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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	
-VS-	)	DOCKET NO. 1:20-CR-00296-JPB
	)	
JOHN GAINES,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF CHANGE OF PLEA PROCEEDINGS
BEFORE THE HONORABLE J.P. BOULEE
UNITED STATES DISTRICT JUDGE
JANUARY 31, 2024

APPEARANCES:

ON BEHALF OF THE GOVERNMENT:
TAL CHAIKEN, ESQ.
SAMIR KAUSHAL, ESQ.
BABASIJIBOMI MOORE, ESQ.
ASSISTANT UNITED STATES ATTORNEYS

ON BEHALF OF THE DEFENDANT:
DEANA TIMBERLAKE-WILEY, ESQ.

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
ATLANTA, GEORGIA

(PROCEEDINGS HELD IN OPEN COURT AT 11:38 AM, ATLANTA, GEORGIA)

COURTROOM DEPUTY CLERK: The Court has set aside time for A change of plea in United States v. John Gaines, Case Number 1:20-CR-296.

Counsel, will you please make your appearances for the record.

MS. CHAIKEN: Good morning, your Honor. Tal Chaiken for the United States. Seated with me at counsel table is my co-counsel Samir Kaushal and Siji Moore. Seated behind us are FBI Special Agents Joe Stites and Stefan Bublitz.

MS. TIMBERLAKE-WILEY: Good morning, your Honor. My name is Deana Timberlake-Wiley, and I have the pleasure of representing Mr. John Gaines who is seated at the table here with me.

THE COURT: Good to see all of you this morning.

If we can please swear in the defendant.

(The defendant was duly sworn)

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

MS. CHAIKEN: Yes, your Honor.

Good morning, Mr. Gaines, I'm showing you a document that's entitled "Guilty Plea and Plea Agreement." Have you had an opportunity to review this document with your attorney?

THE DEFENDANT: Yes.

MS. CHAIKEN: Turning to page 14 of this document, on

the right side above where it says your name, is that your signature?

THE DEFENDANT: Yes.

MS. CHAIKEN: And, Ms. Timberlake-Wiley, on the left side above where it says your name, is that your signature?

MS. TIMBERLAKE-WILEY: Yes, ma'am.

MS. CHAIKEN: Your Honor, page 14 is also signed by myself, approving official Stephen H. McClain and Siji Moore.

Turning to page 15, Mr. Gaines, is that your signature above where it says your name?

THE DEFENDANT: Yes.

MS. CHAIKEN: Turning to page 16, Ms. Timberlake-Wiley, is that your signature above where it says your name?

MS. TIMBERLAKE-WILEY: Yes.

MS. CHAIKEN: Your Honor, may I tender the plea agreement?

THE COURT: Yes. Thank you.

Mr. Gaines, before I can accept your plea of guilty, I need to go over several matters with you. As we go through this process, if anything I state is unclear, let me know and I will repeat or rephrase it for you. It's important that you understand not only my statements to you but also my questions. You need to understand my questions so you can answer them truthfully. A failure to truthfully answer any

question can result in additional charges being brought against you.

Also, as I ask questions, please answer the questions out loud. This will allow the court reporter to take down your responses so we can have an accurate record of these proceedings.

Do you understand, sir?

THE DEFENDANT: Yes.

THE COURT: How old are you and how far did you go in school?

THE DEFENDANT: 58. And I got an EdS in education.

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

THE DEFENDANT: No.

THE COURT: Have you been treated recently for any mental illness or addiction to alcohol or drugs?

THE DEFENDANT: No.

THE COURT: And, Ms. Timberlake-Wiley, are you aware of any issues regarding your client's competence to enter a plea this morning?

MS. TIMBERLAKE-WILEY: No, your Honor.

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

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

Do you understand, first off, that you have the right to plead not guilty and have a trial by jury?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

order from the Court compelling their appearance at trial to testify on your behalf?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: Do you understand that at a trial, while you would have the right to testify if you chose to do so, you would also have the right not to testify?

THE DEFENDANT: Yes.

THE COURT: Do you understand if you chose not to testify or put on any evidence, those facts could not be used against you?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: If I accept your plea of guilty, you will not have a trial and a jury will not decide your guilt, but I will find you're guilty of the charge based on your admission that you're guilty. Do you understand?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: You earlier verified your signature on the plea agreement that you entered into with the government. In a moment I will ask the Assistant US Attorney to review the terms of the plea agreement, other than factual basis for the plea and potential penalties, which we will discuss a bit later in this proceeding.

After that I will be asking you whether the agreement as presented accurately reflects your understanding of the agreement that you've reached with the government?

Ms. Chaiken.

MS. CHAIKEN: Thank you, your Honor.

The plea agreement sets forth that Mr. Gaines is pleading guilty because he is, in fact, guilty of the offense charged.

Paragraphs two through six set forth an acknowledgment and a waiver of the rights that the Court just reviewed with Mr. Gaines.

Paragraphs seven through nine set forth an acknowledgment of the penalties that I understand we'll review shortly.

According to paragraph 11, the remaining counts that are pending against Mr. Gaines will be dismissed on entry of his plea.

Paragraph 12, the US Attorney for the Northern District of Georgia agrees not to bring further charges against Mr. Gaines related to the charges to which he's pleading guilty.

Paragraphs 13 through 15 set forth a series of guideline stipulations, specifically that the applicable offense guideline is 2S1.1(a)(1), that the offense level for the underlying offense is 21 under Section 2B1.1 because the base offense level is 7, and a 14-level upward adjustment applies for amount of loss, between $550,000 and $1.5 million.

The two-level upward adjustment will apply under Section 2S1.1 (b)(2)(B) because Mr. Gaines is pleading guilty to a money laundering offense under Section 1956.

A two-level adjustment under Section 2S1.1(b)(3) will not apply for sophisticated laundering.

And a three-level upward adjustment will apply pursuant to Section 3B1.1(b) for Mr. Gaines' role in the offense because he was a manager or supervisor and the criminal activity involved five or more participants.

In paragraph 16 the government agrees to recommend a two-level downward adjustment for acceptance of responsibility subject to exceptions set forth in that paragraph, including if the defendant engages in conduct inconsistent with acceptance of responsibility.

Paragraph 17 sets forth the parties' understanding that each party reserves the right to make recommendations for sentencing and that there are no agreements on the guidelines other than those that are set forth in the plea agreement.

In paragraph 18 the government reserves the right to modify its sentencing recommendation if it receives additional information that bears on its sentencing recommendation.

In paragraph 19 the government agrees to recommend a sentence within the adjusted guideline range so long as the defendant does not engage in conduct inconsistent with acceptance of responsibility.

Paragraph 20, the government agrees to make no specific recommendation as to the fine to be imposed.

Paragraph 21, Mr. Gaines agrees to pay $806,710 plus applicable interest in restitution to Cross River Bank and the Small Business Administration in the amount set forth in that paragraph.

In paragraphs 22 and 23 Mr. Gaines agrees to forfeiture of any assets that have been seized in connection with this case.

In paragraph 24 Mr. Gaines agrees to pay a special assessment of $100.

In paragraphs 25 through 29 Mr. Gaines agrees to cooperate fully in the collection of any restitution or fine that's imposed pursuant to the terms that are set forth in those paragraphs.

In paragraph 30 Mr. Gaines provides that he understands that the recommendations in the plea agreement are not binding on the Court.

Paragraph 31 sets forth appeal waiver, which I would like to read in full into the record.

THE COURT: Go ahead.

MS. CHAIKEN: Thank you.

To the maximum extent permitted by federal law, the defendant voluntarily and expressly waives the right to appeal his conviction and sentence and the right to collaterally attack his conviction and sentence in any post-conviction proceeding, including but not limited to motions filed pursuant to 28 USC, Section 2255 on any ground except that the defendant may file a direct appeal of an upward departure or upward variance above the sentencing guidelines range as calculated by the district court.

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

The defendant understands that this plea agreement does not limit the government's right to appeal, but if the government initiates a direct appeal of the sentence imposed, the defendant may file a cross-appeal of the same sentence.

And paragraph 32 sets forth FOIA and Privacy Act waiver.

And paragraph 33 sets forth that there are no other agreements between the parties other than this plea agreement.

THE COURT: All right. Thank you.

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

THE DEFENDANT: Yes.

THE COURT: And she read to you about your appeal rights in paragraph 31 and the three circumstances in which you might be able to appeal, but do you understand that you otherwise will have no right of appeal and will be essentially bound by my decision at sentencing?

THE DEFENDANT: Yes.

THE COURT: And, Ms. Timberlake-Wiley, have you reviewed those rights regarding waiver of appeal with your client such that you're comfortable he understands both his rights and waiver of those rights?

MS. TIMBERLAKE-WILEY: Yes, your Honor, I have.

THE COURT: And, Mr. Gaines, do you understand that any provisions in the agreement regarding recommendations to

be made by the government are not binding on the Court? In other words, if I choose not to follow some recommendation that the government makes, do you understand that you will still be bound by your plea of guilty and would not be entitled to withdraw the plea based on the Court not following the recommendation?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: No.

THE COURT: And per the terms of the plea agreement, the US Attorney for the Northern District of Georgia has agreed not to bring any additional charges related to the offense to which you're pleading guilty. Other than those terms, has anyone threatened or forced you to plead guilty or told you that if you do not plead guilty, further charges will be brought against you or other adverse action taken against you?

THE DEFENDANT: No.

THE COURT: And, Ms. Timberlake-Wiley, are you aware of any plea agreement or promise being made to your client

other than what's been discussed here in court?

MS. TIMBERLAKE-WILEY: No, your Honor.

THE COURT: In a moment I will ask Ms. Chaiken to state the elements -- excuse me -- to state the elements of the offense to which you're pleading guilty. The elements of the offense are those matters that the government must prove beyond a reasonable doubt in order to convict you of the charge.

Ms. Chaiken.

MS. CHAIKEN: Thank you, your Honor.

Mr. Gaines is pleading guilty to Count 47 of the second superseding indictment which charges money laundering in violation of Title 18 United States Code, Section 1956(a)(1)(B)(i) and Section 2.

The elements of that offense are as follows:

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

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

Three, money or property did come from an unlawful activity, specifically wire fraud;

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

proceeds.

THE COURT: All right. Thank you.

And, Mr. Gaines, do you understand that those are the elements that the government would have to prove beyond a reasonable doubt in order to convict you of the charge?

THE DEFENDANT: Yes.

THE COURT: In a moment I'll ask the Assistant US Attorney to summarize the evidence the government would expect to present at trial to prove each of these elements. In other words, these are what the government contends are the facts of the case. It's necessary for the government to state these facts because I must determine whether there's a factual basis for you to enter a plea of guilty.

After this statement, I will ask you whether you disagree with any facts stated by the prosecutor. If you do, tell me and we will discuss those facts at that time.

Ms. Chaiken.

MS. CHAIKEN: Thank you, your Honor.

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

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

Under the PPP small businesses could apply for loans that must be used for payroll expenses, interest on mortgage, rent and/or utilities.

The amount of a PPP loan that a business could receive was generally two-and-a-half times the business's average monthly payroll cost.

While the United States Small Business Administration oversaw the PPP, individual PPP loans were issued by private approved lenders, including Cross River Bank, an FDIC insured financial institution based in Fort Lee, New Jersey.

The PPP borrower application form asks the applicant to provide information related to their loan application, including the amount of the business's average monthly payroll, the number of the business's employees and the purpose of the loan with options for payroll, lease and mortgage interest, utilities and/or other. The lender then used this information to calculate the amount of the loan that the business was eligible to receive.

The application form also included certain representations and certifications, including certifications as to the accuracy of the information included in the application itself and in any supporting documents and a certification that the funds would be used to retain workers and maintain payroll or to make mortgage interest payments, lease payments and utility payments.

Defendant John Gaines, who at all relevant times was in the Northern District of Georgia, was a relative of Andre Gaines, who owned a Georgia company called Gaines Reservation & Travel.

On or around May 18th, 2020, Gaines Reservation submitted a PPP loan application. In the PPP loan application Gaines Reservation represented that it had 69 employees and $322,684 in average monthly payroll and that the purpose of the loan was payroll, lease or mortgage interest and utilities.

To support these payroll figures Gaines Reservation submitted IRS Form 941s for Gaines Reservation for each quarter of 2019, and a JPMorgan Chase bank statement for Gaines Reservation for February 2020.

The documents submitted with Gaines Reservation's PPP loan application were fabricated. The IRS confirmed that Gaines Reservation did not file a Form 941 for any quarter in 2019. And bank records for Gaines Reservation show that the bank statement submitted with the PPP loan application was fake. In reality, Gaines Reservation did not have any employees or any monthly payroll costs.

Based on the false representation in Gaines Reservation's PPP application and the fabricated supporting documents, Cross River Bank issued an $806,710 PPP loan to Gaines Reservation.

John Gaines, using his alias Marty Gaines, worked with Darrell Thomas and others to obtain Gaines Reservation's fraudulent PPP loan. E-mails would shown that Defendant Gaines e-mailed a person who makes fake documents for him and asked that person to create fake bank statements for Gaines Reservation that would show payroll withdrawals.

Defendant Gaines then sent multiple fabricated bank statements to Darrell Thomas, and one of those bank statements was submitted with Gaines Reservation's PPP loan application.

Defendant Gaines also e-mailed various other documents to Darrell Thomas related to Gaines Reservation, including a PPP application form that left the number of employees and the amount of payroll blank so that Darrell Thomas and others working with him could fill in those blanks with fake numbers.

After the PPP loan money was deposited into Gaines Reservation's bank account, on which Defendant Gaines was a signer, Defendant Gaines directed various financial transactions to make it look like Gaines Reservation was making payments for payroll and rent which are approved expenses under the PPP.

For example, on June 22nd, 2020, Defendant Gaines caused a wire transfer to be sent from Gaines Reservation to a company called Management Resource Services in the amount of $179,985.72. The purpose of the transfer was listed as

payroll services. In reality, however, Gaines Reservation had no payroll and the purpose of the transfer was not payroll services. Instead, the transfer was designed to conceal the location, nature and source of the fraudulently obtained PPP loan proceeds by making them appear to be spent on payroll while sending them to an account controlled by Mr. Gaines' ex-wife, Carla Jackson.

THE COURT: Thank you.

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

MS. TIMBERLAKE-WILEY: Your Honor, we don't disagree but we do have just a clarification.

THE COURT: Sure.

MS. TIMBERLAKE-WILEY: In the beginning where Prosecutor Chaiken stated that Mr. Gaines was a relative of Andre Gaines who owned a Georgia company, we just want to make it clear that Andre Gaines owned the Gaines Reservation & Travel. That's just important to my client that that be stated.

And also in the last paragraph where the prosecutor stated that Mr. Gaines caused the wire transfer to be sent, we don't dispute that, but the wire transfer was actually sent by Co-Defendant Andre Gaines.

THE COURT: Very well.

Mr. Gaines, with those caveats by your client (sic),

do you disagree with anything else that the Assistant US Attorney said?

THE DEFENDANT: No.

THE COURT: Very well.

Do you admit each of the elements she listed earlier?

THE DEFENDANT: I beg your pardon?

THE COURT: Do you admit each of the elements of the offense she listed earlier?

THE DEFENDANT: Oh, yes.

THE COURT: And, Ms. Chaiken, if you can please state the potential penalties the defendant faces for the charge, including the maximum penalties and any mandatory minimums.

MS. CHAIKEN: Yes, your Honor.

As to Count 47, the maximum term of imprisonment is 20 years. There is no mandatory minimum term of imprisonment. The authorized term of supervised release is zero to three years. The maximum fine is $500,000, or twice the value of the property involved in the transaction, whichever is greatest, due and payable immediately. And then there's also full restitution due immediately, a mandatory special assessment of $100 and forfeiture of any and all proceeds from the commission of the offense, any and all property used or intended to be used to facilitate the offense and any property involved in the offense.

THE COURT: All right. Thank you.

Mr. Gaines, do you understand those are the possible penalties you can receive in this case?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: In the plea agreement -- excuse me.

In the plea agreement that was reviewed with you earlier -- we discussed that waiver of appeal already. So strike that.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: And do you understand that you may be ordered to pay restitution to any victims of the offense?

THE DEFENDANT: Yes.

THE COURT: Are you a citizen of the US Government, sir? Are you a US citizen?

THE DEFENDANT: Yes.

THE COURT: Ms. Chaiken and Ms. Timberlake-Wiley, is there any forfeiture at issue?

MS. CHAIKEN: Your Honor, there were funds that were seized from accounts on which -- or at least one account on which Mr. Gaines is a signer, but our understanding is that that amount has already been forfeited through the judicial process, which is why it's not specifically identified as a forfeiture.

THE COURT: Very well.

Sir, is there anything we've talked about today that you do not feel that you fully understand?

THE DEFENDANT: No.

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

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: How do you plea to Count 47 of the indictment?

THE DEFENDANT: Guilty.

THE COURT: Ms. Timberlake-Wiley, do you feel that you've had a sufficient opportunity to investigate your client's case and advise him concerning the entry of this plea?

MS. TIMBERLAKE-WILEY: Yes, your Honor.

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

MS. TIMBERLAKE-WILEY: No, your Honor.

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

MS. TIMBERLAKE-WILEY: No, your Honor.

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

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

THE COURT: Does the government object to the defendant remaining on bond subject to the previous conditions?

MS. CHAIKEN: No, your Honor.

THE COURT: I find that the defendant understands the charge and the consequences of the plea.

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

The Court finds that the plea has a factual basis and is free of any coercive influence of any kind.

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

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

I find that the plea is freely and voluntarily entered.

It's, therefore, ordered that the plea of guilty of the defendant to Count 47 of the indictment is accepted and entered.

Mr. Gaines, you are hereby adjudged guilty of the charge contained in Count 47 of the indictment.

I'll now be referring your case to a probation officer who will prepare a presentence report. Before I receive the report, sir, you and your attorney will receive a copy of the report and will have an opportunity to object to any findings in the report.

At your sentencing hearing I will hear from the government and any witnesses that it wishes to present, and from you, your attorney, and any witnesses that you wish to

present.

At that time I will decide the proper sentence in your case.

Do you understand?

THE DEFENDANT: Yes.

THE COURT: Counsel, let me now give you some instructions but these will all be included in the notice of sentencing that will be filed on the docket.

If either party requests a departure or a variance or if there's a disputed guidelines issue, I require a sentencing memo to be filed ten business days before the sentencing hearing, the date of which will be provided to you later by Ms. Lee.

Responses are mandatory and must be filed five business days before the hearing.

In the event that the parties agree on the appropriate sentence, please inform the Court no later than five business days in advance of the hearing.

Counsel, is there anything else from either side?

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

MS. TIMBERLAKE-WILEY: No, your Honor.

THE COURT: All right. Good to see all of you.

Ms. Lee, thank you.

Ms. Coudriet, thank you.

Officer, I appreciate your help this morning, I guess

now this afternoon as well.

Mr. Gaines, you have taken responsibility for your actions this morning. As I'm sure your attorney has explained to you federal law looks favorably on people who do so. We will figure out your sentence in a few months, but I do want to commend you here for taking the first step towards making things right here. Okay?

THE DEFENDANT: Yes.

THE COURT: Take care, everyone.

(PROCEEDINGS REPORTED WERE CONCLUDED 12:06 PM)

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 11th Day of February, 2024.

PENNY PRITTY COUDRIET, RMR, CRR
OFFICIAL COURT REPORTER