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1 (PROCEEDINGS HELD IN OPEN COURT AT 10:12 A.M., ATLANTA)

2 THE COURT: Ms. Walker, if you want to call the case, we
3 can get started. And then if counsel could note their appearances
4 please.

5 COURTROOM DEPUTY CLERK: Yes, your Honor.

6 This is case 20-CR-296. USA v. Daryl Thomas.

7 MS. CHAIKEN: Good morning, your Honor. Tal Chaiken and
8 Nathan Kitchens from the US Attorney Office for the United States.
9 And with us at counsel table is Jeffrey Hill from IRS.

10 THE COURT: Good to see all of you.

11 MR. ALPER: Good morning, Judge. Benjamin Alper here
12 with Mr. Thomas.

13 THE COURT: Good to see you, Mr. Alper. And good to see
14 you as well, Mr. Thomas.

15 Mr. Alper, if you and Mr. Thomas could please stand, I'm
16 going to have Ms. Walker swear in Mr. Thomas.

17 COURTROOM DEPUTY CLERK: Good morning. Mr. Thomas, if
18 you can raise your right hand for me.

19 (Defendant duly sworn)

20 COURTROOM DEPUTY CLERK: You may be seated. State your
21 name for the record.

22 THE DEFENDANT: Darrell Thomas.

23 COURTROOM DEPUTY CLERK: Thank you so much.

24 And you can bring that mic a little bit closer to you.
25 Okay. Thank you.

1 THE COURT: Ms. Chaiken, if you can please verify the
2 signatures on the plea agreement.

3 MS. CHAIKEN: Yes, your Honor.

4 Mr. Thomas, I'm showing you a document that is entitled
5 "Guilty Plea and Plea Agreement." On page 23 on the right line
6 above where it says your name, is that your signature?

7 THE DEFENDANT: Yes, it is.

8 MS. CHAIKEN: Mr. Alper, on the left line above where it
9 says your name, is that your signature?

10 MR. ALPER: Yes, it is.

11 MS. CHAIKEN: And, for the record, page 23 and 24 are
12 also signed by representatives of the United States.

13 Mr. Thomas, is that your signature on page 25 above
14 where it says your name?

15 THE DEFENDANT: Yes, it is.

16 MS. CHAIKEN: Mr. Alper, is that your signature on page
17 26 above where it says your name?

18 MR. ALPER: Yes, it is.

19 MS. CHAIKEN: May I tender the plea agreement, your
20 Honor?

21 THE COURT: Sure. Thank you.

22 Mr. Thomas, before I can accept your plea of guilty, I
23 need to go over several matters with you. As we go through this
24 process, if anything I state is unclear, let me know and I will
25 repeat or rephrase it for you. It's important that you understand

1 not only my statements to you but also my questions. You need to
2 understand my questions so that you can answer them truthfully.
3 A failure to truthfully answer any question could result in
4 additional charges being brought against you.

5 Also, as I ask questions please answer the questions
6 out loud. This will allow the court reporter to take down your
7 responses so that we can have an accurate record of these
8 proceedings. Do you understand, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: How old are you, sir?

11 THE DEFENDANT: Thirty-five.

12 THE COURT: And how far did you go in school?

13 THE DEFENDANT: Some college.

14 THE COURT: In the last 24 hours have you taken any
15 drugs, medicine, pills or had any alcoholic beverages to drink?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: And have you been treated recently for any
18 mental illness or addiction to alcohol or drugs, sir?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Mr. Alper, are you aware of any issues
21 regarding your client's competence to enter a plea this morning?

22 MR. ALPER: No, your Honor.

23 THE COURT: Sir, I will now review with you the rights
24 that you're guaranteed under the Constitution and laws of the
25 United States. I want to be sure that you understand your rights

1 and that by entering this plea of guilty, you're giving up many of
2 these rights.

3 Do you understand, first, that under the Constitution
4 and laws of the United States you have a right to plead not guilty
5 and have a trial by jury?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that you're entitled to a
8 speedy and public trial on charges against you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that you have the right to
11 be represented by an attorney throughout all proceedings and if
12 you cannot afford an attorney, one will be appointed to represent
13 you at no cost to you?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that if you pled not
16 guilty and went to trial, at the trial you would be presumed to
17 be innocent and the government would have to overcome that
18 presumption and prove you guilty beyond a reasonable doubt?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that at a trial you would
21 not have to prove you're innocent because the burden would be on
22 the government to prove you're guilty beyond a reasonable doubt?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that at a trial you would
25 have the right to subpoena witnesses which would be an order from

1 the Court compelling their appearance at trial to testify on your
2 behalf?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that during a trial
5 witnesses for the government must come to the Court and testify in
6 your presence?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you understand that your attorney would
9 have the opportunity to cross-examine the witnesses for the
10 government, object to evidence offered by the government and offer
11 evidence on your behalf?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that at a trial, while you
14 would have the right to testify if you chose to do so, you would
15 also have the right not to testify? And do you understand that if
16 you chose not to testify or put on any evidence, those facts could
17 not be used against you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that in order to convict
20 you at a trial the jury would have to reach a unanimous verdict
21 that you were guilty of the crimes with which you're charged?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: If I accept your plea of guilty, you will
24 not have a trial and a jury will not decide your guilt, but I will
25 find you're guilty of the charges based on your admission that

1 you're guilty. Do you understand?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Are you willing to give up your right to a
4 trial and proceed with a plea of guilty at this time?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You earlier verified your signature on the
7 plea agreement that you entered into with the government. In a
8 moment I will ask the Assistant US Attorney to review the terms
9 of the plea agreement other than the potential penalties which we
10 will discuss a bit later in this proceeding. After that I will be
11 asking you whether the agreement as presented accurately reflects
12 your understanding of the agreement that you reached with the
13 government.

14 Ms. Chaiken.

15 MS. CHAIKEN: Thank you, your Honor.

16 Pursuant to the plea agreement the defendant is pleading
17 guilty to Counts 1 and 18 of the indictment.

18 Paragraph 11 sets forth that the government agrees to
19 dismiss the remaining counts pending against the defendant.

20 Paragraph 12 sets forth that the government agrees
21 not to bring further charges related to the charges to which
22 Mr. Thomas is pleading guilty.

23 Paragraphs 13 through 21 set forth a series of guideline
24 stipulations between the parties. Specifically, paragraph 14 sets
25 forth that the applicable offense guideline is Section 2B1.1; that

1 a 20-level upward adjustment applies under Section 2B1.1(b) (1) (K)
2 because the amount of loss is greater than 9.5 Million but less
3 than 25 Million; a two-level upward adjustment applies under
4 Section 2B1.1(b) (2) (A) (1) because there are ten or more victims; a
5 two-level upward adjustment applies under Section 2B1.1(b) (10)
6 because the offense involved sophisticated means and the defendant
7 intentionally engaged in or caused the conduct constituting
8 sophisticated means; a two-level upward adjustment applies under
9 Section 2B1.1(b) (17) (A) because defendant derived more than \$1
10 Million in gross receipts from one or more financial institutions.

11 Paragraph 15 sets forth the parties' agreement that
12 the relevant conduct includes conduct related to defendant's
13 participation in an auto loan fraud scheme.

14 Paragraph 16 sets forth that the parties do not have
15 an agreement as to the applicability of an adjustment for the
16 defendant's role in the offense pursuant to Section 3B1.1(a), but
17 that defendant understands that the United States will argue that
18 a four-level adjustment applies and will present evidence related
19 to that at sentencing.

20 Paragraph 17 sets forth the parties' agreement that a
21 two-level upward adjustment applies pursuant to Section 3C1.1 for
22 obstruction.

23 Paragraph 18 sets forth that the applicable offense
24 guideline as to Count 18 is Section 2S1.1; that the base offense
25 level for the underlying offense from which the laundered funds

1 were derived is 33; that a two-level upward adjustment applies
2 pursuant to Section 2S1.1(b) (2) (B) because the defendant is
3 pleading guilty to a violation of Title 18 United States Code,
4 Section 1956; and that a two-level adjustment will not apply
5 pursuant to Section 2S1.1(b) (3) for sophisticated means.

6 Paragraph 19 sets forth that the parties do not have
7 an agreement as to the applicability for an adjustment for the
8 defendant's role in the offense pursuant to Section 3B1.1(a), but
9 that the defendant understands the United States will argue for
10 a four-level adjustment and will present evidence as to that
11 adjustment at sentencing.

12 Paragraph 20 provides that a two-level upward adjustment
13 applies pursuant to Section 3C1.1 for obstruction.

14 And paragraph 21 sets forth that no adjustment will
15 apply pursuant to Section 3D1.4 for grouping of multiple counts.

16 Paragraph 22 sets forth that the government will
17 recommend an adjustment for acceptance of responsibility to the
18 maximum extent authorized by the guidelines subject to the
19 exceptions that are listed in that paragraph.

20 Paragraph 23 sets forth the parties' recognition that
21 each party reserves the right to make recommendations for
22 sentencing and that there are no agreements on the guidelines
23 other than those specifically mentioned in the agreement.

24 Paragraph 24 sets forth that the United States reserves
25 the right to modify its sentencing recommendation if it learns

1 additional information.

2 Paragraph 25 sets forth a cooperation agreement that the
3 defendant agrees to cooperate truthfully and completely with the
4 government, including producing all records requested, making
5 himself available for interviews, responding truthfully to all
6 government inquiries, and at the government's request testifying
7 at trial or another proceeding.

8 Paragraph 26 provides that the defendant consents to
9 direct contact with the government outside the presence of his
10 attorney for cooperation purposes.

11 Paragraph 27 provides that the government agrees to
12 abide by Section 1B1.8 of the United States Sentencing Guidelines
13 and not to use information previously unknown for sentencing
14 purposes with the caveat that if the defendant is not truthful in
15 cooperation, he may be prosecuted for perjury, false statements,
16 obstruction, and all information he provided may be used against
17 him.

18 Paragraph 28 provides for a conditional 5K/Rule 35
19 motion. And the government agrees to inform the Court of
20 defendant's cooperation.

21 Specifically, if the government determines that the --
22 defendant's cooperation qualifies as substantial assistance, it
23 will file a motion for a downward departure if that happens before
24 sentencing or a Rule 35 motion for reduction of sentence if that
25 happens after sentencing.

1 The defendant understands that the government alone
2 determines if the defendant provided substantial assistance. And
3 the defendant understands that the government may recommend a
4 sentence if it files a motion but the ultimate decision would rest
5 with the Court.

6 Paragraph 29 provides that the government agrees to
7 recommend a sentence at the low end of the applicable guideline
8 range subject to the caveats in paragraph 22 related to acceptance
9 of responsibility.

10 Paragraph 30 provides that the government agrees to make
11 no specific recommendation as to the fine to be imposed.

12 Paragraph 31 provides that the defendant agrees to pay
13 \$14,748,786.35, plus applicable interest, in restitution to the 15
14 victims and in the amounts that are identified in that paragraph.

15 Paragraph 32 provides that the defendant agrees to
16 forfeiture of three real properties in Atlanta, Georgia, that
17 are identified in that paragraph, funds seized from three bank
18 accounts held in the names of Bellator Phront Group, Inc., or
19 Elite Executive Services, Inc., that are identified in that
20 paragraph, \$131,000 in cash, three vehicles that are identified
21 in the plea agreement, and three pieces of jewelry that are
22 identified in the plea agreement.

23 Paragraphs 33 to 37 set forth the forfeiture provision
24 and provide that the defendant waives his interest in that
25 property that is being forfeited and agrees to the forfeiture

1 procedure set forth in those paragraphs.

2 Paragraph 38 provides that the defendant agrees to pay a
3 special assessment of \$200.

4 Paragraphs 39 through 43 provide that the defendant
5 agrees to cooperate fully in the collection of any restitution and
6 fine pursuant to the terms that are laid out in paragraphs 39
7 through 43.

8 Paragraph 44 provides that the defendant understands
9 that the recommendations and the agreement are not binding on the
10 Court.

11 Paragraph 45 sets forth an appeal waiver, which I would
12 like to read in full into the record:

13 To the maximum extent permitted by federal law, the
14 defendant voluntarily and expressly waives the right to appeal his
15 conviction and sentence and the right to collaterally attack his
16 conviction and sentence in any post-conviction proceeding,
17 including but not limited to motions filed pursuant to 28 United
18 States Code, Section 2255, on any ground except that the defendant
19 may file a direct appeal of an upward departure or upward variance
20 above the sentencing guideline range as calculated by the district
21 court.

22 Claims that the defendant's counsel rendered
23 constitutionally ineffective assistance are excepted from this
24 waiver.

25 The defendant understands that this plea agreement does

1 not limit the government's right to appeal, but if the government
2 initiates a direct appeal of the sentence imposed, the defendant
3 may file a cross-appeal of that same sentence.

4 Paragraph 46 provides that the defendant agrees to the
5 standard FOIA and Privacy Act waivers.

6 And paragraph 47 provides that there are no other
7 agreements between the parties other than those set forth in the
8 plea agreement.

9 THE COURT: Thank you.

10 Mr. Thomas, does that accurately reflect the agreement
11 that you believe you've reached with the government?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that any provisions in the
14 agreement regarding recommendations to be made by the government
15 are not binding on the Court? In other words, if I choose not to
16 follow some recommendation that the government makes, do you
17 understand that you will still be bound by your plea of guilty and
18 would not be entitled to withdraw the plea based on the Court not
19 following the recommendation?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Is this the only agreement that you've
22 entered into with the government?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Other than the terms of this agreement has
25 any promise of any kind been made to you to cause you to plead

1 guilty?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Per the terms of the plea agreement, the
4 United States Attorney for the Northern District of Georgia has
5 agreed not to bring any additional charges related to the offenses
6 to which you're pleading guilty. Other than those terms, has
7 anyone threatened or forced you to plead guilty or told you that
8 if you do not plead guilty, further charges will be brought
9 against you or other adverse action taken against you?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Mr. Alper, are you aware of any plea
12 agreement or promise being made to your client other than what's
13 been discussed here in open court?

14 MR. ALPER: No, sir.

15 THE COURT: Mr. Thomas, in a moment I will ask the
16 Assistant US Attorney to state the elements of the offenses to
17 which you're pleading guilty. The elements of the offenses are
18 those matters that the government must prove beyond a reasonable
19 doubt in order to convict you of the charges.

20 Ms. Chaiken.

21 MS. CHAIKEN: Thank you, your Honor.

22 Count 1 of the indictment charges conspiracy to commit
23 bank fraud and wire fraud in violation of Title 18 United States
24 Code, Section 1349.

25 The elements of conspiracy to commit bank fraud and wire

1 fraud are as follows:

2 One, two or more persons in some way or manner agreed to
3 try to accomplish a common and unlawful plan to commit bank fraud
4 and wire fraud as charged in the indictment;

5 And, two, the defendant knew the unlawful purpose of the
6 plan and willfully joined in it.

7 The elements of bank fraud are as follows:

8 One, the defendant knowingly carried out or attempted
9 to carry out a scheme to defraud a financial institution or to get
10 money, assets or other property from a financial institution by
11 using false or fraudulent pretenses, representations or promises
12 about a material fact;

13 Two, the false or fraudulent pretenses, representations
14 or promises were material;

15 Three, the defendant intended to defraud the financial
16 institution;

17 And, four, the financial institution was federally
18 insured.

19 The elements of wire fraud are as follows:

20 The defendant knowingly devised or participated in a
21 scheme to defraud someone by using false or fraudulent pretenses,
22 representations or promises;

23 Two, the false pretenses, representations or promises
24 were about a material fact;

25 Three, the defendant acted with the intent to defraud;

1 And, four, the defendant transmitted or caused to be
2 transmitted by wire some communication in interstate commerce to
3 help carry out the scheme to defraud.

4 And Count 18 of the indictment charges money laundering
5 in violation of Title 18 United States Code, Section 1956.

6 The elements of money laundering are as follows:

7 One, the defendant knowingly conducted or tried to
8 conduct a financial transaction;

9 Two, the defendant knew that the money or property
10 involved in the transaction were the proceeds of some kind of
11 unlawful activity;

12 Three, money or property did come from an unlawful
13 activity, specifically bank fraud and/or wire fraud;

14 And, four, the defendant knew that the transaction was
15 designed in whole or in part to conceal or disguise the nature,
16 location, source, ownership or control of the proceeds.

17 THE COURT: Thank you.

18 Mr. Thomas, do you understand that those are the
19 elements that the government would have to prove beyond a
20 reasonable doubt in order to convict you of the charges?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And in a moment I will ask the Assistant US
23 Attorney to summarize the evidence that the government would
24 expect to present at trial to prove each of these elements. In
25 other words, these are what the government contends are the facts

1 of the case. It's necessary for the government to state these
2 facts because I must determine whether there is a factual basis
3 for you to enter this plea of guilty. After this statement, I
4 will ask you whether you disagree with any of the facts as stated
5 by the prosecutor. If you do, tell me and we'll discuss those
6 facts at that time.

7 Ms. Chaiken.

8 MS. CHAIKEN: Thank you, your Honor.

9 If this case were to go to trial, the United States
10 would prove by admissible evidence and beyond a reasonable doubt
11 the following facts:

12 The Paycheck Protection Program, referred to as the PPP,
13 was authorized as part of the Coronavirus Aid, Relief and Economic
14 Security Act to provide forgivable loans to eligible small
15 businesses.

16 Under the PPP small businesses could apply for loans
17 that must be used for payroll expenses, interest on mortgage, rent
18 and/or utilities. The amount of a PPP loan that a business could
19 receive was generally two-and-a-half times, or 250 percent, of the
20 business's average monthly payroll cost.

21 While the United States Small Business Administration
22 oversaw the PPP, individual PPP loans were issued by private
23 approved lenders, including Cross River Bank, which is a
24 federally-insured financial institution.

25 The PPP borrower application form asked the applicant to

1 provide information related to their loan application, including
2 the amount of the business's average monthly payroll, the number
3 of the business's employees and the purpose of the loan with
4 options for payroll, lease or mortgage interest, utilities and/or
5 other.

6 The lender then used this information to calculate the
7 amount of the loan that the business was eligible to receive.
8 The application form also included certain representations and
9 certifications, including certifications as to the accuracy of
10 the information included in the application itself and in any
11 supporting documents and a certification that the funds would be
12 used to retain workers and maintain payroll or to make mortgage
13 interest payments, lease payments and utility payments.

14 Defendant Darrell Thomas is the owner of a Georgia
15 company called Bellator Phront Group, Inc. Starting in or around
16 April 2020 and continuing to the present, Thomas orchestrated a
17 fraudulent PPP loan and money laundering scheme involving at least
18 14 PPP loans totaling approximately \$11.2 Million. The 14 loan
19 applications were submitted between April 21, 2020, and August 10,
20 2020, and contained false representations about each business's
21 number of employees, average monthly payroll and the purpose of
22 the PPP loan.

23 The loan applications also included fabricated
24 documentation supporting the business's false representations,
25 including fabricated IRS Form 941s, which are employer's quarterly

1 federal tax returns, fabricated bank statements, fabricated
2 payroll spreadsheets and other fabricated financial and tax
3 documents.

4 On or around May 18th, 2020, Thomas submitted or
5 assisted in the submission of a PPP loan application for a Georgia
6 business called Gaines Reservation & Travel, which I'll refer to
7 as Gaines Reservation. In the PPP loan application Gaines
8 Reservation represented that it had 69 employees and \$322,684 in
9 average monthly payroll and that the purpose of the loan was
10 payroll, lease or mortgage interest and utilities.

11 To support these payroll figures, Gaines Reservation
12 submitted IRS Form 941s for Gaines Reservation for each quarter of
13 2019 and a JP Morgan Chase Bank statement for Gaines Reservation
14 for February 2020.

15 Thomas and his co-conspirators fabricated the Form 941s
16 as the IRS confirmed that Gaines Reservation did not file a Form
17 941 for any quarter in 2019. Thomas and his co-conspirators also
18 fabricated the JP Morgan Chase Bank statement as the actual bank
19 statement for Gaines Reservation chose (sic). In reality Gaines
20 Reservation did not have any employees or any monthly payroll
21 costs.

22 Based on the false representations in Gaines
23 Reservation's PPP loan application and the fabricated supporting
24 documents, Cross River Bank issued an \$806,710 PPP loan to Gaines
25 Reservation.

1 On or about May 29th, 2020, a \$93,785 check purportedly
2 for "Roswell Road Warehouse Rent" from Gaines Reservation's JP
3 Morgan Chase account was deposited into Bellator Phront Group's
4 Bank of America account. Gaines Reservation did not rent any
5 warehouse space from Bellator. Instead the transaction was a
6 payment to Thomas that was designed to conceal or disguise the
7 nature, location, source, ownership or control of Gaines
8 Reservation's PPP loan proceeds and to make it appear as though
9 Gaines Reservation was spending its PPP loan proceeds on rent,
10 which is an approved expense.

11 THE COURT: All right. Thank you.

12 Mr. Thomas, do you disagree with any of the facts as
13 stated by the Assistant US Attorney?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: I'm going to now read through with you again
16 those elements and ask you about them.

17 Do you admit that two or more persons in some way or
18 manner agreed to try to accomplish a common and unlawful plan to
19 commit bank fraud and wire fraud as charged in the indictment?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you admit that you knew the unlawful
22 purpose of the plan and willfully joined in it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: As to bank fraud, do you admit that you
25 knowingly carried out or attempted to carry out a scheme to

1 defraud a financial institution or to get money, assets or other
2 property from a financial institution by using false or fraudulent
3 pretenses, representations or promises about a material fact?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you admit that the false or fraudulent
6 pretenses, representations or promises were material?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Do you admit that you intended to defraud
9 the financial institution?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you admit that the financial institution
12 was federally insured?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: As to wire fraud, do you admit that you
15 knowingly devised or participated in a scheme to defraud someone
16 by using false or fraudulent pretenses, representations or
17 promises?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you admit that the false pretenses,
20 representations or promises were about a material fact?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you admit that you acted with the intent
23 to defraud?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you admit that you transmitted or caused

1 to be transmitted by wire some communication in interstate
2 commerce to help carry out the scheme to defraud?

3 THE DEFENDANT: Could you explain interstate commerce,
4 could you explain that to me.

5 THE COURT: Sure.

6 Ms. Chaiken, would you like to take a first crack at
7 that. And then I'll let Mr. Alper see if he disagrees in any way
8 with your representation.

9 MS. CHAIKEN: Sure.

10 Interstate commerce means that the communication passed
11 from one state to another state.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Mr. Alper, is there any disagreement with
14 that synopsis?

15 MR. ALPER: No, your Honor.

16 THE COURT: And, Mr. Thomas, let me ask you again, just
17 so the record is clear, although I think you have answered: Do
18 you admit that you transmitted or caused to be transmitted by wire
19 some communication in interstate commerce to help carry out the
20 scheme to defraud?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: As to money laundering, do you admit that
23 you knowingly conducted or tried to conduct a financial
24 transaction?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you admit that you knew that the money or
2 property involved in the transaction were the proceeds of some
3 kind of unlawful activity?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you admit that money or property did come
6 from an unlawful activity, specifically bank fraud and/or wire
7 fraud?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you admit that you knew that the
10 transaction was designed in whole or in part to conceal or
11 disguise the nature, location, source, ownership or control of the
12 proceeds?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Ms. Chaiken, if you could please now state
15 the potential penalties that the defendant faces for the charges,
16 including maximum penalties and any mandatory minimums.

17 MS. CHAIKEN: Yes, your Honor.

18 Mr. Thomas faces the following maximum and mandatory
19 minimum penalties as to Count 1:

20 The maximum term of imprisonment is 30 years. There is
21 no mandatory minimum;

22 The authorized term of supervised release is zero years
23 to five years;

24 The maximum fine is \$1 Million or twice the gain or
25 twice the loss, whichever is greatest, which is due and payable

1 immediately;

2 There's full restitution due and payable immediately to
3 all victims of the offense and relevant conduct;

4 A mandatory special assessment of \$100 due and payable
5 immediately;

6 And forfeiture of any property, real or personal,
7 constituting or derived from proceeds obtained directly or
8 indirectly as a result of the offense.

9 And Mr. Thomas faces the following maximum and mandatory
10 minimum penalties as to count 18:

11 The maximum term of imprisonment is 20 years. There is
12 no mandatory minimum;

13 The authorized term of supervised release is zero to
14 three years;

15 The maximum fine is \$500,000 or twice the gain or twice
16 the loss, whichever is greatest, due and payable immediately;

17 Full restitution due and payable immediately to all
18 victims of the offense and relevant conduct;

19 A mandatory special assessment of \$100 due and payable
20 immediately;

21 And forfeiture of any and all property, real or
22 personal, involved in the offense or any property traceable to
23 such property.

24 THE COURT: Thank you.

25 Mr. Thomas, do you understand that those are the

1 possible penalties that you could receive in this case?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand that it's not possible for
4 me to state to you today what your sentence will be?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that in deciding your
7 sentence I will consider sentencing guidelines and that the
8 guidelines are advisory, which means that I have the discretion to
9 impose a sentence that is either within the guidelines, greater
10 than the guidelines or less than the guidelines?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: In the plea agreement that was reviewed with
13 you a few moments ago, you waived certain appeal rights. I want
14 to be sure that you understand the meaning of that waiver.

15 Let me first state to you the rights you would have if
16 you did not waive or give up these rights.

17 The defendant in every case has a right to file a direct
18 appeal immediately after his conviction and sentence. In that
19 appeal you may raise any issues concerning the handling of your
20 case in this court that you wish to raise. Those issues would be
21 reviewed by the Court of Appeals. If errors were found, the Court
22 of Appeals could order that action be taken to correct those
23 errors.

24 Besides the right to a direct appeal, you would have an
25 additional opportunity for review of your case by filing a writ of

1 habeas corpus pursuant to 28 USC, Section 2255. That's another
2 opportunity for you to challenge the legality of your conviction
3 and/or your sentence. These are rights that every defendant has
4 unless he waives or gives them up.

5 In your plea agreement you have for the most part given
6 up these rights. Your right of review will be limited to three
7 specific circumstances:

8 First, after calculating the sentencing guidelines that
9 apply in your case, I then impose a sentence that is greater than
10 the guidelines, you would have a right to file a direct appeal
11 challenging that sentence;

12 Second, if the government files an appeal for any
13 reason, you have a right to file a cross-appeal raising any issues
14 that you wish to raise;

15 Finally, you always reserve the right to challenge
16 constitutionally ineffective assistance of counsel.

17 But aside from those three very narrow circumstances,
18 you will have no right of appeal and will be essentially bound by
19 my decision. Do you understand all that, sir?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And, Mr. Alper, have you reviewed the rights
22 with your client such that you're comfortable he understands both
23 his rights and the waiver of those rights?

24 MR. ALPER: Yes, your Honor, he does.

25 THE COURT: Mr. Thomas, do you understand that parole

1 has been abolished in the federal system and that if you're
2 sentenced to prison, you will not be released early on parole?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand that you may be sentenced
5 to a term of supervised release that will follow any term of
6 imprisonment and will include rules governing your conduct that if
7 you violate could result in more time in prison?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you understand that you may be ordered to
10 pay restitution to any victim of the offense?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you a citizen of the United States
13 government?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that as part of your
16 sentence certain property that's been identified by the government
17 may be forfeited by you to the government?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Is there anything that we've talked about
20 today that you do not feel you fully understand?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Have you had a sufficient opportunity to
23 talk about your case with your attorney and have your attorney
24 answer any questions that you have before entering your plea?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Are you satisfied with the representation
2 that your attorney has provided to you?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: How do you plead to Counts 1 and 18 of the
5 indictment?

6 THE DEFENDANT: Guilty.

7 THE COURT: Mr. Alper, do you feel that you've had a
8 sufficient opportunity to investigate your client's case and
9 advise him concerning the entry of this plea?

10 MR. ALPER: Yes, your Honor.

11 THE COURT: Are you aware of any reason I should not
12 accept the plea?

13 MR. ALPER: No, sir.

14 THE COURT: Is there anything else you want me to
15 address with your client on the record at this time?

16 MR. ALPER: No, thank you.

17 THE COURT: And, Ms. Chaiken, is there anything further
18 that the government wishes the Court to address at this time?

19 MS. CHAIKEN: No, your Honor. Thank you.

20 THE COURT: I find that the defendant understands the
21 charges and the consequences of the plea.

22 I've observed the defendant during this proceeding and
23 he does not appear to be under the influence of any substance that
24 might affect his judgment or actions in any manner.

25 The Court finds that the plea has a factual basis and is

1 free of any coercive influence of any kind.

2 I find that there have been no promises made to the
3 defendant except those set out in the plea agreement.

4 I find that the defendant is competent to understand
5 these proceedings and enter a knowing plea of guilty.

6 I find that the plea is freely and voluntarily entered.

7 It's therefore ordered that the plea of guilty of the
8 defendant to Counts 1 and 18 of the indictment is accepted and
9 entered.

10 Mr. Thomas, you are hereby adjudged guilty of the
11 charges contained in Counts 1 and 18 of the indictment.

12 I will now be referring your case to a probation officer
13 who will prepare a presentence report. Before I receive the
14 report, Mr. Thomas, you and your attorney will receive a report --
15 excuse me, will receive a copy of the report and will have an
16 opportunity to object to any findings in the report.

17 At your sentencing hearing I will hear from the
18 government and any witnesses that it wishes to present and from
19 you, your attorney and any witnesses that you wish to present. At
20 that time I will decide the proper sentence in your case.

21 Do you understand, sir?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Counsel, anything else?

24 MS. CHAIKEN: No, your Honor.

25 MR. ALPER: No, your Honor.

1 THE COURT: All right.

2 Good to see all of you. And the defendant is remanded
3 to the Marshal service.

4 Ms. Walker, Ms. Coudriet, Officer, thank you.

5 We're adjourned.

6 (PROCEEDINGS REPORTED WERE CONCLUDED AT 10:45 A.M.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 9th of November, 2022.

Penny Pritty Coudriet

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER