, that maximum is still within the terms of your
11 agreement and you cannot appeal. Do you understand, sir?

12 THE DEFENDANT: Yes, sir, I'm aware of that.

13 THE COURT: Now, there's going to be other
14 consequences obviously as a result of your pleading guilty here
15 besides incarceration. Because at least one of the offenses
16 you're pleading to are drugs, you could be denied certain
17 federal benefits in the future, whatever they may be, such as
18 public housing, scholarships, aid or assistance to family, food
19 stamps. Do you understand, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And obviously a consequence would be if
22 you were to get in trouble again in the future, this conviction
23 here that you've got for these two offenses can be used to
24 aggravate or give you more time in that future offense.

25 Do you understand, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: Now, is anyone forcing, threatening or
3 obligating you to come to court to sign this agreement and
4 enter pleas of guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Aside from the terms and promises that
7 I've explained to you are contained within this Plea Agreement,
8 any other promises made to you that we haven't discussed but
9 has induced you to come to court to sign this agreement and
10 enter pleas of guilty?

11 THE DEFENDANT: No.

12 THE COURT: Now your attorney, Mr. Kendall, is very
13 competent, capable and able. Has he gone over the reports in
14 your case, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Has he explained to you the statute, the
17 guidelines and the terms of your agreement?

18 THE DEFENDANT: I'm sorry?

19 THE COURT: Has he gone over with you the statute, the
20 guidelines and the terms of your agreement?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: I would imagine he might have also told
23 you what he intends to present at the time of sentencing to
24 Judge Roll regarding what the appropriate sentence should be in
25 your case, has he not?

1 THE DEFENDANT: Yes.

2 THE COURT: You should understand that doesn't bind
3 Judge Roll. He's got to hear from the probation officer, the
4 U.S. Attorney, your attorney, and yourself if you wish to say
5 something or wish to submit something such as letters prior to
6 the sentencing before he would impose that sentence. Do you
7 understand, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You should understand as well that if you
10 chose not to testify -- not to say anything or not to submit
11 something at the time of sentencing, that could not be held
12 against you for purposes of determining what the sentence
13 should be. Do you understand, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, have you had any alcohol, drugs or
16 medication within the last 48 hours?

17 THE DEFENDANT: I had a Wellbutrin pill.

18 THE COURT: And do you think that's affecting your
19 ability to think clearly right now, sir?

20 THE DEFENDANT: No, sir.

21 THE COURT: Any physical injuries or emotional or
22 psychological problems or issues in the recent past that might
23 affect your ability to think clearly here today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you had any problems understanding me

1 or your attorney thus far?

2 THE DEFENDANT: No, I have not.

3 THE COURT: Do you feel that you're thinking clearly
4 right now?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you signing this Plea Agreement
7 voluntarily?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, you should understand, Mr. Gilliland,
10 that in both of these matters you have a right to have a trial.
11 And when a person does have a trial that person has many
12 rights. If instead you go forward with pleas of guilty in both
13 these cases you won't be going to trial and you'll be giving up
14 most of those rights.

15 The one right you're not going to give up is the right
16 to have an attorney to represent you. That is, if you wanted
17 trials, Mr. Kendall would represent you at either one of those
18 trials. If you go forward with pleas of guilty, he'll continue
19 to represent you up to and including the sentencing in your
20 case.

21 Do you understand, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: Nonetheless, let me explain to you what
24 rights you're giving up.

25 When someone is accused of committing a crime or

1 crimes the very first right that that person has is the right
2 to remain silent. No one can make you say anything about what
3 you have or have not done in your cases.

4 And because of that right to remain silent, you have
5 the right not to incriminate yourself. That is, give us
6 information that indicates what you've done wrong.

7 Invoking those two rights, you then have the right to
8 have a trial where you would fight or litigate the charges
9 against you. Do you understand, sir?

10 THE DEFENDANT: Yes.

11 THE COURT: At that trial it is your right to be
12 presumed innocent of the charges. The law doesn't assume
13 simply because you've been accused of something that you must
14 therefore be guilty. The law presumes that you're innocent of
15 those charges at your trial. And at that trial or trials you
16 have no obligation to prove that you are innocent. Do you
17 understand, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Someone has the burden and obligation of
20 proving your guilt at either one or both of those trials, and
21 that's the U.S. Attorney. And it is your right to make the
22 U.S. Attorney prove those charges against you beyond a
23 reasonable doubt. And that's a substantial obligation that
24 they must meet against any defendant, including yourself if you
25 wanted to have a trial.

1 Now, at that trial they would call witnesses, have
2 those witnesses placed under oath. And through those witnesses
3 they would introduce a variety of evidence. They would
4 introduce testimony, photos, fingerprints, tape recording,
5 reports and documents, physical evidence, the drugs and or any
6 of that computer equipment that you've got, diskettes and so on
7 as part of the physical proof against you.

8 Do you understand, sir?

9 THE DEFENDANT: Yes.

10 THE COURT: It is anything that they think is
11 appropriate in proving the charges against you. And anything
12 that the judge deems is admissible and competent and reliable
13 evidence. Do you understand, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Now that variety of evidence would be
16 presented and submitted to a jury of 12 people. And they would
17 have to convince all 12 jurors unanimously of your guilt.

18 And at that trial it is your right and through your
19 attorney along with the use of your attorney to help select who
20 those jurors are. You also have the right to confront the
21 witnesses that they would call. That is, to be seated there in
22 open court right next to your attorney, to see who they are,
23 hear what they say under oath.

24 You have the right to cross-examine those same
25 witnesses through your attorney. Mr. Kendall would ask

1 questions of those witnesses on your behalf to see if they tell
2 the truth or not, to determine whether they can recall or
3 remember accurately, or even to see if there's a reason or a
4 motive for the things that they might say against you under
5 oath.

6 Do you understand, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, at that trial it is your right to
9 testify. You're not obligated to. No one can make you do that
10 if you didn't want to. And regardless of whether you
11 testified, you have the right to present evidence, and
12 presenting evidence includes calling witnesses under what's
13 called a subpoena, which is a court order, and that person or
14 persons would have to be there.

15 Again, you are not obligated to present evidence and
16 no one can make you do that if you didn't want to. Do you
17 understand, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And the reason for that is what I said
20 earlier, the law presumes that you're innocent of any of those
21 charges at your trial. And at that trial the law does not
22 impose upon you any obligation to testify or to present
23 evidence in order to prove your innocence.

24 And if at that trial you had chosen not to testify or
25 chosen not to present evidence, that jury of 12 people that

1 were selected, before they could return with a unanimous
2 verdict, whether it's guilty or not guilty, they would receive
3 an instruction from the judge, essentially an order that tells
4 them they are not to consider that you didn't testify or that
5 you did not present evidence in their arriving at their
6 decision. Do you understand, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: But in a few minutes I'm going to be
9 asking you some questions about what you've done. At some
10 point I want to ask as to both counts, how do you plead, guilty
11 or not guilty. And once you say the word "guilty" out loud,
12 you're no longer being silent, you've given up your right to be
13 silent. By pleading guilty you've now incriminated yourself,
14 given up your right not to incriminate yourself. And in giving
15 up those two rights you are also giving up your right to be
16 presumed innocent of those charges.

17 Do you understand, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you're also saying by virtue of
20 pleading guilty that you don't wish to have a trial or that the
21 U.S. Attorney's obligated to prove your guilt beyond a
22 reasonable doubt by convincing a jury of 12 people unanimously
23 of your guilt. And thus if you don't have trials, you're not
24 in a position to help select who those jurors are. You're not
25 in a position to be able to confront and cross-examine the

1 witnesses that would be called. And you're not in a position
2 to testify or present evidence if that's what you wanted to do
3 at your trial.

4 Do you understand you're giving up all of those rights
5 as well by pleading guilty here today, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: Is that what you wish to do?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Very well then.

10 Mr. Markovich, if you'd explain to Mr. Gilliland what
11 the elements of both offenses are and what the Government would
12 have proven in both cases beyond a reasonable doubt had this
13 matter proceeded to trial.

14 And Mr. Gilliland, I'd like you to listen to what
15 Mr. Markovich of the U.S. Attorney's Office is going to say,
16 because I'm going to ask you some questions based on the
17 information that he's about to give us.

18 Thank you.

19 MR. MARKOVICH: Your Honor, the elements of Count 1 in
20 04-1712, the possession with the intent to distribute cocaine
21 is that the defendant agreed with at least one other person to
22 commit the crime of possession with the intent to distribute
23 cocaine as charged in the Indictment.

24 And the defendant became a member of the conspiracy
25 knowing its object was possession with the intent to distribute

1 cocaine, and intending to accomplish the object of it.

2 And the controlled substance involved was
3 approximately 2 kilograms of cocaine.

4 The elements in Count 1 in 04-1747, possession of
5 child pornography, are that the defendant possessed a computer,
6 disk or any other material that contained images that the
7 defendant knew -- excuse me, contained visual images that the
8 defendant knew depicted minors, that being persons under the
9 age of 18 engaged in sexually explicit conduct. The defendant
10 knew that the images depicted minors engaged in such conduct.
11 And the visual depictions is -- or I'm sorry, are of minors.
12 And that the visual depictions have either been shipped or
13 transported in interstate or foreign commerce by any means
14 including the use of computer or the internet.

15 If these cases were to go to trial the Government
16 could prove that on or about July 20th of 2004 at or near
17 Tucson, Mr. Gilliland was arrested in his vehicle which
18 contained approximately 2 kilograms of cocaine. He knew that
19 cocaine was in his vehicle because he had just received it from
20 another individual.

21 He was -- the plan was to attempt to sell or trade one
22 kilogram of the cocaine for a quantity of marijuana and
23 transport the other kilogram of cocaine and the marijuana to
24 Virginia where it would be resold by other co-conspirators.

25 Also, the Government could show that from a time

1 unknown to on or about July 20th, 2004, Mr. Gilliland had
2 access to and used a computer in his home in Patagonia. The
3 computer was seized from his home by law enforcement on July
4 20th, 2004, as were various floppy disks and CDRs. The disks
5 and the CDs contained tens of thousands of images and movies
6 depicting minors engaged in sexually explicit conduct.
7 Mr. Gilliland knew the disks and CDs contained such images.

8 And among the images that were on the computer files
9 were those indicated in Count 1 of the Indictment. The files
10 contain images and clips of various prepubescent children
11 appearing to be under the age of 18 at the time of the images
12 engaging in various acts of sexually explicit conduct with
13 other children, adults, and in some cases alone. The images
14 and clips also depict minors engaged in sadistic and
15 masochistic conduct with adults.

16 And there are at least 100 images portraying
17 identified children who were victims of sexual abuse. Many of
18 the images depict children that appear to be under the age of
19 12.

20 And the Government could show that these images moved
21 through interstate commerce via the internet.

22 THE COURT: Thank you.

23 MR. KENDALL: Your Honor.

24 THE COURT: Yes.

25 MR. KENDALL: As to my client's admission on the

1 facts, we have one caveat on the second offense. He has not
2 had an opportunity to recently review the floppy disks and the
3 CDRs, so he does not have direct knowledge regarding the tens
4 of thousands of images and that every image included
5 conduct -- depicted children engaging in sexually explicit
6 conduct. He is admitting that there were at least 100 separate
7 images.

8 I think that's okay.

9 MR. MARKOVICH: Judge, I don't have a problem with
10 Mr. Gilliland admitting the Government could prove that and he
11 doesn't have reason to dispute it, as long as he does admit
12 that the CDs contained child pornography, regardless of the
13 amount.

14 MR. KENDALL: We don't have direct knowledge of the
15 numbers of images, Your Honor.

16 THE COURT: All right. Mr. Gilliland, have you heard
17 what Mr. Markovich has said that you've done, sir?

18 THE DEFENDANT: I'm sorry, sir?

19 THE COURT: Have you heard what Mr. Markovich said
20 that you did here, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And permit me to ask some questions, sir.

23 Back on July 20 of 2004 near Tucson were you driving a
24 vehicle at that time, sir, when you were stopped?

25 THE DEFENDANT: Well, yes. I had parked the vehicle

1 and I think I may have been moving it, just barely moving it
2 out of the parking space when I was pulled over, if you will.

3 THE COURT: And at that time you were arrested, did
4 your vehicle contain two kilograms of cocaine?

5 THE DEFENDANT: Yes.

6 THE COURT: Were you aware that that vehicle had that
7 cocaine in it?

8 THE DEFENDANT: Where?

9 THE COURT: Were you aware that it was in there?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And where did you obtain that cocaine?

12 THE DEFENDANT: It was given to me by an informant,
13 confidential informant named Archie Gregory.

14 THE COURT: Did you have an agreement with that
15 informant that you were to get that cocaine and distribute it
16 in some way, sir? Sell it?

17 THE DEFENDANT: Yes. Yes.

18 THE COURT: And you made that agreement with that
19 informant?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And it was my understanding that you were
22 going to sell one kilogram of this cocaine for a quantity of
23 marijuana in exchange?

24 THE DEFENDANT: I was actually going to trade the one
25 kilogram to the informant Archie Gregory for I believe 40

1 pounds of marijuana.

2 THE COURT: And the other kilogram was to be
3 transported to Virginia where you intended to have it resold by
4 other individuals?

5 THE DEFENDANT: Yes, by another individual, yes.

6 THE COURT: And were you going to make any money as a
7 result of either one or both of those transactions?

8 THE DEFENDANT: Yes.

9 THE COURT: Which one of the transactions or both of
10 them?

11 THE DEFENDANT: I would have made money off both of
12 them.

13 THE COURT: Now apparently on that same day, July 20,
14 2004, some computers and computer materials and computer
15 equipment and computer related things were confiscated from
16 your home; is that correct, there in Patagonia?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Would you agree that there were various
19 floppy disks and CDRs confiscated then from your home, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And would you agree that any one of those
22 floppy disks and CDRs contained minors engaged in sexually
23 explicit conduct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did you -- were you aware that they

1 contained some of those images, sir?

2 THE DEFENDANT: Yes. I was roughly aware of it. I
3 didn't -- I didn't know how many images or what the images
4 were, but I knew that it -- that it was sexually explicit
5 conduct.

6 THE COURT: How did you come about having possession
7 of those, sir? Did you get it through the internet?

8 THE DEFENDANT: No, sir -- well, no, sir. Mr. Gregory
9 gave it to me.

10 THE COURT: And did -- he didn't force those CDs,
11 floppy disks and CDRs on you, did he, sir?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Did he give them to you with your
14 understanding and knowledge that they contained those images?

15 THE DEFENDANT: Yes, that they contained some -- some
16 images that were illegal, that's what he had told me.

17 THE COURT: Would you agree that some of those images
18 contain prepubescent children, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: That they were engaged in various acts of
21 sexually explicit conduct with other children, adults and in
22 some cases alone?

23 THE DEFENDANT: Yes.

24 THE COURT: Would the images also include sadistic and
25 masochistic conduct with adults?

1 THE DEFENDANT: I believe so. I'm not sure. I don't
2 know that I've seen that myself. I've been -- I heard it
3 alleged, I believe in the second Indictment it's alleged. And
4 I'm not sure that I've actually seen that. But --

5 THE COURT: Are you saying that you didn't see any of
6 the images on any of the floppy disks or CDRs?

7 THE DEFENDANT: No. I did see some of them, but not
8 all of them. I didn't see all of the images. And there's a
9 number of images alleged that I've simply never seen.

10 THE COURT: Would you have any reason to dispute that
11 the U.S. Attorney could prove that those images are contained
12 in those floppy disks and CDRs?

13 THE DEFENDANT: No, sir.

14 THE COURT: Would you agree that those images had to
15 move through interstate commerce via the internet in order to
16 find themselves memorialized in those floppy disks and CDRs?

17 THE DEFENDANT: Yes, most likely I would imagine they
18 did.

19 THE COURT: All right. Both counsel satisfied with
20 that factual basis?

21 MR. KENDALL: Yes.

22 MR. MARKOVICH: Yes, Your Honor.

23 THE COURT: Very well.

24 Mr. Gilliland, before I take your pleas, have you been
25 satisfied with the services and the representation that you

1 received from Mr. Kendall while your matter has been pending?

2 THE DEFENDANT: Yes, sir, very much so.

3 THE COURT: Very well then. Mr. Gilliland, how then
4 do you plead to Count 1 of the Indictment in CR 04-1712,
5 conspiracy to possess with intent to distribute cocaine, guilty
6 or not guilty, sir?

7 THE DEFENDANT: Guilty, Your Honor.

8 THE COURT: How do you plead to Count 1 of the
9 Indictment of CR 04-1747, possession of child pornography,
10 guilty or not guilty, sir?

11 THE DEFENDANT: Guilty, Your Honor.

12 THE COURT: Mr. Kendall, do you believe that
13 Mr. Gilliland understands the nature and the consequences of
14 his guilty pleas, understands the rights he's giving up in both
15 matters and did so voluntarily and willingly?

16 MR. KENDALL: Yes, Your Honor.

17 THE COURT: I'm going to make a finding,
18 Mr. Gilliland, and sign this Plea Agreement, that you've
19 entered pleas of guilty knowingly, intelligently and
20 voluntarily, and that there exists a sufficient factual basis
21 in both matters for which he's entered pleas of guilty.

22 I'm going to recommend to Judge Roll that he accept
23 the terms of your agreement as well as your pleas of guilty.

24 And it's ordered that your matter be set for
25 sentencing on August 30, 8:45 a.m., August 30, 8:45 a.m.

1 I'm also going to order that a presentence report be
2 prepared in your case.

3 Obviously sometime in the very near future somebody
4 from the probation office will be speaking with you. They're
5 going to ask you a series of questions, and you should
6 cooperate with that person, answer his or her questions. As a
7 result of that interview they're going to prepare a presentence
8 report. Your attorney, the U.S. Attorney and Judge Roll will
9 have a copy of it. I'm sure Mr. Kendall will go over it with
10 you sometime before sentencing. And he also knows what other
11 things can be done on your behalf to get information about you
12 and your case before Judge Roll sometime prior to the
13 sentencing.

14 Mr. Gilliland, do you have any questions of me or of
15 your attorney at this time, sir?

16 THE DEFENDANT: No, sir.

17 THE COURT: Very well. Good luck, sir.

18 Counsel have anything further?

19 MR. KENDALL: No, Judge. Thank you.

20 MR. MARKOVICH: That's all.

21 THE COURT: Thank you for your time, Counsel.
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C E R T I F I C A T E

I, CANDY L. POTTER, court-approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

DATED at Phoenix, Arizona, this 4th day of April,
2008.

s/Candy L. Potter
Candy L. Potter