

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION

4 UNITED STATES OF AMERICA, ) CR-01-20127-JF  
5 )  
6 Plaintiff, )  
7 ) San Jose, California  
8 vs. ) May 2, 2002  
9 )  
10 ROGER VER, )  
11 )  
12 Defendants. )  
13 -----)

14 TRANSCRIPT OF PROCEEDINGS  
15 BEFORE THE HONORABLE JEREMY FOGEL  
16 UNITED STATES DISTRICT JUDGE

17 A P P E A R A N C E S :

18 For the United States United States  
19 of America: Attorney's Office  
20 By: SCOTT H. FREWING, AUSA  
21 150 Almaden Avenue  
22 Suite 900  
23 San Jose, California 95113  
24  
25 For the Defendant Arguedas, Cassman & Headley,  
Ver: LLP  
By: CRISTINA C. ARGUEDAS  
803 Hearst Avenue  
Berkeley, California 94710

26 Court Reporter: PETER TORREANO, CSR  
27 License Number C-7623

San Jose, California

May 2, 2002

P R O C E E D I N G S

THE COURT: At this time the Court will take up the matter of United States versus Roger Ver.

And could I have counsels' appearances for the record, please.

MR. FREWING: Scott Frewing for the United States. Good morning, Your Honor.

MS. ARGUEDAS: And Chris Arguedas for Roger Ver this morning and Roger is present.

THE COURT: Good morning. The Court has read and considered the following documents -- I'm sorry.

Ms. Santos, did you want to state your appearance.

MS. SANTOS: Laurie Santos, US Probation. Good morning, Your Honor.

THE COURT: Good morning.

The Court has read and considered the probation report prepared by Ms. Santos and dated April 23rd, 2002. The Court has read and considered the Government's sentencing memorandum filed May 1, 2002 and the Court has read and considered the evaluation of Dr. James Missett dated April 16th, 2002. And the Court has also received a letter dated October 30th, 2001 by Kym, K-Y-M, Barnings, B-A-R-N-I-N-G-S, a close friend of

1 the Defendant.

2 I did want to clarify one thing before hearing  
3 from counsel and from Mr. Ver and that is that  
4 Ms. Santos pointed out to me this morning that there is  
5 an error in the sentencing recommendation, that if the  
6 Court were to adopt a total offense level 11, which is  
7 the agreed-upon offense level in the 11(e)(1)(C) plea  
8 agreement, and criminal history category 3, which is the  
9 criminal history category calculated by Probation, then  
10 the appropriate guideline is twelve to eighteen months  
11 rather than ten to sixteen.

12 The Court could arrive at a ten- to  
13 sixteen-month range by determining that the criminal  
14 history is overrepresented and I'm open to that. I'd  
15 like to hear comment on that.

16 The Government is recommending a ten-month  
17 sentence. So I've taken that into account, but I'd like  
18 to hear from counsel and from Mr. Ver.

19 So Counsel?

20 MS. ARGUEDAS: I believe, Your Honor, that we  
21 are all in agreement that that's the way it should be  
22 arrived at and we also are asking for a ten-month  
23 sentence. I don't know whether we need to explicitly  
24 request this or if it automatically happens, but in the  
25 ten-month sentence we're asking that it be served five

1 months in custody and five months in the halfway house,  
2 which is permissible under zone C.

3 THE COURT: Permissible but not required.

4 MS. ARGUEDAS: Right.

5 THE COURT: Okay.

6 MS. ARGUEDAS: If I need to say more about that?

7 THE COURT: I would like your thinking about  
8 that particularly since Dr. Missett and Ms. Santos seem  
9 to have a different view.

10 MS. ARGUEDAS: Primarily, Your Honor, my  
11 reasoning is that the events that underlie this offense  
12 happened now a couple of years ago and he's been on  
13 pretrial -- you know, bail and been extremely well  
14 behaved and he has been doing something very productive  
15 which is starting a business that has to do with buying  
16 and selling computer memory I think, something to do  
17 with computers. And he's it. He is the business.

18 He may be able to find somebody who can let it  
19 not die if he was gone for five months, but it's because  
20 of his knowledge people call up on the phone and say  
21 they want a certain something and he knows the part  
22 number in his head and he has a website about it and  
23 that's why he's able to make it successful.

24 So whoever he gets to try and take it over is  
25 only going to be able to keep it on life support for

1 five months and then I don't think he would be able to  
2 do it for ten months. So he's going to be on supervised  
3 release, which I think is a good thing, and the question  
4 is do we want to extinguish his business, and I would  
5 say the answer should be no.

6 THE COURT: All right. Mr. Frewing?

7 MR. FREWING: Yes, Your Honor.

8 I must say I had noted the change in the --  
9 pardon me, the -- I guess the error in the calculation  
10 of the actual sentencing range previously and I had  
11 brought it to everyone's attention and then failed to  
12 sort of recall that when I wrote my very brief  
13 sentencing memo yesterday.

14 I think a ten-month sentence in this case is  
15 just. I think the departure for the criminal history  
16 overrepresentation isn't objectionable given that all  
17 the other offenses are essentially traffic offenses.

18 I do have some concern about the Court then in  
19 addition deciding to depart -- or to split the sentence  
20 following a departure. It seems to me that is a pretty  
21 big departure in total from the actual sentence that the  
22 Guidelines calculate.

23 Mr. Ver's conduct was serious. I think one  
24 factor that the Court can take into consideration or at  
25 least should consider is there were some pipe bombs

1 involved in this case as well that were not charged and  
2 are not incorporated in the conduct that's before the  
3 Court except arguably as relevant conduct.

4 The split sentence is -- would result only in  
5 five months incarceration for what I think is a fairly  
6 serious offense. It's my recommendation to do the  
7 ten-month sentence in prison in total.

8 THE COURT: Thank you.

9 Ms. Santos?

10 MS. SANTOS: Probation does stand by the  
11 recommendation presented here to the Court today, Your  
12 Honor.

13 After talking with Dr. Missett he did basically  
14 indicate that the behavior that occurred a couple of  
15 years ago wasn't just juvenile behavior. It was not  
16 just immature actions; that apparently Mr. Ver still has  
17 some of these negativistic attitudes and Dr. Missett did  
18 say that incarceration would be most appropriate as far  
19 as a sentence was concerned.

20 So Probation does stand by that recommendation.

21 THE COURT: Mr. Ver, you have an opportunity to  
22 address the Court. Is there anything you would like to  
23 say this morning?

24 THE DEFENDANT: I think my attorney summed it up  
25 very well.

1           THE COURT:   Thank you.

2           Well, I've given this case a lot of thought.  
3   I'm very troubled by it.   And when I say that I'm  
4   troubled by it I'm troubled by it in several ways.   Not  
5   only am I troubled by the underlying conduct, which is  
6   quite serious, but I don't want to overreact either and  
7   I think that's what makes it hard.

8           I think if you have a case which strikes you as  
9   being particularly severe, in a way that's kind of an  
10   easy thing to just say all right, we'll throw the book  
11   at the defendant and that will satisfy that impulse.  
12   But I don't think judges ought to sentence anybody  
13   impulsively.   You have to look at the offense and you  
14   have to look at the person who committed it.

15          There are elements in the probation report and  
16   in Dr. Missett's report which concern me a great deal.  
17   One has to be very careful.   Mr. Ver, you're a young man  
18   and you've led a law-abiding life for the last two years  
19   and you've by all accounts performed well on pretrial  
20   release.   I did note in your letter that you accepted  
21   that your conduct was illegal, and I appreciate that.

22          I also don't in any way want to confuse your  
23   political beliefs, which you are absolutely entitled to  
24   have, with your criminal conduct.   There's a long and  
25   honorable tradition of libertarian politics in our

1 country and I don't mean to in any way hold that against  
2 you. It's something that you're entitled to have.

3 The problem, though, is that the law is a  
4 representation of authority in a certain way. People  
5 can disagree and they can disagree very vigorously and  
6 very reasonably about what ought to be legal and what  
7 ought not to be legal and how much the Government ought  
8 to do or ought not to do.

9 But there is a point at which we start talking  
10 about public safety and I think even the most die hard  
11 libertarian would agree that one function of government,  
12 if there is to be a government, is to protect public  
13 safety. So then it's just a question of how you do it,  
14 how you do it in a way that's least invasive of  
15 individual liberties.

16 Selling explosives over the Internet doesn't cut  
17 it in any society that I can imagine and I think it's --  
18 the conduct here is simply not tolerable conduct and  
19 it's not -- I don't think one has to be a big government  
20 person or believe in government regulation of every  
21 aspect of human life to suggest that people should not  
22 be selling explosives over the Internet.

23 The other thing that concerns me is that in  
24 looking at your social history it seems to me you've got  
25 some reasons for not trusting authority, and that's



1     okay. I mean, those are feelings that are a product of  
2     your life experience. Nonetheless, those feelings don't  
3     give you the right to be above the same social  
4     constraints that bind all of us.

5             And I'm not saying this as well as I'd like to,  
6     but I think there's a difference between saying I  
7     believe that the government which governs best governs  
8     least and saying that I'm above the law totally, that  
9     I'm so smart, I'm so able, I'm so perceptive that I  
10    don't have to follow the rules that apply to other human  
11    beings.

12            There's a difference between those two  
13    positions. And while one of them is a very respectable  
14    position that I think any judge ought to uphold and  
15    support rather than punish, the other I think is why we  
16    have courts. It's when a person believes that he or she  
17    is so important and so intelligent and so much better  
18    than everybody else that they don't have to follow even  
19    the most basic rules that keep us together in this  
20    society.

21            I hope and I actually suspect that you've grown  
22    up a bit since you did these things. I don't know if  
23    you have any desire to pursue therapy, to deal with your  
24    issues about your father and about your family of  
25    origin. That's your choice, but I think a lot of the --

1 a lot of the edge in the things you did when these  
2 offenses were committed I think may be traced to that,  
3 and that is not in any way meant to devalue the  
4 political beliefs that you have.

5 Again, I think one can have sincere political  
6 beliefs and also have some personal issues that cause a  
7 person to do irrational things. Those things are not  
8 inconsistent and, frankly, I think that's what happened  
9 here.

10 I think that these offenses are very serious.  
11 They could have been a lot more serious. The bombs  
12 could have gone off or people could have used them in  
13 destructive ways. Selling bombs to juveniles is never  
14 okay.

15 I'd like to say that the five and five sentence  
16 that your attorney proposed is something that I'm  
17 comfortable with, but I just can't. And it's not a  
18 desire to be overly punitive or to send you a message.  
19 It's simply saying that this conduct -- when the law  
20 punishes behavior, criminal law is directed at conduct.

21 This conduct to me would have warranted a much  
22 stiffer sentence than ten months. There's a plea  
23 agreement. I'm bound by it. I'm not going to upset it.  
24 It was arrived at in good faith by the Government and by  
25 the defense and I will respect it, but I'm not going to

1 dilute it.

2 And I think part of growing up and part of  
3 accepting responsibility for what you did is recognizing  
4 that when you do something that's this dangerous and  
5 this anti-social that there is a significant consequence  
6 for it.

7 And I certainly don't mean to devalue the  
8 efforts you've made since then or the growth that you've  
9 experienced since then. I want to encourage it, but I  
10 think part of it is recognizing that this is a big deal.  
11 This case is not insubstantial and ten months actually I  
12 think in the scheme of things is something of a break  
13 and I think it's something of a recognition that you  
14 have grown up, that you have accepted some  
15 responsibility, that you don't have a prior criminal  
16 history.

17 But particularly post-9/11 you get cases like  
18 this coming in here the Government is seeking to put  
19 people away for a lot longer than ten months.  
20 So, you know, I don't minimize the effects on your  
21 business and on your personal life or anything else, but  
22 I just can't in good conscious do less than that.

23 Pursuant to the Sentencing Reform Act of 1984,  
24 it is the judgment of this Court that the Defendant  
25 Roger Keith Ver is hereby committed to the custody of

1 the United States Bureau of Prisons to be imprisoned for  
2 a term of ten months.

3           Upon release from custody the Defendant shall be  
4 placed on supervised release for a term of three years.  
5 Within 72 hours of release from custody of the Bureau of  
6 Prisons the Defendant shall report in person to the  
7 probation office in the district to which the Defendant  
8 is released.

9           While on supervised release the Defendant shall  
10 not commit another federal, state or local crime, shall  
11 comply with the standard conditions that have been  
12 adopted by this Court and shall comply with the  
13 following special conditions: The Defendant shall  
14 participate in a mental health treatment program as  
15 directed by the probation officer.

16           The Defendant is to pay part or all of the cost  
17 of this treatment in an amount not to exceed \$60 per  
18 session as deemed appropriate by the probation officer.  
19 Payment shall never exceed the total cost of mental  
20 health counseling. The actual co-payment schedule shall  
21 be determined by the probation officer.

22           The Defendant shall submit his person,  
23 residence, office, vehicle or any property under his  
24 control to a search. Such a search shall be conducted  
25 by a United States Probation officer at a reasonable

1 time and in a reasonable manner based upon reasonable  
2 suspicion of contraband or evidence of a violation of a  
3 condition of release. Failure to submit to such a  
4 search may be grounds for revocation. The Defendant  
5 shall warn any residents that the premises may be  
6 subject to searches.

7 The Defendant shall refrain from accessing via a  
8 computer any material that relates to selling explosives  
9 over the Internet. The Defendant shall not own or  
10 possess any firearms, ammunition, destructive devices or  
11 other dangerous weapons. The Defendant shall pay a fine  
12 that is imposed by this judgment that remains unpaid as  
13 directed by the probation officer.

14 I do agree with Mr. Frewing that some fine is  
15 appropriate in this matter because there was profit from  
16 selling the explosives and Mr. Ver does appear to have  
17 the ability to pay a fine. I think in light of the  
18 overall disposition of the case that I'm inclined to  
19 impose the statutory minimum fine, which is \$2,000, and  
20 that will be the order of the Court.

21 It is further ordered that the Defendant shall  
22 pay to the United States a special assessment of \$150  
23 which shall be due immediately.

24 Mr. Ver, the plea agreement contained a waiver  
25 of your right to appeal. However, if you believe that

1     you have a basis for an appeal, an appeal must be filed  
2     within ten days of today.

3             And I have no problem with a self-surrender.  
4     Was there some discussion as to when that would be?

5             MS. ARGUEDAS:   Ninety days?

6             MR. FREWING:    No objection.

7             THE COURT:   Without objection.   And again I  
8     think that's a credit to your good performance on  
9     pretrial release.

10            MS. ARGUEDAS:   Thank you.

11            THE COURT:   The Defendant is to report to the  
12   facility designated by the Bureau of Prisons on August  
13   2nd, 2002 at 9:00 a.m.

14            MS. ARGUEDAS:   And could you recommend Lompoc?

15            THE COURT:   I can recommend a minimum security  
16   facility in California.   Beyond that -- every time I've  
17   tried to recommend a specific facility to the BOP I get  
18   a note from them saying I can't do that.

19            MS. ARGUEDAS:   Okay.

20            THE COURT:   But I can recommend a minimum  
21   security facility in California.

22            MS. ARGUEDAS:   All right.

23            THE COURT:   And there's only one of those that I  
24   know about.   Okay?

25            MS. ARGUEDAS:   Thank you, Your Honor.

1           MR. FREWING:   Thank you, Your Honor.

2           MS. SANTOS:   Thank you, Your Honor.

3           (Whereupon, the proceedings concluded.)

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CERTIFICATE OF REPORTER

I, Peter Torreano, Official Court Reporter of  
the United States District Court for the Northern  
District of California, 280 South First Street, San  
Jose, California, do hereby certify:

That the foregoing transcript is a full, true  
and correct transcript of the proceedings had in United  
States v. Ver, Case No. CR-01-20127-JF, dated May 2,  
2002; that I reported the same in stenotype to the best  
of my ability, and thereafter had the same transcribed  
by computer-aided transcription as herein appears.

/S/  
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PETER TORREANO, CSR  
License Number C-7623